

R H O D E  
I S L A N D  
H I S T O R Y

SUMMER 1971

**F U S T P U B L I S H E D,**

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T H E

**C A S E,**

**T R E V E T T V E E D E N :**

On INFORM **PLAINT,** for  
refusing Payment for  
*Butcher's* at Par with  
Specie.

Tried before the **S U P E R I O R**  
**C O U R T,** *Newport, Septem-*  
*ber Term, 1786.*

The Case of said Court,  
Before the **A S S E M -**  
**B L Y,** 1786, on  
Citation,  
Wherein the *trial by Jury,*  
*&c.* are stated the Legisla-  
tive, Judiciary *owers of Govern-*  
ment examined and *decided.*

By **JAMES M. VARNUM, Esq;**  
Major-General of the State of *Rhode-Island, &c.*  
Counsellor at Law; and Member of Congress  
for said State.

# R H O D E I S L A N D H I S T O R Y

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*When Mr. Trevett brought action against Mr. Weeden of Newport in September 1786 "for refusing Paper Bills in Payment for Butcher's Meat" he started a flow of printer's ink that continues today on page 95. James Mitchell Varnum's eloquence has given lasting fame to the case.*

*Advertisement from Providence Gazette, January 20, 1787.  
Portrait of Varnum copied from a miniature painted on ivory; photograph  
RHS Library.*



*Elisha Benjamin Andrews as he appeared in the Brown class album of 1870.*

*Photograph courtesy Brown University Archives.*

## Students and the Andrews Legend at Brown

by James E. Hansen, II\*

Elisha Benjamin Andrews, president of Brown University from 1889 to 1898, was an ambitious and dynamic leader. Despite meager financial resources he battled to transform Rhode Island's most venerable college into a full-fledged university. His presidency was characterized by innovation and growth: a three-fold increase in enrollment, greatly expanded course offerings, the assembling of a distinguished faculty, the founding of a women's college, the development of a promising graduate program, and a bold experiment in university extension.<sup>1</sup>

In addition Andrews found time for outside interests. He was an active public speaker, a productive scholar, and a social reformer involved in the major issues of his day.<sup>2</sup> In 1897 his unconventional views on currency reform contributed to a serious conflict with the university's trustees. The immediate question was one of free speech, and Andrews became the focal point of an exciting, nationally-debated academic freedom controversy.<sup>3</sup>

Elisha Benjamin Andrews was an adaptable man who deliberately sought out a broad range of experiences.

He seemed to thrive on new challenges and enjoyed successful careers in religion, teaching and scholarship, and academic leadership.<sup>4</sup> At the same time, however, he adhered to some constant values: the Christian religion, the responsibility of creating a better society, and the task of encouraging the development of young people. Particularly remarkable was his impact upon the young. At Brown, both as professor and president, Andrews displayed an unusual sense of dedication towards students, and few American educators have inspired such profound affection and loyalty as did "Bennie" Andrews.<sup>5</sup>

Andrews' success with young people is significant because it was achieved at a time when student relations with professors and college administrators were strained. Lawrence Veysey has noted that "between undergraduates and their professors at the end of the nineteenth century a gulf yawned so deep that it could appropriately be called the 'awful chasm.'"<sup>6</sup> This chasm existed because students tended to perceive the college as two distinct communities: one, of the "curriculum and the catalog"; and another,

\*Mr. Hansen is Assistant Professor of History at Colorado State University.

1 E. Benjamin Andrews, *Annual Report of the President to the Corporation of Brown University, 1890-1896, 1898* (in 1897 Andrews was on sabbatical leave and the report was written by acting president Benjamin F. Clarke). Annual reports are on file in University Hall, Brown University, Providence, R.I. For Andrews' involvement with the University of Chicago and his relations with William Rainey Harper see Richard J. Storr, *Harper's University: The Beginnings: A History of the University of Chicago* (Chicago, 1966); Thomas Wakefield Goodspeed, *William Rainey Harper* (Chicago, 1928), 41-43; Andrews, "The Granville Period," *Biblical World*, 27 (January-June 1906), 167-70.

2 James E. Hansen, II, "Gallant, Stalwart Bennie: Elisha Benjamin Andrews (1844-1917) — An Educator's Odyssey" (unpublished Ph.D. dissertation, University of Denver, 1969), 378-82.

3 Hansen, 295-357.

4 Graduating from Brown in 1870, Andrews accepted a position as principal of the Connecticut Literary Institute, a Baptist-affiliated preparatory school. Two years later he enrolled at the Newton Theological Institution, prepared for the ministry, and in 1874 became pastor of the Beverly (Mass.) Baptist Church. In 1875 he assumed the presidency of Denison University. In 1879 he resigned and embarked upon an extended period of teaching and scholarly activity: a professorship at Newton, 1879-82; graduate study in Germany, 1882-83; a professorship at Brown, 1883-88, and another at Cornell, 1888-89. In 1889 he was called back to Brown to become president. Leaving Brown in 1898, Andrews went to Chicago where he served as superintendent of that city's public school system. He concluded his educational career as chancellor of the University of Nebraska, 1900-08.

5 "Bennie" is the affectionate nickname students gave to Andrews. In reminiscences it has been spelled "Bennie" and "Benny." The former spelling has been used most frequently.

6 Lawrence R. Veysey, *Emergence of the American University* (Chicago, 1965), 294. See also John S. Brubacher and Willis Rudy, *Higher Education in Transition* (New York, 1968), 122.

of athletic contests, fraternity parties, YMCA meetings, and inter-class melees. Moreover, undergraduates found extracurricular activities more real and rewarding than the classroom.<sup>7</sup> This outlook reflected the values of a competitive, materialistic society. College provided social contacts and an aura of respectability that were useful in the business world. Professors, however, had withdrawn from this world. They found fulfillment in somewhat cloistered intellectual commitments, not in struggles over social prestige and money. Pupil and teacher thus approached the college experience with different perspectives, and these differences produced conflicts. Because students would not study voluntarily, professors subjected them to frequent, mandatory examinations; undergraduates often responded by cheating. In values, interests, and temperament, students and instructors had little in common.<sup>8</sup>

Discord was also generated by the traditional concept of *in loco parentis*, under which students were subjected to rigorous moral, religious, and intellectual supervision. This paternalistic approach to higher education featured daily chapel services, innumerable rules governing personal conduct, rigidly prescribed curricula, compulsory class attendance, and authoritarian teaching methods. Since professors and college presidents were charged with enforcing this system, amicable relations with students were often impaired.<sup>9</sup> After the Civil War the influence of academic paternalism was reduced by increasing secularism, the relaxation of Puritan moral taboos, widespread acceptance of the elective system, and the example of the German university. However, important vestiges of the tradition continued — a fact which many undergraduates resented.<sup>10</sup>

Elisha Benjamin Andrews came to Brown as a teacher in September 1883 following more than a year of graduate study abroad. Since 1864 the chair of history and political economy, which he now assumed, had been filled by one of the most popular and respected

Although President Andrews was able to bridge the "awful chasm" between academic and extracurricular interests, there is evidence that it did persist in modified form. A 1909 postcard caricatures the students' preferences.



Postcard collection. RIHS Library.

professors in the university's history, J. Lewis Diman, a master instructor, idolized by students for his manly bearing, brilliant lecturing, and keen sense of humor. In addition, he was absolutely committed to intellectual honesty. Disdaining criticism, he forcefully expressed himself on such controversial topics as the benefits of free trade and the virtues of Catholicism. His fairness in treating all sides of an issue was widely recognized.

7 George E. Peterson, *The New England College in the Age of the University* (Amherst, 1967), 86-87. Brubacher and Rudy, 119-39.

8 Veysey, 298-303. Brubacher and Rudy, 122.

9 Brubacher and Rudy, 43-44, 51-57. Frederick Rudolph, *The American College and University* (New York, 1962), 86-109.

10 Brubacher and Rudy, 122-23. Peterson, 113-48. Veysey, 299-300.

11 Walter C. Bronson, *History of Brown University 1764-1914* (Providence, 1914), 409-11. Caroline Hazard, comp., *Memoirs of J. Lewis Diman* (Boston, 1887).

Professor Diman's reputation was such that, repeatedly, leading schools offered him attractive professorships, and two universities even sought him as president.<sup>11</sup> This was the man whom Andrews replaced, and comparisons between Diman and the new professor were inevitable.

Andrews met this challenge remarkably well. From the beginning he firmly established a distinctive teaching style expressing his own intellectual independence. His classroom procedures were rarely inhibited by tradition. Students in history and political economy received syllabi which provided a course synopsis and eliminated the customary need for memorizing blocks of material from dictated lectures.<sup>12</sup> He also minimized many of the restrictive formalities which characterized teaching of that era. In his classes the recitation, an oral drill to determine whether or not students had correctly memorized specific assignments, was an occasional instead of a constant instructional method. Andrews also deviated from established practice by permitting students to raise questions during class and to dispute his conclusions. His foremost objective was to promote a spirited exchange of ideas between pupil and teacher.<sup>13</sup>

The students were highly responsive to his informality and to his liberal use of slang and humor to enliven discussions or stress points. During a history class meeting, Andrews described a certain king as lacking "jasm." Bewildered, a student raised his hand and asked, "Professor Andrews, what is 'jasm'?" "Don't you know what jasm is?" replied Andrews in a surprised tone. "Jasm is a buzz-saw ripping through a keg of tenpenny nails."<sup>14</sup> Another time, after completing a discussion on the terms *a priori* and *a posteriori*, Andrews asked a student a question on some historical matter. The pupil got up, stammered, and finally confessed that he had forgotten the answer. He sat down, and another was about to take up the question when the first suddenly began waving his hand. Asked

what he wanted to say, the young man replied that he now remembered the answer perfectly. The professor gave him a long good-natured glance and said, "A little *a posteriori*, Mr. H."<sup>15</sup>

To some of his peers, especially certain older members of the faculty, such informality seemed undignified and at times highly irritating, though to his students it was very exciting. During a period when the Brown faculty was dominated by an older generation of instructors, such as Ezekiel G. Robinson, John L. Lincoln, Albert Harkness, and T. Whiting Bancroft, men who seldom if ever used slang and who told no jokes unless based upon the scriptures or the classics, Andrews was enormously refreshing.<sup>16</sup> He had a knack for stimulating young minds in provocative and entertaining ways.

In addition to his impact as a teacher, Andrews achieved some notice for his involvement in student extracurricular activities. Rarely did he decline an undergraduate appeal for assistance. When a group of political economy pupils formed an economics club, he encouraged them and regularly attended their meetings.<sup>17</sup> When the student debating society needed a speaker for one of its meetings, Andrews appeared and delivered an engrossing address on the importance of extemporaneous speaking and knowledge of parliamentary practice.<sup>18</sup> Furthermore, on numerous occasions Professor and Mrs. Andrews opened their home to Brown students, thus encouraging personal relationships with numerous young people.<sup>19</sup>

Andrews' activities in Providence between 1883 and 1888 were not confined to the university alone. As a former Baptist minister his interest in religion and preaching remained strong. On most Sunday mornings he could be found either supplying some vacant pulpit or conducting Sunday school classes.<sup>20</sup> As might be expected, Andrews' preaching had a definite appeal for many university students. To Walter C. Bronson, class of '87, the professor's fearless rationalism, combined

12 Otis E. Randall, *Brown Reminiscences*, May 24, 1935. The *Brown Reminiscences*, hereafter cited *BR*, consist of photocopies of responses to an inquiry made by Professor William T. Hastings and Judge John S. Murdock during 1935 and 1936. These are supplemented by eulogies, and interviews conducted by Hastings in 1935 and by Professor Gilbert E. Case in 1959. Originals of these materials are preserved but not systematically arranged in the Brown University Archives.

13 A. Clinton Crowell, *BR*, December 7, 1935.

14 Bronson, *BR*, unpublished autobiography, 21.

15 James L. Jenks, *BR*, April 12, 1935.

16 Randall, *BR*, May 24, 1935.

17 Bronson, *BR*, 22.

18 *Brunonian*, 8 (1884-85), 27-28.

19 *Providence Journal*, February 12, 1885.

20 *Providence Journal*, October 7, 1884; November 16, 1886.

with strong faith in the essentials of Christianity, made it possible for skeptical young men — such as Bronson — to remain in the church and yet retain intellectual integrity. This kind of religion respected both tradition and critical thinking and seemed completely devoid of the mealy-mouthed platitudes that sometimes passed for Christianity during that period.<sup>21</sup>

As a classroom teacher and as a dynamic figure both on and off campus, Andrews easily met the challenge of succeeding Professor Diman. Students responded enthusiastically to the new instructor and, when in 1888 he left to become professor of political economy and finance at Cornell University, they expressed their disappointment. An undergraduate newspaper commented editorially:

*We would not presume to question the wisdom of our much beloved teacher in leaving Brown for this new field of work and influence. On that subject he alone is competent to judge. We cannot however let him depart without an expression of sincere appreciation of his work and influence here. Scholarly and liberal in all his instruction, he has inspired every man under him with an ardent wish for learning. . . . Intensely interested in everything of interest to "the boys," he has won the personal admiration and love of every man in the college . . .*<sup>22</sup>

In the same mood a graduate of '85 criticized the school for permitting Andrews to leave and declared that of all courses at Brown, Andrews' alone radiated an atmosphere of intellectual excitement. This alumnus acknowledged the scholarly qualifications of Brown's faculty but declared that few of these men were great teachers or inspirers of youth. "To many of the graduates during the past five years, he has been the prophet and the inspiration of a new intellectual life."<sup>23</sup>

Andrews' appointment at Cornell was clear evidence of his growing professional reputation as scholar and teacher for he was called to take the place of the renowned and controversial Henry Carter Adams. The year at Cornell, however, was but a temporary interrup-

tion. In September 1889 he returned to Providence to assume the responsibilities of the Brown president.<sup>24</sup>

In the years of his presidency Andrews won from his students a loyalty such as no predecessor had ever attained. For, despite his ambitions for Brown as an institution, his numerous administrative burdens, and his religious and scholarly involvements, he still held himself to a fundamental duty of the old time college president: he consciously tried to influence as many students as possible in a personal and individual way. Continuing a practice he had followed while president of Denison University, a small denominational college, Andrews conducted a course in practical ethics.<sup>25</sup> In the old time college this class served as the culmination of the academic experience. Offered during the senior year, and traditionally conducted by the school president, it encompassed a variety of fields, including many that later emerged as specialized "social sciences": psychology, sociology, and political science. Essentially it was designed to provide a proper Christian and moral orientation for young men going out into the world.<sup>26</sup> Needless to say this objective with its emphasis upon personal morality and character building appealed strongly to Andrews' ministerial outlook. He taught the course with particular enthusiasm and, since it was offered during the senior year, caused many students to leave Brown with a vivid impression of his ideas and personal vitality.<sup>27</sup>

Throughout his presidency Andrews maintained special office hours so that young persons experiencing difficulties might meet with him and, occasionally, he even opened his home for this purpose. When cases of student misconduct occurred, it was Andrews who acted to guarantee that certain standards of behavior were maintained. In short, like the old time college president, Andrews displayed a strong interest in the personal and moral as well as the intellectual growth of the people who attended Brown.<sup>28</sup> This approach to education was clearly traditional, stressing the indivisibility of learning and an orderly Christian environment;

the evils of society. In 1888 he was dismissed for delivering a pro-labor speech that annoyed a powerful benefactor of the university. He was immediately called to the University of Michigan and enjoyed a long and distinguished career at Ann Arbor. Veyssey, 76-77. Richard Hofstadter and Walter P. Metzger, *Development of Academic Freedom in the United States* (New York, 1955), 419.

