

Daniel Webster and the Oratory of Civil Religion

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Chapter 1

The Foundation of Webster's Civil Religion

The parallels between Webster's father and his father figure, George Washington, inspired some of his best ceremonial speeches. Like Washington, Ebenezer Webster fought in the French and Indian War. By age twenty-four he had led troops into Canada and risen to the rank of captain. For this accomplishment he was given land in New Hampshire which eventually became Salisbury, a cold and inhospitable town subject to invasions by bears, wolves, and Native Americans. It was there that his son Daniel would be born in 1782.

When the Revolution came, Ebenezer Webster was ready. He resumed his role as captain and assembled a group of some two hundred men who battled the British at Bennington, White Plains, and West Point at the time of Benedict Arnold's betrayal. In fact, Webster guarded Washington's tent on the night of the treason.¹ In 1788, he served as a representative to the New Hampshire constitutional ratifying convention. He was proud of the fact that New Hampshire put the Constitution over the top by becoming the ninth state to ratify the document. He also served as a judge for the Court of Common Pleas. The identification between Ebenezer Webster and George Washington was complete in young Daniel's mind at the time of Washington's death in 1799, even though the former president ended his life as a slaveholder. Daniel excused Washington's blind spot with several rationalizations: Washington was a hero of the Revolution; he did not purchase his slaves but married a woman who already owned them; and he freed them in his last will.²

1. Robert V. Remini, *Daniel Webster: The Man and His Time*, 32.

2. As we shall see, Thomas Jefferson lived well into Webster's adult life and the two met at one juncture, but Webster never condemned Jefferson's slaveholding, nor the fact that he would

Civil Religion

Daniel Webster was of the second generation of American leaders who came into prominence around the War of 1812 with Britain. These orator-leaders had a deep belief in the heroic nature of the birth of the United States, and they were not reluctant to valorize that past in their rhetoric. If not for the likes of Webster, John C. Calhoun, John Quincy Adams, Andrew Jackson, Henry Clay, and others of this second generation, America might not have developed its civil religion and civil war might have come earlier, while the South was strong enough to sustain itself against a Union that had a weak self-conception. Of these leaders, none was more important than Webster when it came to establishing a priority of values for developing nationhood. His talent was to use the founders, particularly Washington, to advance the Federalist agenda, often in the guise of making a ceremonial speech. Because of him, *the Union* became the God-term that Lincoln would use to justify the North's prosecution of the Civil War. The Union was Webster's heaven on earth; the Constitution was his Ten Commandments.

By civil religion I mean the mythos and rhetoric of nation-building that constitute a schema of values which in turn guides decision making. Whether one examines the nation-building techniques of the Egyptians, the Greeks, or the Romans, one finds the use of mythology to rationalize a vision of civic virtue and expansion. In each case there is a retrieval of the origins of nationhood or a tale of the rebirth of a nation. Hesiod and Homer provided the heroes, heroines, and gods that inspired Greek character and justified conquest. Speaking for democratic Athens, Pericles rationalized war against the Spartans; his rhetoric refined the Athenian sense of civic virtue. Virgil revised the story of Rome's founding to include Aeneas, a hero of Troy. The best of these values were merged into a call for civic republicanism based on the Roman republic as idealized in the speeches and writings of Cicero. Cicero's consistent defense of the Roman senate against the threats of Catiline and Marc Antony inspired not only Webster, but also the founders, particularly John Adams.³

not have won the electoral vote in 1800 if the three-fifths rule regarding slaves had not been in place.

3. The notion of civic republicanism and its role in scholarship is discussed in Daniel T. Rodgers, "Republicanism: The Career of a Concept." For its influence on John Adams, see Bernard Bailyn, *The Ideological Origins of the American Revolution*; J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*; Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy*.

The United States was also a child of the Enlightenment. Thomas Jefferson had studied the French agitators and philosophers and the Scottish Enlightenment thinkers. However, most of the founders were more familiar with Locke's treatises on civil government. Locke's role as author of the British Bill of Rights after the Glorious Revolution of 1688 made him a natural source for civic republicanism.⁴ The tension in civic republicanism is between the state's role as a dispenser of public goods, such as rights and national security, and the people's temptation to act in self-serving ways. Jefferson emphasized the benefits of a democratic republic while James Madison tended to focus on the need for checks and balances, and ultimately became the prime mover behind a bill of rights that protected minorities and curbed the voracious impulses of the majority.

Civic republicanism evolved into civil religion when the mythos of the founders was created from the lives of real people who delivered passionate speeches against the Stamp Act, wrote thoughtful treatises on independence, and led the new nation through a revolution. While myths emerged, they were much closer to actual events than were the narratives of the ancients. George Washington did not throw a silver dollar across the Potomac, but he did throw one across the Rappahannock. Paul Revere did ride through the countryside warning people that the British were coming. Betsy Ross constructed an American flag for one of the signers of the Declaration of Independence, and Nathan Hale died for it. American troops did spend a winter at Valley Forge with their feet bound in rags.

Which stories form a nation's civil religion is often determined by the orators who recall those stories for their audiences.⁵ Few were better at glorifying America's immediate past than Daniel Webster. He clearly understood that the American revolution led to the rebirth of a nation first founded as diverse colonies in the wilderness. For Webster the Declaration of Independence served as the baptism of the new nation; the Constitution was its confirmation. These were sacramental moments in America's civil religion that could

4. See Louis Hartz, *The Liberal Tradition in America: An Interpretation of American Political Thought since the Revolution*, and Thomas L. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke*. I do not mean to minimize the influence of the Scottish Enlightenment, particularly on Jefferson; see Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s*, and Paul A. Rahe, *Inventions of Prudence: Constituting the American Regime*. Lance Banning, however, attributes most of the Jeffersonian philosophy to English opposition leaders; see *The Jeffersonian Persuasion: Evolution of a Party Ideology*.

5. See James Arnt Aune, "Public Address and Rhetorical Theory."

be shared again and again through the agency of Webster's oratory. His rhetorical ability allowed him to lead the public in mass celebrations that consecrated America's most sacred values. He became one of the high priests of American civil religion from at least 1820 to his death in 1852.

Civil religion not only recalls the past, it instructs on how to act in the present. As in Cicero's day, the speakers of Webster's day used celebratory rhetoric to shape current values. These values became guides to decision-making for the nation's leaders. The complication with such rhetoric is that audiences hold not only themselves but their speakers to the standards that are articulated. Thus, Webster took an enormous risk when he entered into compromise negotiations; they could undermine the more platonic themes of his civil religion. In fact, he was roundly condemned in New England because the 1850 Compromise included the Fugitive Slave Law, which was offensive to idealists who had supported Webster earlier.

The tension between civil religion and political compromise is a theme I shall pursue in this study. Its contemporary application should be obvious in an era marked by Manichaean presidential rhetoric that attacks "evil empires" and an "axis of evil." While good-and-evil dualities often prove attractive to the public, they can haunt those who rely on such tactics. Once politics is elevated to the level of religion, it tends to become uncompromising. That is a problem for those who believe, as did Webster, that politics is the art of compromising.

Finally, civil religion guides the nation toward a *telos*, an ultimate freedom, and, in so doing, takes on an ever stronger religious cast. Jonathan Winthrop's reference to a shining city upon a hill in 1630 not only recalled the prophet Micah and the Book of Revelation, it also provided a goal toward which the Massachusetts colony could strive. Centuries later when Ronald Reagan revived Winthrop's metaphor for political purposes, he recalled the Puritan adventure in the wilderness and provided a *telos* for the future by claiming dramatically that the United States was the last best hope of mankind. The conversion of the wilderness into a "civilized" place was a leitmotif of American civil religion that culminated in the call for manifest destiny in Webster's time. Appeals to hardship, sacrifice, battle, and martyrdom rallied the public to expansionism before and after the invention of the phrase *manifest destiny* in 1845. That idea was a natural extension of the belief that Americans were a chosen people with a mission not only to cultivate the land, but also to bring the "blessings" of civilization to a new continent.

