

ddy
ncil
ham
nton
and

CHAPTER XX

SPOILS OF OFFICE

THREE YEARS AT ALBANY

THE GOVERNOR IS NO SPOILSMAN

HAMILTON THE PROPHET OF THE SPOILS SYSTEM

1794 THE FEDERALISTS CHALLENGE GOVERNOR CLINTON

GOVERNOR JAY AGREES WITH CLINTON

DEWITT CLINTON IN THE PATRONAGE SADDLE

TRIUMPH OF THE SPOILSMEN

GEORGE CLINTON'S final term as governor began on July first, 1801. The Clinton family moved northward from New York to Albany where they occupied "Mr. James Caldwell's elegant house in State street" that Governor Jay had also used as his executive mansion.¹ Here the Clintons lived for three years with occasional treks to New York where they took a house on Cortlandt Street west of Broadway. But they never took root at Albany as they had done earlier at Poughkeepsie and New York. Albany on its side never claimed Clinton.

The veteran executive found at Albany that the governorship had been sadly emasculated during the Federalist period. The stranglehold of the spoils system on state politics was generally deplored but universally accepted. The governor was no longer the chief appointing officer even though he must still assume responsibility for the conduct of the ever increasing number of state officers who were appointed,

¹G. R. Howell and J. Tenny, *History of the County of Albany* (New York, 1886), 443. Governor Jay rented the Caldwell house, which was at 60 State Street, in the fall of 1797. Monaghan, *John Jay*, 412.

not elected. He found the personnel of the state's civil service thoroughly permeated with the stench of virulent partisanship, divided politically within itself. New York politics had reached the nadir of decency.

Governor Clinton, from the day he became governor in 1777 to his death thirty-five years later, was never a spoilsman. As governor he was an ex-officio member, with a casting vote, of the council of appointment. The clause of the state constitution empowering the governor, "with the advice and consent of the council, to appoint all officers . . .," was very similar to the corresponding clause of the federal Constitution of 1787, and under it Clinton claimed and asserted, as the president of the United States has claimed and successfully asserted, the right of exclusive nomination. It was clearly the intent of the framers of the state constitution to give the governor, who was to be responsible for the administration of the state government, a preponderant influence in the appointment of other officers such as the provincial governors had enjoyed. Certainly Clinton's assumption of the right of nomination was not seriously challenged for over ten years.²

Meanwhile the state enjoyed political tranquility and honest, non-partisan government. During the early years loyalty to the American cause was, in addition to fitness, the only prerequisite to appointment. The governor called the council together, notified it of vacancies, and nominated candidates for its approval. His nominations were made with tact and generally with honest impartiality; and during the period of his undisputed leadership they were seldom challenged. He was admirably fitted for the often troublesome task of making appointments. Vanderkemp wrote of him in 1792 that he, Vanderkemp, had "often indeed been surprised with admiration at [Governor Clinton's] knowledge of men, which is a distinguishing trait of his character—and, in my opinion, one of the chief means of his Political success."³ A keen judge of men and a forceful political leader, Clinton completely dominated his council and dictated its appointments. Under

² H. M. Flick, "The Council of Appointment," *New York History*, July, 1934, is the best account of the Council. H. L. McBain, *DeWitt Clinton and the Origins of the Spoils System in New York* is excellent and Hammond's *New York* is useful.

³ *The Vanderkemp Papers* (Publications of the Buffalo Historical Society, II), 54.

his regime removals were made sparingly and only after serious consideration by the council sitting in an almost judicial capacity.

The worst that can be said of the appointments during Clinton's first administrations was that they came to be confined more or less to a small group of chronic office-holders and office-holding families.⁴ But they were not confined to men who agreed politically with the Antifederalist governor. In 1788 three of the chief legal officers of the state, Chancellor Livingston, Chief Justice Richard Morris, and Justice John Sloss Hobart of the Supreme Court, were Federalist, while only one of that group, Justice Robert Yates of the Supreme Court, was an Antifederalist. If Mayor Lansing of Albany was an Antifederalist and a friend of Clinton's, Mayor Duane of New York was well known to be Federalist in principle. Recorder Samuel Jones of New York was at the time a Clintonian; Adjutant General Nicholas Fish and Attorney General Egbert Benson were both Federalists nominated by George Clinton and appointed by his council. If Simeon DeWitt, a relative of the governor's, was made surveyor general, so also was Philip Schuyler, who had no fondness for the governor and his politics. Later the Federalist Varick was made attorney general and he in turn was succeeded by the most enigmatical of all of Clinton's appointees, Aaron Burr, an Antifederalist who had opposed Clinton's reelection in 1789 by supporting Yates. Yates himself was made chief justice. And as late as 1791 that vigorous Federalist squire, William Cooper of Cooperstown, was named first judge of Otsego County.⁵ Certainly the appointments of the first five Clinton administrations were notable for their impartiality.