21 Bronson, *BR*, 21.

22 *Brunonian*, 22 (1888-89), 30.

23 *Providence Journal*, July 2, 1888. This alumnus' criticism may not have been justified. According to Alfred G. Langley, '76, president Ezekiel G. Robinson hoped that Andrews might be his successor. He believed that if Andrews left Providence for a time, Brown would realize its loss and call him back as president at the earliest opportunity. See *Providence Journal*, August 21, 1897.

24 Waterman T. Hewett, *Cornell University: A History*, 2v. (New York, 1905), 2, 132-33. Adams supported the ideal that scholars should employ their knowledge to remedy

25 At Denison this course was entitled "moral philosophy." Osman C. Hooper, *Denison Reminiscences*, January 1918. The Denison Reminiscences consist of materials in the Denison University Library, eulogies, and two or



but it was employed with such skill that many students viewed the president's direct influence as a highly significant factor in their total collegiate experience. In an age of discordant student-faculty relations and of widespread undergraduate opposition to academic paternalism, Andrews was clearly an exceptional figure.<sup>29</sup>

Among the beneficiaries of Andrews' unusual interest in students was James H. Higgins, class of '98, later governor of Rhode Island from 1907 to 1909. Higgins appeared in the president's office one day hoping to secure a scholarship. A poor boy, but determined to obtain an education, he had worked long hours financing night school classes in order to qualify for college admission. Unfortunately, by the time he was able to come to Providence and meet with Andrews, all financial aid for the coming school year had been allocated. Higgins was bitterly disappointed, but apparently there was nothing that could be done. Andrews, however, recognizing the young man's acute unhappiness, told him to come back the next day.

When Higgins returned, he was amazed to discover that loan money had been made available; he would be permitted to enroll for the coming term. Thus James Higgins was able to obtain his education and move on to a distinguished career in public service. Several years after his graduation, Higgins returned to Brown to pay off his debt. Going to the financial office, he asked how much he owed. Mysteriously, no one seemed to know; there were no records of any financial arrangements involving Higgins. Andrews, impressed by the young man's story, had put up the money himself.<sup>30</sup>

A number of students, like Higgins, achieved prominence in later life after being influenced by Andrews. One was Alexander Meiklejohn, class of '93, who, as president of Amherst College and dean of the Experimental College at the University of Wisconsin, played a key role in reinvigorating the twentieth-century liberal arts college. Meiklejohn believed that,

three inquiries by Professor William T. Hastings concerning Andrews' activities there [originals of the latter are in Brown University Archives].

- 26 George P. Schmidt, *The Old Time College President* (New York, 1930), 108-111.  
 27 Henry D. Sharpe, Notebook of E. Benjamin Andrews course in Practical Ethics, January-June 1894, Brown University Archives. Also Charles Dana, April 4, 1935; George S. Ellis, April 9, 1935; Henry F. Huse, April 10, 1935; Frank Grant Lewis, June 27, 1935; and Mary E. Woolley, December 31, 1935, all BR.  
 28 *Brown Daily Herald*, October 14, 1892. Schmidt, 52-53.

James H. Higgins, class of '98, rewarded Andrews' faith in him. This portrait of Rhode Island's Governor Higgins, 1907-1909, hangs in the State House.



Photograph by Leo P. Reardon.

ideally, higher learning should foster liberal culture and absolutes of intelligence and morality which would equip students for a life of self-disciplined freedom.<sup>31</sup> He particularly held that true education should embrace the whole man and not be limited to the promotion of efficiency or to social service. The purpose of the American college, he said, *is not primarily to teach the forms of living, not*

- 29 For observations on the changing character of the college and university presidency see Peterson, 138-40; Veysey, 259.  
 30 James N. Ashton, BR, April 23, 1935. "Higgins, James Henry," *National Cyclopaedia of American Biography*, 16 (1917), 402.  
 31 Charles Jasper Cooper, "Alexander Meiklejohn: Absolutes of Intelligence in Political and Constitutional Theory," *Dissertation Abstracts*, 29 (November 1968), 1576-A. Scott Abbott, "Philosopher and Dean: Alexander Meiklejohn at Brown, 1901-1912," (unpublished master's thesis, University of Denver, 1966).

primarily to give practice to the art of living, but rather to broaden and deepen the insight into life itself, to open up the riches of human experience, of literature, of nature, of art, of religion, of philosophy, of human relations, social, economic, political, to arouse an understanding and appreciation of these, so that life may be fuller and richer in content; in a word, the primary function of the American college is the arousing of interests.<sup>32</sup>

In 1912 Meiklejohn became president of Amherst where he was highly successful in promoting his particular educational philosophy — a philosophy which he felt had been greatly influenced by the teaching of Andrews. Meiklejohn idolized Andrews and likened his teaching abilities to those of Socrates. He noted that the president "seemed to give an answer to that question in which all other questions are summed up, What shall I be?" Moreover, he saw Andrews as a true champion of liberal culture: "Its learning and its art, its literature and thought, its science and religion had their way with him. He dreamed of making men of culture."<sup>33</sup>

Another student deeply impressed by his contacts with Elisha Benjamin Andrews was John Hope, the renowned Negro educator.<sup>34</sup> Son of a white father and a Negro mother, Hope came to Brown in 1890 after graduating from Worcester Academy in Massachusetts. He had been raised in Georgia amid difficult social pressures caused by his parents' racially mixed union and poverty. Securing a scholarship to Worcester Academy, he fervently wished to obtain a college education. Hope succeeded in this ambition largely because Andrews made some generous financial arrangements which enabled the young Negro to meet expenses and remain at Providence.<sup>35</sup> Hope held a deep admiration for Andrews both as an inspiring example

and as a "liberal" on the racial issue.<sup>36</sup> Many years after leaving Brown, Hope wrote a letter to Andrews which vividly expressed this admiration:

*Whatever has been my success, inner rather than outer, is due largely to you, not only to your teachings but to your life . . . No gathering of old Brown men occurs without mention of you . . . and no man ever mentions you without a quiver in the eye. You not only taught men, but made them.<sup>37</sup>*

Hope's impression of the president's racial liberalism was fixed only a few weeks after the young student arrived. At that time the prominent Negro educator and politician, John M. Langston, paid a visit to Providence. He was entertained by loyal Republicans and honored with a lavish reception by the city's Negro community. John Hope was a member of the arrangements committee for this reception. When President Andrews learned of Langston's presence, he invited the distinguished visitor to address the students at a morning chapel service. To John Hope this invitation was a gesture of singular importance: "John M. Langston was up to that time the first colored man to occupy a seat in the pulpit of Brown University." With a definite trace of emotion, Hope proudly recalled the moment of Langston's appearance:

*I shall never forget the impression made on me that morning as I saw those two learned and eloquent men sitting in the pulpit of our historic old chapel. There where Wayland and Lincoln and Robinson had sat, educators whose impress on the country's culture cannot perish with the years, sat John M. Langston, a fit representative of my people.<sup>38</sup>*

In addition to James H. Higgins, Alexander Meiklejohn, and John Hope, President Andrews also influenced Mary E. Woolley, one of the first women to graduate from Brown and for thirty-six years president

32 Veysey, 210-11.

33 Alexander Meiklejohn, *Freedom and the College* (New York, 1923), 50-52. Andrews certainly valued liberal culture, but he tended to view this concept more pragmatically than Meiklejohn. In stressing the importance of union between moral and intellectual elements in an education and in asserting that "an education was liberal . . . in proportion as it rendered its possessor at home in the world of the mind," he offered ideas which Meiklejohn could utilize in developing his own educational philosophy. More than Meiklejohn, however, Andrews believed that mental activity required some rational and visible end. The individual scholar had to be practical; the man of letters could not "mope and dream." This was, perhaps, an important difference in emphasis, but it did not

detract from Andrews' enormous personal impact upon the younger man. Andrews, "Idea of a Collegiate Education," *Baptist Quarterly Review*, 12 [1890], 433-35.

34 Hope served as president of Atlanta Baptist College from 1906-1929 and then became president of Atlanta University, the first Negro graduate school.

35 Ridgely Torrence, *Story of John Hope* (New York, 1948), 91-101.

36 Torrence, 93.

37 Torrence, 94.

38 John Hope was not entirely correct in his impression of Andrews' position on the race issue, which reflected an inconsistency quite typical of many 19th-century white Americans. On the one hand he could help Hope to obtain a college education; he could invite important

Mary E. Woolley, one of its earliest and most illustrious graduates, would have given Pembroke College the name Andrews for "the man to whom it owes its being."



Courtesy Brown University Archives.

of Mount Holyoke College. As a person who devoted her life to female higher education, Miss Woolley deeply appreciated Andrews' role in establishing the Women's College at Providence: "If ever an individual founded an institution, Dr. Andrews was the founder of this college, and the one criticism that I have of my Alma Mater, so dear to me, is that it fails to bear the name of the man to whom it owes its being."<sup>39</sup> She also greatly admired his qualities as an educator: "He possessed to an extraordinary degree the power of

inspiring students. One could not be less than his best self in his presence, and always left that presence with the feeling that a better self was possible."<sup>40</sup>

Of fateful importance for Brown University was the experience of John D. Rockefeller, Jr. When looking for a college to attend, Rockefeller was attracted to Brown primarily because of Andrews' reputation as an educator. Family friends such as William Rainey Harper and William Herbert Perry Faunce told him that the opportunity to study under Andrews would be an experience of incomparable value.<sup>41</sup> For his part Andrews was certainly aware that a close association between the university and America's wealthiest Baptist family might benefit the school. He actively recruited young Rockefeller, writing personal letters which described the advantages of an education at Providence. Once Rockefeller decided to attend Brown, Andrews was unusually solicitous in helping the new student to find suitable housing and get comfortably situated.<sup>42</sup> Their relationship deepened during John's years as an undergraduate. In addition to occasional social contacts, young Rockefeller attended church services and a Sunday Bible class conducted by the president.<sup>43</sup> Unfortunately he missed Andrews' senior level practical ethics course, which many students regarded as the highlight of their studies at Brown, because the president was on leave during Rockefeller's senior year.<sup>44</sup>

At one point an unpleasant incident threatened to mar cordial relations between Andrews and young Rockefeller. Trouble developed when Hammond Lamont, recently appointed professor of rhetoric and oratory, discovered that a number of his students had seemingly plagiarized written compositions. Some had incorporated material from books without using quotation marks; at least one had copied from another's

Negroes to visit Brown. Yet on the other hand he viewed members of the black race as inferior human beings. During a visit abroad, for example, Andrews compared the Negroes of Egypt to those of the U.S. by saying, "they are just the same as our dear Negroes at home, lazy, good-natured creatures of low intelligence." Reviewing William A. Dunning's *Reconstruction, Political and Economic*, he criticized the author for failing to stress the struggle of Southern Saxonism against Negro barbarism. *American Historical Review*, 1907-08, 371-373. In practice Andrews could treat members of another race with cordiality and respect. But his feelings were bound by the prevalent historical notion of Teutonic supremacy. Andrews to Isabel W. Bliss, February 12, 1897, copy, Brown University Archives.

39 Mary E. Woolley, *BR*, December 31, 1935. Grace E. Hawk, *Pembroke College in Brown University* (Providence, 1967), 16-28.

40 "Alumnae Department," *Sepiad* (Brown Women's College student magazine), 18 (December 1917), 28-29.

41 Raymond B. Fosdick, *John D. Rockefeller, Jr.: A Portrait* (New York, 1956), 46-47.

42 Andrews to John D. Rockefeller, Jr., March 27, April 11, June 3, 1893, John D. Rockefeller, Jr. Papers, Rockefeller Archives, Rockefeller Center, New York City.

43 Rockefeller to his mother, November 12, 1894; November 19, 1896; John D. Rockefeller, Jr. Papers.

44 Rockefeller's biographer mistakenly assumed that John, Jr. took this course under Andrews from January-June 1897. Fosdick, 79.

paper. Thirteen members of the junior class were accused, among them John D. Rockefeller, Jr.<sup>45</sup> He and five others were ultimately exonerated and received a public apology from Professor Lamont. President Andrews, however, was charged with disciplining guilty students and his first impulse was to impose a severe penalty: suspension until the following year. This decision attracted considerable publicity, produced some public criticism of Andrews, and provoked a vigorous formal protest from the entire junior class — a protest led by John D. Rockefeller, Jr.<sup>46</sup> After several weeks of unpleasant controversy, the president drastically modified his position and substituted a milder punishment: a promise by the students involved "to abstain from dishonesty in all written work."<sup>47</sup> This step should have ended the incident but, unfortunately, ugly rumors concerning young Rockefeller persisted. Andrews therefore found it necessary to write John a personal letter, addressed "To Whom It May Concern," attesting to the young man's integrity and proclaiming him guiltless.<sup>48</sup>

Despite the Lamont incident, John D. Rockefeller, Jr. developed a strong sense of affection for President Andrews and in later years claimed that the educator had been a molding force in his life:

*Dr. Andrews was the only teacher or professor with whom I had contact in school or college who made a deep and lasting impression upon me. I went to Brown University largely because he was there. His splendid, virile, fearless, uprighteous life was a constant inspiration to me in college days, as it has been since.<sup>49</sup>*

Rockefeller demonstrated his regard by contributing to a building at the University of Nebraska during Andrews' chancellorship there and by personally supplementing his friend's retirement income.<sup>50</sup> He did not, however, share Andrews' ambition to transform Brown from a college into a major university and was reluctant to bestow large benefactions upon his alma

*John Davison Rockefeller, Jr., class of '97, chose Brown University largely because of Andrews' presence there. The two men remained staunch friends in spite of the Lamont incident.*



Courtesy Brown University Archives.

mater. Rockefeller's fondest recollections of Brown were of an old time college where, as a rather shy young man caught in the public spotlight, he was able to find independence and warm comradeship. Understandably he was anxious to preserve this happy memory.<sup>51</sup>

Clearly Elisha Benjamin Andrews was an educator with an unusual talent for stimulating the minds and inspiring the devotion of students — a talent particularly remarkable given the prevailing relations between students and academicians. What qualities did he

45 *Providence News*, February 13, 1896. Guild Scrapbook, Brown University Archives. Reuben A. Guild, librarian at Brown, compiled several scrapbooks of newspaper clippings pertaining to events from 1889-1898. Many of the clippings are annotated and authors of unsigned articles frequently identified. In an annotation to the above article, Guild indicates that John D. Rockefeller, Jr. was one of the thirteen accused. This is undoubtedly correct since all of the names were made public at the time. Unfortunately, materials examined for this study do not provide a complete list of those names.

46 *Providence News*, February 13, 1896. *Providence Journal*, February 14, 17, 18, 19, 20, 1896.

47 *Providence Journal*, April 1, 1896; also March 5, 15, 1896.

48 Andrews to To Whom It May Concern, April 15, 1896, John D. Rockefeller, Jr. Papers.

49 Rockefeller to Ella Andrews, December 15, 1917, John D. Rockefeller, Jr. Papers.

50 Rockefeller to E. Benjamin Andrews, January 27, 1903. Charles Heydt to Robert W. Jumbel, January 16, 1916. Rockefeller to Ella Andrews, December 15, 1917. John D. Rockefeller, Jr. Papers.