While Webster recoiled from the dangers of expansion, particularly the unjust war with Mexico, he embraced the part of the myth that eulogized prop-

erty. Like Jefferson, Webster believed that those who owned a piece of the nation were more likely to protect and defend it. A favorite quotation of landholding revolutionaries like Webster, who was a major defender of property rights before the Supreme Court, was Rousseau's comment "The first man who, having fenced in a piece of land, said, 'This is mine,' and found people naive enough to believe him, that man was the true founder of civil society."⁶ Webster was also familiar with the *Second Treatise on Government*, in which Locke sets out his view on the subject of property:

God, when he gave the World in common to all Mankind, commanded Man also to labour, and the penury of his Condition required it of him. God and his Reason commanded him to subdue the Earth, i.e., improve it for the benefit of Life, and therein lay out something upon it that was his own, his labour. He that in Obedience to this Command of God, subdued, tilled, and sowed any part of it, thereby annexed to it something that was his *Property*, which another had no Title to, nor could without injury take from him.⁷

Webster incorporated Locke's thesis into American civil religion.

When fully formed, Webster's patriotism called on the public to live up to the goals of the nation's founders and to venerate the sacrifices they made in bringing the nation to its ultimate fulfillment. Webster may never have been more effective in this regard than in his address celebrating the start of construction of the Bunker Hill Monument. Sitting near him were the survivors of that early revolutionary battle. He referenced them and those who died in the battle, coaxing his audience to lead better lives and achieve the dream for which those soldiers fought. Webster understood that civic cleansing, like religious cleansing, can be achieved by rebirth through rhetorical identification. Thus, he created a channel through which the audience became one with the soldiers who sat on the stage and with those who had given their lives. As audience members relived the sacrifice of the soldiers, they were purged, unified, and transformed into more perfect citizens.

Webster could achieve this transcendence because he was well educated in America's past. That past provided a foundation for his civil religion. Thus, to contextualize his oratory, we need to review the formation of the tenets of his philosophy—that is, his version of civic republicanism.

6. Jean-Jacques Rousseau, *Discourse on the Origin and Foundation of the Inequality between Men*, 192.

7. John Locke, *Two Treatises on Civil Government*, 309.

Webster's Evolving Federalism

Not surprisingly, the political philosophy of Webster and his contemporaries can be traced to past generations. For example, before the Revolution orators stirred the country from the pulpit and political stump with a mix of revivalist zeal and Enlightenment reason. This synthesis occurred most notably in the rhetoric of Rev. Jonathan Mayhew of Boston. His most famous sermon, "A Discourse concerning Unlimited Submission and Non-Resistance to the Higher Powers," was delivered in 1750. An examination of the sermon reveals why some have called it "the morning gun of the revolution." Its avowal of independence, natural rights, and individualism reflects Enlightenment thinking and is, in turn, reflected in the writings of Thomas Jefferson and George Mason twenty-six years later. This passage about the duties of the ruler and the ruled inspired Jefferson as he wrote the Declaration: "[I]t follows, by a parity of reason, that when [our ruler] turns tyrant, and makes his subjects his prey to devour and to destroy, . . . we are bound to throw off our allegiance to him, and to resist. . . . [T]o resist [our] prince, even to the dethroning [of] him, is not criminal; but a reasonable way of indicating [our] liberties and just rights." In 1763, Mayhew, ever the gadfly, authored the pamphlet *Observations on the Charter and Conduct of the Society for the Propagation of the Gospel in Foreign Parts*, which asked: "[I]s it not enough that they persecuted us out of the old world? Will they pursue us into the new to convert us here?"⁸

During the Revolution and in the debates over the ratification of the Constitution and the Bill of Rights, it was common for ministers to take political positions. They were particularly concerned about freedom of religion in the new nation.⁹ This habit, which can be traced back to Jonathan Winthrop and forward to Jerry Falwell and Pat Robertson, also contributes to ways in which American political ideology merges with religious zeal.

No doubt Webster was also influenced by the oratory of Patrick Henry, which was spread through the colonies by underground presses. In Massachusetts Henry's published speeches led to the formation of the Sons of Liberty. Samuel Adams became the leading propagandist for a war of independence, particularly when a squad of British troops fired into a threatening crowd in Boston in 1770. Adams rhetorically recreated the "massacre" in

8. Charles W. Akers, *Called unto Liberty: A Life of Jonathan Mayhew, 1720–1766*, 85, 184.

9. See Craig R. Smith and David M. Hunsaker, "The Religious Clauses of the First Amendment," chap. 3 of *The Four Freedoms of the First Amendment: A Textbook*.

the *Boston Gazette* and used that newspaper's offices to print many powerful pamphlets.

American independence was based in part on the precedent of the Magna Charta of 1215 and the English Bill of Rights of 1689. Thus, when the colonies declared independence, most of them also called for a bill of rights. Pennsylvania in 1776, New York in 1777, South Carolina in 1778, and New Hampshire in 1783 all endorsed a bill of rights. In 1778 Massachusetts rejected a new constitution because it did not contain one. This history of the writing of new charters during the Revolution makes clear why so many colonists demanded a bill of rights when a federal constitution was written ten years later. These legal and political documents would allow Webster to declare that he understood the intent of the founders and thus could speak for them and act on their behalf.

These transitions from oratorical wishes to legal documents provided a nurturing environment for political parties. An atmosphere for debate had been established in which it was assumed that certain natural rights were inalienable and that reason would rule in the formation of law. In the interim, the Constitution of the United States was adopted in Philadelphia. The need for a new constitution to supersede the Articles of Confederation would prove important to the formation of the Federalist Party and to Webster. The leadership of the Federalist movement was composed of members of the merchant class, which wanted a strong federal government to protect shipping, to protect fledgling industries, and to extract taxes and tariffs that would pay for internal improvements. Webster inherited and defended this tradition for many reasons: his father was a Federalist; his law clients were mainly Federalists; the interests of New Hampshire and Massachusetts were mainly Federalist. Most of all, however, after defending Federalism in the courts and arguing for it in the House and Senate, Webster believed it was the only way the country could survive—economically, internationally, and ideologically.

Those opposed to Webster came out of the Anti-Federalist tradition. Reflecting their agrarian bias, the Anti-Federalists tried to lower taxes and tariffs, to protect minority and states' rights, and to reduce government interference. Later, embracing the civil religion of John C. Calhoun, some agrarian interests defended slavery and attempted to nullify tariffs using states' rights as their shield. The Federalists attempted to contain slavery and use tariffs to protect manufacturers, with the Union as their shield. The Federalists' rationale for a new constitution served Webster in his calls—in the Congress, before the

Supreme Court, and as Secretary of State—for curtailing states' rights. He believed that the Articles of Confederation failed because they gave too much power to the states.

Webster also noted that among the former colonies sectionalism undercut the Articles of Confederation. Before 1776, the colonies had divided into three distinct groups, with different social, political, and economic interests. The original New England states (Massachusetts, New Hampshire, Rhode Island, Connecticut) were called the “Eastern” states, as opposed to the four “Middle” states of New York, New Jersey, Pennsylvania, and Delaware and the five “Southern” states. By 1783, the Eastern states were using the threat of forming a separate confederation to support their demand for a stronger central government.¹⁰ New England again threatened secession in 1812 over “Mr. Madison’s war” with England, which the Eastern states did not support. Webster played an important and controversial role in that debate; the roots of his position can be traced back to the controversy of 1783.

Other animosities between the North and South were brought to the fore in the summer of 1786 during debates in Congress over the navigation of the Mississippi River.¹¹ On August 12, 1786, Virginian James Monroe wrote that a group of New Englanders and New Yorkers had proposed dividing the confederation at the Hudson River. Noting that two Pennsylvania congressmen favored the idea, Monroe suggested, “It were as well to use force to prevent it as to defend ourselves afterwards.”¹²

When the Whig Party was under siege by Jacksonian populism, Webster relied on such Federalists as Alexander Hamilton to defend republicanism. According to Max Farrand, Hamilton “had no sympathy for the Articles of Confederation.” During the constitutional convention of 1787, he provided the delegates with his own plan calling for a strong central government and

10. Nathaniel Gorham of Massachusetts, speaking in Congress, declared that if that body was not given the ability to meet the demands of public creditors, the Articles of Confederation would fail and “some of the states might be forming other confederacies adequate to the purposes of their safety.” James Madison, notes on debates, February 21, 1783, in *The Papers of James Madison*, 6:273. See also John P. Kaminski and Gaspare J. Saladino, eds., *The Documentary History of the Ratification of the Constitution*, 13:55.

