

**Joe Bailey, the last democrat, by Sam Hanna Acheson.**

Acheson, Sam Hanna, 1900-1972.

New York, The Macmillan Company,

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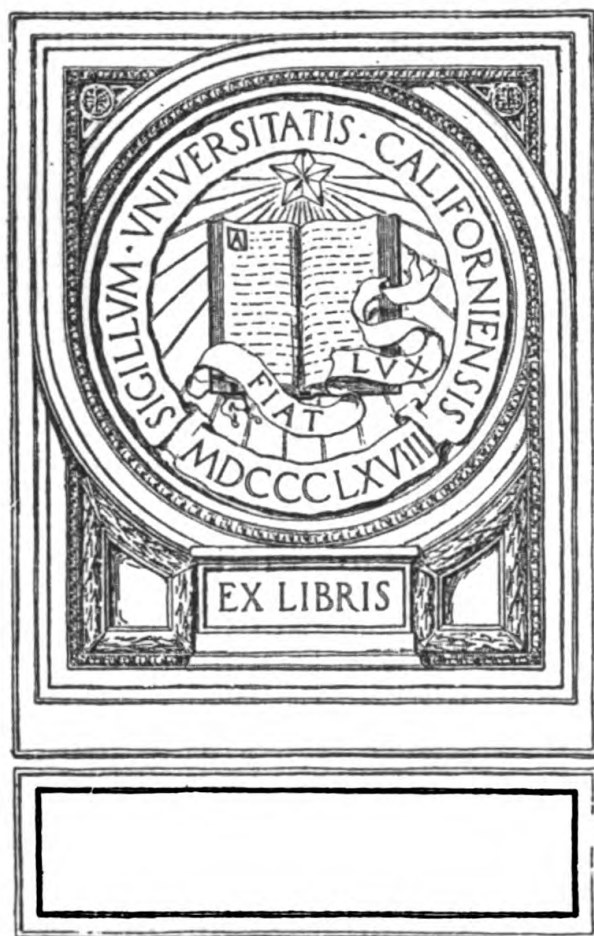


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## JOE BAILEY, THE LAST DEMOCRAT



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*J. W. Bailey*

# JOE BAILEY

## THE LAST DEMOCRAT

BY  
SAM HANNA ACHESON

NEW YORK  
THE MACMILLAN COMPANY  
1932

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**Set up and printed. Published May, 1932.**

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TO  
MY MOTHER  
AND  
THE MEMORY OF  
MY FATHER

813272



## PREFACE

SENATOR BAILEY of Texas, one of the most conspicuous and influential Democrats in official life at Washington during the Administrations of McKinley, Roosevelt and Taft, has often been called the last Democrat. As elected head of the minority in the House during the fateful years leading to the Spanish-American War, and later as the real leader of the opposition in the Senate during the first twelve years of the new century, he went far toward meriting the arrogant phrase. Master of the Democratic party of Texas, he became the most powerful voice of the Southern wing of the Democratic national party and as such played a determining rôle in its councils. Time alone tends to sustain the phrase, for he survived all of the three great antagonists with whom he disputed the course which Democracy should take: Cleveland, Bryan and Wilson.

But the phrase implies a break in the tradition of the oldest political party in the United States, and Joseph Weldon Bailey would be the first to reject the characterization. Before his death he saw the rise of a younger generation of party leaders whom he saluted and acknowledged to be true modern disciples of Mr. Jefferson. He was, rather, a pivotal link in the chain that binds the past to the present and to the future; if in a certain rhetorical sense he was the final spokesman of the Confederacy, the last major prophet after John C. Calhoun and Jefferson Davis, he died with his face to the future, holding confidently to the belief that the Democratic party is as necessary to the preservation of Ameri-

can liberties and ideals as it was a century ago when the Hamiltonians sought to erect the first Fascist State.

Born in the Deep South in the latter part of 1863 at an hour when the fortunes of the Confederacy had reached their zenith and were just beginning to set, he lived until the Spring of 1929. Thus his life spanned three significant epochs in the history of the American Union: the Gilded Age that came to full bloom by the third decade after Appomattox, the Social Revolution heralded by the trumpets of free silver and halted only by the deluge of the World War, and, finally, the New Economic Era, that period of barren and prosperous reaction which Warren Gamaliel Harding was privileged to dedicate and which Herbert Clark Hoover, with incredulous eyes, saw crumble suddenly in a great roar of dust and fury on a Black Friday in the first year of his presidency.

Bailey's service in Congress lay almost wholly within the middle phase. Except for four years during Cleveland's last term he was a member of the minority, yet it would be an error to assume that he had no part in the positive legislative results. It is true that his name is not officially stamped on any act of Congress; unlike McKinley or Grundy, no radical revision of the tariff is popularly named for Bailey; unlike Volstead or Mann no Federal statute affecting the intimate lives of millions of Americans is known as the Bailey Act; he does not have even such a paternal distinction as that which has gently but irrevocably settled upon his successor in the Senate, the Hon. Morris Sheppard, who will be known forever as the father of national prohibition. But the lack of obvious mementoes should not be confusing. Bailey's legislative career coincided roughly with what Prof. Charles A. Beard has called the movement toward social democracy, that great ground swell of revolt and reform which swept eastward in an effort to curb the excesses of the Gilded Age. This vast, often sub-

terranean ferment, first symbolized on a nation-wide scale by Bryan, worked through and across party lines under Roosevelt, Taft and Wilson to effect more than a partial transformation in American life.

Of all the fruits of that movement three are seen in retrospect to have been basic; in two of these Bailey played a determining part. The first was the subjection of the railroads to social control by the empowerment of the Interstate Commerce Commission in 1906 to regulate the rates and services of the carriers. Bailey shares equally with Roosevelt and Tillman in the final enactment of the Hepburn Rate Bill, that Magna Charta of American economic liberty on which has been built the whole structure of control of more than one fifth of the industrial wealth of the United States. The second major fruit was the final imposition of a Federal income tax. The real victory was won in 1909 when a tax on the earnings of corporations was imposed by law and the Seventeenth Amendment was submitted by Congress to the individual States, thereby paving the way for the tax on personal incomes as well which a Democratic majority imposed in 1914. In so far as any one person may be said to be responsible for this formidable advance against plutocratic power, the victory may be said to have been a personal triumph for the Texan. The third fundamental assault on the anarchy of American economic life, and likewise that accompanied by the greatest beating of drums, was the reform of the currency and banking system. It is, perhaps, a far cry from the discontent of farmers and small business men in the '80's of the last century to the modern and elastic Federal Reserve banking system. Yet it was the initial driving force of the free silver enthusiasts, among whom was originally Bailey, that brought about the final solution of fiscal disorder. And if Bailey was not so influential here as in the railroad regulation and income tax reforms, his views and those

of his party were not without weight in shaping the form and ultimate control of the central banking system.

As an adult Bailey saw his country twice go to war. Now the making of war by Congress is a positive, if not always constructive, measure, and Bailey as the party leader opposed to Speaker Thomas B. Reed in 1897-98 was one of the authors of the Spanish-American War. That he quickly regretted his approval and his promotion of this step toward the Manifest Destiny of the American people is seen in his almost immediate about face and in his long and magnificent fight up-stream against the excesses of Chauvinism which that holy crusade unleashed. Later as a much wiser and lonely elder statesman he saw his country once more embark on a crusade, this time to make the world safe for democracy. From the porticoes of private life he sought unsuccessfully to arrest the forward surge of his countrymen. Bailey was, perhaps, never more constructive than when in the days before America's intervention in Europe, he inveighed Cassandra-like against that step.

The last decade and one half of his life was spent outside of public office. It was largely one prolonged protest against the course which his country and his party took on questions of public concern. Because of his unremitting criticism of Federal prohibition and enfranchisement of women by Federal amendment, he came to be regarded by many as a negative if not a carping influence. But such were the cogency and soundness of his views, particularly upon the more disputed achievement of Federal prohibition, that they may yet gain a place in that renewed radicalism which threatens, that literal cutting back to the roots of the original American system of government which he espoused so consistently and courageously. The keystone of his political creed was a belief in the system of dual sovereignty around which the Constitution of the United States was formed. He continued to champion a

just safeguard of the right of local self-government at a time when it became fashionable to deride the doctrine of States' Rights as an archaic fetish; yet he lived to witness a reaction in favor of this first principle, even among certain leaders of the Republican party.

No foreword would be complete without a reference to the long, dominant and passionate part which Bailey had in the internal affairs of Texas. The political history of the State in the last fifty years may be written largely around three personalities who rose in turn to first place: James Stephen Hogg, Joseph Weldon Bailey and James E. Ferguson. Here again Bailey occupies the middle panel. Although he never held an office in the State government, he was for more than ten years the center of a cyclonic storm in the life of Texas. No political figure since the days of the Republic was capable of inspiring greater loyalty and devotion among his followers; nor, at the same time, more capable of arousing bitter and unrelenting hatred.

The Bailey controversy in Texas stemming out of the Waters-Pierce Oil Company episode and Bailey's part in it, necessarily occupies a fair-sized, but it is hoped a proportionate, part in this chronicle. The facts remain as an invitation alike to both those who believed Bailey guilty of the most heinous charges brought against him and those who believed him innocent of all imperfection.

What manner of man was Bailey? The facets of his personality were many; to the legal student he will remain one of the great Constitutional lawyers of his age whose prowess was such that Taft offered him a place on the Supreme Court of the United States; others, perhaps, will remember him as the premier orator of his generation. And yet others will hold to their earlier skepticism of his abilities and his achievements, agreeing with his most widely quoted critic, Samuel G.

Blythe, that Bailey was a sophist at the core of a huge and undeserved political myth. But even the obscurest human life is far too complex to be pinioned with a phrase, and it is hoped that the pages which follow give a better answer to the question than some telling but over-simple label.

In the preparation of this study I have had necessarily the aid of a great number of people. To those writers, students and contemporaries of the period whose findings have been considered I make most grateful acknowledgment. The bibliography, which lists alphabetically all sources referred to in footnotes, particularizes the debt I owe to both published and unpublished writings. In addition I wish to thank those individuals and friends who have assisted in the assembling of material or offered criticism or counsel in the drafting of the final text. In doing so, of course, I wish to emphasize that the responsibility for any new opinions or conclusions rests upon me alone.

I am indebted further to Mr. Julian Capers, Jr., for his original suggestion of this study; to Mr. J. W. Bailey, Jr., who placed the entire collection of his father's private papers at my disposal without imposing the slightest restrictions or stipulations upon the use to be made of that material; to Mrs. Imogene Bailey Rucker of Houston, Texas; Mr. W. B. Jaynes and Mr. Mark Sullivan of Washington, D. C.; Miss Cleora Clanton, Miss Rose Hutchinrider and Miss Alice Amsler of the Dallas Public Library staff; Mr. W. H. Kittrell, Jr., of Dallas, Texas; and Mrs. Leila B. Shuey, Librarian of the *Dallas News*, all of whom were of the greatest assistance in the assembling of material. I am also most grateful to Professor John H. McGinnis, Professor Herbert Gambrell and Mr. Henry Smith of the faculty of Southern Methodist University; Dr. James Q. Dealey and Mr. John King, editor and managing-editor, respectively, of the *Dallas News*; Mr. John William Rogers,



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Jr., Mr. John J. Simmons, Mr. Irvin Taubkin, Miss Anne Toomey, Mr. Charles H. Platter and Mr. John E. Owens, all of whom have read portions of the manuscript or proof. Very specially am I indebted to former Governor O. B. Colquitt for his aid in securing transcripts of certain important letters and documents, as well as for the benefit of his intimate knowledge of the period. Throughout the preparation of this study I have had the constant benefit of suggestions by Mr. Alex Acheson, Jr., of the *Dallas Times Herald*, whose extensive familiarity with Texas and national politics has been of the very greatest aid. Finally I wish to register my very great debt to Miss Sarah Chokla of the English faculty of Southern Methodist University for her invaluable assistance in the making of an index.

SAM HANNA ACHESON.

Dallas, Texas.

March 2, 1932.



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## JOE BAILEY, THE LAST DEMOCRAT



## CHAPTER I

### BIRTH AND CHILDHOOD

It was neither an auspicious place nor a happy time in which to be born. Mississippi in 1863 was one extended battle front, the scene of the most decisive struggle in the war between the States. That summer Grant had succeeded in striking the death-blow to the Confederacy by his capture of Vicksburg. With that cleaverlike stroke, cutting through to the red, wet earth on July 4, the body if not the spirit of the South had been severed. On the same day far to the east Lee had turned his bent lance of an army away from Gettysburg, and these two simultaneous defeats marked the hour from which the star of Jefferson Davis and all those who had cast their honor and their fortunes with him began to set.