Abuse of the patronage is, of course, a perfectly natural concomitant of democracy in its early stages. Men who have worked and even shed blood to establish popular governments soon come to feel that they have a right to hold office. In their minds office-holding ceases to be a duty or a privilege confined to the able and the experienced, and becomes a highly desirable right—evidence of their partnership in the new commonwealth. And as there are invariably too few offices to go round, these partners insist on rapid turnover so that all may

⁴ H. M. Flick, *loc. cit.*, 560.

⁵ F. B. Hough, *Civil List of New York* (1860); Hammond, *op. cit.*, 53-54.

have their day. Although the rise of the spoils system in America is popularly associated with Andrew Jackson, whose fame has suffered considerably thereby, the clamor of the young American democracy for office was heard years before Jackson, soon after the Revolution.

The prophet of the spoils system in New York was none other than that earnest partisan, Alexander Hamilton. It was he who first suggested that in giving the governor the sole right of nomination, the council was misinterpreting the constitution. In the letters of "Publius" he made vague, unsubstantiated assertions⁶ that the broad powers of the governor of New York in filling positions had produced "scandalous appointments to important offices," but "in tenderness to individuals" he forebore to descend to particulars. "The governor," Hamilton wrote, "claims the right of nomination, upon the strength of some ambiguous expressions in the constitution; but it is not known to what extent, or in what manner he exercises it . . . from whatever cause it may proceed, a great number of very improper appointments are from time to time made." These statements were made in a campaign document in a time of stress when men were not carefully weighing their words. Historians generally have concluded that Hamilton's position regarding Clinton's exercise of the right to nominate was unsound and without any basis but politics. Yet Hamilton had sowed the seed that was in six years' time to convert New York's appointive system into a pathetic scramble for the spoils of office.

The crisis came in 1794. When the Federalist legislature met in January the Tory lawyer Hoffman launched the attack on the governor and the Republican council of 1793 for their failure to appoint a fifth judge to the supreme court. The governor had, as a matter of fact, allowed the appointment of a fifth judge to go over because he had not approved of Peter W. Yates, the Republican candidate. The Federalists now proceeded to revolutionize the whole appointive system as Hamilton had suggested in 1788, in order to appoint their candidate, Egbert Benson. Although the old council of appointment had not served the customary full year, the new Assembly named a Federalist council in which Philip Schuyler was the leading spirit. The governor, feeling secure in the right of nomination which he alone had exercised for

⁶ *The Federalist*, Ford, ed., 464, 472, 514.

seventeen years, innocently called together the hostile council. One of the three Federalist members at once nominated Benson and he was confirmed by a vote of three to one. The governor protested the council's right of nomination and refused to sign the minutes of the meeting, but the Federalists had tasted blood and did not intend to draw back. As offices became vacant loyal Federalists were appointed, and if vacancies did not occur in sufficient number, new offices were created. The governor's nominations were ignored. The power of appointment had been transferred from the executive to the legislature, and politics was to have its day!⁷

Governor Clinton, who seldom lacked the courage of his convictions, filed with the clerk of the council a vigorous protest against the council's usurpation of power. He insisted that as he alone was responsible for the conduct of the executive branch of the state government, it followed that he must have the principal voice in the appointment of his subordinates. He accused the Federalist majority of the council of making appointments for party reasons. The Federalist majority replied, admitting that they had increased the number of offices and made certain removals without hearings, but justifying themselves on the ground that Clinton had formerly used the power of the patronage to his own advantage. Yet they could cite against him only two cases in his entire seventeen years of service. One of the two was the famous sheriff of Otsego who was involved in the disputed election of 1792.⁸ However weak the position taken by the job-seeking council may have been, Schuyler and his Federalist colleagues had their way. The spoilsmen were in the saddle.

The power of the patronage was turned against the Clinton administration in another field. The federal administrations of Washington and Adams very naturally favored Clinton's political enemies when offices were to be distributed. Washington, who believed that somehow faction and partisanship might be avoided in American politics, made at first every effort to be impartial. He appointed General John Lamb, the Antifederalist, collector of the port of New York. His postmaster general for two years was Samuel Osgood, the New York democrat and

⁷ H. M. Flick, *loc. cit.*, 263-64; McBain, *op. cit.*, 38-41; Alexander, *New York*, I, 61f; Hammond, *New York*, I, 83-85.