11. At one point, Rufus King, Benjamin Lincoln, and Theodore Sedgwick of Massachusetts proposed a separate New England confederacy. Kaminski and Saladino, *Documentary History*, 13:55.

12. James Monroe to the governor of Virginia, August 12, 1786, in Edmund C. Burnett, ed., *Letters of Members of the Continental Congress*, 8:424–25.

limited popular participation through elected representatives. He said on June 18 that “the British government was the best in the world. . . . This government has for its object public strength and individual security.” He went even further on June 26:

All communities divide themselves into the few and the many. The first are the rich and wellborn, the other the mass of the people. . . . The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second, and as they cannot receive any advantage by change, they therefore will ever maintain good government.¹³

In the *Federalist Papers*, Hamilton, perhaps reflecting the thinking of Thomas Hobbes, argued that “the passions of men will not conform to the dictates of reason and justice, without constraint.”¹⁴ Like Madison, Webster shared Hamilton's view of human nature, and he incorporated it into his civil religion.

The Ratification Debates

When the Constitution was submitted to the states, many Americans registered their dissatisfaction with the omission of a bill of rights. Conventions had been an innovative idea at the time of the Revolution. However, since Americans had found them an effective way to draft state constitutions, it followed that ratification of the new Constitution should be accomplished by state conventions, assemblies of the representatives of the people.¹⁵ Thus, cauldrons for political partisanship were forged even as the system rejected direct democracy.

During the convention Madison was not involved in the brief dialogue concerning the insertion of a bill of rights into the Constitution. His lack of concern grew out of his conception of Federalism. If the Constitution did not empower the federal government to promote or establish any religion or to restrict speech and the press, he believed, then all questions concerning freedom

13. Max Farrand, ed., *The Records of the Federal Convention of 1787*, 1:291, 288, 434.

14. Alexander Hamilton, *Federalist* (no. 15), 35.

15. Conventions would again be called in 1820 and 1821 when states sought to revise their constitutions. In 1831 the first party nominating convention was held, and all major parties have used them since.

of the press, speech, and religion would be left exclusively to the individual states to decide. If the Constitution contained a provision relating to those freedoms, reasoned Madison, it might be seen as an invitation to limit individual freedoms. Later, he would change his mind. At the time, he returned to Virginia from Philadelphia and became one of the Constitution's most ardent defenders, writing twenty-nine of the eighty-five articles that became *The Federalist Papers*. These editorials became the bible of the Federalist Party; each and every one was closely studied by Webster in his formative years.

Madison was but one participant in the Federalist campaign of persuasion. Federalists kept up a steady barrage of editorial opinion in the press. They succeeded in dubbing their opponents "Anti-Federalists," in place of the preferred "Federal Republicans." They out-organized and outflanked the Republicans as the crucial ratification debates began in state conventions. During those debates, however, the "Anti-Federalists" were able to sustain a call for a bill of rights, particularly in states that refused to ratify, such as North Carolina and Rhode Island, and in states that ratified reluctantly or conditionally, such as Massachusetts, Virginia, and New York.

One of the reasons for the high level of debate was that the founders were thoroughly familiar with the theoretical writings of Locke, Hobbes, Sir Philip Sidney, Milton, Montesquieu, Rousseau, Richard Price, and John Cartwright. Another influential rationalist was Algernon Sidney, whose *Discourses on Government* of 1698 were standard reading for the founders. James Burgh's popular *Political Disquisitions* (1774–1775), on nonconformist thought and natural rights, could be found in almost every sizeable town.

What the founders brought to Enlightenment thinking was know-how. Certainly Henry Clay and Daniel Webster understood that the founders converted the theories of European philosophers into the realities of the American political system. The founders were pragmatists who wanted the government to help them get things done. Like Aristotle, they sought an expedient system, not so much an ideal one. Clay's compromises and Webster's legal briefs are classic examples of how the second generation brought practicality to the theories of the first.

The Enlightenment thinkers derived many liberties from earlier documents that granted new rights to nobles. For example, the Magna Charta included due process, protection of unjust seizure of property and person, and trial by jury. The right to petition the government and to bear arms were included in the English Bill of Rights. It was, in fact, the English Bill of Rights that gave its

name to our own even though many of the rights contained in the English Bill were first developed in the colonies.

As they evolved and decided to seek independence, the colonies also developed new rights that were never part of the English system of justice. In fact, some of the rights developed in the colonies predate Locke and other Enlightenment thinkers. As Webster often pointed out, Massachusetts' interest in a bill of rights can be traced to its early history starting with the Mayflower Compact of 1620 and the Pilgrim Code of Law of 1636. More important, however, was the Massachusetts Body of Liberties of 1641, the first civil document in the colonies to call for a guarantee of free speech, bail before trial, a jury trial, and the right to counsel. It was the first to protect individuals from double jeopardy, to provide for just compensation, and to reserve certain powers from government control. It was the first document in the history of the world to forbid unauthorized searches. In short, it contained many of the rights incorporated into the first ten amendments to the Constitution. The Body of Liberties was strengthened by the Laws and Liberties of Massachusetts, drafted in 1647. This may explain why Massachusetts was so adamant to add a bill of rights to the Constitution. Even before he became a lawyer in Boston, Webster was well aware of this tradition.

Partisan Strategies

While the Anti-Federalists numbered among their members some exceptional writers who published some important documents under various pseudonyms, they did not mount an effort equaling *The Federalist Papers*. In fact, the Anti-Federalists were about as diverse a group as one could imagine in the colonies. This may explain why George Mason was unable to form a committee of correspondents. Imagine what Mason, Patrick Henry, and Richard Henry Lee might have written in defense of their position had their effort been coordinated. Instead, Anti-Federalists too often had to fend for themselves, relying on infrequent letters from their leaders or gleaning what arguments they could from published rebuttals in the press. Furthermore, there was no consensus among Anti-Federalists on which form of government would work best. Elitists such as Luther Martin and Richard Henry Lee believed in a natural aristocracy that was tempered by democracy. Poorer Anti-Federalists tended to favor more direct democracy and to resent the elitists. In general, however, all Anti-Federalists opposed consolidation of the national government and

unlimited powers for Congress; they favored states' rights and a bill of rights, particularly freedom of the press, speech, and religion.

On February 6, 1788, Massachusetts ratified the Constitution only after acrimonious debate and with the provision that a bill of rights be added. Although Maryland ratified the document on April 26 and South Carolina on May 23, Patrick Henry succeeded in delaying consideration in Virginia and Gov. George Clinton simultaneously delayed consideration in New York. If these two states held out, the Constitution would be mortally wounded, for they were the most populous and geographically imposing states. In June, New Hampshire became the ninth state to ratify, with Webster's father voting in the affirmative, and the Constitution was finally the law of the land, but Virginia and New York were needed to prevent the Union from being divided.

Before Virginians got word of the action taken in New Hampshire, however, Henry was defeated when on June 25, 1788, Virginia ratified the Constitution, believing it had provided the crucial ninth vote. New York followed suit on July 26. While some hope remained that the new states could still call for a new constitutional convention under the provisions of Article V, most leaders believed that the task of proposing amendments to the states would fall to the new Congress.

As a result of the state ratifying conventions, the Federalists got their Constitution, but the Anti-Federalists extracted a pledge for a bill of rights. Even though Madison opted for the legislative mode for drafting and ratifying amendments, his move to address them at all revealed that the clash with Henry had a significant impact on him.

Much to John Adams's horror, Jefferson mailed Thomas Paine's *Rights of Man* to influential opinion makers in support of the need for a bill of rights. Adams wrote to Jefferson claiming he had damaged the ratification process. This plaintive message contains one of the most interesting sentences in the history of American letters. Adams directly rejected Jefferson's olive branch concerning their "differences of opinion in private conversation." Wrote Adams, "You and I have never had a serious conversation together that I can recollect concerning the nature of government." This comes as something of a shock to those who have credited reports that Adams and Jefferson spent time at various junctures discussing the nature of government before the Declaration of Independence was written. When Webster rose to eulogize Adams and Jefferson in 1826, it made his task all the more difficult, as we shall see.