The village of Crystal Springs, not fifty miles from Vicksburg to the southeast, had barely escaped being trampled under the heels of the Union Army as Grant, flanking the key to the great river artery, first marched on Jackson to block any Confederate relief from the east. If on October 6 the birthplace was not actually within the new lines of the Federal Army, it was close enough to accentuate the horror and distress of its inhabitants as defeat closed in on their hopes for the Confederacy. In no home in the village was the gloom heavier than in that of Joe Bailey, where his wife and small two-year-old daughter were alone while the head of the family was on active duty under the Confederate banner. Not only was the father absent at the birth of his only son, but the father's father in Pennsylvania, following the fortunes of the Union at that

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great distance, could not learn for many months that there had been a male issue in the deep South to carry on the Bailey name and line.

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The line of the child traced back immediately to Scotland on the paternal grandfather's side, and to the North of Ireland on the paternal grandmother's side. The first Bailey of this branch of the family had come to America in the first years of the nineteenth century, bringing his bride, a member of the Weldon family, to the New World with him. They halted for a time in New York, where a son bearing the name of Joseph Bailey was born shortly before the young family moved on to Philadelphia. Much of the daring and aggressiveness of the line came from the Weldons. The wife of the immigrant Bailey was a particularly thrifty and shrewd business woman, organizing and becoming the first president of one of the earlier building and loan associations in Philadelphia. Three of her brothers, George, Tom, and William Weldon, had joined the Baileys in Pennsylvania, and they, too, early disclosed those traits of industry, frugality, and business acumen that were considered the cardinal virtues in the society in which they had settled. The Scotch breed, though, once crossed with the Irish strain, is never free of a certain romantic tendency. When, therefore, the three Weldon brothers suddenly decided to throw caution and the orderly pursuit of wealth to the winds and to follow a highly speculative adventure into the far South, their decision waited on no weighing of the outcome. They took with them their nephew, not yet turned into man's estate, who eagerly took the chance to explore unknown lands. He accompanied his uncles, it was noted, with the express approval of his practical and commonsense mother. The venture, involving some governmental contracts, proved highly profitable for the uncles, who remained to prosper even



more, only to suffer bankruptcy with others in the South shortly afterwards. Joe Bailey also had found the new land to be good, and no place sweeter than that part of Mississippi where he decided in the late fifties to settle as a small merchant.

There was more than the natural beauty of the country and the equableness of the climate that determined his choice; for he had already met and was to win the heart and hand (it was easy for the newcomer to learn the vernacular) of Miss Harriet Dees, a member of a family that typified the best that two centuries in the South could produce. Related through her mother to the Hill family of Georgia, young Mrs. Bailey had the pride and the outlook of her race, on no question more naturally than on the threatening issues which came to a head while Buchanan was still President and Jefferson Davis sat for Mississippi in the Senate at Washington City. A quiet, gentle woman as bespoke her nurture, there was, however, an ironlike quality to her will, and before the storm of secession broke she had firmly lashed her husband's sympathies to the Southern cause. The young couple were poor townspeople, and without land or slaves, but there was no question where the loyalties of both were first when the struggle came. The Baileys in Pennsylvania as naturally sided with the Union.

The child was christened Joseph Edgar Bailey. There was no mention of the Weldon name, perhaps as a result of the breach in loyalties. Not until the war was long over would there be a resumption of hearty family feeling between the grandparents in Pennsylvania and the parents in Mississippi. And the link that finally reestablished the relation would be the child born in the midst of the great struggle.

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The collapse of the Confederacy in the spring of 1865 was not without its elements of relief to the South. Now that the

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long strain was over, now that the homeland disrupted by contending armies would soon be freed of the military heel, now that thousands of families would be reunited, even though those who marched away to confident smiles were to tramp home in rags and face an exhausted community, utter dejection failed to enslave an entire people. Even in defeat their spirits were not broken; staring their enormous loss of life and property in the face, they accepted fate philosophically and prepared to make the best of what was left. The attitude of the President was the great, buoyant factor, conciliatory, generous to the fallen, and yet realistic. Under such a policy of reconstruction as the great Lincoln was formulating, the South was not without hope and so its people realized. But suddenly Lincoln was killed and soon the South would be plunged into a greater tragedy than the war itself, for Andrew Johnson was not equal to the task of holding back the tides of hate and unprincipled political ambition that would now engulf the South. The second and more disastrous tidal wave struck with no greater fury than in Mississippi, where early after Lee's surrender the first move to resume normal government had been attempted. Mississippi was the first Secessionist State to hold a convention for the purpose of accepting the requirements of the conquerors; all but two of its hundred delegates were able to qualify, and the action of the postwar convention was, as Claude Bowers has written in his superb chronicle of the whole tragic era, "a challenge to the fairness of the foe."<sup>1</sup> Already, though, the radicals were at work in Washington, and one of their chief leaders, the malignant Charles Sumner, was denouncing the Mississippi convention as "a rebel conspiracy to obtain political power."<sup>2</sup>

The radicals hastened to foment regurgitated hate in Northern public opinion; when the legislature met at Jackson shortly after-

<sup>1</sup> Bowers, p. 62.

<sup>2</sup> Garner, p. 94; quoted, Bowers, p. 62.

wards and sought to cope with the primary problems of civilization in the South, nowhere more gravely brought to a head by emancipation than in Mississippi where the negroes actually outnumbered the whites, the news of the acts of the legislature set off screams of denunciation in the Northern press. Laws prohibiting intermarriage between whites and blacks, making it a crime to furnish deadly weapons or liquor to the ex-slaves, and other measures designed to prevent bloodshed in the local communities were the target for the wildest outbursts. "The men of the North will convert Mississippi into a frog pond before they will allow any such laws to disgrace one foot of soil," declared the *Chicago Tribune*.<sup>\*</sup>

But this and other vocal outcries were but a warning of the vindictive extremes which the radicals of the North would impose by force during the years that followed. By 1867 Mississippi had passed into the hands of the carpetbaggers and the blacks, supported by troops of the Federal government, and a negro had already been seated in the Senate at Washington as the successor of Jefferson Davis. For eight interminable years the State remained in the shadows of corrupt and ignorant government, the former rulers of the State being ground down under one of the most humiliating and cruel despotisms in history.

On a child living within a few miles of the State capital, the grotesque proceedings of the legislature and the Governor at Jackson were to have an abnormal influence. With the resentment of his elders smoldering in impotent rage, the child, who was naturally bright and quick-witted, was forced into a precocity in matters of public concern. The very air he breathed seemed to be charged with the tension of his people. Before he was old enough to go to school the talk and convictions of his elders had penetrated deeply into his psychol-

<sup>\*</sup> December 1, 1865; quoted, Garner, 115; quoted, Bowers, p. 63.

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ogy, and a residue of certain prejudices would stick there until the end of his days.

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Never rich in antebellum days, Covich County and its two principal settlements of Crystal Springs and Hazelhurst were pauperized by the African bondage through which the whole State now passed. The people could not support a public-school system, but Crystal Springs was not without some means of instructing its youth. Professor Newton's private school for girls was locally celebrated, and Pearl Bailey, the oldest child in the family, was one of its brightest pupils.<sup>4</sup>

By the time the boy was ready to begin the first reader, an old-time schoolmaster by the name of McNeill, carrying, of course, the title of professor, had opened his school within walking distance of the town. Here the youngster was sent and here he made his first impression on his fellow countrymen. Charles Terry, a native of Crystal Springs and a pupil in the school at the time, remembers most vividly the school debates, in which "Buddie" Bailey was most often the victor.<sup>5</sup>

Only one other boy could hold his own in a speaking contest with him, R. P. Willing, later a lawyer of the county seat at Hazelhurst, and these two were also admittedly the "best scholars" in the school. A contemporary recalls that all of the Bailey children, the boy as well as his one older and three younger sisters, were physically striking in appearance, their strong, sturdy little bodies being set off by handsome faces in which the force and beauty of the eyes were the most memorable features. "Buddie" Bailey suffered from one element of his physical heritage, an unusually ruddy complexion for Mississippi; this early led to taunts from his playmates at playtime, and as promptly developed a defensive attitude on

<sup>4</sup> Interview, Charles Terry.

<sup>5</sup> *Ibid.*

the part of the child that soon passed over from the art of speech to physical combat. Largely as a result of this inner sensitiveness he became one of the best scrappers on the playground, it being said even then that he would fight at the drop of a hat.

But the most potent influence in his early training was not Professor McNeill's school. The Bailey children had an unusual advantage in the home training given them by their mother. A singularly intelligent and high-spirited woman, she was determined that her children should not suffer from the meager educational advantages that seemed to be their lot in the bankrupt South. She was also a very devout woman, inculcating the morals of her religion while her children were at her knee. Although all the energies she had left after making a home for her family were poured into the activities of the Baptist Church, she was not of the bigoted sort who felt that all grace and salvation dwelt in her own particular creed. Tolerance of the beliefs of others was among the earliest lessons that she taught her young. In the Sunday school she revealed her marked ability as a teacher to other children. One of them recalls that she was very "clear and concise, able to make the mysteries and the stories in the Bible seem real and living to even the dullest witted of us." Not a small part of her success, the same individual remembered fifty years later, was her sympathetic manner.\*

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Throughout the first thirteen years of Bailey's life, Mississippi lay helpless under the domination made possible by the central government. In the county adjoining Copiah the tragic farce was played at Jackson where, despite several efforts at redemption by the conservative elements of the State, includ-

\* *Ibid.*

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ing even some Republicans such as the President's brother-in-law, Judge Louis Dent, who made the race for governor unsuccessfully in 1869, the State government made high jinks of political liberty. A view of Jackson at this time is reconstructed by Bowers:

"Adelbert Ames as military governor had taken possession of the State House and executive mansion in the fashion of Bombastes Furioso, to rule supreme and to pass on to the Senate to make room for James L. Alcorn, a handsome, vain, imperious planter of property . . . nearly forty former slaves, forced to make their mark, are enacting laws in the spirit of a lark. . . . The old governing element is hopeless, though a few determined spirits like J. Z. George still hope and plan. The gentle Lamar, depressed, is standing by the gate of his cottage at Oxford in the twilight, looking sadly across the solemn fields, watching his neighbors passing in the middle of the road for safety." \*

Lucius Quintus Cincinnatus Lamar was soon to become the leader in one of the most courageous and desperate rebellions in the history of any people. One of the lasting folk heroes of the Southern people, this statesman and jurist was indirectly to influence Bailey greatly at a time when he was passing from boyhood to manhood. Born in Georgia, Lamar had moved to Mississippi and served that State in the national House of Representatives just prior to the outbreak of the war between the States. With secession he had joined the military service of the Confederacy and later had been sent to Europe on a diplomatic mission which had for its purpose the winning of Russia's recognition of the South. After the war he was living in retirement at Oxford when the distress of the people of his adopted State led him to lead their final and successful cam-

\* Bowers, p. 368.

paign for redemption. Later he would become United States Senator from Mississippi, Secretary of the Interior under the first Cleveland Administration, and finally serve as an associate justice of the Supreme Court of the United States. When Lamar took the field in 1872 for reelection to Congress, it was "an epochal candidacy." \*

Throughout the South there was a stirring of hope; Texas had been the first to overthrow military rule, restoring constitutional government in 1871. Lamar won, and Mississippi again took hope. Two years more would pass before alien rule would be overthrown in Jackson, but the campaign was now on, and the darkest days in Mississippi history were soon to pass. Although the same year of Lamar's election to Congress saw the election of Adelbert Ames as Governor of Mississippi, this victory was in fact the death warrant of carpet-bag rule, for by the excesses that now were loosed, the final overthrow of Ames and all that he symbolized became inevitable.

The first victory in the final redemption of Mississippi was won at Vicksburg in 1875, where the corrupt city government was overthrown at the ballot box after the departmental Federal commander at New Orleans, on word from President Grant, refused to send troops to the support of incumbents. The war was now on; taxpayers leagues were formed all over the State, the oppressed whites were mentally arming themselves, and in August the Democrats held a State convention in Jackson that laid the plans for the revolution. In such times it was not too much to expect a thirteen-year-old boy to understand the purpose of that gathering. Returning delegates told of the "dynamic, moving speech from Lamar" which had outlined the objectives and the strategy.\*

The management of the campaign to win control of the

\* Bowers, p. 387.

\* Bowers, pp. 452-53.

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State government had been given to General George, and every one knew that this meant the generalship of the army. "It is rebellion if you see fit to apply that term," commented the *Aberdeen Examiner*. "It is rebellion of a downtrodden people against an absolutism imposed by their own hirelings, and by the grace of God we will cast it off." Cast it off the embattled whites of Mississippi did, the grace of God consisting in part of the iron discipline which George exacted of his men to prevent open civil war, and in part by the refusal of President Grant to send Federal troops to the relief of Ames and his supporters. Despite a "few riots," the election was held without actual bloodshed and the Mississippi plan of redemption was established in the Democratic landslide at the ballot box. Nevermore, at least in Bailey's lifetime, would the control of Mississippi pass again to the Republican party, although, as we will see, sporadic counter revolts would be attempted by the carpetbaggers and the blacks in specific localities. One of these counter revolts would occur in Bailey's home county of Copiah, and he would have a fateful part in it.