⁸ The governor's protest and the reply are printed in the *Albany Gazette*, October 23, 1794.

friend of the Clintons; and certain lesser appointees, such as Henry Remsen, chief clerk of the new Department of State, were Antifederalists. But later in the administration, disillusioned by the appearance of the political opposition that he wished so much to avoid, the first president yielded to his Federalist advisers and his appointees were expected to be orthodox in their politics. And John Adams seems to have made no effort whatever to appoint Republicans. According to Channing, when Jefferson came into office in 1801 he found among the 228 principal federal officers only 30 who could be called Republicans.⁹

While capable Antifederalists like Melancton Smith, Yates, Lansing, Samuel Jones, Aaron Burr, and George Clinton himself, were neglected, loyal New York Federalists fell heir to some of the best of the federal offices. Jay became chief justice; Duane, Troup, Laurance, and Hobart in turn received federal district judgeships; Richard Harison was named United States district attorney; William S. Smith became federal marshal; and Nicholas Fish supervisor of revenue for the New York district. Hamilton's appointment to the Treasury made him perhaps the most influential man in the administration. Such a constellation of high federal dignitaries in the New York heavens may have aided very materially in the state's conversion to Federalist politics in the 1790's. Although Clinton was always on the friendliest of terms with Washington, he did not press the president for a share in the patronage. Even when his own party was in power, he seldom pressed his claims. He could state a few days before his death that, "it is contrary to [a] Rule I long since established not to interfere in state or indeed other appointments from which I have seldom erred."¹⁰

Governor Jay found himself in a dilemma. Like George Clinton he believed that the exclusive right of nomination belonged to the governor, but he could not publicly maintain that position without offending his own party. He tried to avoid the issue by asking in his first message that the legislature pass a declaratory act determining the question once and for all, but the legislature failed to respond. Nevertheless the governor again assumed the sole right to nominate and while the

⁹ *United States*, IV, 252.

¹⁰ Draft letter of February, 1812, recommending Charles Christian, *Clinton Papers*, vol. 31.

Federalists controlled the council of appointment there was no inclination to challenge the practice. Jay seems to have urged some restraint upon his colleagues, but without much success. Republicans were turned out of office and replaced with Federalists. New offices were added to provide more spoils.¹¹ "To the general rage for party spirit I think the State Government have not been far behind its people," wrote William Fitzhugh from Geneva, "and in my opinion they have degenerated much from their wonted dignity . . ."¹² By 1801 when the Clintonians returned to power, almost all the important positions were filled with Federalists. Certainly the spoils system in New York originated, as McBain has so conclusively proved, under Federalist auspices some years before DeWitt Clinton and his outraged Republicans seized control of the council of appointment in 1801.

Unfortunately for George Clinton his own party challenged Jay's assumption of the right to nominate before the end of the Jay administration, a challenge that paved the way for the final transfer of the disputed right from governor to council. The council which Governor Jay convened in February, 1801, was Republican by a margin of three to one. DeWitt Clinton was one of the three Republicans. Another was the ponderous figure of Ambrose Spencer, formerly a Federalist, later a member of the state supreme court, brother-in-law and close associate of DeWitt Clinton. The third Republican was a pliable individual named Robert Roseboom. The council was DeWitt Clinton's, not Jay's. Nevertheless it showed a remarkable degree of moderation in accepting many of the governor's nominations and leaving Federalists in office. Finally, however, the three Republicans on February 24 rejected the governor's nominee for sheriff of Orange and named their own man. Jay asked for an adjournment to consider the matter and, the adjournment agreed upon, the council did not meet again during Jay's term.

Meanwhile, on February 26, Governor Jay sent a message on the subject to the legislature.¹³ Now that his political opponents were the avowed champions of the obnoxious system of nomination by the

¹¹ McBain, *Spoils System*, 45-50; H. M. Flick, *op. cit.*, 266; Fox, *Aristocracy*, 6.

¹² S. B. Webb, *Correspondence*, III, 217.

¹³ Jay, *Correspondence*, IV, 290.

members of the council, Jay had no hesitation about stating his side of the case. In his message he referred tactfully and effectively to Governor Clinton's position:

Doubts have long existed whether by this article [article 23 of the state constitution] the right of nomination was exclusively vested in the Governor, or whether it was vested concurrently in him and the council. Questions arose on this article during the administration of my predecessor, and in the month of March, 1794, gave occasion to animated discussions between him and the then Council . . . [Becoming governor I maintained that the right of nomination was exclusively the governor's, since] the right to *appoint* necessarily included the right to *select* and *nominate*; and it gave me pleasure to find, on conferring with my predecessor, that this opinion was strengthened by his informing me that he had always claimed this right and never yielded or conceded it to be in the Council.