The founders believed that certain rights were inalienable, that they were

natural or God-given, and that they were intended to protect the individual citizen from the federal government. The founders sought to preserve as much of states' rights as they could while building a viable Union. Only those items enumerated were to be the province of the Congress; it was not to assume any powers on its own. That predisposition would change with civil war and the passage of the Fourteenth Amendment, which was eventually used to enforce the first nine amendments against the states. At the time the Bill of Rights was being debated, however, Federalists gave Anti-Federalists assurances that the federal government would not overstep the checks and balances established by the Constitution. The Ninth and Tenth Amendments sealed that bargain.

Secretary of State Jefferson certified the Bill of Rights on March 1, 1792, when he announced that three-fourths of the state legislatures had ratified ten amendments to the Constitution. The road to ratification stretched back to the Magna Charta and wound through the works of Enlightenment thinkers into America's colonial experience, revealing each colony to be a distinct innovator of human liberties. The state constitutional ratification conventions heard cries for a national bill of rights.

The debates over the Bill of Rights had several important implications for Webster's interpretation of the Constitution. If one accepts the position of Madison and Jefferson that the Constitution should be interpreted in terms of its original intent, strict constructionists have a strong argument that their interpretation is the closest to what the founders had in mind.¹⁶ In the ratification debates, the antagonists agreed that the federal government should be granted no powers that were not clearly enumerated. There was no endorsement of "implied powers," "penumbras" of meaning, or a "living constitution." To those who advance such notions, the vast majority of founders would probably have responded: If you don't like the Constitution the way it is, amend it. In one of his first speeches on the floor of the House, Webster began, "After the best reflection which I have been able to bestow on the subject of the bill before you, I am of the opinion that its principles are not warranted by any

16. Madison wrote that the Constitution must be interpreted according to "its true meaning as understood by the nation at the time of its ratification." James Madison to John G. Jackson, December 27, 1821, in *Letters and Other Writings of James Madison*, 3:244. Jefferson wrote that lawmakers ought to return "to the time when the constitution was adopted, recollect the spirit manifest in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed." Thomas Jefferson to William Johnson, June 12, 1823, Library of Congress, <http://memory.loc.gov/master/mss/mtj/mtj1/053/1000/1004.jpg>.

provision of the Constitution.”¹⁷ Webster’s construction of the Constitution would often emerge in speeches in the Congress, though he was more than willing to give a little when it was in the interest of his clients before the Supreme Court.

Webster realized that the Constitution took Enlightenment themes and converted them into pragmatic realities. Building on the Magna Charta and the English Bill of Rights of 1689, Americans put European theory into practice with the Pilgrim Code, the Massachusetts Body of Liberties, the Pennsylvania Charter of Liberties, and the Virginia Declaration of Rights as the colonies evolved into a nation. After the Revolution, the debates over the ratification of the Constitution and the Bill of Rights established the two-party system. The Federalists held the presidency during Webster’s formative years, using it to make judicial appointments that would last well into the nineteenth century. When John Adams succeeded George Washington in 1797, Federalists realized that they no longer had a charismatic leader. Adams soon found he could not rein in Hamilton, who strengthened the party by using the crisis of a quasi-war with France.

New immigrants to America moved into the party of Jefferson, the rebuilt home of the Anti-Federalists. When Jefferson was elected president in 1800, the two-party system was institutionalized and the Federalist Party began its decline, in part because the public began to turn against Hamilton’s Alien and Sedition Acts. As a young Federalist, Webster would do all in his power to save the party and when that failed he would revive Federalist doctrine in a new National Republican (Whig) party. In this effort, he would rely on the Federalist credo, the interests of his state, and the guidance of George Washington.¹⁸ In fact, Washington, despite being a plantation slaveholder, would emerge as the godhead of Webster’s sect. Like other founders, Washington was a Freemason; Masonic symbols—reflections of builders of Egypt, Greece, and Rome—inspired the country’s early architecture and still adorn U.S. currency. The founders downplayed their religion; like Pericles and Cicero, they devoted more time to their nation than to their church. Their vague deism allowed Webster to recast them into his civil religion. Before he could do that, however, he needed rhetorical and legal training. It is to that training that we now turn.

17. *The Papers of Daniel Webster: Speeches and Formal Writings*, ed. Charles M. Wiltse and Alan R. Berolzheimer, 1:20. The speech was delivered on December 9, 1814, in opposition to a conscription bill.

18. See Henry Weincek, *An Imperfect God: George Washington, His Slaves, and the Creation of America*.

The Education of a Citizen Orator

Daniel Webster's rhetorical prowess was not only the product of natural talent, it was also the product of a solid education and hard work. His mastery of the techniques of Aristotle and Cicero served him well as he attempted to advance Federalist principles in the courts, in the Congress, and on the stump. He did this by incorporating Federalist principles into the Whig Party and into a civil religion that was most clearly and transcendently expressed in his ceremonial addresses. While Webster's pursuit of the presidency was a failure of strategic thinking, he did enjoy much public adulation and certainly influenced the course of the nation. Much of this success was due to how his education refined his natural genius and talent.

With the Revolution over and the Treaty of Paris soon to be signed, the United States was in its infancy in 1782. On January 18 of that year, Daniel Webster was born in Salisbury, New Hampshire, to his father's second wife, Abigail.¹⁹ Daniel was two years younger than his parents' first son, Ezekiel, who had been preceded by his sisters Mehitable and Abigail. (A third sister, Sarah, was born in 1784.) The brothers became very close. Daniel's olive complexion and black hair led his classmates to dub him "Black Dan"; that name's meaning would be perverted by those who later condemned him as "Black Dan," the man who sold out his values. Daniel's earliest lessons came from the Bible as taught him by his parents.

A stern master, Ebenezer Webster required young Daniel to memorize Watt's *Psalms*; when Daniel succeeded, his father knew he had a phenomenal memory. These same passages would later float into Webster's consciousness as he composed his speeches, and from there into the minds of his listeners. When at the age of four Daniel began to show an interest in poetry, his father provided outside tutors for him. Soon Daniel was reading Pope's *Essay on Man* and Cervantes' *Don Quixote*.²⁰ Before he was ten, he was declaiming passages from the Bible to citizens of the Merrimack Valley, who marveled at his clear voice. Raised a Presbyterian, Webster would carry the marks of standard Protestantism with him all his life. He used his understanding of individual salvation to guide his adaptation of the Second Great Awakening, which developed around 1800 and lasted into the 1830s, moving from the South to the

19. Ebenezer Webster's first wife, Mehitable, bore three children who survived into adulthood: Suzannah, David, and Joseph. Mehitable died in 1774; five months later, Ebenezer married Abigail Eastman, a thirty-seven-year-old seamstress.

20. Remini, *Daniel Webster*, 15; Maurice G. Baxter, *One and Inseparable: Daniel Webster and the Union*, 4.

North. That religious movement paralleled Webster's attempt to construct a civil religion out of America's respect for the civic republicanism of the founders.

By age thirteen, Webster was an intern in the local law office of Thomas Thompson, where he memorized and used legal phrases, many in Latin, that would serve him throughout his career and mark his published speeches. Thompson, a Harvard graduate, was the first of a series of mentors who took Webster under their wing. Older men of learning and skill were often so impressed with Webster that they not only accepted him as an apprentice, but also guided him in his later adventures. Thompson, for example, encouraged him to seek the best education available. These mentors, particularly the noted jurist Christopher Gore, became even more important to Webster after his father died.

Despite Thompson's help, Webster barely qualified for entrance into Phillips Exeter Academy in 1796. There, he was homesick and very insecure about public speaking. In fact, he had such stage fright that he often found himself unable to stand before the class. He would return to his room after these occasions and weep over his plight. In December of 1796, he dropped out of school.

This failure caused Webster to mount a major reexamination of his priorities. He believed he had failed his father and needed to provide income to the family. Thus, during the winter of 1797, he found himself trudging off to teach elementary school in Salisbury. Webster was a good teacher, but bored with his duties. He decided that he must attend college. In order to ready himself for the qualifying examinations, he took up study with Dr. Samuel Wood in nearby Boscawen. Wood stressed Cicero and Virgil; Webster was fascinated and had soon memorized Cicero's attacks on Catiline.

Next Webster took up Greek grammar with a Dartmouth senior named David Palmer in order to prepare for entry into that college. Though he never mastered Greek the way he did Latin, Webster learned enough to translate parts of the New Testament. He continued to work on his Latin and Greek, and is said to have memorized *Paradise Lost*. After a while, speaking began to come naturally to him. More important, the next year he excelled in enough subjects that his father agreed to send him to Dartmouth College if he could qualify. His efforts were rewarded in August of 1797; at age fifteen, Webster became a student at Dartmouth, only the third person from Salisbury to go to college.