51 Harold E. Van Horn, "Humanist as Educator: The Public Life of Henry Merritt Wriston" (unpublished Ph.D. dissertation, University of Denver, 1968), chs. 9, 12. George L. Miner, *BR*, June 4, 1935.

possess which enabled him to influence young people so profoundly? Foremost were his natural gifts as a teacher which, by the time he had become president of Brown, were sharpened by years of experience. Also important was his very genuine desire to know and, if necessary, to help young people as individuals. Equally significant, however, were the dramatic flair which his activities seemed to reflect and the lively interest that he took in all new things, whether important ideas or current fads.

The dramatic appeal of Andrews' behavior was something that many students found irresistible. Many, for example, admiringly recalled his physical magnificence in breaking up class riots that periodically erupted among undergraduates. One regular cause of such disturbances was a custom known as the freshman-sophomore cane rush, whereby the rival classes engaged in combat for possession of a cane. The president's involvement in one such clash was described as follows:

*On the day of our traditional but forbidden Freshman-Sophomore cane rush, after the last recitations in the afternoon, on the back campus, a cane appeared and a near riot of milling freshmen and sophomores broke out. Almost immediately, Benny, coming from his office through U. H. [University Hall], paused just for an instant on the northeast steps of U. H., then started on a run for the combatants whose nucleus was just back of Manning. He made his way rapidly toward the center of the struggle by seizing the combatants by the collar, first with one hand and then with the other, literally throwing them alternately to one said [sic] and then to the other, making his own path. He gave me the impression of a giant as he tore along. Just before he reached the focal point of the picture, a sudden hush fell on the assembly and all the fighting stopped, and that was the end of the rush. Benny never said a word; perhaps he was so out of*

*breath, he couldn't. He turned about and walked slowly over to his house at the top of the Hill, and we never heard any allusion to the matter from him, not even in Chapel.<sup>52</sup>*

The president's magnetism was also vividly demonstrated during the spring of 1898, shortly after the outbreak of the Spanish-American War. One evening the rumor reached Brown that the Spanish fleet was off the coast of Newport, Rhode Island. This news spread from dormitory to dormitory until practically the entire student body had been awakened. The next morning in chapel President Andrews took the incident as the basis for a moving patriotic speech. He described his own experiences in the Civil War, mentioning that he lost an eye in the service of his country. He then urged that Brown students enlist in a college regiment and personally volunteered to serve as its colonel. As a direct result of this speech, a large number joined a unit organized by the university's department of military tactics.<sup>53</sup>

In addition to the heroic image that he cast, Andrews appealed strongly to students because he often sympathized with their current interests. This was clearly evident with regard to college athletics. During the 1880s and 1890s intercollegiate athletic competition, especially in football, began to command tremendous popularity with American college students. A number of America's leading educators, however, opposed such activity because of the time and money wasted. Cornell president Andrew D. White, in response to a challenge from thirty University of Michigan footballers who wanted to arrange a game in Cleveland with his school, telegraphed: "I will not permit thirty men to travel four hundred miles merely to agitate a bag of wind." President Charles W. Eliot of Harvard reflected a similar frame of mind when he declared: "At . . . universities there must be constant economy and inadequacy in expenditure for intellectual

A vivid description of how Rockefeller felt about his years at Brown has been preserved in his biography:

*Speaking at the 50th anniversary of the class of '97, he paid this tribute to his college days: "I think I appreciate these reunions as much as, perhaps more than, any man here . . . Only here on the campus did I enjoy a completely independent personality. With you fellows, I was hailed as 'Johnny Rock,' just one of a hundred others, but at least one who stood on his own feet . . . There has been nothing in my life since then quite like this kind of comradeship. That's why I like to*

*come back to the campus from time to time, and particularly to these reunions where we all meet on the old time footing and where again, to you, I'm only 'Johnny Rock.'"*  
Fosdick, 82; see also Storr, 270-72.

52 Albert H. Dunham, April 5, 1935; Henry H. Hall, December 21, 1900, both BR.

53 Howard A. Swallow, April 6, 1935; Ernest P. Carr, April 5, 1935, both BR. *Brown Daily Herald*, April 2, May 17, 1898.

objects: how repulsive, then, must be foolish and pernicious expenditures on sports."<sup>54</sup>

Andrews did not share these views. He was aware of the expenses associated with collegiate athletics but believed that their costs could be met by a system of carefully arranged voluntary contributions. He acknowledged the physical injuries and loss of time connected with college sports but felt that such problems were controllable and justifiable when measured against the advantages to be derived from athletic participation. Andrews approved of athletics for a variety of reasons. For one thing he believed that they promoted character building: "the restraint and self-denial required in the athlete and made natural by absorption in physical training greatly inure to the moral improvement of many young men."<sup>55</sup>

The practical lessons to be derived from physical competition were many. Training in teamwork and the ability to handle defeat Andrews considered especially worthwhile. On the latter subject he remarked: "Such buffets form a good education for life. They train the will as nothing else, short of real life, can, and will-training is the item in which modern education is even now most deficient." The Brown president particularly valued the game of football because of the risks associated with it:

*Severe and hazardous exercises are not only valuable themselves, but they are necessary to the life and continuance of those milder plays which all commend. A measure of risk in playing the game nurses courage and adds to the moral value of the game. Moreover, it is precisely these stern sports in which young men engage only at their best that do most to repress vices in those participant in them.*<sup>56</sup>

At the age of seventeen Elisha Benjamin Andrews had faced the perilous test of military combat. He began this test as a boy; he emerged from it a man. Possibly the memory of that experience influenced the

*"This is a man." The legendary impact of Andrews upon Brown students was a remarkable human achievement.*



*From a painting by William Merritt Chase, courtesy Brown University.*

educator's outlook with regard to rigorous and combative athletic competition.

Andrews believed in the value of athletics philosophically and supported them practically. Time and again he made speeches urging support of Brown's various teams and just as frequently donated his own money to keep them going.<sup>57</sup> He was also an avid spectator at most of the school's sport competitions — a fact greatly appreciated by members of the student body:

*Coming off the football field one day in the fall of 1891, disheveled and grimy, I approached Bennie on the side line. He stood, as usual at such a place and time,*

54 Rudolph, 373-74, 390. Veysey, 276.

55 Andrews, *Annual Report of the President to the Corporation of Brown University*, June 1895, 36-37.

56 *ibid.*, 39.

57 *Brown Daily Herald*, November 4, 1893; January 21, 1895; January 21, 1896.

58 Henry J. Hall, *BR*, December 21, 1935.

59 See entire file of *BR*.

60 *Daily Nebraskan* [University of Nebraska student newspaper], November 7, 1901. This is a letter from an unidentified Brown professor to Haven Metcalf, Brown '96, a teaching fellow in the botany department

at Nebraska. See also Ernest P. Carr, April 5, 1935; Arthur I. Andrews, April 11, 1935; William H. Kennerson, April 22, 1959, all *BR*.

*In 1899 Brown University's new athletic field about a mile from the campus was named Andrews Field in honor of sports enthusiast "Bennie" Andrews. It was the scene of the Brown-Carlisle game of 1910.*

*with trousers turned up, overcoat buttoned to the chin with upturned collar. His "tall hat" was set well back on his head. As I came near he grinned and as I trotted by he said, "Good work, Hall, good work."*

*What did I care for fatigue and bumps!<sup>58</sup>*

If Elisha Benjamin Andrews had never accomplished anything else, the impact that he exerted upon students at Brown would be worth noting. Rarely has an American educator been so gifted in stimulating the minds and winning the loyalties of young people — loyalties which would rekindle during the crisis of 1897 and for many years thereafter. Moreover, this influence was not limited to students of special talent such as James H. Higgins, Alexander Meiklejohn, John Hope, or Mary Woolley. It was felt by practically every undergraduate who had an opportunity to know him.<sup>59</sup> Andrews was determined to upgrade Brown's academic quality and to move the school towards true university status, but he was equally determined to remain an old time college president, in the best sense, to his students. To them, and even to those who came to Brown after 1898, Andrews was remembered as an inspiring model of manhood, an intellectual gadfly, a generous benefactor, and a sympathetic friend. His success with young people was singular because it was achieved at a time when most students and academicians had little in common.

In 1901 Andrews returned to his alma mater for a visit. The last class to remember him as president had graduated the preceding June. Yet the reception

accorded him was one befitting the most revered of campus heroes. The scene is described by an unidentified Brown professor:

*We have been giving "Benny" a warm reception; never since I have been a professor here has any man received such an ovation from students and faculty and alumni. It was pre-arranged that the faculty should meet and entertain him on Thursday evening at the German seminar. The students, however, to whom his fame has descended, added extra features to the program. They first rang the University bell for about an hour; then with drum and fife, red fire and Roman candles, went down to Infantry Hall where he was speaking, and just after 9 P.M. escorted him with immense enthusiasm and cheering back up the hill to the University. There they forced open the gates and forming in double columns escorted him and President Faunce to the front steps of Sayles Hall. There he turned and addressed the sea of young eager faces who hung upon his every word. Comments all around were, "This is a man." Then while the faculty were entertaining Andrews, the boys adjourned to Lincoln Field where they built several big bonfires and cheered and sang "For Benny's a Jolly Good Fellow!" After our faculty entertainment they crowded into the chapel and yelled "We want Benny" until he came in and addressed them from the gallery.<sup>60</sup>*

All this for a man known only by his reputation. The legendary impact of "Bennie" Andrews upon Brown students was surely a remarkable human achievement.

*Photograph courtesy Brown Alumni Monthly and Mr. W. E. Sprackling.*



When he was sixteen, Thomas Chevalier de Villebresme joined the mousquetaires, the horse guards of the king's

household. A dashing example is shown in *Uniformes Militaires . . .* by Sieur de Montigny (Paris, 1772).





## The French Fleet at Newport, 1780-1781

by Henry J. Yeager\*

For a great variety of reasons the French genuinely sympathized with the Americans during their war of independence from England. Louis XVI and his minister Vergennes saw the chance to revenge the seizure of Canada in 1763 and, even more important, to open North America to French trade. On the other hand the intellectuals, influenced by the ideas of Voltaire and Rousseau, championed what they considered to be the struggle against feudalism and privilege and a consequent return to the simple life.

Notwithstanding all this enthusiasm, concrete support from the French government was slow in coming. The first direct aid, a fleet under Admiral Comte d'Estaing, arrived in the new world in the summer of 1778. After some ineffectual maneuvers off the northeast coast, it withdrew to the West Indies. It was only after Lafayette visited Versailles during the winter of 1779-80 that France decided to make a substantial military effort against the British. An expeditionary force of 6,000 men under Marshal Comte de Rochambeau occupied Newport the following summer. An officer of that expedition, Thomas Chevalier de Villebresme, recounts in his memoirs<sup>1</sup> the details of the French stay in Rhode Island. His report is translated and presented below.

Villebresme was born in 1755 into a family of soldiers. At the age of sixteen he joined the *mousquetaires*, horse guards of the king's household, which served as a military school for the nobility. Pressure for reforms at the beginning of the reign of Louis XVI resulted in the disbanding of the *mousquetaires* in the fall of 1775.

Two years later Villebresme met Chadeau de la Clocheterie, captain of the *Belle Poule*, and served as one of his officers during a variety of skirmishes against

the English in European waters. When Clocheterie was given command of one of the ships of the squadron that was to accompany Rochambeau's army, Villebresme was invited to go along. He arrived in Brest on April 24, 1780 to prepare for embarkation.

(Material in brackets has been added by the translator to clarify obscure ideas or references. When necessary, the spelling of proper names in the original has been altered to conform to current American usage.)

*Our squadron was comprised of seven ships of the line, two frigates, another ship of the line armed as a transport, and twenty-nine transports, all under the orders of the Chevalier de Ternay, squadron commander.<sup>2</sup>*

*The instructions given by the minister to Monsieur de Ternay specified that he was to proceed to Rhode Island and, if it was not occupied by the English, to disembark the troops and to put himself at the disposition of the American government. At the same time he was to be free to turn down any proposal which appeared likely to compromise the safety of his squadron. In case he found himself outnumbered or powerless, he was authorized to ask for reinforcements from our squadron in the West Indies.*

*On May 2, 1780, at six a.m., we set sail under northeast winds.*

[The crossing was relatively uneventful. Several English vessels were taken, but others were allowed to escape because of the extreme timidity of Monsieur de Ternay who seemed reluctant to enter any battle in which he did not have overwhelming superiority.]

*Nothing worth remarking happened until the 9th of July when fog obliged us to anchor three leagues [seven and a half miles] off Block Island. The next day*

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1 Villebresme, Thomas Jacques de Goislard, Chevalier de, *Souvenirs du Chevalier de Villebresme, mousquetaire de la garde du roi, 1772-1816* [Paris: Berger-Levrault & Cie, 1897].

2 Although he had commanded a squadron during the invasion of Newfoundland in 1762, the Chevalier de Ternay appears not to have been drawn to a military career. He resigned from the service in 1772. At the time of being chosen to head the present squadron he was governor of Réunion and adjacent islands in the Indian Ocean.

we set sail only to drop anchor again off Martha's Vineyard. Finally on the 11th the convoy and squadron arrived at Rhode Island, where we learned that the sails which had caused Monsieur de Ternay so much fright<sup>3</sup> were simply a small English convoy, escorted by the *Romulus* (44 cannon) and two frigates, bringing back to New York part of the army which had taken Charlestown.<sup>4</sup> Commodore Gayton had sent the two frigates in order to mislead us. And he certainly succeeded thanks to the exaggerated prudence of Monsieur de Ternay.

In Newport Bay we found the frigate *Hermione*, commanded by Monsieur de la Touche,<sup>5</sup> which had brought over the Marquis de Lafayette two months before. Since its arrival it had made several sorties during one of which it had encountered the *Isis*, an English frigate of the same grade. They were both equally disabled and the outcome remained undecided. Monsieur de la Touche was rather seriously injured.

Two days after our arrival the army contingents went ashore and camped near Newport. On the 21st an English squadron of twelve vessels appeared at the mouth of the bay and during the 22nd and 23rd appeared to be preparing to attack us as we lay at anchor. At the same time we heard that General Clinton, commander of the English forces, was preparing to come with 10,000 men to engage the Comte de Rochambeau on Rhode Island before the latter had a chance to join up with the Americans.

Our own troops and the American militia set about immediately restoring the lines which had been raised around Newport by General Prescott when he had been attacked by General Sullivan and the Marquis de Lafayette.<sup>6</sup> For our part, the squadron formed a battle line, mooring fore and aft, and set up batteries on land, all of which made our position rather respectable.

This work wore out the soldiers and sailors, a third of whom were already sick from the rigors of the Atlantic crossing. To defend ourselves from this double attack we had no more than 4,000 men in combat condition. Fortunately for us our adversaries wasted time in attacking, so that General Washington was able to put himself in a position to help us by appearing to menace New York. This diversion obliged General Clinton to

re-land the troops which he had already embarked at Huntington, Long Island.

The general situation of the Americans, which had been quite depressing at the time of our arrival, began to improve. The American people, tired of the war which they were waging in a slovenly fashion, had kept going only through pride. Now they were ready to put out their wrists for new bonds and sign a dishonorable peace. Our presence gave them courage. Washington's army augmented by our troops took the offensive and was able to stand up to the English.

Although the campaign of 1780 was neither active nor brilliant for our squadron, it had important consequences. The English were obliged to gather together all their naval forces in order to blockade us in Rhode Island. Thus everywhere else in America navigation was unrestricted; we kept tied down a force twice as large as we were.