Jay went on to explain that he had asked his first legislature to pass a declaratory act, but without result. Finding himself now opposed by a council which differed with him, he was submitting the matter to the legislature for its consideration.

The whole state was agitated over the issue—especially, according to George Clinton, the vendue masters whose jobs were at stake. He wrote to DeWitt Clinton that “the general opinion is in favor of the measures you have taken,” but he did not add that he himself approved.¹⁴ There was tremendous pressure among the Republicans for jobs and it would have been bad politics for the Republican candidate for governor to criticize the Republican council in the midst of the campaign. Clinton was seldom blind to the political aspect of events.

The legislature again refused to pass any declaratory act to settle the wrangle between governor and council.¹⁵ The Assembly, by a decisive vote of 61 to 35, insisted that it possessed no authority to legislate in such a matter,¹⁶ but the impasse was finally broken in April when the legislature “recommended” that a convention be called to amend the state constitution. It was mid-October, over three months after Governor Clinton took his oath of office, that the convention met at Albany and

¹⁴ Letters of March 5, and 28, 1801, DeWitt Clinton Papers.

¹⁵ A statement of DeWitt Clinton's observations on a proposed declaratory act is in DeWitt Clinton Papers, Miscellaneous volume.

¹⁶ *Daily Advertiser*, March 7, 1801.

named Aaron Burr its president. Although DeWitt Clinton himself was absent, the Republican spoilsmen were in control and the convention with much discussion but with virtually no dissent awarded to the members of the council of appointment, as well as to the governor, the right of nomination. John Henry, the Albany lawyer, was the leader of the small majority that stood by the governor.¹⁷

It was a serious defeat for the governor and marked very definitely the rise of DeWitt Clinton to party leadership in his uncle's place. The council under the nephew's domination had already in its August session swept aside the old governor's conscientious objections and made a number of obviously partisan removals and equally partisan appointments. Federalists like Richard Harison, William Coleman, Richard Varick, and Daniel Dale, a host of lesser officials and the numerous Federalist justices of the peace, were proscribed. During the August meetings, most notorious for their decapitations, from a quarter to more than half of the officers in many counties were removed, although few changes were made in Federalist counties like Albany. Governor Clinton protested and spread his protest on the minutes of the council. On several occasions he refused to sign the minutes that recorded the most outrageous of the removals.¹⁸ But the Republicans could not forget the Federalist proscriptions of the last seven years and the job-hungry Clintonians and Livingstons were swept into the newly made vacancies. Edward Livingston became mayor of New York; a Livingston by marriage, Morgan Lewis, became chief justice; Brockholst Livingston was also elevated to the supreme bench; and Thomas Tillotson, the new secretary of state, was a brother-in-law of Robert R. Livingston. Certainly the Livingstons received their full share of the plums. Only the Federalists and the Burrrites were forgotten.¹⁹

DeWitt Clinton, now in full control of the dominant wing of the New York Republicans, had no scruples against putting his own friends and connections into office. A few Clinton relatives and inti-

¹⁷ The convention also fixed the number of state senators and representatives. Among its members were James Clinton (Orange) and DeWitt's son, George Clinton, Jr. (New York). S. C. Hutchins, *Civil List of . . . New York* (Albany, 1874), 55; Alexander, *New York*, I, 115-16; H. M. Flick, “Council of Appointment,” 267-68.

¹⁸ McBain, *Spoils System*, 119.

¹⁹ Hammond, *New York*, I, 180, states that not one Burrrite received an office.

mates were already in office; others like Sylvanus Miller, the friend of DeWitt who became surrogate of New York, were appointed during the great raid on the patronage of August, 1801; and still others were appointed in the months and years that followed. A famous "Clinton Catechism" of 1811 named about twenty-five of these, including Judge Obadiah German, James Tallmadge the elder, and James Tallmadge Jr., John Taylor, Samuel Osgood, Pierre Van Wyck, Theodorus Baily, Ambrose Spencer, Matthias B. Tallmadge, Simeon DeWitt, Charles the brother of DeWitt Clinton, Philip Spencer Jr., and William Stewart.²⁰ Over half of the names in the "Clinton Catechism" were those of relatives of George Clinton, but most of the appointments responsible for their inclusion belong to the period when DeWitt dominated the council. "Plain Truth," in a broadside of 1804, complained that of the two great families that ruled the state the Clintons held fourteen important places and the Livingstons twelve.²¹ Certainly it was not Andrew Jackson who introduced the spoils system into American politics.

²⁰ Reprinted in Platt, *History of Poughkeepsie* (1905), 308-09.

²¹ Fox, *Aristocracy*, 64.