When Webster attended Dartmouth, it was served by only four professors with three aides. In his freshman year he became more familiar with Cicero's

Select Orations and *De Oratore* and rhetorical theory and criticism.²¹ In his next three years, he studied the Greek classics, Hugh Blair's *Lectures on Rhetoric and Belles Lettres*, moral philosophy, politics, and the law. Blair's book focused on creating the sublime, as Webster would do in his greatest orations. From the purity of Pericles to the florid style of Alcibiades, Webster learned that words can be the vehicles of great thought. Perhaps from Thucydides' account of the debates over the fate of Mytelene and Syracuse, he learned how argument can shape public opinion and decide the fate of nations. His talent was further refined by classes in oratorical composition and delivery and by membership in literary societies. He became the United Fraternity's top debater and formed the Federal Club to promote the party of Washington, Hamilton, and Adams. Again, he was nicknamed "Black Dan" because of his dark looks.

Receiving a charter from an earl of the same name, Dartmouth began as a school for Native Americans in 1769, and, when Webster entered, was a much lesser light than Harvard. However, classes at Dartmouth were perhaps some of the most rigorous in the new nation. They included instruction on all the elements of rhetoric with special emphasis on logic, the emotions, stylistic commonplaces, and organization. Webster quickly mastered these areas and in his junior year was given the privilege of delivering the 1800 Fourth of July address for the town of Hanover.

This assignment was heady stuff for an eighteen-year-old. Webster's first epideictic effort pleased the crowd, even though some of its phrasing was heavy-handed. He began:

Countrymen, brethren, and fathers. . . .

Twenty-four years have this day elapsed, since United Columbia first raised the standard of Liberty, and echoed the shouts of Independence!

Those of you, who were then reaping the iron harvest of the martial field, whose bosoms then palpitated for the honor of America, will, at this time, experience a renewal of all that fervent patriotism, of all those indescribable emotions, which then agitated your breasts.

Clearly, Webster had a passion for the grand style. He also had a passion for Washington: "[W]here is our Washington? where the hero, who led us to victory—where the man, who gave us freedom?" He again recalled the martyrs of

21. David F. Ericson, *The Shaping of American Liberalism: The Debates over Ratification, Nullification, and Slavery*, 2; Herbert D. Foster, "Webster and Choate in College: Dartmouth under the Curriculum of 1796–1819," 511; Claude M. Fuess, *Daniel Webster*, 1:50.

the past: "For us they fought! for us they bled! for us they conquered." His awareness of world events was also evident, as was his chauvinism: "Columbia stoops not to tyrants; her sons will never cringe to France. . . . Let the sons of Europe be vassals; let her hosts of nations be a vast congregation of slaves; but let us, who are this day free, whose hearts are yet unappalled, and whose right arms are yet nerved for war, assemble before the hallowed temple of Columbian Freedom, and swear, to the God of our Fathers, to preserve it secure, or die at its portals!" Already the Federalist, Webster could not resist putting his take on the foreign crisis that Hamilton had used to force the Alien and Sedition Acts through Congress. In this election year, the young Webster would be shocked by the victory of the Democratic-Republicans.²²

Though the speech was acclaimed by most who heard it, some groused that it was too florid.²³ Perhaps Webster was adapting to one of the distinguishing marks of his time, a reliance on emotionalism to persuade and entertain. People were far more emotionally active and responsive in public than we are today. Webster's adaptation to this emotionalism would be refined and would reemerge in many of his speeches, most notably in his First Bunker Hill Address. That Webster took the criticism to heart was evident in his next major address a year later, a eulogy for Ephraim Simonds, a fellow student. This speech was more austere, though it was one of Webster's most religious and sensitive.

Webster was required to take courses in public address every year he attended Dartmouth, culminating in legal and deliberative oratory in his senior year. Almost in revolt, he wrote poetry, which was well received by his classmates, if not by his instructors. His eyes were opened to the vices as well as the virtues of a college education. His social circle led him to gin, brandy, port, and gambling. The habits Webster formed at Dartmouth, particularly for drink and witty conversation, stayed with him all his life.

On October 6, 1800, Webster delivered an "Oration on Ambition" to the United Fraternity. In this speech he condemned the base ambition of Caesar but praised the virtuous ambition of George Washington.²⁴ The speech was

22. Daniel Webster, *The Writings and Speeches of Daniel Webster*, 15:475, 484.

23. Webster vowed never again to be so sophistic, and later professed embarrassment at his early effusions. *The Private Correspondence of Daniel Webster*, ed. Fletcher Webster, 1:52-53; *Writings and Speeches*, 13:582.

24. "Oration on Ambition," in Webster's original hand, can be found in the Dartmouth College Archives and online at <http://www.dartmouth.edu/~dwebster/1801/ambition.html/>.

widely praised and Webster was chosen to be one of the commencement speakers in 1801, but he turned down the opportunity because he believed he was not placed prominently enough in the program. Many agreed with his decision, believing that Webster was the best man in his class. So, on graduation day, Webster spoke instead before the United Fraternity on "The Influence and Instability of Opinion." The speech reveals his early talent for ceremonial oratory. In its praise of George Washington, it served as a precursor to later eulogies such as his speech at the centennial anniversary of Washington's birthday in 1832.

Becoming a Lawyer

Webster began the study of law on his own after his commencement from Dartmouth at age nineteen. Due to his father's financial difficulties, he was forced to teach school and delay his entry to the bar.²⁵ At Maine's Fryeburg Academy, Webster taught so well that he received a special bonus. The students were a wonderful audience for his remarkable expository talents. They allowed him to begin to hone his legal talent. He also continued to write rhetorical documents. For example, to celebrate New Year's Day in 1803 he branded President Jefferson a radical in "The News Boy's Message to the Patrons of the *Dartmouth Gazette*."²⁶ He studied Blackstone's *Commentaries* and often raised issues of common law in the classroom. These teaching techniques would prove helpful in addressing a jury, and Webster did not have to wait long for that opportunity. Once he was financially able, he returned to Salisbury and began an apprenticeship in the law under his old mentor Thomas Thompson. He stayed for two years.

In July 1804, Webster moved to Boston to tutor his brother in Greek and Latin and was luckily accepted as an apprentice by the great jurist Christopher Gore. Webster had arrived unannounced at Gore's office on Tremont Street after only a few days in town. Gore, a famous Federalist, commissioner, and lawyer, had just returned from Britain, having served under the Jay Treaty provisions. He hired Webster as a clerk. His incredible library was soon rifled by the young Webster, who worked diligently at improving his use of the English

25. As David F. Ericson points out, "41 percent of [Dartmouth] graduates became lawyers; 25 percent became ministers." *Shaping of American Liberalism*, 14.

26. Baxter, *One and Inseparable*, 11.

language. He read Gibbon, Boswell, Moore, and many others. He translated Latin and Norman common-law commentaries into English and worked to master case law. Gore taught Webster many useful things, not the least among them the ability to imitate the sound practices of other lawyers and to mix with high society in a civilized manner. The two men were not infrequently seen arm in arm, weaving down a cobblestone street together after an evening on the town.

Webster left Gore's office when he was admitted to the bar in March 1805. He took up the practice of law in Boscawen and was an instant success. He chose Boscawen because it was close to Salisbury, where his father lived in ill health, mourning the death of Webster's older sister Abigail. In the month prior to his admission to the bar, he found time to pen "An Appeal to the Old Whigs of New Hampshire," an attempt to rally the sagging Federalists. At Thompson's behest, Webster proceeded to campaign for the Federalist candidates in the area. His efforts went for naught as the Democratic-Republicans continued to make gains. Nonetheless, Webster defended even the Federalists' sins. His apologia for the Sedition Act of 1798 was published in the *Monthly Anthology* of Boston in 1806.

That publication signaled the fact that Boscawen was becoming too small for Webster; juries began to notice his arrogance.²⁷ So Webster was given his first full-fledged trial in Plymouth. Ebenezer came to watch the successful summation. Webster's triumph before his father built his confidence, but it turned to sadness when the old man died in April.