## CHAPTER II

### A WANDERING STUDENT

A FEW years after the followers of Lamar and George had succeeded in unsaddling the Republican régime in Mississippi, young Bailey was reaching an age when he would complete the schooling available at Crystal Springs. The Weldon uncles by now had recovered a part of the fortune they lost during the war, and they began to show an interest in the further education of their grandnephew. This interest soon blossomed into an offer of financial aid, provided young Bailey was in earnest in his design to take a college education and to fit himself to be a lawyer.

He was not ready to enter the State university at Oxford when he had completed all the schooling that Crystal Springs offered. At sixteen, therefore, he went to the academy at Clinton for a year's preparatory work. The following fall he went to Oxford and enrolled. The year was memorable in his life, but not strictly from an academic standpoint. Here at last, in the university debating societies and in the student life, was an existence far more worthy of a young man's time than the mere poring over books. In the Phi Sigma Society, which met every Saturday morning, he promptly established himself as an outstanding debater and orator. Liberally supplied with money by his uncles, he now dressed himself as became a good-looking young man of the world, whose impressive appearance, ready speech, and rather arrogant outlook on life masked a great deal of inexperience. Although he could afford any cut of clothes he desired, it was soon noted

that he did not follow the immediate fashion for undergraduates. At the time he was one of a group of students who sought out and rather reverently called on Lamar at such times as he was at home in Oxford between sessions of Congress. By now Lamar had been made United States Senator, and his home, at such times as he was there, was a sort of shrine to the young Mississippians who had come from distant parts of the State. Was it Lamar himself, or some older statesman, whom Bailey, consciously or unconsciously, was imitating in his style of dress? The cut of his hair, the length of his coat, the broad-brimmed black hat were definitely and defiantly ante-bellum. The influence of Lamar, and all he stood and had fought for, was infinitely greater, though, on the young visitor. It was from Lamar that the young man, whose ideas already looked beyond a legal career to active politics, was able to orient his ideas of classical Southern politics to the renewed national outlook. From the example of Lamar he saw that the South was not done for as a factor in the Federal Union; that, without making apologies for the war, and without forswearing the political ideals of the major prophets such as Jefferson and John C. Calhoun, the New South had much yet to contribute to the nation. Nor was, he now learned, the Democratic party dead as a national party. Tilden, it was firmly believed throughout the South, had been legally elected, and nevermore would the country stand for such a steal as the Republicans had made in seating Rutherford Hayes.

But there were other attractions in Oxford than the debating society and the talks, face to face, with Lamar himself. The young ladies of the town were famous for their beauty, and the young freshman from the West who had so early distinguished himself in the Phi Sigma was, despite his youth, a more than fair contender for their society. At first it was an open field, and with so many to admire there was no heady

exclusion at the shrine of a single devotion. Then one day he met the young sister of the editor of the Oxford *Eagle*, Miss Ellen Murray, and each fell deeply in love with the other. The young lady's elders refused to take the matter seriously; at their respective ages both principals were perhaps only beginning the usual series of youthful college romances. But Bailey, at least, was never more in earnest nor more certain of anything than that he had met the one woman whom he wanted to accompany him through life. If the course of true love rarely runs smoothly, the young lady's people might have taken the courtship more seriously, for something happened that now brought on real storm and stress. It was some real, or perhaps just an imagined slight that brought on this lovers' quarrel; at any rate the two parted. The young man's bad temper and proud spirit seized upon some grievance with the university authorities and magnified it, so that he soon abruptly resigned from his courses and left Oxford. Then began his tortuous journey that would lead through two more universities and a separate law school and would end several years later in reuniting with the lady of his heart in the new world of Texas.

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From Oxford Bailey went to Nashville, registering in Vanderbilt University for the spring term of 1881. Here he was restless and dissatisfied, and he decided to go elsewhere in the fall. In this state of mind the University of Virginia appealed to him. Had not Mr. Jefferson considered its founding one of the three major achievements of his life? When he registered at Charlottesville in October, 1881,<sup>1</sup> the University of Virginia was then, as it had been before, the gathering place of students from every part of the confines of the Confederacy.

Then, as earlier and later, it seemed to be a breeding place

<sup>1</sup> Records of the registrar, letter of Virginia E. Moran, May 10, 1930.

of public men in the South. Thomas Woodrow Wilson and John Sharp Williams were only two future statesmen who had been students there immediately preceding. He signed his name as Joseph Edgar Bailey, matriculating first in the schools of Latin and Greek. Several years later he would drop the middle name of Edgar, substituting for it that of Weldon. On his own application, he was allowed to drop these studies and to enter the school of law on February 1, 1882.<sup>a</sup> From the fact that the faculty minutes record him as delinquent in attendance on lectures in both Latin and Greek, Professor Thornton inferred in 1929 that "he was not a laborious student.

"His preparation was probably imperfect," added Professor Thornton, "and his taste did not run to moods and tenses. The university work was perhaps of a higher grade than his training justified, and it is easy to see that entering the law school in the middle of the session, he would be in no position to profit by the lectures in that subject. His withdrawal at the end of March was doubtless voluntary and wise." <sup>a</sup>

But Bailey's withdrawal from the University of Virginia in the spring of 1882 was not due primarily to a distaste for either moods and tenses or the study of law. It grew out of a disagreement that was to him more personal and more real. Among the new students that year was a young Texan from Brenham, Harry P. Lawther. The two early became friends and joined the same debating society. In those years the literary societies were in their heyday, almost the core and heart of undergraduate life. The Jefferson Society was the older; in its annual contest the year before Wilson had won the debaters' medal, and three or four years earlier Charles A. Culberson, another Texan, had won the same honor. But by

<sup>a</sup> Letter, William M. Thornton to Miss Sarah Michie, July 30, 1929.

<sup>a</sup> *Ibid.* Professor Thornton in the same letter adds: "I am sure that you may dismiss as unworthy of belief any rumor that he was expelled from the university."

chance it was the younger or Washington Society which both Bailey and Lawther joined. Lawther's most vivid memory of his new friend was of his appearance and dress. "Bailey arrived wearing a big hat, Prince Albert coat and wearing his hair in the manner of a statesman of the old school." The Mississippian took one of the most expensive rooms offered by the university to students, and promptly lined its walls with a costly though well-selected beginning of a private library.<sup>4</sup>

Despite this slight oddity of his clothes and a disdainful manner at times that seemed to his fellow students to grow out of his belief in his own capabilities, he proved to be popular with his associates. Since he usually had more cash in his pockets than the average student and was rather prodigal in aiding his friends through major financial crises, he acquired the reputation of being generously open-hearted. There was, besides, a generous quantity of sporting blood in his make-up, with tastes and inclinations that were still considered, at least at Charlottesville, as the concomitants of a gentleman. It was not yet a time when athletics were considered the end-all and the be-all of undergraduate life, although there were certain games of skill that were highly valued. Among these games was billiards, in which Bailey was acknowledged to be "the most expert player in the university."<sup>5</sup>

His game was, in fact, "quite beautiful for ease and skill."<sup>6</sup>

As spring approached, the big event in the Washington Society neared, the annual debating contest. It was soon determined that Bailey and his friend from Texas, Harry P. Lawther, a Virginian by the name of Wise, and a student from the Indian Territory named Ainsworth would choose sides and a fitting subject. And now began a tussle of wills

<sup>4</sup> Interview, Lawther, May 14, 1930.

<sup>5</sup> Statement, Professor Nichols, letter to V. E. Moran, May 10, 1930.

<sup>6</sup> Statement of William M. Thornton.

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that revealed the great significance of the society in undergraduate life and much of the temperament of the four contestants. Bailey at once proposed that they debate the tariff question. Lawther as quickly vetoed the suggestion. "I learned that Bailey had been speaking on the tariff ever since he could talk," recalled Lawther, "and I knew he'd wipe the rest of us off the face of the earth with that subject." Wise backed Lawther's objection, and Ainsworth sided with Bailey.<sup>1</sup>

Since they could not agree on the tariff proposal, apparently they could not agree on any other subject. They met often and long, but after days and weeks of futile arguing, during which the dispute veered dangerously near to personal violence, they were still far from agreement. At last, scarcely a week before the contest, they suddenly hit on an issue, suggested by Wise, that all four were willing to accept. This was a highly controverted question in the State of Virginia at the moment, a proposal uppermost in Virginia politics through the efforts of a General McMahon to have the debts of the State "readjusted." The "readjuster" proposal raised a great agitation all over the State, its opponents charging that the scheme was nothing less than a virtual repudiation of the bonds of Virginia. No sooner, then, had the four students finally selected this subject and got to work in earnest in preparation than the faculty learned of their choice. Faced by the prospect of having this wildcat brought into the halls of the university itself, with no idea how much and what kind of publicity the debate might produce over the State, the faculty stepped in and acted promptly and without warning by flatly putting its corporate foot down on it. Not in the Washington Society would undergraduates debate such a subject! Bailey, figuratively at least, blew up. Shades of Thomas Jefferson and the Bill of Rights! If this was the faculty's view on freedom of speech,

<sup>1</sup> Interview, Harry P. Lawther, May 14, 1930.

if this outrage could be perpetrated in the institution founded by Jefferson himself, he would have no more of it. And in March, just prior to the debating contest, Bailey packed his books in his room on the range, gathered his toga of injured dignity around him in disgust, and rather grandly walked off the campus. Lawther and the two other contestants remained, hastily substituting a fourth and a new subject, and Lawther captured the medal in the contest.\*

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Bailey moved at once on Lebanon, Tennessee, where the law school that has trained so many lawyers of the South was ready to receive the young man, provided that he really meant to get down to business in the matter of preparing for the bar. The Lebanon Law School was distinctly professional; here there was little of the distractions of ordinary undergraduate life, and no time to spare for those who might wish to trifle. Strangely enough, Bailey now buckled down to real work, applying himself with such concentration as would have surprised many of his former classmates at Charlottesville, Nashville, and Oxford. Working throughout the summer and the first two-thirds of the following scholastic year, he was ready to apply for his license to practice law by the summer of 1883. When the time came to leave Lebanon he was genuinely regretful at leaving it. In this short space he had come to cherish an affection for this place and these instructors, as his attitude in after life clearly indicated. Perhaps his feelings were in some way mixed up with his final mastery over himself, for it is true that only at Lebanon, at the end of his meandering course through the wilderness of higher education, that he at last found himself.

\* *Ibid.*

## CHAPTER III

### "GONE TO TEXAS"

WITH his formal education behind him, Bailey returned to his home county, applied and was admitted to the bar of Copiah County, and hung out his shingle at the county seat of Hazlehurst. Although he lacked more than six months of being twenty years of age, he now considered that he had reached man's estate, and he promptly plunged into local and State politics.

A relatively new issue was agitating the Democracy of Mississippi, now that the Republicans had been ousted more than eight years from control at Jackson, and the Democrats could afford, therefore, to debate and differ among themselves. This was the matter of curbing the power of the steam railroads. These corporate entities were free to make and break freight rates as they saw fit, and the shippers of the State, notably the planters and the small merchants of the inland towns, were growing resentful of the arbitrary and often intractable attitude of the transport companies. There was an increasing tendency throughout the South and West to regard the railways as the source of all economic maladies. In Texas, for instance, as early as 1876, when the constitution was overhauled, the power of the State to regulate the common carriers had been specified in writing and approved by the voters. Young Bailey placed himself without any hesitation on the side of the more advanced, those who would subject the railroad octopus to State control. To many of the older generation this proposal seemed



a rabid (and if they wanted to be offensive about the matter), a downright Socialistic scheme. When time came to select delegates to the State convention of the party in the summer of 1883, the railroad issue was practically the only one to run on. And since both young Bailey and his father desired to be a delegate from Copiah County, they found themselves ranged on opposing sides of the railway issue. But the son proved to be the more effective campaigner. In showing the need for a State railroad commission he cited facts and figures; among his arguments was the famous Memphis water rate to New Orleans which the railroads put into effect to meet river competition on the Mississippi River. A parallel rail route through the heart of the State not a hundred miles east of the river exacted a much higher rate. This young Bailey cited as an overwhelming proof of the arbitrary and unfair anarchy of the railroad rate-making system. Why should Crystal Springs and Hazlehurst pay the freight bills of Vicksburg and Natchez? The arguments and the oratory were conclusive to the Democrats of Copiah County and the son beat his father in the race for delegate to the State convention.<sup>1</sup>

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But the young lawyer's first major contribution to politics was more local. In the fall of 1883 the Republicans attempted to regain a foothold in Copiah County, preparing throughout the summer and fall preceding the November general election to elect a full slate of county officials. Since slightly more than half of the 27,552 people living in Copiah County were blacks,<sup>2</sup> the local Republican factors believed that the time had come to reassert themselves in this important center. If victory was theirs in the county adjoining the State capital, perhaps the work

<sup>1</sup> Speech at Paris, Texas, April 27, 1912, *Dallas News*, April 28, 1912.