Newport Bay where we were anchored is in the form of a long rectangle indented into the state of Rhode Island. Its direction is north-south, the same as Conanicut Island and Rhode Island. These two islands form three narrows: to the east, Sakonnet; in the middle, the one on which Newport is located; and the one to the west, Narragansett.

Our batteries were set up on Point Brenton, at the south end of Rhode Island, as well as on the tip of Conanicut Island. We were thus sheltered from a frontal attack by the enemy, but he could have still gone through the narrows to the west and without danger descended the middle narrows and taken us from the rear. Fortunately he did not dare to try it.

Newport, capital of Rhode Island and the Providence Plantations, is situated in the southwest part of the island. It is a town of secondary importance but its port is one of the safest and most beautiful in America. Before the war it was a rich commercial center but, having been taken successively by the Americans and then the English and having been pillaged by the latter, it has lost a great deal of its beauty.

Newport Bay receives the waters of several rivers upon which are located the towns of Bristol, Warren, Warwick, Newton, and Providence, etc. This last town,

3 On the 20th of June the squadron had sighted six English vessels. It would have been easy to take several of them but Ternay preferred to turn away.

4 Charleston was taken by the British in May 1780 by forces sent down from New York by General Clinton.

5 Levassor de la Touche-Tréville was in charge of setting up the defenses of Rhode Island in 1780.

6 Upon its capture by the English in 1776, Rhode Island was placed under the command of General Prescott. The American attack against him in August 1778, led by General Sullivan, would probably have succeeded if the French squadron under D'Estaing had cooperated.

This French map of 1781 shows the positions of the forces as described by Villebresme, but the cartographer mislabeled the island of Conanicut "Connecticut."

RIHS Map Collection.



on the right bank of the river of the same name, is richer than Newport. Its inland location sheltered Providence from some of the revolutionary battles which had damaged Newport, and so its commerce suffered less.

Rhode Island and Conanicut Island are rather fertile, but the air which one breathes there has the reputation of being the most unhealthy in New England. Formerly

these islands had been covered with woods and orchards which the English destroyed. Bivouacking there was extremely unpleasant because of the abundance of snakes, scorpions, mosquitoes, and especially the legions of horrible centipedes which wake up sleepers with their loathsome touch. In the few houses which remained almost intact we still were not protected from all that vermin which penetrated the

smallest cracks. It was enough to drive one crazy.

At the time of our arrival the heat was unbearable during the day but as soon as the sun went down there was a penetrating dampness. Pestilential vapors came out of the ground and we felt ourselves chilled by the fever of that region, which is so difficult to cure. My robust good health managed to resist all these attacks, but the army was seriously affected and every day we had numerous dead to bury in this cursed land. Monsieur de Ternay also soon felt the effects of the climate and he died of the fever in the beginning of December. He was buried on the 15th with all possible ceremony and, to preserve his memory, a small mausoleum was put up near the main church of Newport. He was not very much mourned for he had very few of the qualities which a leader should possess. He knew little about navigation or the military arts; his character was weak and irresolute; and, most important, he had caused us to miss out on some sure victories. The Chevalier des Touches,<sup>7</sup> since he had the most seniority in the squadron, took command. We soon saw that we had in him a leader capable of commanding us in the difficult circumstances in which we found ourselves.

We were very much surprised when we had the chance to judge the American troops. Up until then we had considered them as sacrificing themselves for the cause of freedom. We had thought that they would show the same energy as the Dutch when they broke the chains of Spanish oppression. Unfortunately it was not at all like that. Discord reigned among the Americans. Each province's, each state's wish to keep its soldiers and its money for its own defense hindered the plans of the Congress and the commander-in-chief. Love of money was more important than love of country; no one wanted to enlist without receiving a considerable sum of money nor to furnish supplies unless an excessive profit was assured. The troops, dressed in rags or canvas hunting jackets, were not disciplined nor trained in the most elementary maneuvers. They were continually in revolt. The soldiers were almost all vagabonds that poverty and bad

conduct had forced to take arms. For example, at the beginning of 1781 Congress ordered a levy of 37,000 men. Only 8,000 appeared and they had neither clothing nor arms. In February it was even worse; the Pennsylvania troops revolted, massacred their officers, and marched on Philadelphia in order to force the Congress to increase their pay. It was with some difficulty that these brave democrats were made to return to their regiment.

Liberty for the American people was more a subject for speculation rather than enthusiasm. They would change according to the circumstances, becoming Whig or Tory depending upon which was more advantageous at the moment. In general the rich were Tories and the poor were Whigs. The latter hoped under cover of the unrest to seize the property of the rich. The motto of democrats is the same in all countries, and the results are the same. Those who saw what liberty, equality, and fraternity were in France during the Revolution will not contradict me.

Although far from England and supported by powerful allies, the Americans were hardly able to hold off their enemy. The American troops were not very numerous and, without the support of France, they would not have been able to resist the English for very long. A large number of Americans, however, called loyalists, were partisans of the British, served them as spies or guides, and even fought in their ranks with much more devotion than their compatriots showed in defending liberty. In France we are seriously mistaken about the patriotism of this people who certainly do not merit the sympathy which certain French felt and still feel for them. If we had not had a direct and personal interest in supporting them, our intervention in their behalf would have been the result of folly and trickery.

The English soldiers were quite different. Commanded by capable leaders, subject to strict discipline, they fought bravely for those who paid them. Indeed, England, finding it impossible on her own to maintain a front in the West Indies and in America as well as in the Mediterranean and India, had bought 17,000 men from the Duke of Brunswick and the Landgrave of

7 On the voyage to Newport, Touches had commanded the *Neptune*, a copper-lined ship of the line with 74 cannon, second in fire power only to the flag-ship, the *Duc-de-Bourgogne*.

8 Perouse's original command had been the *Amazone*, an unlined frigate of 32 cannon.

9 Comte de Guichen commanded a French squadron based in Martinique which had several inconclusive encounters with the English under Rodney. Having failed to accomplish anything concrete due to the difficulty of working with his Spanish allies, Guichen decided to return to France.

10 Vice-Admiral Arbuthnot was the chief British naval commander in North America whose cooperation with Clinton resulted in the seizure of Charleston.

Hesse. This strange transaction, signed by Lord North, stipulated that at the end of hostilities the sellers would take back their soldiers in good condition; the dead would be paid for at the rate of ten pounds sterling; for every three crippled the buyer was to pay the price of one dead man.

While speaking about the death of the Chevalier de Ternay, I got a bit ahead of myself. I want to go back to the month of October 1780. On the 28th of that month, taking advantage of a squall which had dispersed the English raiders, the frigate *Hermione*, commanded by Monsieur de la Perouse,<sup>8</sup> left for France with the dispatches of Monsieur de Ternay and Monsieur de Rochambeau informing the government of the helpless condition in which we found ourselves.

During the same period, Admiral Rodney arrived from the West Indies; this brought the English squadron at New York up to twenty-two vessels. He had attacked Monsieur de Guichen three times when the latter was on his way to Europe.<sup>9</sup> Rodney then

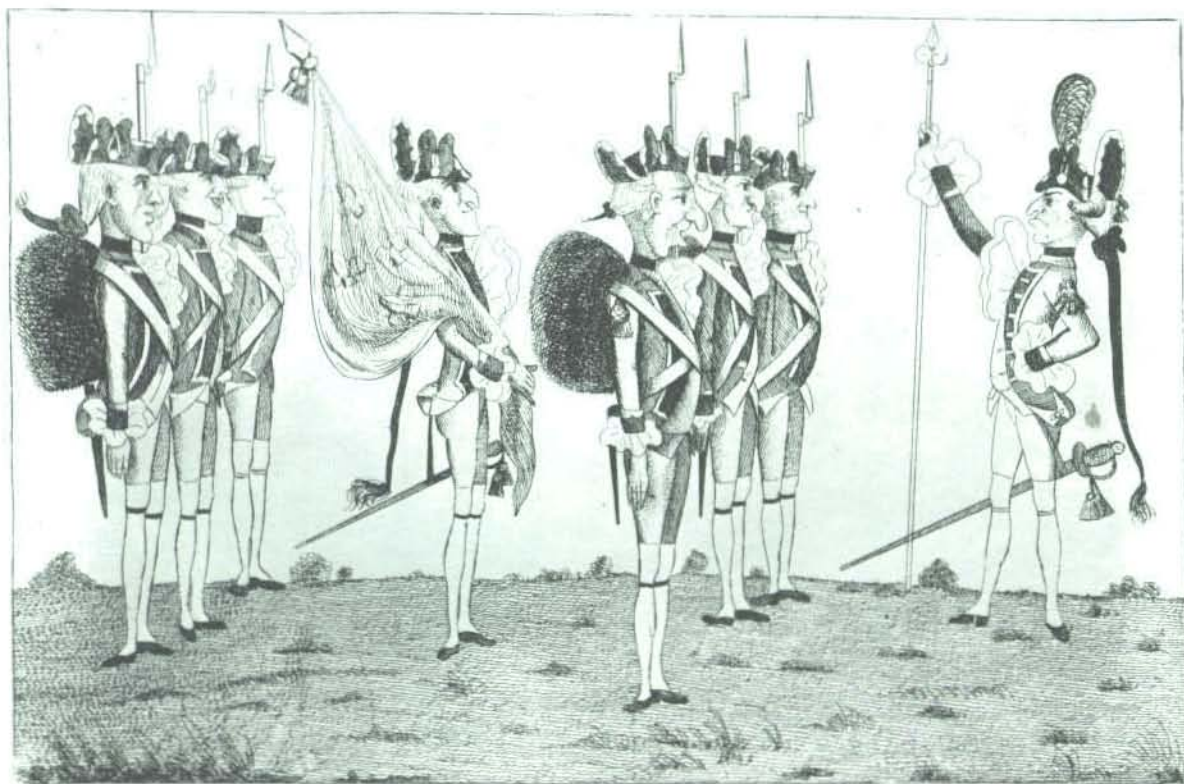
seized a convoy coming from France and was headed toward New England in the hope of destroying the Rhode Island squadron if he did not encounter Monsieur de Guichen again.

This additional danger made us increase the batteries defending the narrows and tighten our line of ships. Rodney learned of these preparations and returned to the West Indies taking with him two of the ships of Admiral Arbuthnot.<sup>10</sup>

As soon as Monsieur des Touches took command, he displayed an audaciousness which gave rise to comparisons which were not very flattering to the memory of his predecessor. He dispatched two warships from Newport Bay to protect American vessels which had taken on provisions for the army. But the English, anchored in Gardner's Bay at the eastern tip of Long Island, learned about it and sent three warships to attack them. The English were caught up in a squall and one of them, the *Culloden*, was wrecked on Montauk Point. The two others, the *America* and the

Villebresme's low opinion of the American soldier was matched by the British view of the effete French.

Engraving, Library of Congress



COUNT DE ROCHAMBEAU  
French General of the Land Forces in America Reviewing the French Troops

Bedford, were able to survive the danger but with serious damage. Our warships and the convoy returned without accident to Rhode Island.

The loss of the Culloden made the two squadrons a bit more evenly balanced, and Monsieur des Touches decided to benefit from it by doing something useful for the United States.

General Clinton, having given up the idea of attacking us in Rhode Island, had sent to Virginia in January 1781 a fleet loaded with troops. They were commanded by General Arnold who in September 1780 had betrayed his country when he was commander at West Point, an important post on the North River<sup>11</sup> and key to the northern provinces. Discontented with Congress, which had refused him the money to fortify his flanks, Arnold opened negotiations with Clinton, the English

general, to hand over the post under his command. Clinton sent him an aide-de-camp, Major André, to arrange the details of the treason. But André was arrested by the Americans while he was disguised as a peddler. In the soles of his shoes they found proof of the plot, and he was condemned to be hanged — the punishment for spies.

Clinton tried all the means in his power to save him, but Washington remained inflexible because several American officers had suffered the same punishment at the hands of the English who refused to consider them as belligerents. Major André underwent his punishment with great courage and his supplications for permission to die the death of a soldier brought tears to the eyes of all those who were present at the execution. He went to his death without an escort, accompanied

Villebresme adds another account to many of the capture of Major André. The historic incident is celebrated in an engraving from a painting by Asher B. Durand.



Engraving, American Art Union, figures by Alfred Jones, landscape by Smillie & Hinshelwood.

only by two American officers who did not wish to remain until the last moment because he had impressed them so much.

The English were at fault originally in treating their American adversaries as rebels and, since this sad event, they have modified their inhuman procedure. This is what General Washington wanted to bring about by causing the death of a brave officer for whom he had the highest esteem.

Arnold was able to escape in time and obtained the rank of general in the English army. The English officers to their great credit served with repugnance under this wretch who did not hesitate to give up the most beautiful province of his country.

The Chevalier des Touches, having learned of the deplorable situation of the Americans in Virginia, resolved to remedy it. Consequently he detached from our squadron the *Eveille*, commanded by Monsieur de Tilly, under whose orders he also placed the *Surveillante*, the *Gentille*, and the cutter *Güepe* which was lost some days later at Cape Charles.<sup>12</sup>

Monsieur de Tilly left Newport on February 12th and on the 16th arrived in Chesapeake Bay where he seized fifteen English transports. The head of the convoy and the escort, a vessel of forty-four cannon, escaped by going up the Elizabeth River to Portsmouth, occupied by General Arnold. The mouth of the river was too shallow for the *Eveille* to pass and too well defended for the frigates to force an entry. Consequently Monsieur de Tilly, not being able to do any more, was going to return to Rhode Island when he learned that the *Romulus*, a warship of forty-four cannon, at that moment at sea, was due to arrive very soon. Indeed two days later she appeared, entered the bay without any suspicion, and was engaged by the French units to whom she yielded her flag.

Monsieur Gardeur de Tilly is among those officers who served with great distinction during this war. He became vice-admiral in 1791. His son and four of his relatives later served with distinction in the navy.

After the seizure of the *Romulus*, Monsieur de Tilly returned to Rhode Island where he dropped anchor on

the 27th of February. One can imagine that the arrival of our old enemy with a French crew and the white flag floating above the lions was greeted with a thousand cries of "Vive le Roi!"<sup>13</sup>

Monsieur de Rochambeau and Monsieur des Touches, again beseeched to come to the aid of Virginia, decided to act toward that end. It was agreed that our squadron, reinforced by the *Romulus*, crewed by the sailors from the *Gentille* and commanded by Monsieur de Villebrune, would embark 1,200 men under the orders of Monsieur de Viomesnil, with Portsmouth as their destination.<sup>14</sup>

On the 7th of March, the day before our departure from Newport, General Washington came to confer with our generals about the proposed expedition. I had the good fortune to see this famous man whose bearing, movements, and features were in accord with the opinion which I had already formed. Nature has given him a physical constitution which suits perfectly his other great capacities.

The more one examines the limited courage and energy of this nation whose army he commanded, the more one is astonished by the great talents of this illustrious man. With very small means he was able to hold powerful enemies in check and he alone, one can say, was the mainstay of liberty in this country.

The mission which was confided to our squadron was excessively difficult because of the poor condition of several of the warships. The first requisite for our success was concealing our departure from the English frigates which were watching us closely. We had to get enough of a head start so as not to be caught before we got to Chesapeake Bay.

[The result of this convergence of forces in Virginia was, of course, the battle of Yorktown. The French fleet assured the defeat of Cornwallis by preventing rescue or escape by sea. Villebresme then saw action in the West Indies before returning to his home. At the beginning of the French Revolution he served in the States General and then joined other former *mousquetaires* to form an army in exile. Despite his action-filled life he lived to the age of ninety-four.]