Webster was pulled out of mourning by an invitation to give a Fourth of July address at the new state capitol in Concord on Federalist contributions to the nation. In the speech, Webster defended American government as an unmatched political system, claimed that the island nation of Britain could never again threaten America, and attacked the French: "Ambition is the never-dying worm which feeds and fattens in the bosom of Gaul."²⁸ Webster's fame led to his being retained by several banks, a regular occurrence throughout his career for which he would be regularly criticized. In the fall of 1806, Thompson was elected to Congress, which fired Webster's ambition. Thompson's letters to him described a life on the Potomac for which Webster said he was ready to exchange the time he was spending on the

27. Remini, *Daniel Webster*, 78–79.

28. Webster, *Writings and Speeches*, 15:547.

Merrimack. Thompson let Webster know that he would have to achieve this goal one step at a time.²⁹

First Webster gave his law practice to his brother, who had just finished law school. Then he relocated to Portsmouth, New Hampshire, where he partnered with Timothy Farrar, Jr., and became a contributor to the *Portsmouth Oracle*, the local Federalist outlet. In 1807, Webster was admitted to practice in the New Hampshire Superior Court, which traveled to various county seats. As he spread his wings, jurists found him more entertaining than arrogant. Webster's formula was to reinforce a clear statement of the facts and a reasonable argument with stylized emotional appeals.³⁰

Portsmouth's bipartisan flavor reminded Webster of Boston, as did its harbor. He soon found another mentor in Jeremiah Mason, who often argued before the same courts as Webster. Mason, a strong Federalist, believed Webster to be a fine orator and actor, two essential talents for a great lawyer. Mason was superb at common law and clear argumentation. Webster was not above imitation. Combining his talents with those of Mason, he rounded his forensic ability into an even more powerful and effective instrument. He continued to deliver ceremonial speeches at Dartmouth on many a Fourth of July, and he expounded his Federalist philosophy at numerous dinners. He was soon known as "the Yankee Demosthenes."

In May 1808, Webster married Grace Fletcher after becoming a member of her Congregational church in Salisbury by writing his "confession." Still something of an idealist, Webster had taken a Calvinist turn even before moving to Portsmouth, which would serve him well in constructing the clear values of his civil religion. He and his wife rented a house from Jeremiah Mason in Portsmouth, where Webster's law practice was thriving.

The year 1808, of course, was a presidential election year, and Webster had high hopes for a Federalist resurgence, even though at this point in his life he greatly admired James Madison, the converted Democratic-Republican candidate, who had penned some of Webster's favorite *Federalist Papers*. Webster rightly believed that Madison was a reluctant Republican who was more concerned with checks and balances than with enhancing democracy. New Hampshire gave its electoral votes to Madison's opponent, Charles Pinckney, but this did not prevent Madison from ascending to the presidency.

29. *The Papers of Daniel Webster: Correspondence*, ed. Charles M. Wiltse et al., 1:7, 12, 74-82.

30. Peter Harvey, *Reminiscences and Anecdotes of Daniel Webster*, 46-50.

In 1809 the Federalists retook the governorship and both houses in New Hampshire. Webster campaigned for Federalist Jeremiah Smith, who won the governorship. By 1810 Webster was an official of the Federalist Party, regularly cajoling the faithful to work harder. In that same year, his daughter, Grace, was born, and Webster was chosen as one of three commissioners to revise the criminal code of the state. In March 1812, Webster became the first Federalist in thirteen years to be elected town moderator of Portsmouth; he won by twelve votes. He believed that agriculture was the foundation of all successful democracies, and quoted Aristotle to that effect.

The War of 1812

The year 1812 was a tumultuous one for Webster and the country. Madison asked for a declaration of war against Great Britain to protest the trade practices necessitated by its ongoing war with Napoleon's France. Madison could not have known that Napoleon's invasion of Russia would lead to his defeat, allowing Britain to focus its war power on its former colonies. On July 4, a few weeks after the declaration of war, Webster spoke at the request of the Washington Benevolent Society, a group of rabid Federalists. He was at his most dramatic: "We come to take counsel of the dead. From the tumults and passions that agitate the living world, we withdraw to the tomb, to listen to the dictates of the departed wisdom."³¹ What could be more dramatic than the idea that the dead speak to us? It was right for the time and led into Webster's invocation of Washington and his theme of the development of the Union. This was significant since many in New England were calling for secession. Webster never did; he could later fall back on this speech for evidence of that fact.

However, the address did lead to Webster's appointment to a group that was assigned to write a "memorial" to the president condemning his conduct. When the Rockingham convention met on August 5 to organize Federalist opposition to Madison, Webster arrived with a draft of the memorial. It was accepted with only minor changes,³² and proved so popular that the convention nominated Webster for the U.S. House. The nomination was made official on October 7 at the state Federalist convention. Webster's delivery of the memorial at the end of that convention and throughout the campaign became one of

31. Webster, *Writings and Speeches*, 15:583.

32. Baxter, *One and Inseparable*, 34.

the most popular political advertisements of the Federalists. Again, much to his credit and later credibility, Webster pulled back from secession: "We shrink from the separation of the states, as an event fraught with incalculable evils."³³

The Federalists' Clinton-Pickering ticket swept New England, with the exception of Vermont. However, Madison had enough support elsewhere to win the electoral college, 128 to 89. Webster ranked second in the vote for the six at-large House seats available from New Hampshire.

As America went to war with England, Webster, at age thirty-one, arrived in the District of Columbia, a city he found appallingly dirty and swamplike. Two days after being sworn in, he met with the diminutive Madison at the "president's house," as it was called at the time.³⁴

During the congressional session of the summer of 1813 Webster took quarters in a Georgetown boardinghouse, Crawford's Hotel, where his depression over the appearance of the city was relieved somewhat by his friends. Jeremiah Mason represented New Hampshire and Christopher Gore represented Massachusetts as senators; Gore lived at the same boardinghouse as Webster. These three stuck together and became part of the Federalist caucus that was outnumbered 114 to 68 in the House and 26 to 10 in the Senate. In light of the situation, Webster thought it best to offer his hand to the powers that be. During a special session of Congress, he met Speaker Henry Clay and Rep. John C. Calhoun, each of whom had supported an invasion of Canada in 1808 and Madison's war with Great Britain in 1812. (Calhoun was the same age as Webster, Clay five years their senior.) Webster was appointed to the foreign-relations committee, which was chaired by Calhoun. Clay ran the House, often giving angry speeches about the president's conduct of the war, thereby distancing himself from a policy he had supported. Webster also ran into Clay in the courtroom, where he occasionally took on a case. For example, Clay partnered with Webster on *Osborn v. Bank of the United States*.

These great minds formed an oratorical triumvirate that would dominate the first half of the century. Clay's speaking style was dramatic and lyrical, Calhoun's cold and rational. These men were easily as ambitious as Webster was. His relationship with Clay and Calhoun would outlive his relationship with most of the members of his family.

33. Webster, *Speeches and Formal Writings*, 1:3. The memorial was signed by 1,500 citizens and republished in the North.

34. It later became the "Executive Mansion," and then Theodore Roosevelt named it the "White House."

The war consumed the nation's attention. On June 10, Webster introduced five resolutions criticizing the war and suggesting that Madison had withheld information about France that would have made it less likely for the United States to declare war against England. Even Madison's supporters were impressed with Webster's skill at argument. He succeeded in getting the resolutions passed, and they were praised by the New York press.³⁵ Webster personally presented the resolutions to the president, whom he now found to be unimpressive. James Monroe, the secretary of state, wrote Madison's equivocal response to the resolutions and little more was heard about them.

As the Congress took up a tax bill to fund the war, Webster returned home to escape the July heat of the Potomac Basin and await the birth of his second child. Daniel Fletcher Webster arrived on July 23; henceforth, he was referred to as Fletcher. Webster took some time to tend to his law business because he was broke, a condition from which he rarely escaped.

He did not return to Washington until late December to attend the second session. News arrived from Portsmouth that Webster's house had burned to the ground, his wife and children barely escaping. Grace sent word that they were safe and that Webster should stay in Washington. The session continued into the new year, while the British blockade strangled American businesses. Webster's formal maiden speech in the House was well received; in fact, as he spoke congressmen left their desks and sat in the dock so they could see his every gesture.³⁶ William Plumer, a Republican representative from New Hampshire, wrote: "His manner is forcible and authoritative. Nothing is left at loose ends in his statements of fact or in his reasonings; and the hearer passes from one position to another with the fullest conviction that the result must be correct, where the steps leading to it are so clear and obvious."³⁷ Even Chief Justice John Marshall took notice of the speech, which was an attack on the war policy of the administration and demonstrated how committed Webster was to avoiding wars. The speech also made clear Webster's belief that the Constitution's main purpose was to stimulate commerce in America.