<sup>2</sup> Federal Census of 1880.

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of George and Lamar could be overturned later throughout the State. The Democrats were equally resolved to stamp out this immediate counter-revolt at all costs. Tension increased as the local campaign wore on, and by October both sides were talking of using force. Two weeks before the election the party in power realized that unless desperate remedies were used, the worst features of Reconstruction would prevail again at Hazelhurst; these remedies they decided to use. The result was an election "riot" in which, after the smoke cleared, it was seen that young Bailey had been one of the principals. When Election Day came, the Democrats formed a "procession" of armed men, some ninety of them mounted, and by virtue of this armed patrol the Democrats carried every beat, or precinct, in the county. During the height of the excitement, however, a member of a well-known white family who was thought to be the brains of the Republican campaign was shot and killed.

News of this violence flashed throughout the country, and the remnant of the radicals at Washington now raised the cry once more against the barbarism of the Southerners. Congress convened a few weeks later; the Copiah County riot and one single other disturbance in a Virginia county were eagerly pounced upon by the Republicans. Although both riots were over local or State offices, Congress decided to examine the circumstances and results; the presidential election of 1884 impended and it was charged, at least by the Democrats in Congress, that their opponents were seeking a predicate to throw out the electoral votes of two Southern States on the ground that republican forms of government had broken down in such localities. Early in January, therefore, the United States Senate instructed its Committee on Elections and Privileges to investigate the election riots in Mississippi and Virginia. George F. Hoar of Massachusetts was named chairman of the sub-committee which went in the fore part of 1884 to New Orleans,

from which distance from Copiah County witnesses were subpoenaed and heard. William P. Frye of Maine, Angus Cameron of Wisconsin, Eli Saulsbury of Delaware, and Benjamin F. Jonas of Louisiana were other members of this subcommittee which would now hear, for the first time, of a certain Joe Bailey. Seventeen years later this same Joe Bailey would enter the Senate and a quarter of a century later he would be one of the most important members of this same powerful Senate committee. The sessions of the subcommittee lasted for weeks. Through a host of witnesses the subcommittee was able, more or less, to learn the truth of the matter. In summarizing the findings, Senator Hoar, for the Republican majority, reported:

"A company consisting of about 150 persons was organized under the command of Erastus Wheeler (who was named) major in command. These men were mounted, ninety of them armed with guns, the remainder with pistols buckled around them army style, or hanging in the horns of their saddles. Of this company Mr. Barksdale, the member of Congress from that district, testified:

"The procession, so far as I know, the citizens who composed it, were among the best in the county. A good many of them were planters and men of various professions living in the county.'

"This opinion," added Senator Hoar, "is abundantly supported by that of many other witnesses and controverted by none. This company began its operations about the time debate closed, some fourteen days before the election. . . ."

As one of the accredited attorneys in the bar of Copiah County, Bailey's name was on the list of witnesses whom the subcommittee expected to hear. He refused, however, to go to

\* Senate Report No. 512, Forty-eighth Congress, in "Senate Reports," first session, Vol. 4, p. xvii.

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New Orleans and testify, frankly for the reason that "he would not appear and perjure himself." <sup>4</sup> From other witnesses the committee was able, however, to learn of his part in the happenings in Copiah County. Mr. Barksdale submitted that "doubtless there were some thoughtless, rash young men in the procession, some of whom may have indulged in improper methods to influence the result of the election." <sup>5</sup>

Among these "rash young men" was, unquestionably, "Captain" Joe Bailey, as established by the testimony of Frank N. Sessions and others. In attempting to reconstruct the scene, the investigators learned of the mass meeting of more than four hundred people held at noon of Election Day at the courthouse at Hazelhurst. The climax of the meeting had been reached, it was related, in the passage of resolutions serving notice upon the leading Republican family in the county that its members would be held responsible in the event the election went against the Democrats. For a moment the mass meeting had hesitated to serve this notice, but after one main speech and "a good deal of enthusiasm," Sessions related, the fatal notice had been adopted.

"Was Joe Bailey there?" asked Senator Frye.

"Joe Bailey is the person who spoke," answered Sessions.

"What did you hear Joe Bailey say?"

"Well, in the beginning of his speech there was much applause, so that it seemed as though it was a long while before he could get started off. But after a while, when the music and shouting ceased, he commenced in a moderate tone somewhat and said that they had won a great victory. He says, 'my friends, you have won a great victory.' He says, 'we have got a Democratic stock of officers,' and he says, 'by the next

<sup>4</sup> Recollections of J. W. Bailey, Jr., 1930.

<sup>5</sup> Senate Reports, Forty-eighth Congress, Vol. 4, p. li.

election we hope to have a Democratic Congress.' And something about that way he spoke along, something in moderation. . . . And some persons by this time hollered out to the left of the house from where I was, 'tell us what they done in Beat 3' (to which Captain Bailey had been assigned for electioneering purposes)."

Sessions then repeated from memory what Bailey had related of campaign activities in Beat 3. Senator Frye wanted to know if the crowd applauded the recital of these more or less stiff-arm methods.

"Yes, sir, there was much applause in his speech," continued Sessions. "He seemed to be a flowery speaker and tolerably witty . . . and he went on and says, 'my friend Wheeler is a noble hand to electioneer.' . . . Mr. Bailey said it would be well for some persons to go round and see those people who affiliated with the opposition party and were voting different, or were willing to vote different to us, and encourage them to come together and vote with us, he said . . . as he wound up his speech he says, 'if they agree to come back and vote with us, grant them all courtesy and be peaceable with them; but in the event they should fail,' he says, 'then what shall we do?' The house cried out then in much tones, 'kill them out, kill them out.' It was all gloomy before us, so many persons that I could not see who it was, but there was a loud voice said 'Kill them out' after the cheering subsided. . . . Then Bailey said, 'No, I would not advise you to kill them out,' but, he said, 'I believe you will do it without my advice.' "

"Was anything said about the next time having a Democratic President?" asked Senator Frye.

". . . No, sir, it was only the next time that he thought we would have a Democratic Congress. That came in near the close of his speech. I do not recollect about the President."

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"Who is Joe Bailey, a Democrat?"

"I suppose he is. I never had any intimate acquaintance with him. I met him once or twice at Hazelhurst before I heard him speak. He seemed to be a very clever, nice man."

"I should judge so," interrupted Senator Frye, "from his speech."

"Yes, he seemed so," agreed Sessions. "That was about the first of my acquaintance. I had seen him just a few times." \*

When the protracted hearings in which the story of Major Wheeler, Captain Bailey, and the other 148 or more citizens in the procession had been told came to a close, the subcommittee carried its findings back to the general committee at Washington. The Republican majority on the committee recommended the publication of all the facts thus gleaned and hinted at the suggestion that there should be a general investigation of elections over Mississippi to determine "if republican government exists there." This majority report suggested such an inquiry to determine if Mississippi should be denied representation in Congress.<sup>†</sup>

The Democratic minority on the Senate Committee, headed by Senator Jonas of Louisiana, dissented "entirely from the statements and conclusions" of the majority. A more plausible and sinister purpose of the whole junket to New Orleans was voiced by the Democratic minority, especially since the presidential campaign of 1884 was only a few months off. "It is their conviction that the investigation in which they have been reluctantly engaged," declared the dissenters, "was originated and conducted for the purpose of aiding the Republican party in the approaching presidential election by renewing the stories of outrages and crimes so effectually used in former political campaigns and perhaps, if necessary, for rejecting the vote of Mississippi in the electoral college. . . ."

It is noteworthy that beside the publication of the hearings

\* *Ibid*, pp. 364-368.

† *Ibid*, p. xliii.

in a Senate document, nothing more was done about the Copiah County election riot by Congress. Bailey made no appearance before the committee nor ever sought to correct the reports made of his activities by Sessions or others who did testify. While never expressing any pride in the procession and riot, he never was known to express any regret. The whole affair, however, had its unpleasant aftermath, and he very soon recognized that this youthful indiscretion was, in a certain sense, a black mark that would be chalked against his political record so long as he remained in Mississippi. The episode was, he later told J. W. Bailey, Jr., one of the determining factors in his decision less than a year later to leave Mississippi for good.

Sessions could not recollect if Bailey had prophesied the election of a Democratic President in 1884. As a matter of fact, the young attorney was soon convinced that the Democratic Governor of New York, Grover Cleveland, would be carried into the White House in a national Democratic victory. Bailey knew nothing personally about this reform candidate, but he had high hopes of his success; and so ably did he praise the merits of Cleveland that the Democrats of Mississippi, in the summer of 1884, nominated Bailey as a Democratic candidate for presidential elector from Mississippi. At the time of his selection he was not legally of age, but a full month before his name would be submitted on the ballot to the voters in the November general election, he would have the requisite twenty-one years. There was little danger of the State going for Blaine, but the young orator took the field in behalf of the Democratic ticket from President to constable. And here, at last, he could unburden himself of his complaints of the iniquities of the Republican tariff. He spoke in Jackson and other near-by centers, impressing his audiences with his unusual eloquence and grasp of the principles of the two parties. The Democrats won throughout the nation, and Bailey, as a member of the

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majority in the electoral college, helped cast the vote of Mississippi for Grover Cleveland, the first Democrat chosen for the highest office in the land since the outbreak of the War between the States.

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As the new year opened, Bailey determined to make the move which his own best judgment prompted. In after years, one of his boyhood friends who had moved to Texas four years earlier insisted that he was instrumental in the future Senator's choice of the Lone Star State. "In 1885 I was back home on a visit," this friend recorded, "and saw and talked with Joe about Texas and told him it was the place for young men with brains. I saw he was dabbling in Mississippi politics and told him that Texas was the State of all others for him if he could make good, that Texas needed bright minds to represent her in Congress, but to keep out of Olin Welborn's district, as it would take an old campaigner to swap places with him." \* But there was undoubtedly a more powerful attraction drawing him toward Texas, now that he had decided to break the ties with his home county. Miss Murray, with whom Bailey had been able to resume diplomatic relations some time before, had moved to the new country. Early in the new year, therefore, he set out on a scouting trip westward. Going northward only as far as Jackson, he boarded the Vicksburg, Shreveport & Pacific Railroad and rode almost due west. At Shreveport he transferred to the Texas & Pacific, continuing over the so-called Trans-continental branch that would carry him as far as Sherman.

Texas in 1885, particularly the northern part which he now invaded, was still a frontier country. The older eastern and southern sections contained the preponderance of wealth and population. Galveston was still the metropolis of the State and

\* Letter, H. B. Cooke to J. M. Doyle, Fort Worth, Texas, April 23, 1908.



political control was vested almost wholly in the thickly populated sections of the southern and eastern portions. Only twelve years earlier the rails of the Houston & Texas Central Railway had been pushed as far north as Dallas to form the nucleus of a new trading center in the crossing of the east-west line of the Texas & Pacific. Grayson County, bounded on the north by the Red River and the Indian Territory, was thought to contain the seed of the future large city of northern Texas. Grayson County already had a larger population than the average of its neighbors. Sherman, the county seat, was an old, settled community that predated the War by many years. The southward thrust of the Missouri-Kansas-Texas Railroad in 1870, which had crossed the Red River into the county, brought a fresh flow of immigrants from the North and East, now that a through rail route had been opened by way of the St. Louis gateway. The business leaders of Sherman had felt, however, that the destiny of their city was irresistible and they had refused accordingly to make concessions which would have brought the Missouri-Kansas-Texas Railway into Sherman. As a result the railroad company had laid out a rival town ten miles nearer the river and named it Denison. By 1885 the whole tier of black-land counties in the north-central part of the State had begun to be settled with great rapidity, the older sections of Texas furnishing fully as many of the new settlers as the older States east of the Mississippi River. In the same year that Bailey decided to locate in this part of Texas, the publishers of the *Galveston News*, the oldest business institution in Texas, sensed the tide of immigration that was converging on this country some two hundred to three hundred miles to the north, and established another daily paper at Dallas, to be known as the *Morning News*. Already many of the more enthusiastic citizens of Dallas believed that their city would forge ahead of its rivals for commercial supremacy in the new cotton empire.