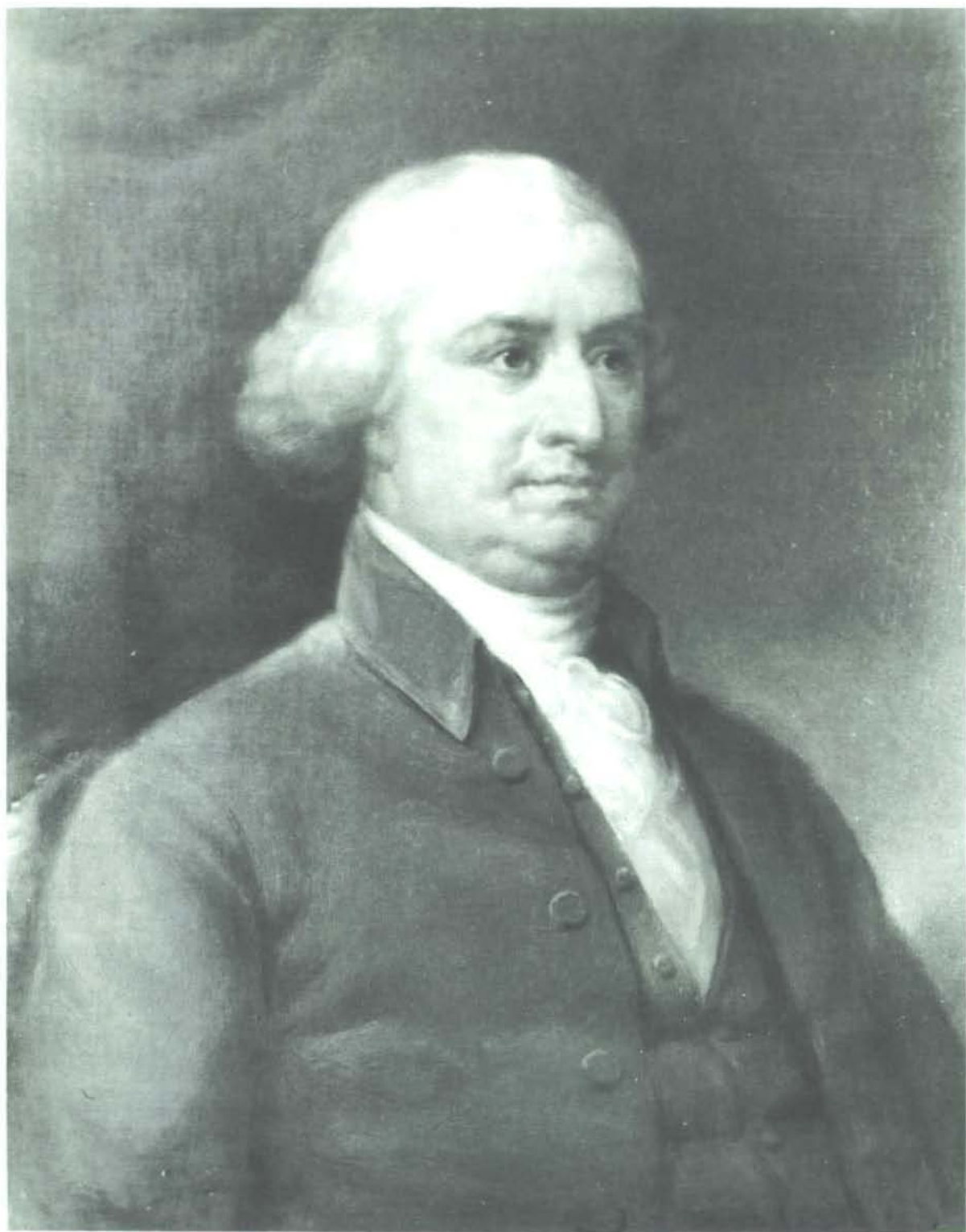
11 The Dutch called the Hudson the North River; the name persists today for the dock area from the Battery to, say, 59th Street.

12 Before joining Rochambeau's expeditionary force Tilly had been a major general with the troops in Martinique.

13 The white flag is, of course, the Bourbon standard with the fleur-de-lis on a white field. The only British naval

flag with lions was the royal standard, but normally it is flown only when the sovereign himself is on board.

14 Antoine Charles du Houx, Baron de Viomesnil, head of the French artillery, second in command to Rochambeau, played a prominent role at the siege of Yorktown. Villebrune seems to be remembered only as the captain of the *Romulus* on this voyage to Virginia.



*Judge David Howell contributed to the impact of the Trevett-Weeden case by his defiant reply to the Assembly's demand that the judges show cause for their decision.*

*Painting by James Sullivan Lincoln after a portrait by Trumbull, photograph courtesy Brown University.*



## Rhode Island's Paper Money Issue and *Trevett v. Weeden* (1786)

by Patrick T. Conley\*

*Trevett v. Weeden* is among the best known cases ever to be tried before an American state court. Paradoxically, it is a case that has seldom been properly understood. Legal historians attempting to trace the origins of the doctrine of judicial review refer to several state decisions antedating *Marbury v. Madison* as evidence of the acceptance of that cardinal principle of American constitutional law by many of our early jurists. *Trevett v. Weeden* is usually cited in such a litany as a major precedent for judicial review, and most accounts of the case, whether in monographic or textbook form, either erroneously assert that

Rhode Island's highest tribunal declared a paper money statute unconstitutional in the *Trevett* decision or else they are vague and inexact in their summary of the court's action.<sup>1</sup>

Even those few accounts of the decision which are generally accurate are not fully acceptable; first, because they are not based upon the court record and thus lack precision, and secondly, because they fail either to examine or to understand the paper money program which gave rise to the legal dispute.<sup>2</sup> Conversely, of the three satisfactory analyses of the greatly misunderstood paper emission, two ignore *Trevett v.*

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1 Among the current standard American history textbooks which erroneously contend that the court rendered a decision of unconstitutionality are — T. Harry Williams et al., *A History of the United States*, 3rd ed. (New York, 1969), 1:177. John A. Garraty, *The American Nation* (New York, 1966), 144-45 ("this was the first case in which an American court declared a legislative act void on constitutional grounds"). Richard B. Morris, ed., *Encyclopedia of American History*, rev. ed. (New York, 1965), 115. Richard B. Morris and William Greenleaf, *U.S.A.: The History of a Nation* (Chicago, 1969), 1:309. John D. Hicks et al., *A History of American Democracy* (Boston, 1966), 104.

Recent monographs making the same mistake include — Irwin H. Polishook, "Trevett vs. Weeden and the Case of the Judges," *Newport History* 38 (April 1965), 45-69. William A. Curran, "Trevett v. Weeden: Its Place in Our History," *Rhode Island Bar Annual* 3 (Oct. 1966), 22-28. See also Robert K. Carr, *The Supreme Court and Judicial Review* (New York, 1942), 43-44. Charles Warren, "Earliest Cases of Judicial Review of State Legislation by Federal Courts," *Yale Law Journal* 32 (Nov. 1922), 15-28. Thomas M. Cooley, *Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union*, 5th ed. (Boston, 1883), 194. Brinton Coxe, *Essay on Judicial Power and Unconstitutional Legislation* (Phila., 1893), 167 and ch. 25 *passim*. John Winslow, *Trial of the Rhode Island Judges: An Episode Touching Currency and Constitutional Law* (Brooklyn, 1887).

Examples of vague and imprecise accounts of the case by major authors are — Andrew C. McLaughlin, *The Confederation and the Constitution* (New York, 1907), 108-09. Homer Cary Hockett, *Constitutional History of the United States* (New York, 1939), 176-77. Alfred H. Kelly and Winfred A. Harbison, *The American Constitution*, 4th ed. (New York, 1970), 99. Samuel G. Arnold, *History of the State of Rhode Island* (New York, 1859-60), 2:525.

2 "Generally accurate" accounts of the case are — Frank Greene Bates, *Rhode Island and the Formation of the Union* (New York, 1898), 131-39. Charles Carroll, *Rhode Island: Three Centuries of Democracy* (New York, 1932), 1:387-97. Edward C. Stiness, "The Struggle for Judicial Supremacy," in Edward Field, ed., *State of Rhode Island and Providence Plantations at the End of the Century: A History* (Providence, 1902), 3:107-110. Sidney S. Rider, "The Real Point Decided in the *Trevett vs. Weeden* Case," *Book Notes* 11 (1894), 62-63, 22 (1905), 62-63. Charles Grove Haines, *American Doctrine of Judicial Supremacy*, 2nd ed. (Berkeley, Cal., 1932), 105-112. William W. Crosskey, *Politics and the Constitution in the History of the United States* (Chicago, 1953), 2:965-68. Edward S. Corwin, *Doctrine of Judicial Review: Its Legal and Historical Basis and Other Essays* (Gloucester, Mass., 1963), 71-74 and "Progress of Constitutional Theory between the Declaration of Independence and the Meeting of the Philadelphia Convention," *American Historical Review* 30 (April 1925), 523.

Constitutional historians Haines, Crosskey, and Corwin do not examine the paper money controversy; and local historians Bates, Carroll, Stiness, and Rider fail to understand the intent and effect of Rhode Island's paper money issue.

Weeden and the other incorrectly states the judgment of the Court.<sup>3</sup> This historiographical mélange indicates the need for a re-examination of this complex case and the much maligned paper money program from which it stemmed.

Rhode Island's infamous paper money plan was the offspring of its Revolutionary debt. By 1784 the state had put its financial house in order by "scaling" or adjusting its war debts. The final figures revealed that the state government owed about £96,000 to private creditors. Of this total £50,000 was held by approximately 250 individuals in the form of six percent notes, and the balance by about 2,300 individuals (over half the voters in the state) in the form of four percent notes. The remaining computed debt was much larger, but it was charged against the national government. This included claims of the state government for uncompensated expenditures on behalf of Congress, and claims of individuals for goods and supplies furnished to prosecute the war. These demands totaled £1,178,000 but the bulk of this sum would never be forthcoming.<sup>4</sup>

There was another claim against the national Congress, however, which was quite significant. This debt took the form of Continental Loan Office certificates amounting to £157,200 or \$524,000. Two-thirds of these securities were owned by Providence citizens, mostly merchants, and more than half by twelve men in that city. Among the twelve merchant princes were John and Nicholas Brown, Zachariah and Philip Allen, Jabez Bowen, Welcome Arnold, and the powerful firm of Clarke and Nightingale. When final settlement certificates and other federal obligations were added to the loan office securities they produced a state total of \$598,941 held by 411 individuals. Citizens of Providence and Newport owned \$425,122 or 71 percent of this total.<sup>5</sup>

The enlightened self-interest of Rhode Island was so strong that it voluntarily assumed a portion of the continental debt burden by attempting to support the interest on those continental securities owned in the state. Mercantile influence in the Assembly prior to

1786 no doubt produced this fiscal concern. In fact, while the merchants controlled the state government, vigorous efforts were made to collect those taxes which had been levied to meet the interest on the continental debt. Prior to 1786, Rhode Island's record of compliance with congressional requisitions was one of the best in the Union. Also, contrary to popular opinion, Rhode Island was not disposed to repudiate its state debt, largely because of the widespread distribution of its notes.

At first, the state's import duties alone (2% *ad valorem* in 1783 and 2½% in 1784) were nearly sufficient to service the debt; but soon, as the interest obligation increased, heavier direct taxes on real property became necessary. These levies steadily increased until they became oppressive. By 1786, many Rhode Island taxpayers, especially those in the agrarian country towns, had been caught in an absurd dilemma — they were losing their realty because of nonpayment of taxes levied on it for the purpose of supporting interest payments on their own state securities and the merchants' continental certificates.

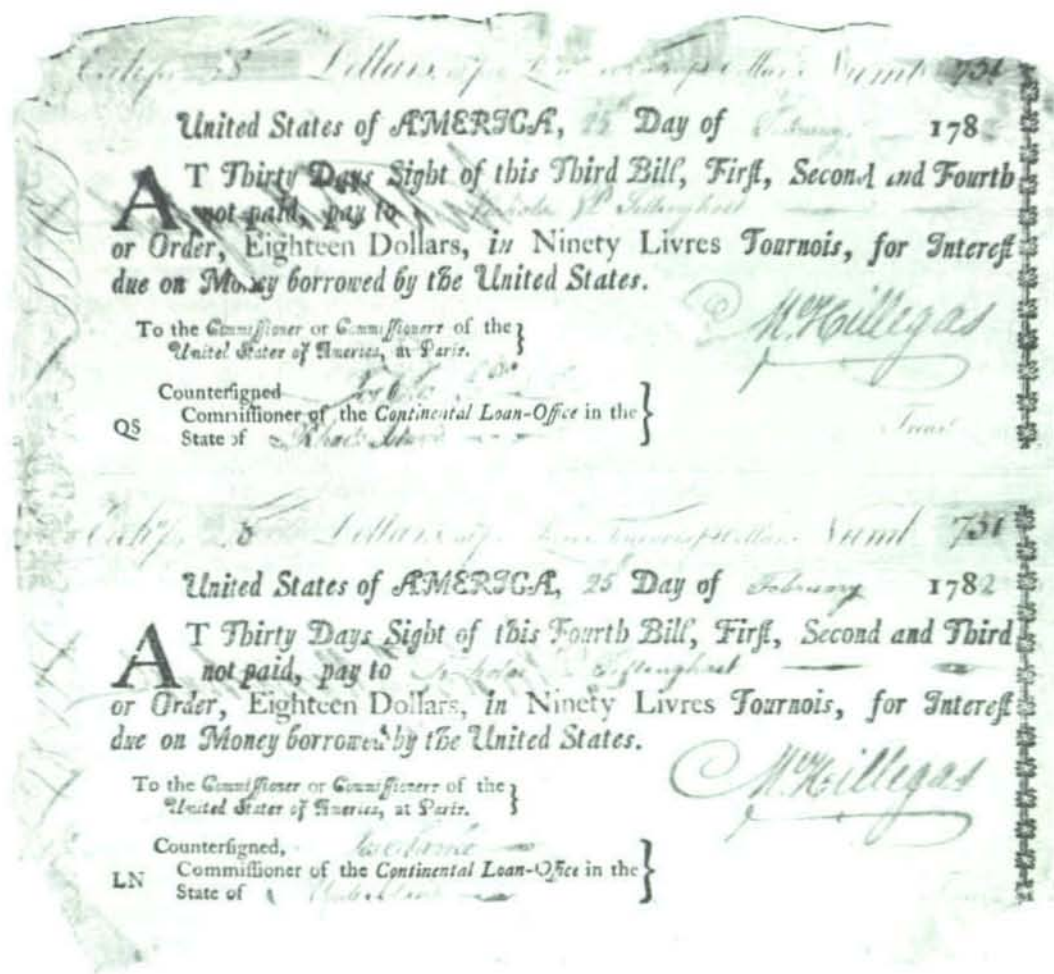
It was at this critical juncture that an aggrieved and resourceful politician, Jonathan J. Hazard, advanced an ingenious paper money plan. Hazard, a deputy from the coastal but agrarian and noncommercial community of Charlestown and that town's harried tax collector, gathered about him a forceful group of rural politicians. These men studied intently the records of the state's last pre-Revolutionary issue of paper money in 1750 and then decided to adopt a similar program to solve Rhode Island's contemporary financial ills.