Even more impressive was Webster's "enlistment speech" of January 14, 1814. This address provides further evidence that Webster's anti-imperialism was early born. In it, he opposed any plan of invading Canada and condemned the administration for supporting an embargo on foreign goods:

35. *Annals of Congress*, 13th Cong., 1st sess., 149-51. See also Remini, *Daniel Webster*, 108; Merrill D. Peterson, *The Great Triumvirate: Webster, Clay, and Calhoun*, 41.

36. Charles W. March, *Daniel Webster and His Contemporaries*, 35-36.

37. Quoted in Richard N. Current, *Daniel Webster and the Rise of National Conservatism*, 27.

The army raised last year was competent to defend the frontier. To that purpose the Government did not see fit to apply it. It was not competent, as the event proved, to invade with success the provinces of the enemy. To that purpose, however, it was applied. The substantial benefit which might have obtained, and ought to have been obtained, was sacrificed to a scheme of conquest, in my opinion a wild one, commenced without means, prosecuted without plan or concern, and ending in disgrace.

The periodic style here is quite effective as it marches toward its goal. Later in the speech Webster sought to retain interest not only with inverted wording but with sarcasm: "All the evils which afflict the country are imputed to the Opposition. What possessor of political power ever yet failed to charge the mischiefs resulting from his own measures, upon those who had uniformly opposed those measures?" He accused the administration of accepting "rash counsels and feeble execution." When he moved to his attack on the embargo, he argued that "[t]he faith of this nation is pledged to its commerce, formally and solemnly. I call on you to redeem that pledge. . . . In the commerce of the country the Constitution had its growth; in the extinction of that commerce it will find its grave."³⁸ This wonderful antithesis brings to a close Webster's strong defense of New England's interests and his attack on the administration. In this speech, Webster developed a theme that he would return to in his opposition to wars of aggrandizement: a protest against those who question the minority's patriotism when it opposes the president. The speech called for a negotiated peace, a repeal of the embargo, and a stronger navy. This position went down to defeat 97 to 58. However, Webster edited, published, and sent the speech to commercial interests where he gained adherents.

Before the Supreme Court

Webster had his own commerce to worry about, which motivated him to take his first case to the Supreme Court. It was presided over by John Marshall and populated with such noted jurists as Joseph Story, who wrote the three-volume *Commentaries on the Constitution*, among other legal works. Webster's success with this court can perhaps partly be attributed to his feeling more at home among its Federalists than among the Democratic-Republicans who ran the House. He had already established a reputation for forensic achievement

38. *Annals of Congress*, 13th Cong., 2nd sess., 940-44, 950.

in the county courts of New Hampshire, the First Federal Circuit in Boston, and the Supreme Judicial Court of Massachusetts. The persuasive force of Webster's briefs would help Marshall build a consensus on constitutional questions. Marshall not only complimented Webster's arguments, he plagiarized them.³⁹ Webster's early Supreme Court cases centered on admiralty law. The knowledge of maritime jurisprudence he acquired would later give his deliberative speeches on trade, tariffs, and foreign policy added credibility. It may also explain his penchant in subsequent years for using nautical metaphors to open his speeches on the floor of the Senate. His expertise proved useful when he served as secretary of state under President Tyler and negotiated the Maine boundary compromise with England.

Of the 223 Supreme Court cases in which Webster appeared, he was the primary attorney for 168; of these, 24 involved precedent-setting constitutional questions, and of these, Webster won 13, most of them while Marshall was chief justice. Webster's fees varied widely. In *McCulloch v. Maryland* (see Chapter 2), he signed on for \$5,000 but was given an additional \$1,500 bonus when he won the case. His clients were diverse, including, at one point, the English banking firm Baring Brothers.

Along with Marshall and Story, justices Gabriel Duvall, Bushrod Washington, H. Brockholst Livingston, Thomas Todd, and William Johnson formed Webster's audience. Though Story and Livingston had been appointed by Jefferson, they were soon converted to Marshall's point of view, giving the chief justice a commanding majority on most issues. The Court's sessions in the basement of the Capitol building were often attended by lawyers and laypersons. In Webster's day there was no limit on how long an attorney could speak on behalf of his client. In the *McCulloch* case, for example, William Pinckney spoke for three days.

When Webster was admitted to the Supreme Court bar in January 1814, he wrote home to his brother about how much he admired Chief Justice Marshall.⁴⁰ He argued his first case on March 12, requesting a rehearing of a lower-court ruling against his client. Justice Washington delivered the opinion of the Court, which was in Webster's favor. (A year later the Court upheld Webster's client and reversed the lower court.) Webster was unsuccessful in his

39. Irving H. Bartlett, *Daniel Webster*, 75, 79, 80. Marshall was a fine persuader in his own right. He was forced onto the dissenting side in only eight cases and in only one constitutional case, *Ogden v. Saunders* (1827), where he sided with Webster.

40. Remini, *Daniel Webster*, 117.

second case, argued two days later. His third case, *Town of Pawlet v. Clark, et al.*, was eventually decided in favor of his clients. Justice Story's ruling in this case established the important constitutional principle that laws and precedents applying to the original thirteen states also applied to newly admitted states.

Meanwhile, with Napoleon's abdication, the threat from Great Britain was looming larger. Madison backed down on the embargo he had imposed on foreign trade. The move caused chaos in the New York and Boston markets. Webster attacked the administration on April 6:

Sir, a Government which cannot administer the affairs of a nation without producing so frequent and such violent altercations in the ordinary occupations and pursuits of private life, has, in my opinion, little claim to regard of the community. . . .

It is the true policy of government to suffer the different pursuits of society to take their own course, and not to give excessive bounties or encouragements to one over another. This, also, is the true spirit of the Constitution. . . . It owes protection to all. I rejoice that commerce is once more permitted to exist; that its remnant, as far as this unblest war will allow, may yet again visit the seas, before it is quite forgotten that we have been a commercial people.⁴¹

The speech on the repeal of the embargo established Webster as a leader in the House. He was widely praised in Federalist circles and particularly among his colleagues.

The session soon came to a close and Webster returned to his home and a reelection campaign. The Republican press accused him of aiding the enemy, a charge that would reemerge when he opposed the war with Mexico three decades later. Webster was able to overcome this canard because the war was so unpopular in New England. In late August, the British invaded Washington, torching the Capitol and the presidential mansion. Madison, who had been visiting the front lines, fled to the Maryland countryside. His wife, Dolly, saved the most precious items in the mansion and escaped to the Virginia countryside. They were not reunited until late the next day because the First Lady was denied shelter by Virginians who opposed the war, proving that New England was not alone in its opposition to it.

The congressional election in New Hampshire was conducted just after this

41. Webster, *Writings and Speeches*, 14:35,46.

tragedy. Webster was reelected and turned his attention toward the English invasion. Portsmouth felt threatened since it housed a naval base. Webster's role as the chairman of the Committee on Public Safety stood him in good stead when he was accused of advocating separatism later that year. What led to those charges was the calling of a convention in Hartford in December to discuss secession. By then, Webster had returned to Washington because Madison had called for a special session of Congress. The burned presidential mansion saddened Webster; the Madisons took up residence in the Octagon House, which stands on New York Avenue to this day. The Congress met in temporary quarters where, despite his sympathy for the Madisons, Webster continued to beat the antiwar drum. His speech of October 24, 1814, strongly opposed administration policy. Madison, however, insisted he needed more money to prosecute the war against the barbarian British. His call stiffened New Hampshire's resistance to taxation. Of the taxes suggested, Webster supported only the tax on whiskey; he adamantly opposed raising land taxes. Webster allied himself with Calhoun in an effort to defeat the administration's banking bill. When they succeeded, the two men wrote the legislation for Webster's version of a national banking system, which passed on January 7, 1815, by a large majority. The president vetoed the legislation and it became an issue that would divide the parties for years to come.