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In Sherman, Bailey found a number of former Mississippians—friends or relatives of people back home. At first this seemed to be the place to settle. On inquiry, however, he learned of the promising and newer settlement of Gainesville, only a few miles farther westward, the county seat of the adjoining county of Cooke, where he was told the bar was less crowded and the services of a young lawyer would be in greater demand. After a few days' inspection, his decision was made. Returning to Hazelhurst, he wound up his affairs, which were not extensive, and a few months later said farewell to the land of his birth.

Gainesville in 1885 had a more than promising future. Located only a few miles from one of the major crossings of the Red River, it seemed destined to become the center of a large trade with the Indian Territory, especially as the pressure increased to open that rich and fertile land to white settlement. Bailey was fortunate in forming a partnership shortly after his arrival with C. B. Stuart, one of the most aggressive and talented lawyers in the community. Soon he felt his business affairs were in such shape that he could ask Miss Murray to be his wife; they were married in 1886 and were soon settled in a home of their own which immediately became a center of social life in the community, particularly since both of the young couple were of a hospitable and friendly nature and enjoyed entering into the simple pleasures of the community.

As in Hazelhurst, however, the practice of law was unable to hold the complete interest of the young lawyer. There was in Gainesville at the time a local political feud of many years standing, and Bailey wisely decided that he would not identify himself with the partisans of either group. Instead he began journeying throughout the surrounding countryside, making friends among the cotton farmers who were flocking there, and not neglecting the diminishing ranks of cattle raisers who were fast being pushed westward or out of business. It was

noticed that he readily took the cases of the law firm which necessitated trips to adjoining county seats.

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The Texas State elections of 1886 were at least of educational value to Bailey. As in Mississippi the Democratic party held undisputed sway in Texas, the real decision in all but presidential elections lying within the precinct, county, congressional district, and State conventions. The year was uneventful in State politics so far as personalities were concerned. The Old Alcalde, O. M. Roberts, was succeeded as Governor by Sul Ross, and for all that a new observer could see, there were no disturbing personalities in sight who might upset the even tenor of party control that had existed since the overthrow of the carpetbag régime of Edmund J. Davis. There was a certain unwonted fire and vigor in the young East Texan who had been named Attorney-General, but in 1886 the name of Jim Hogg was still largely that of an unknown figure. The real issue alarming the State was the demand that the saloons be run out of Texas. In 1887 the issue of State-wide prohibition was submitted to the voters in the form of an amendment to the State constitution. Bailey now espoused this radical cause, taking the stump in a series of debates and speeches that carried him over most of North Texas. The ardor of his advocacy, in which he even read from the immortal words of Mr. Jefferson to prove that the sovereign people of a State might abolish the right to sell and drink liquor, was only a part of his appeal to his audiences. The charm of this handsome young man's oratory and the striking effect of his garb which evoked idealized memories of antebellum Southern glory were such as to catch and hold the attention. The peak of his campaign was reached in a series of debates with another young man looking up the ladder of political fame, the Hon. Cone Johnson of Tyler, who decried this

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dangerous madness of the moment that would deny personal liberty and destroy property rights. The prohibition amendment was buried at the polls, however, and so decisively that it would not again be submitted for almost another quarter of a century.

Although he had been on the unpopular and losing side, Bailey had not wasted his time in this canvass. The elections of 1888 came on and the Democrats of the Fifth Texas Congressional District met in McKinney later that summer to say who should represent them in Congress. The Hon. Silas Hare of Sherman, rounding out a long career of public service as district attorney and district judge, now sought this final honor. He was admittedly the strongest candidate and his nomination was conceded before the convention met, but there had been one of those tactical errors that can return to plague the winner so unexpectedly and so fatally. During the course of his canvass Judge Hare had slighted or affronted the "Free Grass" element in the party, the group of Democrats opposed to turning over all of creation to the new, although numerically stronger, element of farmers. As a result this minority group succeeded in locking the convention so tightly that it was soon seen that Judge Hare could not receive the necessary two-thirds vote. After hours of stalemate in which no accredited candidate was able to muster enough strength to win, Joe Bailey of Cooke was turned to as a dark horse. The movement gained immediate headway; in a burst of enthusiasm one delegate after another expressed a willingness to accept the Gainesville man, and from all appearances the convention was about to nominate him when he asked for the floor. Explaining that he could not legally accept the nomination if it were tendered him because he was not yet of sufficient age to sit in Congress, Bailey, at the same time, made an earnest and moving plea that Judge Hare be given the honor. Shortly afterwards the deadlock was broken, Bailey's

plea was answered, and Judge Hare was sent to Congress. The action of the "young interloper" from Mississippi made a deep impression on the delegates; it would have great effect two years later when Bailey would make his first bid for the political favor of the people of the Fifth District.

In the same year Bailey attended, at Galveston, his first State Democratic convention in Texas. It was far from an exciting gathering, since its main business was to renominate for two years more the present State officers. Prohibition had been laid away in a profound sleep, and there seemed to be now no great issue left to disturb the Democracy. But in sending Jim Hogg back to the Attorney-General's office for two more years, the convention unwittingly became a party to the manufacture of the greatest issue in Texas politics in forty years. The twenty or more months that now intervened were only a lull before the storm, and if the old-line leaders of the party were innocent of the portents, Bailey, at least, was studying the barometer of popular feeling. Such study was now his primary concern, for he had made his decision to stand for Congress at the next election.

## CHAPTER IV

### NEW NAMES AND FACES

THE year 1890 was epochal in each of the three rings of politics which an ambitious candidate for Congress must study. There was about to take place on the national stage one of those periodic revulsions of sentiment which, in this instance, would give the Democrats control of the lower House and foreshadow the capture of the Senate and the Presidency as well two years later. In State politics a real revolution impended. The small farmers and merchants of Texas would find their savior and field marshal in James Stephen Hogg. Under his banner the forces of agrarian unrest were soon to wrest control of the political machinery, imposing reforms of a disturbingly economic complexion. It would mark the passing of the older generation in the Democratic party of Texas, the conservative remnants of the Confederate era who had been in control of the State since the end of Reconstruction. In the more parochial sphere of the Fifth Texas Congressional District, Bailey himself would be the cause of a complete overturn. When the smoke would clear, the name of the twenty-seven-year-old lawyer of Gainesville would have to be included in the roster of new political stars shot into the sky by the events of 1890. In distant Nebraska another young newcomer that same year would also win a seat in Congress—William Jennings Bryan.

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As the year opened, the searing, scarifying, all absorbing political issue in Texas was not the "damnable heresy" of free

silver. Nor was it a question of whether Congress should loosen the protective tariff where, in the words of Colonel Sterett, "It pinches the withers of the people." Before the year was out the Democratic party of Texas would pronounce the faith on both of these national, and therefore slightly academic, issues. The immediate question was: "Shall the great railroad octopus be shorn of its talons, so long," the advocates of rate regulation insisted, "grappling the flesh of the defenseless farmer and rancher?"

To this incendiary language of the halls of the Farmers' Alliance demanding a State Railroad Commission, the old régime answered in kind. "Will the Conservative elements of the party," asked the *Dallas News*, "see the State government without a struggle converted into a huge octopus of special bureaus, special commissionerships and special inspectorships, with arms and tentacles stretching in every direction and applying its inquisitorial and suctorial powers to every form of business and industry, to every recess of private life and to every attribute of personal liberty? Time will show."<sup>1</sup>

But time alone did not give the answer. Time, indeed, was but a minor figure beside Jim Hogg, the massive, rough-tongued Jacksonian firebrand who four years before had descended upon the State capitol at Austin from the red, sandy, pine-covered hills of East Texas to become the State's Attorney-General. Hogg was an impregnably honest soul, lacking neither humor nor common sense, and his appeal to the crowd was all the more powerful because of his religious conviction of the rights of the under dog. This thirty-nine-year-old "Tyler Statesman" talked the hand-hewn speech of the boys at the forks of the creek. In leading their successful revolt within the State party that year Hogg became their idol forever, a legendary hero who has grown, in the manner of legends, with the years.

<sup>1</sup> *Dallas News*, Editorial, February 18, 1890.

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Even in his political decline ten years later, after Bailey had reduced his power to a shadow, he could still throw a Democratic convention into transports of laughter and yells as he jibed at his opponents and successors. Elected Attorney-General in 1886, Hogg shortly instituted a series of lawsuits against insurance companies, against rate-making pools of the railroads, and against the landholding subsidiaries of the same transportation companies; thus he revealed himself in the eyes of the older, more conservative elements of the party as a dangerous and marked man. As the last of his two years in the Attorney-General's office came into view, his reputation already overtowered the brave but gentle figure in the Governor's chair, Sul Ross. This noted Indian fighter of the era just succeeding the Republic of Texas was the beau ideal of the conservatives. Although his fame rested on his rescue of the famous Cynthia Ann Parker, Sul Ross was also an ex-Confederate officer, having been the youngest Brigadier-General on the Southern side. As his term of office drew to a close, he appeared as a worthy replica in appearance, manner, and speech, of Marse Robert himself. With his silvered hair, graying mustache and goatee, and with his soft, wide-brimmed hat that seemed to have been dyed black in perpetual mourning for the lost cause, this tall hostage from the past had proven most acceptable to the oligarchy in control of Texas since 1874. It was galling to these same conservatives to contemplate the independent roughshod Attorney-General as his successor in the Governor's mansion. But this succession is exactly what came to pass in the hour when the aroused farmers and ranchers decided that they would create a State Railroad Commission.

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Looking beyond the borders of Texas and viewing the party as a nation-wide entity, it was seen that the emphasis on issues was differently placed. In this larger sphere the Democrats were



to overturn the Republican majority in Congress because of that "iniquitous and most Republican act," the McKinley Tariff of 1890.

Few of the 3,000,000 or more Texans thought much or cared more for political developments beyond the Red River, but at least one Texan took a leading part in the congressional campaign as it was waged in doubtful states. This was the Hon. Roger Q. Mills of Corsicana, for almost twenty years the representative of the Third Texas Congressional District in Congress. Fully as much by his ability as by his seniority at Washington he was a leader of the party, a staunch adherent of Grover Cleveland and perhaps the most able advocate in congressional ranks of the free-trade doctrine. As chairman of the all powerful Ways and Means Committee of the House during Cleveland's first term, he had led the attack on the protective tariff in that attempted downward revision of schedules which was known as the Mills Bill. With the return of the Republicans to control of the House in 1888, coincident with Harrison's election to the Presidency, this Democratic charge had failed; but Mills, now on the minority side, continued as the most trenchant critic of the protective system. The Republican answer to the Mills Bill had been the McKinley Tariff which, in its more excessively high schedules, played into the hands of the Democrats in the congressional election of that year. As a concise and forceful exponent of the low-tariff position, Mills had been granted space in several periodicals of national circulation in which to present the position of his party, while in the field he was used as a heavy battery throughout the Middle West. When the returns of the November election were in, the issue seemed to have been squarely met, for the Republicans had been turned out of control of the House, and even Major William McKinley himself, father of the tariff bill, was among those who had lost their seats.

Scarcely two weeks after the congressional elections, Henry

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George arrived in Texas on the Chautauqua trail. "The man who has contributed most to this glorious result," said the great Single Taxer, whose heart was also large enough to encompass the free-trade doctrine, "is that sturdy Texas statesman, Roger Q. Mills." In the buoyancy of victory, George had no hesitancy in assuring an interviewer that "this victory over protection has come to stay, unquestionably. I don't believe the American people will ever go back to the tariff delusion again." \*

### §

But on the more constricted stage of the Fifth Texas District, that block of twelve counties in the north-central portion of the State, the issues were less sharply defined. Two personalities rather than burning questions were what the voters there were now asked to decide between; the one a young, likeable lawyer new to the country; the other a veteran public servant many years his senior, Judge Silas Hare of Sherman. Bailey was determined that the contest should be strictly an affair between gentlemen, especially now that the man he sought to unseat was the same candidate whom two years before he had saved from defeat in the nominating convention of the congressional district. And thus their campaign was conducted to the end, with Bailey maintaining, under even the most trying circumstances, a grave and considerate courtesy toward his elder. At the start he announced that he would not invade Judge Hare's home county, since he felt that "the people of Sherman and Grayson County as a whole ought to vote for their fellow citizen." \* In view of the fact that Grayson County contained both Denison and Sherman, two of the five larger towns of the district, and would cast twenty of the eighty-one votes in

\* *Dallas News*, November 13, 1890.

\* *Recollections of Joseph W. Bailey, Jr.*

the deciding convention, this was more than lip service to courtesy.