The paper money plan was to operate in the following manner: paper money, in an amount approximately equal to Rhode Island's war debt of £96,000, was to be printed and made legal tender for all public obligations and taxes. The paper would then be lent to those borrowers who could furnish good security, namely, real estate. Land, in fact, was the most desirable collateral both economically and politically, because the right to vote was dependent upon its ownership.

3 Forrest McDonald, *We the People: The Economic Origins of the Constitution* (Chicago, 1958), 323-346 and Hillman Metcalf Bishop, *Why Rhode Island Opposed the Federal Constitution* (Providence, 1950), 15-36, do not examine the Trevett case; while Irwin H. Polishook, *Rhode Island and the Union 1774-1795* (Evanston, Ill., 1969), 112-180, incorrectly interprets the Court's decision.

4 My summary of the paper money issue is based largely upon the persuasive interpretation of McDonald, *We the People*, 323-46. This economic historian has revealed the complexities of Rhode Island's frenzied finance during the "critical era" by closely examining the pertinent documents in the Rhode Island State Archives.

These Continental Loan-Office certificates were claims against the national Congress. Livres Tournois, Tours francs, as indicated, had a value of twenty cents each.



RIHS Library.

Provisions would be made to prevent depreciation of the paper, for if it maintained its face value, the interest to be collected on it would be roughly equivalent to the interest owed by the state on its six and four percent

certificates. If taxes were continued at existing levels, they would then be easier to pay because of the increased money in circulation. These taxes would be sufficient to retire the state debt at par in about seven

Old, with an anti-paper animus, but still useful is Elisha R. Potter, Jr. and Sidney S. Rider, *Some Account of the Bills of Credit, or Paper Money, of R.I. from 1710-1786* [Providence, 1880].

5 More money had been subscribed in the R.I. loan office during the Revolution in proportion to the state's

population than in any other state except Pennsylvania. Bishop, 19. For Rhode Island's public debt holdings see E. James Ferguson, *Power of the Purse: A History of American Public Finance 1776-1790* [Chapel Hill, N. C., 1961], 280-82.

years. If, however, the paper depreciated, it could be supported by increasing taxes fast enough to absorb the depreciation. If the tax revenues paid in this inflated money were used for debt service, the state would retire its debts in a much shorter time. Whether or not the paper depreciated, its issuance would relieve the current tax burden, and it would make the state, which was a debtor paying interest on nearly £ 100,000, also a creditor collecting interest on approximately the same amount.

By late 1785 Hazard and his associates had worked out the details of this well conceived and imaginative scheme; during 1786 they set out to secure its implementation. In February they caused the Assembly to request the towns to instruct their deputies (state representatives) regarding the desirability of a paper money issue. In March they made a feeler motion to issue paper, but it was defeated in the lower house by a vote of forty-three to eighteen.<sup>6</sup>

Undaunted by this temporary setback, the paper money men stumped the state explaining the intricacies of the plan to disgruntled Rhode Island taxpayers. This approach was most successful. In the April town meetings only the merchant-controlled communities of Providence, Newport, and the island town of Portsmouth instructed their delegates to oppose the issue. These meetings effected an overturn in the lower house by selecting thirty-eight new deputies to the General Assembly. In the general election John Collins, an advocate of paper money, won the governorship by a wide margin, as did a paper party deputy governor and five new assistants (senators). These spring 1786 elections marked the coming to power of the pro-paper "Country" or "Landholders" Party and the temporary eclipse of mercantile control in the Rhode Island General Assembly.<sup>7</sup>

The victors wasted little time when the Assembly convened; their plans had been well laid. Within days they passed a law authorizing the issuance of a hundred thousand pounds of paper money according to the

general outlines of the Hazard plan. The act established in effect a land bank, where government-authorized paper bills, which had the capacity of legal tender, would be lent at the rate of four percent. These loans were to be secured by mortgages on real property worth twice the nominal value of the currency lent. The duration of the loan was to be fourteen years with interest due for the first seven and the principal repayable in equal annual installments during the second seven-year period.

The law contained numerous devices designed to maintain the par value of the paper. The most important and the most controversial were the provision making paper the legal tender for all debts public and private, and the infamous "lodge money" or "know ye" clause. The latter provided that if a private creditor should refuse to receive the paper, the debtor could discharge the debt by "lodging" or depositing the paper money with one of the judges of the county courts of common pleas. If the creditor declined to accept the lodge money after citation by the court, the judge was to issue public notice ("Know ye") that the tender had been made. Should the creditor remain adamant, the debt was declared canceled after a three-month waiting period and the money was forfeited to the state.<sup>8</sup>

This plan encountered the inveterate opposition of the merchants, some of whom set out to discredit the issue and undermine faith in it through a palpably false propaganda campaign. The merchants inaccurately charged that the emission was the work of radical agrarian debtors who wished to defraud creditors of their just compensation, and some of these merchants were so bold as to borrow large sums of the new paper to use as a fund for manipulating its value downward on the open market.<sup>9</sup>

The source of the merchants' discontent stemmed basically from the fact that the paper plan neglected the continental creditors, most of whom were members of the powerful mercantile establishment. The leaders of the "Country Party" were determined to pay the

6 At this time even some of the debt-ridden towns recoiled from the prospect of paper. South Kingstown, for example, the community with the greatest tax delinquency, declared against emission of paper currency "without a dissention" in town meeting on February 20 and reaffirmed this position at a special meeting one week later. By July 1786 however they were vigorously supporting it. South Kingstown Town Meeting Records 1776-1836, 218. Town meeting records are in offices of clerks of respective municipalities unless otherwise

indicated. For instructions given to the representatives of several other R.I. towns in February 1786 on emission of paper money, see Papers Relating to the Adoption of the Constitution of the United States, 40f, hereafter cited PAC, R.I. State Archives. Ironically, Charlestown's town meeting in February 1786 also voted against instructing its deputies to support emission. PAC, 59. Preserved instructions of Warwick, Cranston, Cumberland, Gloucester, Smithfield, Coventry, Richmond, Tiverton, and Middletown indicate that they approved. PAC, 40-63.

state debt, but they abandoned all responsibility for redeeming continental obligations. Their supporters in the rural inland towns believed that this expense should be borne exclusively by Congress, while a majority in the eastern shore and island towns (Providence, Newport, Bristol, and Warren excepted) regarded it as unjust that they were taxed to support these securities when they were receiving no money from either the state or Congress for war losses. The fact that many of the continental securities had passed from the hands of their original owners, often farmers, into the hands of merchant-speculators, usually at a fraction of their face value, made direct taxation to support interest payments on these certificates even more objectionable.<sup>10</sup>

Another typical complaint was that contained in the town of Smithfield's instructions to her deputies in April 1786. The town leaders contended that "there have been many examples where one year's interest hath been paid in silver, that was worth more than the principal was when loaned."<sup>11</sup> This incongruous situation, whereby the annual interest on the continental securities (raised by taxation and paid in specie) exceeded in value the depreciated certificates themselves, was not to be tolerated by those who owned none.

Many merchants, however, and a sizable number of the freemen of Providence held continental loan office certificates. In fact, a dozen powerful and influential merchant-speculators in that town owned about half of the \$524,000 in loan office securities held in the state.<sup>12</sup> No plan which ignored this debt could meet with the approval of Providence, nor could one which cut off the coveted specie merchants needed to satisfy their unrelenting foreign creditors. A principal source of this specie, of course, had been the interest paid in silver on the merchants' continental certificates.

Opposition to the paper plan in Newport was also formidable but less strenuous than that manifested by Providence. The port towns of Bristol and Warren

*A public notice or "know ye" published in the Providence Gazette of February 3, 1787.*

STATE OF RHODE-ISLAND and PROVIDENCE PLANTATIONS.

TO ALL WHOM IT MAY CONCERN.

**K**NOW YE, That William Champlin, and Margaret his Wife, once Margaret Drew, of Newport, in the County of Newport, and State aforesaid, Administratrix to the Goods and Chattels, Rights and Credits, of Capt. James Drew, late of Newport, Merchant, deceased, on the 29th Day of December, 1786, at my Dwelling-House, at Newport, lodged with me the Sum of One Hundred and Fifteen Pounds Six Shillings and Sixpence, Lawful Money, it being in full for the Principal and Interest of a Judgment of Court, Debt and Cost, obtained against Henry Hunter and the said Margaret, in their Capacities as Administrators to the Goods and Chattels, Rights and Credits, of the aforesaid James Drew, deceased, by John Crammond, of the City and State of New-York, Merchant, by Henry Marchant, Esq; his Attorney, upon Record: That the said William and Margaret hath in all Respects complied with the Law respecting the Paper Currency; and that the said Henry Marchant, Esq; as Attorney, upon Record, to the said John Crammond, hath been legally and duly notified thereof.

Witness, P. MUMFORD, C. J. S. C.  
Newport, Jan. 13, 1787.

harbored hard money sentiments as well but the remainder of the state, especially the interior towns, was firmly in the grip of the paperites as the May 1786 session drew to a close.<sup>13</sup>

It has been mentioned that the merchants issued vociferous denunciations of the paper money scheme. They alleged, without foundation, that since the paper would not be accepted outside the state, it would destroy Rhode Island's commerce. Their favorite tactic, however, was to depict advocates of paper money as an unscrupulous band of dishonest debtors

7 *We the People*, 321-331. In March 1786 the merchant-controlled Assembly had granted a limited concession to the debtor interests by passing "An act for making real and certain enumerated articles of personal estates . . . liable under certain restrictions for the payment of debts upon execution." John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England*, 10v. (Providence, 1856-65), 10:182, hereafter cited *RICR*. This act fell short of debtors' demands and was repealed in June 1786. *RICR* 10:205.

8 Records of R. I. General Assembly 13:262-66, R. I. State Archives, hereafter cited *RIGA* Records.

9 The manipulation scheme is alluded to in Forrest McDonald, *E Pluribus Unum: The Formation of the American Republic, 1776-1790* (Boston, 1965), 125-26.

10 *We the People*, 330, 333-34. There was less speculation in the public debt in R. I. than in most other states. "Rate of transfer" was a relatively low 52 percent. Ferguson, 280-81.

11 The Smithfield petition is in *PAC*, 54.

12 *We the People*, 334.

13 Bates, 123-29.

[VOL. I.]

T H E

[NUMB. 4.]

# Newport Herald.

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 THURSDAY, MARCH 22, 1787.
 

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 NEWPORT, (RHODE-ISLAND) PRINTED BY PETER EDES, ON THE PARADE.
 

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seeking to defraud their creditors. Because the anti-paper merchants controlled the principal means of communication, including the local press, this latter charge was often repeated and accepted as accurate both by contemporaries in other states and by subsequent historians.<sup>14</sup>

A man in large measure responsible for the dissemination of anti-paper propaganda was journalist Peter Edes. This spokesman for the mercantile interest published a remarkable series of articles in his *Newport Herald* reporting on the proceedings of the Rhode Island General Assembly between the spring of 1787 and January 1790, when the legislature acted to convene a convention to ratify the Federal Constitution. Edes's reports still provide the best existing description of the debates in the Rhode Island legislature during the closing years of the confederation, but they display a strong anti-paper and pro-Federalist bias. Nonetheless, they were frequently reprinted in newspapers throughout the United States without proper caution that Edes's indictment of the Country Party might be partial and distorted. Some Federalist editors even embellished

Edes's unflattering appraisal of the paper money men. Francis Childs, publisher of the *New York Daily Advertiser*, for example, reproduced one of Edes's reports under the heading "Quintessence of Villainy."<sup>15</sup>

Contrary to the Newport editor's allegations, however, the three most careful historians of confederation Rhode Island and its paper issue persuasively maintain that the cancellation of private debts was only a relatively insignificant by-product of the scheme, not its essential purpose.<sup>16</sup> Forrest McDonald and Hillman Bishop support this conclusion by alluding to the published announcements of lodge money deposits. Such deposits, which represented all private debts canceled by paper against the wishes of the creditor, amounted to £17,000 out of a total emission of £96,608 in paper bills. Actually, fewer than 300 different individuals, about two percent of the adult male population, were involved in lodge-money transactions in any capacity. McDonald further demonstrates that "there is no foundation in fact for the commonly accepted generalization that the paper-money movement in Rhode Island represented the actions of large

14 Bates, for example, in his generally sound study gives the following appraisal of the money plan: "Conceived in ignorance, and supported by folly and dishonesty, it had brought discord, repudiation and misery." 148.

15 Edes's accounts have been collected by Irwin H. Polishook, ed., "Peter Edes's Report of the Proceedings of the Rhode Island General Assembly, 1787-1790," *Rhode Island History* 25 (April 1966), 33-42; (July 1966), 87-97; (October 1966), 117-129; 26 (January 1967), 15-31.

16 *We the People*, 332-33. Polishook, *R.I. and the Union*, 103-173. Bishop, 15-25.

17 *We the People*, 333. Bishop, 23-25, states that "many paper money supporters reprobated the action of those who lodged paper currency with the judges. Many who approved the use of paper money to liquidate the state debt did not approve the tendering of paper for debts originally incurred in gold." These moderates made

bands of debtor-farmers who were using depreciated paper currency to pay obligations due to merchant-creditors." Both farmers and merchants involved themselves in relatively few lodge-money transactions; both availed themselves of this method of debt reduction.<sup>17</sup> The real motives behind the issuance of paper, for all but the most radical of the Country Party, were tax relief and reduction of the state debt. The principal objections to the paper money program, as we have seen, stemmed from abandonment by the Country Party of all responsibility for continental obligations and the plan's indirect curtailment of specie.

Propaganda of the merchants and their private manipulations helped to undermine popular faith in the new currency and it depreciated rapidly. Thirty months following its issuance it had declined in worth at a steady rate until its market value was less than eight cents on the dollar. For two years it remained at this low level, then it rose to six for one, a value it held until all but a fraction of it was retired in 1800.<sup>18</sup> Depreciation, however, did not seriously impair the paper money faction's plan to retire state debts; in fact, it hastened the process.

In December 1786 the program of debt service began when the Assembly authorized payment in paper of the first quarter of the state's six percent obligations. A March 1787 statute penalized those who refused to comply with this system by providing for partial forfeiture of their securities and interest thereon to the state if they failed to present their certificates to the General Treasurer as directed.

The second quarterly payment on this debt was authorized in June 1787, the third in February 1788, and the final portion in March 1789. Meanwhile, in October and December 1788, authorization acts were passed allowing holders of four percent notes to receive their compensation from the state. Thus by mid-1789 Rhode Island's entire debt had been liquidated and the annual expenses of the debt-free government were reduced to less than £10,000. Forty percent of these expenses could be met by interest payments on paper loaned and the remainder supplied by import duties.

To the delight and relief of all, especially the landholding farm population, the direct tax load had been abolished.

In retrospect, the paper plan must be termed a success and standard criticisms of the program adjudged inaccurate and undeserved. State government benefited by retiring its pressing debt; taxpayers also gained relief; so did the many holders of state securities because the depreciated paper they received was worth more than the depreciated securities they had owned. The principal aims of the Country Party had been effectively achieved. In addition, Rhode Island's interstate and foreign trade enjoyed an annual increase throughout the period of agitation, despite merchants' apprehensions.<sup>19</sup>

But the controversial emission of '86 was far from an unmixed blessing. Forrest McDonald in his perceptive defense of the paper plan lists two detrimental and unfortunate by-products of the scheme. The worst effect of the paper, says he, was the great damage it did to the reputation of Rhode Island among sister states. The dubious credit for this achievement must be shared by Providence merchant princes and irascible Peter Edes for, in their efforts to discredit the Country Party, they further tarnished the already questionable reputation of their state as well. "Rogue's Island," home of the dishonest debtor, was the image they presented to a condescending nation.