The same session also considered Secretary of War Monroe's plan for a draft. Webster opposed it in no uncertain terms on December 9, 1814: "The Constitution is libeled, foully libeled. The people of this country have not established for themselves such a fabric of despotism. . . . Where is it written in the Constitution, in what article or section is it contained, that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of government may engage it?"⁴² Webster claimed that Congress did not have the power to make Monroe into a dictator. If such action were to be taken, Webster argued, the states would have the right to interpose in the way Jefferson had suggested during the Alien and Sedition Acts crisis. It was as close as Webster would ever come to Calhoun's doctrine of nullification. With the Hartford Convention about to convene, his words were given great weight. The irony of the situation did not escape the press: Why was the Federalist Webster invoking Jefferson, and the Democratic-Republican Monroe invoking Hamilton to

42. Webster, *Speeches and Formal Writings*, 1:20-21.

defend his draft.⁴³ Luckily, Webster never made it to the later-ridiculed Hartford Convention, and he was delighted when the conscription bill failed in the Senate. He claimed to have put the fear of God in some of the Democratic-Republican senators.

While Madison attempted to negotiate his way out of the war, Gen. Andrew Jackson, with the help of French forces led by the Marquis de Lafayette, defeated the British at New Orleans. Two thousand British were killed. Even before this victory, however, Madison's negotiating team had reached an agreement with the British in Ghent to reestablish the conditions that existed between the countries before the war. By March 1815 the British were focused on a new threat: Napoleon had escaped prison and was rallying his troops once more. Americans cheered their president and his party. Webster left the Capitol in gloom and vowed not run for reelection in 1816. In fact, he may have already decided to move to Boston; Portsmouth could not contain his ambition, nor satisfy his ego. He had led the Federalists in the House on some important issues: opposition to the war and conscription, opposition to tariffs, and support for a national bank. At thirty-two, it was time to decide where his future lay. Webster retired from politics, moved to Boston, and returned to the practice of law.

The end of the war with Great Britain marked the beginning of the Era of Good Feelings. Suddenly popular, President Madison said he favored a national bank, a protective tariff, and internal improvements. House Speaker Clay made that platform his own. His floor lieutenant, Calhoun, took up the unionist cry, even arguing for a more flexible view of the Constitution, a position that would come back to haunt him. In 1816, however, he and Clay were seen as nationalists and the Second Bank of the United States was approved.

Given his decision not to run for reelection, Webster could have sat back during the session and watched the action. Instead he provided correctives on the currency system, pushing through on the force of his oratory resolutions requiring a sound currency. He also succeeded in adjusting the tariff on cotton to suit the desires of industrialist Francis Cabot Lowell. The ensuing election proved that Webster had chosen just the right time to move to a new state. Congress had voted itself a raise, and in the fall elections of 1816 the public threw out a majority of each house of Congress. Webster realized that

43. Webster later defended his speech by arguing that interposition is not the same as secession, and that even Madison had joined Jefferson on the issue of interposition in 1798.

the Federalist Party was dying; the Democratic-Republicans even won New Hampshire, which would have an important impact on one of his most notable cases (see Chapter 2).

Webster moved his family to Boston, where he pursued a career in the law. He and his wife were in Washington in early 1817 for the final days of his term when they received word that their daughter was gravely ill. They returned to Boston, where she died of tuberculosis.

While grieving in Boston, Webster established himself as a member of two prominent churches. Soon he had recovered enough to join several social clubs. His wit and intelligence were in demand, and he recruited an impressive client list for an out-of-stater. It included Francis Cabot Lowell, George Cabot, John Jacob Astor, and James Otis. Webster practiced law in the courts of the area: Suffolk, Essex, Middlesex, Plymouth. He became prominent at the First Circuit Court of the United States. He generated a healthy income, yet still managed to overspend. He relied heavily on loans from benefactors.

Webster's clever use of narrative in the courtroom became legendary. He made sense of the facts in a way that helped his clients and beguiled the judge and jury. An early example occurred in the trial of Webster's clients Levi and Laban Kinniston. Elijah Goodridge, a respected citizen, had accused the two of shooting and robbing him. Goodridge had been treated for a wound in the left hand. Webster established the facts he needed in his cross-examination. Then, in his summation, he convinced the jury that Goodridge had actually shot himself in an attempt to fake a robbery and escape his creditors.⁴⁴

In Boston, Webster was overwhelmed by a sense of freedom when he looked out to sea, the same sea that would provide him with a master metaphor for many of his speeches. Nearby was New Bedford, which provided the men who hunted whales. When Webster arrived he could have had no idea how prosperous whaling would become by the time of his death, but he lived long enough to see Herman Melville's *Moby-Dick*, based on the trials of the whaling captains, published in 1851. Whaling, however, was not the most important business in Massachusetts; creating cloth was.

The Mills

In 1780 an Englishman named Richard Cartwright developed a method for spinning cotton and wool into yarn. By 1789, the first American spinning

44. See Webster, *Writings and Speeches*, 10:173–93.

mills were sprouting up in Rhode Island. By the 1820s, waterwheels had turned these mills into power looms for the South's cotton and New England's wool. Francis Cabot Lowell, who invented the power loom and created the Boston Manufacturing Company, tried to create a better environment for his workers than that endured by workers in England.⁴⁵ "Lowell girls" were hired off the farm, where they made no money, and brought to the mill towns to work. They were not allowed to drink; they had to attend church service on Sunday, their only day off; and they had to work long hours, but that was no different from life on the farm. In fact, many of the women believed they had a much better life with the Lowell company.

In Lowell's factory town, bells called the women to their twelve-hour days. They were fed three decent meals a day and lived three to a room, often sharing beds as they had on the farm. Child labor was common, as on the farm. What these workers did not face on the farm was dust- and fiber-filled air, which choked their lungs, and the noise of looms, which often caused deafness. The press began to talk about the "lords of the lash" in the South, who produced the cotton that was spun by the "lords of the loom" in the North. In response, Lowell had his workers form an association known as the Daughters of Free Men. Throughout 1816, when tariff proposals were being hotly debated in Congress, Lowell rationalized support for selective tariffs and became instrumental in developing a new party out of the dregs of the Federalist movement.

Boston was a bustling city of 40,000 inhabitants. Webster and his family lived on Beacon Hill; his office was on State Street, near the State House. Francis Lowell provided financial support, betting that Webster had a future in Massachusetts politics. By 1819, Webster was earning over \$20,000 a year, a sizeable sum at the time. Yet it was still not enough to support his extravagant lifestyle.

As Lowell watched approvingly, Webster practiced law with a small but talented fraternity. Arguing before the highest court in the land, he came into contact with the finest minds in America. His friend Joseph Story claimed to be a Jeffersonian but was a Federalist at heart.⁴⁶ William Wirt's use of humor and historical and poetic quotations impressed Webster. So did Wirt's defense of Jeffersonian principles. Wirt, who was attorney general from 1817 to 1829,

45. Even as late as 1860, "there were more cotton spindles in Lowell, Massachusetts, than in all eleven states that eventually made up the Confederacy." Louis Menand, *The Metaphysical Club: A Story of Ideas in America*, 10.

46. Maurice G. Baxter, *Daniel Webster and the Supreme Court*, 21.

joined Webster as often as he opposed him before the Supreme Court.⁴⁷ David Ogden appeared with or against Webster thirty-two times. And the eloquent Rufus Choate, a few years behind Webster at Dartmouth, joined him in *Rhode Island v. Massachusetts*.

These men helped sharpen Webster's abilities and refine his conceptualization of national conservatism. They forced him to find the best ways to defend his fundamental belief in due process, property rights, and federal protection of contracts. The defense was almost always rooted in constitutional issues because those issues were the most current before the Supreme Court. Furthermore, while a vague plan or an emotional argument might satisfy some in the Congress, only a tightly reasoned argument could pass muster before the Court. Any loose ends, contradictions, or holes would be noted by adversaries and the sitting justices. Thus, Webster's experience before the Court helped him to become the preeminent debater on the floor of the Senate. Webster was often to be seen running from the Supreme Court in the Capitol's basement up the steps to the House or Senate chamber. He would argue a legal motion on one level of the building and a legislative amendment on the next. Before that could happen, however, he needed to get himself elected to the Congress from his new home state.

47. Wirt opposed Webster in the *Dartmouth College* case and in *Ogden v. Saunders*; he joined Webster in *Gibbon v. Ogden* and *McCulloch v. Maryland*.