The controverted issues of both State and national campaigns impinged, however, on the campaign in the Fifth District, and Bailey side-stepped none of them. He was, he told his audiences, first of all in favor of the free coinage of silver at the ratio of sixteen to one. How the phrase rolled and boomed from thousands of hustings that year throughout the South and West! It lent dignity and statesmanship, in its sonorous verbiage, to the desire gnawing at the vitals of hundreds of thousands of small farmers and merchants who dreamt longingly of some magic wampum string that would not tighten periodically and choke them. And Bailey was, of course, sworn to destroy the vicious tariff that taxed the farmer for the benefit of Eastern manufacturers. But—much closer to their hearts—Bailey announced his support of Jim Hogg's Railroad Commission; had he not been fighting even against his own father for such a regulatory body, back in old Mississippi before he could even vote?

As a result of his residence he could reasonably expect, at the outset of his campaign, the fourteen votes of Cooke County in the deciding convention. He had ruled himself out of the adjoining county of Grayson, so it was obvious that to win he must appeal successfully to a majority of the Democrats of the remaining ten counties. He began, therefore, a hand-to-hand canvass of the territory which equaled in size almost half of the State of Mississippi. But first he paused to invite Judge Hare at Washington to join him in a series of debates before the people of the district. The incumbent refused in the beginning with the usual excuse that his duties required his presence in the Capital. But soon disturbing reports began to filter into the congressman's office; soon his closest supporters telegraphed that the "situation has become urgent"; and pausing only long enough to introduce a bill to erect post offices at Gainesville as

well as Denison and Sherman, he hurried the fifteen hundred miles home to Texas. Now almost frantically he accepted the challenge to debate with his opponent in a joint canvass of the district.

They met first at Lewisville in Denton County in the forepart of July. It was largely a gathering of farmers that afternoon and Judge Hare knew almost every man, or his father, by his first name. So much did he feel at ease that he fell at once into the colloquial language of banter and intimacy.

"Listen, you woolly-headed hardshells," Judge Hare began, and his audience chuckled in friendly recognition, "you all know me well. I helped you run the buffalo out of this country, helped you lay corduroy roads through the stickiest bottoms, and served you well as district attorney and district judge and now in Washington fighting them damn Republicans." <sup>4</sup>

Howls of approval and delight. For an hour he harangued them in an old and familiar voice; then it was Bailey's turn. The audience at first was hostile. The second speaker was somewhat pompous for such a clean-shaven youngster; but his appearance was arresting. His voice, likewise, was in his favor, a clear, perfectly controlled organ of moderate range, but of almost musical tones, particularly in the lower register. But neither voice nor appearance alone, nor together, account for the reversal of sentiment that Bailey now wrung from his hearers. He won largely by that supreme flattery of the forum which he had learned so early: a convincing manner of respect, of even deep-seated reverence, for the assumed intelligence of the audience. Bailey left (it was inferred) all jesting to his amiable opponent; he addressed himself instead to these farmers in their jeans as if they had been the Supreme Court of the United States; and what was more, he compelled them for the moment at least to accept his estimate of their grave concern for the Federal Union.<sup>5</sup> The canvass in other precincts of the county

<sup>4</sup> Recollections of John J. Simmons.

followed, and on the night of July 11 the rivals concluded before a mass meeting on the courthouse lawn in the town of Denton. The next day the precinct conventions of the Denton County primary were held, and by nightfall it was seen that Bailey had won the votes of this populous county.

This first victory outside of his home community was important because of its psychological effect on nine other counties yet to speak. During the next two weeks the two candidates were seen together behind a buckboard riding westward into Wise County. Already the veteran had begun to lose heart, but he fought on: no fight is finished until the last vote is counted. By the early part of August all but three of the counties had spoken. Although the score now stood forty votes for Bailey and only twenty for Judge Hare, the contest was far from decided. Since the historic two-thirds rule of the Democratic party prevailed even in congressional conventions, Bailey's simple majority might yet fail him in getting the nomination. Eighteen of the remaining twenty votes to be instructed were to be found in Collin, the populous black-land county of which McKinney was the county seat. Obviously the crux of the fight lay here, for with its eighteen votes Bailey would have a two-thirds majority and several votes to spare; without those votes the convention might easily become deadlocked, preparing the way for some dark horse to walk off with the honor. Collin was the last of the twelve counties to hold its primary, which was set down for August 23, and Bailey began therefore an almost house-to-house canvass in the three weeks intervening.

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In the meantime the State campaign had run its course, ending in a blaze of speechmaking and jubilation at Galveston in

\* Recollections of John J. Simmons.

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the middle of August. Bailey had not dared to desert his canvass in Collin County; thus he was not present to witness Jim Hogg's clamorous nomination for Governor, nor that of young Charles A. Culberson of Dallas, who had received the toga of Attorney-General, after having been chosen personally for this place by Hogg.\* The State convention was a far different one from that of 1888, now that the radical wing of the party had triumphed. Old and familiar faces were missing; it was strikingly a young man's convention, the majority of the delegates being under thirty-five years of age. And more remarkable still, it was shockingly patent that "a man's service in the War would not help him to office." †

But to the defeated conservatives the greatest mischief of all done at Galveston was the State platform. There was, heading the list of planks, the endorsement of the amendment to the State constitution to provide for a Railroad Commission. The amendment now would be carried safely at the general election to be held in November. There was also a plank calling for more rigid enforcement of the anti-trust laws of Texas passed the year previous. And for the guidance of the national Democracy, Hogg dictated a plank demanding the free and unlimited coinage of silver at the ratio of sixteen to one. Thus free silver was made an article of faith in the Texas party, to be reaffirmed at each succeeding convention until the Texans six years later at Chicago would see it accepted by the national convention of the Democratic party. These proceedings were viewed by spokesmen for the old régime with misgivings bordering on disgust. The shrieks of joy acclaiming the nomination of Hogg for Governor were exceeded only by the enthusiasm released by the actual counting of the ballots; the sound at last diminished, only to be revived in a contrapuntal chant of old-fashioned hog calls. The Dallas

\* Madden, p. 14.

† Dallas News, August 17, 1890.

*News* was openly contemptuous; the convention represented, it said, "a stiff sort of semi-revolutionary Democracy . . . with communistic proclivities."

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But while the oyster parlors, the surf beach, the bars, and the convention proper entertained the boys at Galveston, Bailey continued his pursuit of votes in Collin County. On the night before the primary, Judge Hare, who had refused to continue the joint canvass, came to McKinney to meet the Gainesville man in final debate. The crowd before the courthouse on the public square was openly for Bailey, but he continued to act and speak with the same gravity as before his more doubtful audience at Lewisville. He repeated the commanding issues in State and nation; then he whipped out a copy of the *Congressional Record* and read the missteps which his opponent was charged with having made at Washington in casting the vote of the district. To the end he scrupulously refrained from reflecting personally on the incumbent, but when Judge Hare rose to speak, certain of Bailey's admirers were less considerate. Cat-calls and jeers greeted the judge's opening sentence; the heckling continued, and as he attempted to speak against the storm, the crowd cried him down. Instantly Bailey was on his feet: "Free speech, my fellow countrymen, is one of the sacred guaranties embedded in the Constitution!" Finally his appeal got a hearing for his opponent. But as the judge talked on and on the crowd grew impatient. Bailey, they wanted Bai-ley! At last, exasperated and now finally convinced that his cause was hopeless, the Grayson County man slammed his notes on the table and unburdened himself in a final defi: "All right, take your damned Joe Bailey, and as far as I am concerned, you can go to Hell with him!" \* The next day the Democrats of Collin

\* Recollections of John J. Simmons.

County spoke, pledging their eighteen votes to Bailey, and the race was ended.

Early in September the citizens of Gainesville held a barbecue and jubilee ratification in honor of their new first citizen. Thousands poured in from all of North Texas, "the largest collection of Democrats ever seen in Cooke County"; \* Hogg's new Attorney-General, the elegant Charles A. Culberson, journeyed from Dallas to be a guest speaker. As one of the new stars in Texas politics he was eyed curiously by the crowd. But as charming, gracious, and suave as this future "young Christian governor" appeared that day—his slightly Byronic, almost Grecian profile enhanced by the military carriage of his tall body—he was eclipsed in public interest by the real hero. Colonel William E. Sterrett, home from his duties at Washington as correspondent for the *Dallas News*, visited the new shrine at Gainesville. He was almost—but not quite—overcome by the mixture of civic pride, adulation, and boasting that prevailed in the community where Bailey had arrived only five years before as a stranger.

"The Hon. J. W. Bailey is," wrote the newspaper man, fumbling for words as he sought to catch the elusive impression, "well, he is hardly a pet, nor yet a hero, but something of both, with a dash of the chevalier. . . . 'See Florence and Die' has been translated in Gainesville to 'See Bailey and Skip.' " Then the recording devil allowed his memory to run back a year or so to the day when, on the streets of Dallas, he first saw the newcomer from Mississippi. "I was amused," recalled Colonel Sterrett. "He stood on a street corner in Dallas with some choice political spirits, and his entire posture seemed to be a studied pose. Of heroic build, with smooth face, long hair and longer coat, all at variance with prevailing styles, he struck me as a political masher, a sort of statesmanlike dude stuck on his intellectual shape, and when he announced for Congress I cher-

\* *Dallas News*, September 26, 1890.



ished a secret wish that the youngster might get some of the starch taken out of him. But there is (today) neither ostentation nor affectation about him. His bearing and manners are natural. The long hair and long coat belong to his unique character.”<sup>10</sup>

In distant New York State another newcomer to party gatherings was also being termed a dude in politics that year: Theodore Roosevelt.

<sup>10</sup> Sterett, Gainesville, January 2, 1891.

## CHAPTER V

### A PERFECT NIOBE

SUCH is the clumsiness of the elective system that Bailey, having received the formal mandate of the people of his district in November, had to wait until the very close of the next year before he could appear in the halls of Congress. Meanwhile political forces failed to halt out of sympathy with his enforced idleness. In January of 1891, Hogg was installed as Governor. Since the people of Texas in November had amended their constitution to permit it, Hogg now drove through the legislation creating the appointive commission empowered to fix the rates and services of the railroads. He promptly offered the chairmanship of this "communistic proclivity" to John H. Reagan, junior United States Senator from Texas, who was "the really important pioneer in the fight for Federal regulation of railroad rates" <sup>1</sup> as indicated in his part in the passage of the Interstate Commerce Act of 1887. With equal speed Senator Reagan accepted and resigned his seat at Washington. The State legislature in the meantime had adjourned and Hogg now had a free hand to name a new Senator.

By every standard of party preference the seat of Houston and Reagan should have gone to Congressman Mills. The "immortal" Richard Coke, senior United States Senator from Texas, was ageing fast, and Mills' elevation would, so the conservatives reasoned, add to the luster of Texas, as well as be a reward for Mills' distinguished service in the lower House. But the large,

<sup>1</sup> Sullivan, "Pre-War America," p. 199.

perspiring figure in the Governor's office, his feet in slippers as he beat against the approaching summer with a large palmetto fan, was no stickler for precedents. Instead he reached down into private life and appointed his fellow townsman, Horace Chilton of Tyler. The new Senator's chief qualification, it seemed, was his intimate friendship with the Governor since boyhood, coupled with the fact that he had "persuaded" Hogg to run for Governor the year previous. Even Hogg's closest supporters asked for an explanation. Irritated at this criticism, Hogg privately defended his selection; he said, or rather it was blatantly and doggedly noised that he said, "I appointed Chilton to a Republican Senate because he is not embarrassed by a Confederate record." For the next ten years Hogg was denying this quotation. Whether a malicious lie hatched by his enemies, as Hogg maintained, or simply the most stupid slip of the tongue in the annals of Texas, it was doubly offensive; not only had Mills served the Confederacy as an army officer, but Reagan also had been postmaster-general in the same government. Until the legislature should be called into special session there was, however, no appeal from Hogg's decision, and Chilton went to Washington where his credentials were accepted.

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But Mills, apparently, could have another consoling honor, one not within the box of favors at the Big Governor's disposal: the speakership of the House of Representatives. As the new Congress convened at the end of 1891, the Democrats again were to take control of the larger chamber. The country naturally assumed that Mills would be named Speaker since, next to former Speaker John G. Carlisle, he was "the most popular man in America with the rank and file of Democrats." <sup>a</sup> The entire delegation from Texas, including the newly elected repre-

<sup>a</sup> Clark, Vol. I, p. 273.

sentative from the Fifth District, were behind Mills' candidacy. But his ambition was threatened, it was seen, even before Congress assembled, by the growing cleavage in the national party over the issue of free silver. The silver men, spurred on by success in widely scattered States of the West and South, including Texas, were laying plans to capture control of the party. Was it wise, or safe, therefore, to entrust party control in Congress to a man whose intimacy with Cleveland brought him under suspicion? Mills had put all emphasis on tariff reform, but he was strangely silent on free silver. Thus the speakership became a goal post in the struggle that would end only at Chicago five years later. In November the *Dallas News* viewed the prospect. This gold standard, pro-Cleveland organ professed to believe that "the defeat of Mr. Mills for the speakership as the peculiarly recognized champion of tariff reform would place the Democratic party on the road to political bankruptcy."