A second bad effect, asserts McDonald, was that some private creditors suffered because £17,000 in depreciated bills were used to satisfy personal debts. These losses, of course, were far less significant than previously supposed, but this is little consolation to those creditors who were forced either to accept lodged paper or forfeit it to the state.<sup>20</sup>

Several other undesirable by-products or consequences of the paper controversy, however, McDonald neglected to identify. First, mention should be made of the hardship, privation, and subsequent reprisals which disputants in the affair visited upon one another and the long-standing bitterness which such actions engendered. For example, in the first weeks following

paper money legal tender for private debts because they believed this step necessary to maintain the value of the emission.

18 *We the People*, 335-36.

19 *ibid.* Schedule of debt retirement can be traced in RIGA Records 13:343, 359, 397, 429-30, 451, 478, 547, 569, 586-87. Taxes levied during this period were: £20,000 [June 1786]; £20,000 [March 1787]; £30,000 [Sept. 1787]; £30,000 [June 1788]; £20,000 [March 1789]. RIGA

Records 13:287-90, 359-62, 404, 407-08, 410-12, 527, 532-35, 589-92. McDonald errs when he states that "in 1788 the debts were retired in four quarterly installments." *We the People*, 336. McDonald [335] and Polishook, *R.I. and the Union*, 168-70, agree regarding the increase in trade.

20 *We the People*, 336.

the emission, merchants in the towns closed their stores rather than sell their goods for paper while farmers, who had mortgaged their lands to secure paper, sought to compel townspeople to accept the money by withholding produce from the market. Relations between town and country during this critical period were increasingly marked by suspicion and resentment.<sup>21</sup>

The debit side of the paper money ledger must also include some notice of the bold, aggressive, and often unjust means employed by the Country Party to implement and protect its program. A consideration of those involves us with several issues relating directly to Rhode Island constitutional development.

Among the most flagrant attempts made by paper money men to defeat, coerce, or punish opponents were: (1) passage of a forcing act in June 1786 providing a heavy fine for non-acceptance of the paper or for contributing to its depreciation; (2) addition of an amendment to this act in August 1786 providing for trial without jury or appeal for violators (this amendment was the law challenged in *Trevett v. Weeden*); and (3) an unsuccessful attempt to require a test oath binding the taker to make every effort to uphold the value of paper and barring from public office all who refused to swear.

Those maneuvers of a desperate faction exhibited an unfortunate disregard for the rights of the minority opposition. It was, perhaps, these measures employed in conjunction with paper emission that prompted many denunciations of the Country Party by the mercantile community.

The forcing act of June 1786 was designed to check rapid depreciation of paper bills. This statute provided that any person who refused to take these bills at par in exchange for any articles he offered for sale, or should make any difference in prices between silver and paper money in any sale or exchange, or should attempt to depreciate or discourage passing of these bills, would be

fined one hundred pounds for the first offense. For the second violation, he would be fined the same amount and be rendered ineligible to vote or hold office in the state.<sup>22</sup>

This penal law apparently failed to achieve its intended effect because of delays in meting out penalties to violators, so a special August session of the legislature was convened which modified it with an ill-advised amendment. The August act lessened the monetary penalty on those refusing paper, but it provided for immediate trial of violators by *special court*.

This supplementary statute stated that if any person refused to receive paper according to the requirements of the previous laws, the individual tendering money should apply for relief to a justice of the Superior Court or to a judge of the Court of Common Pleas in the county where the offense was committed. The judge handling the complaint was thereupon directed to summon the refusing party to appear before a *special court* within three days to stand trial, without benefit of jury. The judgment of this special court was to be final and conclusive; no appeal from its decision was allowed. If the accused was found guilty, he was to pay the assessed fine plus costs or be committed to the county jail "till sentence be performed."<sup>23</sup>

Needless to say, this law provoked an uproar because of its disdain for procedural due process, and it was immediately defied. In Newport, where anti-paper forces held a majority, John Weeden, a butcher, refused to accept paper tender of John Trevett offered in payment for meat. The latter thereupon entered a complaint against the recalcitrant butcher with the chief justice of the Superior Court, Paul Mumford, thus precipitating the case of *Trevett v. Weeden*.<sup>24</sup>

Two of the state's ablest lawyers sprang to Weeden's defense — Henry Marchant, former attorney general and ex-delegate to the Continental Congress, and General James Mitchell Varnum, member of Congress from Rhode Island. The trial was conducted, despite

21 Bates, 126-28.

22 RIGA Records 13:279-80. *We the People* 332 gives the erroneous impression that this supplementary act was part of the original paper money statute.

23 RIGA Records 13:297-99. *RICR* 10:212-13. Those who passed this bold measure also approved a law at this session making the paper money a tender in payment of continental taxes. *RICR* 10:211-12.

24 Information on this case and trial of the judges which followed can be found in Papers Relating to the *Trevett versus Weeden* Case, 1786, Misc. MSS, Newport Historical Society, Box 43, folder 12 which contains three other writs summoning to court violators of the

act. James M. Varnum, *The Case, Trevett against Weeden* . . . [Providence, 1787]. *Providence Gazette* Sept. 30 and Oct. 7, 1786. *Newport Mercury* Oct. 2, 1786. *RICR* 10:215, 218-19. RIGA Records 13:315-17. The most convenient and accessible compilation of relevant material is John D. Lawson, ed., *American State Trials* [St. Louis, 1914-36], 4:558-599, but this collection contains numerous inaccuracies.

25 The August penal law which Weeden was accused of violating specified that *special courts* try all cases arising under it. The chief justice summoned a special court to try the case. It convened on Sept. 20 but "adjourned over into" Superior Court sitting at its September term. The case, therefore, for reasons not fully known, was tried before Superior Court. In the words of Varnum, most



Henry Marchant, with Varnum, sprang to the defense of Weeden.



RIHS Library.

provisions of the penal law, at a special session of the Superior Court of Judicature, Rhode Island's highest tribunal,<sup>25</sup> held in Newport on September 22, 1786 with Chief Justice Mumford presiding. The case was highlighted by Mr. Varnum's speech for the defense, a brief which the most thorough student of the development of judicial supremacy has called one "which indicates perhaps better than any other document prior to the federal Convention, some of the ideas on which reliance was placed in accepting the principle of judicial review of legislative enactments."<sup>26</sup>

At the outset Varnum, a man of eloquence and imposing appearance, prayed that the Court would not

take cognizance of Trevett's complaint because of three major objections to the act under which the charge was brought.<sup>27</sup> First, defense counsel contended that the August act under which Weeden stood accused had expired ten days after the rising of the Assembly. Faulty draftsmanship of the penal statute by the legislature gave this technical allegation much merit.<sup>28</sup>

Varnum however informed the judges, "we do not place our principal reliance upon this objection." He then embarked upon a more formidable avenue of attack, namely that by the statute "special trials are instituted, incontrollable by the Supreme Judiciary Court of the State." This was a gross violation of the long-standing principle that "the highest court of law hath . . . power to reverse erroneous judgments given by inferior courts and the duty to command, prohibit, and restrain all inferior jurisdictions, whenever they attempt to exceed their authority or refuse to exercise it for the public good."<sup>29</sup>

The final aspect of the penal act to be attacked by Varnum was its failure to provide accused with jury trial. His arguments on this point were most effective. He made several allusions to the charter of Charles II, still the state's basic law, and listed two principal causes of colonial discontent on the eve of the Revolution in the process of developing his position.

"Trial by jury," asserted Varnum, "was ever esteemed a first, a fundamental, and a most essential principle in the English constitution." This "sacred right" was transferred from England to America by numerous royal grants, including Rhode Island's charter of 1663. The charter provision giving colonists the right to "have and enjoy all liberties and immunities of free and natural subjects" of England was then cited in proof of this contention. These privileges and immunities were abridged by the Stamp Act levy and by England's use of admiralty jurisdiction. In fact, attempts of Parliament to deprive colonists of trial by jury "were among the principal causes that united the

accurate source, "Mumford . . . caused a Special Court to be convened. But as the information was given during the [September] term of the [Superior] Court, it was referred into the term for consideration and final determination." Varnum, 1-3. Many historians have failed to grasp the existence and significance of this subtle distinction, including the most recent scholarly accounts — Polishook, "Trevett vs. Weeden and the Case of the Judges," 50-51; and Curran, "Trevett v. Weeden: Its Place in Our History," 24. No previous historian, it seems, has consulted the court record, namely Superior Court of Judicature, Newport County, Record F (1772-1795) [September term 1786], 280-82, Newport County Court House, Office of the Clerk of Superior Court.

26 Haines, 105. Benjamin Bourne, who later became Rhode Island's first U.S. Representative, also invoked the doctrine of judicial review in 1786 in a farcical case [arising out of the paper money dispute] which was never adjudicated. See the cursory allusion to Bourne's role by civic leader John Howland in his *Life and Recollections* edited by Edwin M. Stone (Providence, 1857), 101-04.

27 RICR 10:220. RIGA Records 13:316.

28 Varnum, 5-7.

29 Varnum, 7-9.

colonies in a defensive war," contended the learned Revolutionary general.<sup>30</sup>

Now, that long-cherished right of trial by jury was being denied by the Rhode Island General Assembly, claimed Varnum. This was a clear usurpation, for the charter prohibited the legislature from making laws "contrary and repugnant" to the general system of laws which governed the realm of England at the time of the grant. The Revolution, said he, had made "no change" in this limitation of legislative power. Trial by jury, he contended, "is a fundamental right, a part of our legal constitution," and one with which the Assembly cannot tamper.

Then, after references to Coke and other legal authorities, Varnum espoused the doctrine of judicial review in his learned and forceful summation:

*We have attempted to show, that the act, upon which the information is founded, has expired: That by the act special jurisdictions are erected, uncontrollable by the Supreme Judiciary Court of the State: And that, by the act, this court is not authorized or empowered to impanel a jury to try the facts contained in the information: That the trial by jury is a fundamental, a constitutional right — ever claimed as such — ever ratified as such — ever held most dear and sacred: That the Legislature derives all its authority from the constitution — has no power of making laws but in subordination to it — can not infringe or violate it: That therefore the act is unconstitutional and void. That this Court has power to judge and determine what acts of the General Assembly are agreeable to the constitution; and, on the contrary, that this Court is under the most solemn obligations to execute the laws of the land, and therefore cannot, will not, consider this act as a law of the land.<sup>31</sup>*

Contrary to generally accepted belief, the Rhode Island Superior Court did not, on the basis of Varnum's

*Sir Edward Coke, eminent legal authority quoted by Varnum.*



*Engraving from Genesis of the United States, edited by Alexander Brown (Boston, 1890).*

appeal, declare the penal statute unconstitutional and void. It did, however, accede to his plea by denying jurisdiction over Trevett's complaint, for the Court unanimously decided "that the said complaint does not come under the cognizance of the Justices here present, and . . . it is hereby dismissed."<sup>32</sup> Presumably cognizance was denied because the justices heard the case in special session of the regular term and not as a special court as directed by the force act.

In the commotion which followed the trial, knowledge of the specific decision was somehow distorted, for the infuriated Assembly in special session issued a summons requiring immediate attendance of the judges to render their reasons for adjudging "an act of

30 Varnum's contention that English deprivation in certain instances of trial by jury for American colonials was a "principal" cause of the Revolution has been examined by David S. Lovejoy, "Equal Rights Imply Equality: The Case against Admiralty Jurisdiction in America, 1764-1766," *William and Mary Quarterly* 16 (Oct. 1959), 459-84.

31 Varnum, 10-36, especially 35.

32 *RICR* 10:215. *RIGA Records* 13:316.

the supreme legislature of this state to be unconstitutional, and so absolutely void."<sup>33</sup> This may have been the justices' personal view, but it was not their formal decision.

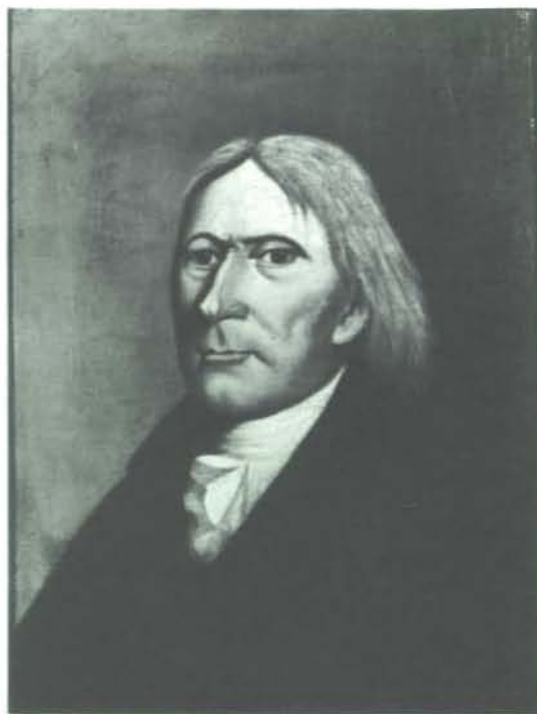
(Unquestionably the Assembly's misstatement is the source of the erroneous notion entertained by numerous historians which this essay seeks to correct.)

In early October, after a two-week delay, Judges David Howell, Joseph Hazard, and Thomas Tillinghast appeared to defend their course of action. Chief Justice Paul Mumford and Associate Justice Gilbert Devol were conveniently ill.

Both Tillinghast and Hazard, the latter a paper money supporter, stoutly defended the judgment they had rendered. Howell did likewise in a speech much lengthier and more fully preserved. He asserted that the justices were accountable only to God and their own consciences for their decision. It was beyond the power of the General Assembly to judge the propriety of the Court's ruling, the angry Howell continued, for by such an act "the Legislature would become the supreme judiciary — a perversion of power totally subversive of civil liberty." Howell then contended for an independent judiciary so that judges would not be answerable for their opinion unless charged with criminality. In support of his position he made impressive citations from Montesquieu, Blackstone, Serjeant William Hawkins, and Bacon.

Showing little remorse or contrition for his act, Howell boldly informed the lawmakers that the legislature had assumed a fact, in their summons to the judges, which was not justified or warranted by the records. The plea of Weeden, he pointed out, mentions the act of the General Assembly as unconstitutional, and so void, but judgment of the Court simply is that the information is not cognizable before them. Hence it appears, chided Howell, that the plea has been

Chief justice of the Superior Court, Paul Mumford.



Courtesy Redwood Library.

mistaken for the judgment. His personal opinion however was that the act was indeed unconstitutional, had not the force of law, and could not be executed.<sup>34</sup>

The response of the judges, especially that of Howell, did little to endear them to the General Assembly. Thus the legislature declared its dissatisfaction with the judges' retorts and a motion was made to dismiss them from office. Before the vote on this imprudent suggestion was taken, a memorial signed by the three judges was introduced and read. They had anticipated

33 *RICR* 10:215. Since Varnum prayed that the court refuse cognizance of Trevett's complaint for three reasons — one of which was the alleged unconstitutionality of that portion of the penal act denying accused trial by jury — and the judges in disclaiming cognizance did accede to Varnum's request, it could be tenuously maintained that the court by implication regarded the statute unconstitutional. *RICR* 10:220. However, the court was not sitting as a special tribunal according to the

provisions of the act and this, assuredly, was the ground on which it refused cognizance. Polishook ["Trevett vs. Weeden," 63] is only the most recent of many historians who have erroneously asserted that the court made a specific declaration of unconstitutionality. The original court record clearly shows that the action was dismissed.