How?

"Such virtual repudiation of the tariff issue would be an emphatic invitation for the cause of free and unlimited coinage of silver to assert itself to the utmost as the basis of Democratic alignment. (And) the Democratic party has never been further apart on any single question than it is on the silver question." \*

Submerging his free silver prejudices for the greater glory of Texas, Bailey went on to Washington some days in advance of the opening of Congress on December 5 to do his part in the election of Mills. Mrs. Bailey and the children would follow. Already another new member of Congress, the Hon. William Jennings Bryan, was on the ground, also soliciting votes for a candidate for Speaker. But the Nebraskan's candidate was not "that sturdy Texas statesman." In 1891 Bryan scarcely knew the language of free silver, much less had espoused its doctrine, but he was ambitious to be named on the important Ways and

\* *Dallas News* editorial, November 28, 1891.

Means Committee, which appointment was within the province of the Speaker. Bryan's tactics to gain this end did not include a working agreement with the Texans. Instead he allied himself with the ambitions of William Springer of Illinois. But a third candidate, Charles F. Crisp of Georgia, was soon disclosed as the most formidable opponent to Mills. When the Democratic caucus met, Mills failed to win on the first few ballots, and the contest drew out menacingly. No Speaker had been elected at the hour when by law Congress convened, and all work had to be suspended until the new Democratic majority could reach a decision. The Springer forces now realized that it would be either Mills or Crisp, and they considered how best to conserve their interests. Soon they formulated a proposal: if Crisp would give the chairmanship of the Ways and Means Committee to Springer, the Middle Western bloc of votes were his for the asking. But there was another specific proviso in the offer: Crisp must also agree to name Bryan as a member of the same committee. The Crisp forces at first hesitated, then accepted.<sup>4</sup> And with the Springer votes the deadlock melted. By nightfall, on the twenty-ninth ballot, Crisp at last forged ahead of Mills. The Georgian now climbed rapidly toward the necessary two-thirds majority and just before midnight "a shout went up, a mighty shout,"<sup>5</sup> and Crisp had won. And in that victory the Democratic party, in a curious and devious way, had in fact started rolling down the steep road to political bankruptcy.

It was a bitter result for Bailey. With Mills' election he could have had his choice of committee assignments, including more particularly that on Coinage, Weights, and Measures where, in view of his advocacy of free silver, "his friends were anxious to have him." Instead he was assigned to Public Lands; it was almost an insult, for every one knew that outside of post

<sup>4</sup> Clark, Vol. I, p. 273.

<sup>5</sup> Sterett, December 7, 1891.

offices and military camps the Federal Government owned not one acre of the enormous public domain of Texas. Even in drawing for a seat he seemed unlucky, for he found himself on the Republican side of the House in that strip emptied of Republicans, now that their ranks had shrunk to only eighty-eight members.

## §

Bailey's youth itself—he was the youngest member of the new Congress—was enough to attract attention. But his costume of "the old style politician of fifty years ago," which he had no idea of abandoning, brought instant notoriety. To many observers and appraisers of the new assembly this eccentricity of dress was matched only by the distaste which another newcomer, the Hon. Jerry Simpson of Kansas, had avowed for socks. Responding to overt leers and downright comment the young Texan not only defended his choice of clothing, but took the offensive as well against one positive rule of fashion: the use of formal dress in the evenings.

"I have always held that society had no right by its dictum to regulate the style of a man's clothes," he said. "Ever since I could afford it, I have dressed just as I do today. I have worn the same black broadcloth suit, cut in the same style; the same style of broad shirt front and a white tie; the same kind of collar and a broad black felt hat. I wear these clothes regardless of the day of the week or the hour, or of society's dictation, because I believe they become me and they please my wife.

"There is a rule of society which prescribes that a dress-suit shall not be worn until after 6 o'clock in the evening. If I choose to wear a dress-suit, I would feel free to put it on in the morning or evening, or at noon, just as the fancy dictated. . . . The rule prescribing dress originated in the old customs of the courts of nobility. We are simply imitating those old aristocrats

when we bar a person out of society because he does not dress in the fashion. If men showed more independence in the matter of dress, they would soon be able to break over the society restraints, and after that anybody could wear whatever he chose to, so long as he conformed to the law of the land and wore something. I shall continue to wear, so far as I am concerned, whatever suits me and at the same time meets the approval of my wife." \*

As refreshing as this sounded, the rebel against the dicta of fashion might easily have been dismissed as a charming but none the less freak, had he been willing to rest on such a bid for fame. But there was obviously something beneath the black felt hat and behind that broad shirt front; Bailey's maiden speech in the House, given in January, gave warning of it. His very choice of subject disclosed an arresting independence of mind. Having suffered the autocratic rule of Czar Reed in the preceding Congress, the Democrats, now that they were in the majority, proposed to give the Republicans some of their own medicine; to this end the Democrats again imposed the rule that the five-man Committee on Rules should have almost dictatorial power to shut off debate when the party leaders decreed. The safe and normal course for a novice would have been to discuss either the tariff or the money question; a few weeks later Bryan would make his first flight from the old ark of the tariff. But Bailey elected instead to try his lance on this rule of procedure. The House was in a hubbub when he rose. He had to utter only a few words, though, to catch the ears of those near by, and as he proceeded in skillfully balanced phrases, the clear baritone voice rolling his words outward and upward in a forceful scansion of prose, the circle of interested listeners widened. Soon the whole House was listening, and from the galleries came the compliment of silence. He spoke only ten

\* Bailey papers, scrapbook.

minutes, under a rule fixing that time limit, but the effect was extraordinary.

"Mr. Bailey of Texas made the speech of the day," wrote Colonel Sterett. "He delivered himself in fine voice and the best of style and he was interrupted with applause as he made his points. When he had finished members from all over the House gathered around him and warmly shook his hand. It is said that never in years has any young man and a new member made such a fine impression and been treated with such consideration. The Republicans as well as the Democrats congratulated him. I have never seen any man in Congress get a greater compliment in making (his first) speech." \*

Well might the Republicans applaud, but the speech fell on hardened hearts as far as the votes of the Democratic majority were concerned. Not until seventeen years later, when the tables were once more reversed and Cannonism was a war cry, would the sentiments of Bailey's speech be adopted by the House of Representatives. It was, nevertheless, a forensic triumph, and the acclaim lured him out into deep water. Even as some babes lisp the catechism when they begin to talk, Bailey seemed to have been weaned on the rules of order; he considered himself a parliamentarian of the first order, and what is more, he was adept in making his way through the mazes of parliamentary procedure. As the session continued he found it easy to get the floor to kill, by one method or another, the private bills of various members. His favorite tactic was to refuse unanimous consent, particularly when a pension was proposed for a veteran of the Union Army. These gadfly maneuvers were especially irritating to the majority, for many Democrats were representatives from States above the line.

Then, to the amusement of the Hon. Thomas B. Reed of Maine, who now sat meekly on the minority side, the Texan began insisting on a technical quorum whenever any bill was

\* Sterett, January 30, 1892.



passed by the House. A less felicitous demand could scarcely have been resurrected from the parliamentary graveyard of the House in view of the bad blood still felt between members of the two parties since the day in 1890 when Czar Reed imposed this identical requirement upon a helpless Democratic minority. Likewise with unsparing logic and even more offensive intellectual arrogance Bailey attacked the merits themselves of certain local bills. Thus when the California delegation asked for a Federal Commission to insure a process of mining in California that was clearly prohibited by the laws of that State, Bailey pointed out the subterfuge. When an appropriation item for a survey of a proposed international railway in Central America came before the House in the consular bill, he denounced its passage. This proposal was, he declared, "a favorite project with that class of statesmen who are dazzled with the prospect of magnificent aggrandizement and a brilliant foreign policy, the dangers of which the founders of the Democratic party warned us." \* And he concluded by calling for "that clause of the Constitution which authorizes this."

So the young man was concerned about the Constitution! A veteran of his own party, McCreary of Kentucky, interrupted rather petulantly. "This appropriation is as much authorized by the Constitution," he said, "as the \$1,500,000 that have been donated by Congress to the World's Fair at Chicago." That, surely, would dispose of the youngster's rhetorical flourish. But McCreary might as well have tried to calm a bull with a bandanna handkerchief.

"I have regarded this World's Fair appropriation," replied Bailey, "as no more nor less than a legislative burglary. . . . It is not Constitutional. It violates the basic and fundamental principles upon which this Republic was founded." \*

Hear, hear! Was it possible that this bull-headed yearling

\* *Record*, 52d Congress, first session, pp. 5810-11.

\* *Record*, 52d Congress, first session, pp. 7073-74, 7087.

from Texas was opposed to the World's Fair appropriation? A Republican plug with a card-index memory jumped into the breach between two members of the majority. Now he was reading the 1888 platform of the Democratic national convention recognizing "the Chicago Exposition as a national undertaking and urging Congress to appropriate"; and who was Bailey to defy the supreme council of his own party? In fact, the newcomer from Texas was growing entirely too bold, even forward, to suit the temper of the House. The old members who had applauded his first speech were not ready to extend him the privileges of seniority. And at least one member of the minority grew extremely weary of Bailey's reprise on "basic principles." Representative Chipman of Michigan rose to administer what he considered the young man most needed.

"The gentleman from Texas is a perfect Niobe here," said Chipman, "he is all tears. . . . The burden of his complaint is that the Constitution is being violated and its sacred provisions disregarded. All throughout this discussion he has assumed the duties of wet nurse to that venerable institution and to admonish members on what their duty is and to inform us of what true Constitutional law consists. . . . After forty years of experience in the courts of this country and experience in different legislative bodies, I am as yet unprepared with absolute certainty to assert what is in the Constitution. I have, of course, my opinions, but I dare not undertake to assert them in the presence of this audience, in the presence of men who have grown gray in the service of this country."<sup>10</sup>

The House had scarcely ever before heard such a dressing down of the bumptious, howsoever kindly intended. But the young man was only partly chastened; he continued to annoy both his colleagues and the opposition with the same tactics. At last there came a reckoning; it was too perfect a chance for the

<sup>10</sup> *Record*, 52d Congress, first session, p. 7087.

House to let slip through its fingers. For Bailey, it now developed, had a private bill of his own, one to grant a right-of-way through the Indian Territory to a railroad company organized by his fellow citizens of Gainesville. The bill was being watched much more closely back home than either the Chinese Exclusion bill or the World's Fair appropriation. And when Bailey's bill turned up on the calendar on April 13 a quorum of the House suddenly failed to register itself when the vote was taken. "No quorum, Mr. Speaker," piped up Representative Chipman. It was the introductory cue to a farce interlude.

"Mr. Speaker, I will ask for the yeas and nays," said Bailey, instantly aware of the trap but determined to take his medicine unflinchingly, "I am not willing that a bill I offer shall be passed without a quorum, any more than a bill offered by any other gentleman." Then the fun began. For nearly two hours Bailey's bill was in the hands of old, practiced players who carried it through a mad, flashing scrimmage of parliamentary play. Both players and spectators were vastly amused. At last old Dave Culberson, Chairman of the House Judiciary Committee, and father of the new Attorney-General at Austin, intervened out of pity for his young colleague. On Culberson's appeal the disciplinary Mr. Chipman withdrew his demand that enough votes be cast by those present to register a quorum, and the bill was passed finally.

The next day Bailey rose on personal explanation, half apologetic ("I have studied to avoid giving offense to my colleagues")—half defiant ("What have I done to deserve this impeachment but follow what the Constitution itself demands")? Then he concluded with a passionate appeal "from the angry protests which assail me here to the sober judgment of my own constituents, a brave and free people, confident of their approval. And with that for my shield, the shafts of

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malice and revenge fall spent and harmless at my feet." The House thundered as he sat down; as the record reads, the simple word "applause" follows. But it is entirely possible to believe that the applause was faintly ironic.<sup>11</sup>

### §

The session wore out to an inconclusive ending. On the larger issues of the tariff and free silver the session had been a stalemate. Already the spotlight, for the country at large, had switched to the impending presidential election, while in Texas the work of Congress had been forgotten in the renewed outbreak of the war between the Hogg followers and the conservatives. Curiously enough, Bailey had not spoken on the floor on the great money question; his silence even brought complaints from home where the bimetallist sentiment had grown stronger since 1890 and where Bailey in a few months must stand again before the people. As a result, Colonel Sterett was asked to send word from Washington that Mr. Bailey had not "yielded to the anti-silver idea." Then the congressman was quoted directly: "I was for the free and unlimited coinage of silver when a candidate, and am just as earnestly in favor of it now."<sup>12</sup> But a more enduring service to the cause of free silver was vouchsafed to Bailey. Fate selected him as the instrument to initiate Bryan into the new faith. On the very day in March that the Nebraskan by his debut speech on the tariff "easily placed himself among the big men of the country"<sup>13</sup> Bryan sought out Bailey, informed him that he was going "to take the subject up right away," and asked Bailey's aid in choosing a proper course of reading in the creed of free silver. So together the two young congressmen went imme-

<sup>11</sup> *Record*, 52d Congress, first session, pp. 3257, 3579, including quotation from *Washington Post* of April 14, 1892.