34 Varnum, 37-43, summarizes the arguments of the judges.

the plan to remove them and they demanded as freemen and officers of the state the right of due process—"a hearing by counsel before some proper and legal tribunal, and an opportunity to answer to certain and specific charges . . . before any sentence or judgment be passed, injurious to any of their aforesaid rights and privileges." After the memorial, General Varnum addressed the House in defense of the Court.

This determined show of resistance caused the Assembly to waver. A motion was passed directing that the opinion of the attorney general and other learned lawyers be obtained on the question of "whether constitutionally, and agreeably by law, the General Assembly could suspend, or remove from office the Judges of the Supreme Judiciary Court, without a previous charge and statement of criminality, due process, trial, and conviction thereon."

Attorney General William Channing (father of the famed Unitarian minister) and others consulted answered in the negative. Thus it was resolved by a large majority of the legislature that "as the judges of said superior court, etc., are not charged with criminality in giving judgment upon the information, John *Trevett* against John *Weeden*, they are therefore discharged from any further attendance upon this Assembly on that account," and are allowed to resume their functions.<sup>35</sup>

The forcing statute which sparked the dispute was repealed in December,<sup>36</sup> but the Assembly gained some measure of satisfaction from the independent-minded

Court when it declined to re-elect Howell, Hazard, Tillinghast, and Devol upon the expiration of their terms in May 1787. Chief Justice Mumford, who had failed to testify either because of illness or discretion, was surprisingly retained. Congressional delegate Varnum and Attorney General Channing were also ousted because of their defiant stand, whereas Henry Goodwin, state's counsel in the proceedings, was elevated by the Country Party to the position vacated by Channing.<sup>37</sup>

As the foregoing analysis reveals, the decision of the Rhode Island Superior Court in *Trevett v. Weeden* was not an authentic or technical precedent in the development of judicial review. Nor did the action of the Court prevent implementation of the paper money program. Further, the effect of the case upon Rhode Island's long-range judicial development was slight. *Trevett v. Weeden* was a cause célèbre which produced great temporary excitement but made little permanent impact upon the operations of Rhode Island's governmental system. After 1786 the legislature continued to exert as much control over the state's courts as before. Judges continued to be elected annually by the dominant party—despite periodic protests of reformers—until establishment of a written state constitution in 1843. The Assembly continued to entertain petitions from individuals adversely affected by legal decisions and often honored such petitions by overturning the judgment of the supreme court in cases of insolvency and by authorizing new trials in civil suits. These

35 RIGA Records 13:317. *RICR* 10:220. Varnum, 44-53, contains a summary of the Assembly proceedings which followed testimony of the judges.

36 RIGA Records 13:345. *RICR* 10:230-31, 242. The June forcing act was also repealed at this time, but the May emission act was amended to allow debtors to lodge money with any justice of any of the courts of common pleas. The May act had specified that the debtor lodge money in the county wherein he resided. *RICR* 10:226. In addition the December session passed a statute providing that most personal actions for debt payment had to be commenced by creditors within two years after the debt was made or else the debt was not recoverable. A forcing act of sorts, this drew such stiff criticism that it was repealed in the March 1788 session. RIGA Records 13:344-45, 466, 473-74.

37 *RICR* 10:241-42.

38 On the general course of Rhode Island judicial history from *Trevett v. Weeden* to *Taylor v. Place* see the following. Stiness, 107-119. C. Peter Magrath, "Samuel Ames: The Great Chief Justice of Rhode Island," *Rhode Island History* 24 (July 1965), 65-76. Peter J. Coleman, *Transformation of Rhode Island, 1790-1860*

(Providence, 1963), 251-55, 285. Patrick T. Conley, "Rhode Island Constitutional Development, 1636-1841: Prologue to the Dorr Rebellion" (unpublished doctoral dissertation, University of Notre Dame, 1970), *passim*.

39 Edward S. Corwin lists *Trevett v. Weeden* among the "alleged precedents for judicial review antedating the Convention of 1787." Corwin, although aware that the Court did not declare the penal act unconstitutional, makes the interesting point that the statute was "self-contradictory and impossible to be performed, since it required that those violating it be tried without a jury but in accordance with the 'Law of the Land.'" *Doctrine of Judicial Review*, 71-74. On the significance of Varnum's argument in the development of judicial review Corwin makes the observation:

"Of the so-called 'precedents' for judicial review antedating to the Convention of 1787, the one which called forth the most elaborate argument on theoretical grounds and which produced the most evident impression upon the membership of the convention, was the Rhode Island case of *Trevett v. Weeden* . . . The feature of the case which is of immediate pertinence is the argument which it evoked against the act on the part of

practices were not terminated until 1856 when the state supreme court finally asserted its independence of the Assembly in the landmark case of *Taylor v. Place*. Until the *Taylor* decision — seventy years after *Trevett* — no state court dared challenge the Assembly; no Rhode Island justice gave official endorsement to the doctrine of judicial review.<sup>38</sup>

The real significance of the *Trevett v. Weeden* episode lies not in the formal action of the Court (which ducked the issue) but in the utterances of defense counsel James Mitchell Varnum and, to a much lesser degree, in the personal observations of Justice David Howell. General Varnum's statement of the doctrine of judicial review was one of the most forceful and extensive arguments on that subject developed during this formative period.<sup>39</sup> Assuredly his position was known to the framers of the federal constitution<sup>40</sup> and to such state supporters of that document as James Iredell and John Marshall. Varnum furnished his contemporaries and posterity with a full statement of his views by publishing them in pamphlet form together with an account of the trials of both Weeden and the judges. Varnum's work was widely disseminated and even advertised for sale in the Philadelphia press during April and May 1787 as the delegates were entering that city to participate in the Grand Convention.<sup>41</sup> To this eloquent attorney and harbinger of judicial review our courts and our legal historians owe a duty of deference and acknowledgment.<sup>42</sup>

the attorney for the defendant, James Varnum." Varnum developed "the theory of a law superior to legislative enactments." His argument, in the tradition of Coke and Locke, "kept alive, even after the fires of revolution had cooled, the notion that the claim of law to obedience consists in its intrinsic excellence rather than its origin. Again, it made rational the notion of a hierarchy of laws in which the will of merely human legislators might on occasion be required to assume a subordinate place. Lastly, by the same token, it made rational the notion of judges pitting knowledge against sheer legislative self-assertion" ("Progress of Constitutional Theory," 523).

A good general discussion of the historiography of judicial review is Alan F. Westin, "Charles Beard and the American Debate over Judicial Review, 1790-1961," which is the introduction to Westin's edition of Charles A. Beard, *The Supreme Court and the Constitution* (Englewood Cliffs, N.J., 1962), 1-34.

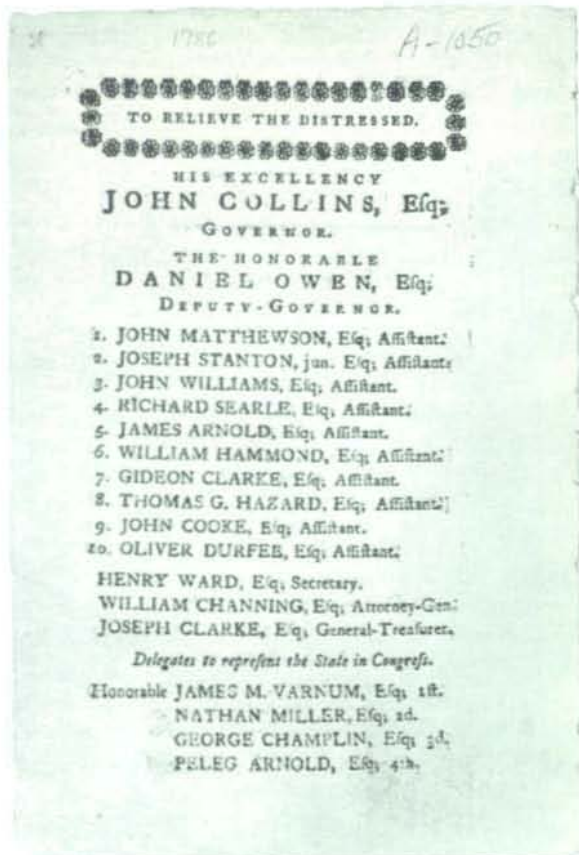
40 Raoul Berger, *Congress v. Supreme Court* (Cambridge, Mass., 1969), 39-40, 45-46, claims that several state cases between 1776-1787 (including *Trevett v. Weeden*) "were thought to exemplify judicial review" by the Founding Fathers and in this "rationalistic" sense these were "precedents" in the development of that doctrine.

This advertisement in the Providence Gazette was followed by similar ones in the Philadelphia press during April and May 1787 when delegates were entering that city for the Constitutional Convention.

**JUST PUBLISHED,**  
And now selling by the Printer hereof,  
**T H E**  
**C A S E,**  
**TREVETT against WEEDEN :**  
On INFORMATION and COMPLAINT, for  
refusing Paper Bills in Payment for  
Butcher's Meat, in Market, at Par with  
Specie.  
Tried before the Honourable SUPERIOR  
COURT, in the County of Newport, Septem-  
ber Term, 1786.  
**A L S O,**  
The Case of the Judges of said Court,  
Before the Hon. GENERAL ASSEM-  
BLY, at Providence, October Session, 1786, on  
Citation, for dismissing said Complaint.  
Wherein the Rights of the People to Trial by Jury,  
&c. are stated and maintained; and the Legisla-  
tive, Judiciary and Executive Powers of Govern-  
ment examined and defined.  
By **JAMES M. VARNUM, Esq;**  
Major General of the State of Rhode-Island, &c.  
Counsellor at Law, and Member of Congress  
for said State.

41 *Pennsylvania Packet* (Phila.) April 25, May 2, 9, 16, 23, 1787. See also Varnum to George Washington, June 18, 1787 in Max Farrand, ed., *Records of the Federal Convention of 1787*, rev. ed. (New Haven, 1937), 3:47-48; and James Madison's remarks on the Rhode Island judiciary on July 17, 1787 during a debate on "judicial negative" of state laws. *ibid.*, 27-28.

42 Shortly after the Assembly terminated his membership in the Confederation Congress, Varnum, a director of the newly formed Ohio Company, was appointed United States judge for the Northwest Territory. He assumed his duties at Marietta, Ohio in June 1788 and gave important assistance in framing a code of territorial laws. Although of powerful build and a physical culturist, he failed in health in the frontier environment and did not survive the first winter. On January 10, 1789 Varnum's death at the age of forty cut short his highly promising career. See James M. Varnum, *A Sketch of the Life and Public Services of James Mitchell Varnum of Rhode Island* . . . (Boston, 1906), 31-41.



RIHS Library.

This is the winning prox or ticket of the spring 1786 elections which brought to power the pro-paper "Country" or "Landholders" Party and achieved the temporary eclipse of mercantile control. Contributing to the paper party's success were such sentiments as those opposite, penned by an enthusiastic paperite on the back of a Country Party prox.

on the proseding of y<sup>e</sup> 19 day  
 of April 1786

The 19 day of April as they say  
 freedoms sons Began the way  
 The day we ever observe with admiration  
 Resembling almost a newe Creation  
 of Numerous Gentle Men to prevent  
 the total wast of ~~our~~ estates that is almost spent  
 By Spendthrifts who hertofores have Ruled the Rost  
 and of freedom much they made their boast,  
 But now alas the do appear.—  
 Like Breathless Corps that none do fear  
 Now we see them industriously inclined  
 to those Occupations fit By Nature designed  
 While freedoms sons are Industriously engaged  
 the Impending destruction to eswage  
 to Make and establish new & Rightious Laws  
 to preserve the Interest of those who bled in  
 fredoms cause  
 that those Ingroses ~~might~~ might not from their  
 Interest Tare  
 as the harmless Lam is from the sheep Torn by the  
 Ravinous Bare  
 the original of those Gentlemen as fame does Tell  
 Like Lucifer from Their Heaven they fell  
 altho a numerous host they did proswade  
 the Rightious Law of Liberty to invade  
 Now they are forsaken By the men on whom they did  
 depend  
 them in their most Cruel Acts ~~to~~ for too Defend  
 But not all of those who office did sustain  
 did ~~thos~~ endeavour those Cruel acts for too Maintain  
 those Never ought to be inroled with the Rest  
 But by freedoms sons ever ought for to Be blest.

The 19 day of April as they say <sup>on the profession of 19 day</sup>  
freedom's sons began the way <sup>of April 1786</sup>

The day we ever observe with admiration  
Puppling almost a new Creation  
of Numerous Gentle Men to prevent.

The total want of ~~some~~ thus that is almost ~~lost~~  
By Spendthrifts who heretofore have Ru'd the Rest  
and of freedom men they made their boast,  
But now alas they do appear

Like Breathless Crabs that were ~~at~~ <sup>at</sup> first  
Now we see them industriously inclined  
to those Occupations fit by Nature designed  
While freedom's sons are industriously engaged

the ~~comparing~~ <sup>comparing</sup> ~~with~~ <sup>with</sup> ~~them~~ <sup>them</sup> ~~to~~ <sup>to</sup> ~~judge~~ <sup>judge</sup>  
to Make and oft ~~with~~ <sup>with</sup> ~~new~~ <sup>new</sup> & ~~mighty~~ <sup>mighty</sup> ~~new~~ <sup>new</sup> Laws  
to preserve the Interest of those who bleed in freedom's cause  
that those ~~ingraves~~ <sup>ingraves</sup> ~~might~~ <sup>might</sup> ~~not~~ <sup>not</sup> ~~from~~ <sup>from</sup> ~~them~~ <sup>them</sup> ~~their~~ <sup>their</sup> ~~Interest~~ <sup>Interest</sup>  
as the harmful Law is from the ~~help~~ <sup>help</sup> ~~can~~ <sup>can</sup> ~~by~~ <sup>by</sup> ~~the~~ <sup>the</sup> ~~Nation's~~ <sup>Nation's</sup> ~~Bank~~ <sup>Bank</sup>

The origin of these Gentlemen as fame does tell

Like Lucifer from ~~his~~ <sup>his</sup> ~~Heaven~~ <sup>Heaven</sup> they fell  
at the a numerous host they did provoke  
the mighty Law of Liberty to invade

Now they are formed by the man on whom they did depend  
them in their most Cruel Acts ~~to~~ <sup>to</sup> for too Depend

But not all of those who offic'd did sustain  
did ~~the~~ <sup>the</sup> ~~endeavour~~ <sup>endeavour</sup> ~~to~~ <sup>to</sup> ~~these~~ <sup>these</sup> ~~Cruel~~ <sup>Cruel</sup> ~~acts~~ <sup>acts</sup> ~~to~~ <sup>to</sup> ~~sustain~~ <sup>sustain</sup>  
those ~~slaves~~ <sup>slaves</sup> ~~ought~~ <sup>ought</sup> ~~to~~ <sup>to</sup> ~~be~~ <sup>be</sup> ~~involved~~ <sup>involved</sup> ~~with~~ <sup>with</sup> ~~the~~ <sup>the</sup> ~~Rest~~ <sup>Rest</sup>  
But by freedom's sons ~~ought~~ <sup>ought</sup> ~~not~~ <sup>not</sup> ~~to~~ <sup>to</sup> ~~be~~ <sup>be</sup> ~~blat~~ <sup>blat</sup>.