<sup>12</sup> Sterett, January 23, 1892.

<sup>13</sup> Sterett, March 17, 1892.

diately to a bookstore where Bailey obliged as a sympathetic tutor.<sup>14</sup>

As the session ended, Bailey was ready to face the people of the Fifth Texas District. His reception in Congress had been mixed, but he had undoubtedly placed himself, in the short five months, above the mediocre level. That year Champ Clark ran successfully for Congress in Missouri, asking and getting the seat of a one-termmer who, in Clark's opinion, had been too modest and retiring. Clark used the example of Bailey, Bryan, and a few others to prove that it was possible during a first term in Congress to make "reputations which attracted the attention of the country."<sup>15</sup> The party leaders might balance his abilities and defects critically; he had certain traits of leadership—courage, vigor, alertness; he was a first-class speaker and he knew parliamentary law and tactics. But on the opposite scale must be placed his intractability, his arrogance of manner, his almost disdainful pride in his own judgment; and copybook maximists shook their heads sadly. But the people of the Fifth Texas would not fret themselves over such a nice balancing of points. To them it was enough to know that he had not bowed the knee to effete fashion in dress, nor yielded to the anti-silver forces. Even the *Dallas News*, "the goldbug journal," assured them of his success in Congress: "Bailey is coming to the front in his courageous and unsparing opposition to the pension frauds."<sup>16</sup> Even Judge Hare now attested publicly to Bailey's "brilliant record"; and so, without opposition, he was nominated again that summer to serve his second term at Washington.

<sup>14</sup> Hibben, p. 142; *Washington Post*, March 17, 1892; Sullivan, Vol. I, p. 119.

<sup>15</sup> Clark, Vol. II, p. 399.

<sup>16</sup> *Dallas News*, editorial, March 21, 1892.

## CHAPTER VI

### CLEVELAND

IN 1892 the Democratic party had little choice but to nominate Grover Cleveland once more for President. Political expediency seemed to dictate this step long before the convention met in Chicago in June, for without him the party could not hope to consolidate the gains of 1890 and press on to control of both the Presidency and the Senate. But Cleveland's leadership, due chiefly to his inflexible bitterness toward free silver, was highly objectionable to a large and growing element within the party. His nomination was accomplished therefore only at the expense of an interstate compromise, a self-imposed truce between the two factions that, for practical purposes, amounted to stultification of convictions and emotions. With what unfortunate results the next four years would reveal.

In Texas that year the dominant wing of the party under Hogg stepped aside to give the Cleveland men a free hand at Chicago. Thus the Texas delegation was composed of gold-standard men. That this was rank truckling to expediency and not indicative of Texan sentiment was seen in the purely State campaign which now ensued, the most savage internecine struggle since reconstruction, the famous Hogg-Clark campaign for Governor. While it is true that this contest was waged primarily over the Texas Railroad Commission, Hogg's second triumph vindicated free-silver sentiment in Texas as well as the railroad regulatory body.

In the spring of 1892, when the legislature had at last been

called into session, Congressman Mills was elected to displace Hogg's appointee, Senator Chilton. Although a haunting phrase had campaigned in Mills' favor, "not embarrassed by a Confederate record," Mills' intimacy with Cleveland had actually been in his favor, now that it was accepted by even the free-silver men in Texas that Cleveland would once more head the party, with excellent chances of being returned to the White House.

But lest there should be any misunderstanding in the future over the real position of the majority wing of the Texas Democracy, the State convention later in the summer declared:

"While we yield to the wisdom of a majority of the National Democracy in making reduction of revenue taxation the chief issue in this campaign, in accordance with the policy that it is safest to make the struggle to secure one reform at a time, we nevertheless reaffirm the Free Silver stand taken by the Democratic party of Texas in 1890."<sup>1</sup>

### §

To the casual observer that day in March, 1893, when Cleveland again became President there seemed to be no surface reason why the Democrats could not continue the armistice that had won the election and thereby make the most of their opportunity. For the first time since the Civil War both branches of the legislature, as well as the executive, were Democratic. But the will to win had imposed too great a strain; the armed truce cracked even while the mild flutter and the perfunctory good wishes of the inauguration were still on the air. Judged by pragmatic standards, the second Cleveland administration was a failure. Greeted by the opening chords of a nation-wide panic, it would end to the strains of social revolution. The four years would be stained with untold economic suffering; even the

<sup>1</sup> *Dallas News*, August 17, 1892.

President's one important achievement was a passive one, the delay, and merely the delay, of a settlement of the silver issue. Despite his courage and his honesty, Cleveland was not able to effect either of his two major proposals, a serious reduction of the tariff, or a genuine system of civil service. If the first foundered in "party perfidy" at the hands of his Eastern Democratic foes, as Cleveland charged, his civil service crusade bogged down in the same pervasive spirit that had made his nomination possible. For, having won the postmasterships at the cost of temporarily abandoning their free silver convictions, the Western and Southern Democrats now saw no reason to leave the spoils of office to the vanquished. In fact, the President's stand on patronage and civil service, not his championship of the gold standard, was the immediate cause of the antagonism which flared up with his return to the White House, the prime cause of which would sour into hatred toward him on the part of the rank and file of Democratic congressmen.<sup>a</sup>

Even before the first year of the Administration had ended, Bailey broke with the White House; the break, significantly enough, came over this question of Federal patronage, although its roots were to be found in the antagonism which Cleveland displayed all too bluntly toward the advocates of free silver. One of Bailey's closest political and personal friends, Nat Gunter of Grayson County, wanted to be named collector of customs at El Paso. Bailey had prevailed upon eleven of the thirteen Texan Representatives to support Gunter, and he had, as well, the endorsement of the senior Senator from Texas, Richard Coke. But Representative Cockrell of the El Paso district had another candidate for the same place, and Senator Mills, who could speak to the President directly, sided with Cockrell. As a result, Gunter was not appointed, and Bailey was furious. He now burned all bridges between himself and

<sup>a</sup> Recollections of Cleveland, Sterett, *Dallas News*, 1924.



the White House and, in addition, chalked up a score to remember against Senator Mills.

"I have heretofore carefully refrained from criticising Mr. Cleveland and his cabinet," the thirty-year-old Texan declared in a public statement, "but I cannot refrain from saying that the appointment of Mr. Davis signifies that whenever an opportunity presents itself, the Administration intends to discriminate against Democrats (who are) in favor of free and unlimited coinage of silver. . . . It could hardly be considered strange, however, that Senator Mills should be able to control Texas appointments. He has evinced his willingness to support the President, right or wrong, and without regard to his own sentiments. I am not ready to go that far. I am a Democrat, and as such, of course, I will be glad to support the recommendations of a Democratic President whenever I can do so consistently with my sense of duty to my constituents, but I am not ready to sacrifice my own convictions and the convictions of my people to the demands of any power on earth.

"If in pursuing what I believe to be for the best interests of Texas and the entire country I incur the hostility of Mr. Cleveland, I shall regret it, but I shall not alter my course, and I do not shrink from its consequences." \*

Of all the President's recommendations, that to repeal the Silver Purchasing Act of 1890 was the most obnoxious to the silver men; it served to touch off a holocaust of oratory in support of unlimited coinage, in which Bailey and his pupil from Nebraska declaimed fully against the outrage. And when talk could do no more, both Bailey and Bryan voted defiantly against repeal. Precarious as the break with the President had been to Bailey's hold on the Fifth Texas District—after the honeymoon year he could not name even the postmaster of the lowliest village in North Texas—it proved his political fortune in the

\* *St. Louis Republic*, October 27, 1893.

halls of Congress. As his colleagues' antagonism toward the President rose year by year in a purple, apoplectic tide, Bailey's stock was carried upward on the crest until, at the end of the Administration, he would become the titular as well as the actual leader of his party in the House. Bryan, on the other hand, paid more dearly for his rashness; at a word from the President the dictator of the Democratic party in Nebraska had Bryan's political head chopped off in the nominating convention of 1894 and Bryan's congressional career was at an end.<sup>4</sup>

But the strangest achievement of the Administration was the Wilson Tariff Act of 1894. Here the contradictory views, the irreconcilable interests of Eastern and Western Democracy met head on. The struggle was resolved finally in a compromise which pleased no one, not even the voters, who soon swung the pendulum back to Republican control of legislation. The tariff act contained two controversial principles, on both of which Bailey was ranged against the man in the White House.

Although old in the history of tariff legislation, the doctrine of free raw materials was now for the first time written into a tariff measure as sponsored by a Democratic President. This high-sounding name was that given to the old Whig device of protection whereby manufacturers are allowed to import their crude materials free of duty, while their finished products are protected against foreign competition. This "Cleveland heresy," as Bailey later termed it, was naturally more acceptable to the seaboard Democracy, with its need of industrial support, than to the Democrats of the West and South who produced, among other raw materials, wool, hides, and timber. The "doctrine" had been expressly approved, however, by the national convention of 1892 dominated by the Cleveland forces. In denouncing the McKinley Tariff the convention had endorsed the efforts of the House Democrats in 1891 "to modify its most oppressive

<sup>4</sup> Hibben, pp. 154-55.

features in the direction of free raw materials." But whatever Bailey may have felt at this time about the doctrine, he remained, like Bryan, true to the platform utterance and voted for one free schedule after another on raw materials.

Ultimately the Senate defeated Cleveland's tariff views. Even the House revolted and, figuratively, slapped the President's face on the second issue. The rider to the act providing for an income tax was, in the eyes of many conservatives, a revolutionary one, a long step toward downright communism. This, clearly, was the voice of Populism, though it might be the hand of Democracy. During the darker hours of the Civil War the Northern States had resorted to the income tax; but the triumphant plutocracy had immediately repealed it when the crisis passed. Not only was an income tax, especially in times of peace, a form of "robbery of the successful and rich to line the pockets of the unfit," a dangerous principle of government in itself; but it was more—an attempt to undermine the protective-tariff system under which the United States had waxed rich. For if the Federal government was to tap the great and growing reservoirs of accumulating wealth, its need for large customhouse receipts would diminish correspondingly, and with it the greatest justification for a protective system. Or so, at least, the frightened conservatives regarded the income tax in 1894 as Bailey and the other radicals imposed it. Had it remained a law, it might have disputed with free silver as a major issue throughout the country. But the Supreme Court of the United States in 1896, in one of its more famous five-to-four decisions, declared the law unconstitutional. Thus by the arm of the judiciary another "communistic proclivity" was seemingly buried, just at the time when the Interstate Commerce Act of 1887 and the Sherman Anti-trust Act of 1890 were also being ground to a nullity in the same sanctuary. Fifteen years later, under greatly changed circumstances, the Democrats,

through Bailey, would resurrect the income tax, to see it finally become incorporated into the law of the country.

## §

The congressional elections of 1894 rolled into place, and when the votes were counted, the Democrats once more were declared the minority party in the House. Czar Reed now resumed his place as Speaker. For the third time Bailey received the commission of the people of his district. In Texas the gubernatorial succession was effected tranquilly, almost silently, in the heaviest contrast to the tempestuous scenes of Hogg's ascent to power. Culberson as Attorney-General since 1890 had proven an apt pupil in the Hogg tradition, recapturing more than two million acres of public lands from the railroad companies and successfully defending the Railroad Commission before the United States Supreme Court where its validity was upheld. He was now handed the governorship by Hogg. A new and relatively unknown figure now succeeded to the attorney-generalship, M. M. Crane of Cleburne. As for Hogg, there was, of course, the additional prize of United States Senator, should he want to take it. Senator Coke was up for reelection and the hour of his generation was long past; a frown from the retiring Big Governor would be enough to finish him. But Hogg had other plans; the senatorial matter was, he said, "a chestnut with a hole in it." Later he reflected truthfully, "I guess I could have had it if I wanted it. But I have filled a higher office; I have been Governor of Texas twice, you know. As for the Senate, I never cared to go to that place." \* Instead he insisted on justice at last for his old friend Chilton, who that year defeated the senior Senator for the nomination. Hogg retired to the side lines, taking up the practice of law in Austin.

Even with the House lost to the Republicans, the Cleveland

\* *Dallas News*, July 6, 1903.

Administration might have made such a showing during its last two years that the country once more would have continued the Democrats in power in 1896. But this required a more synchronized pull by all elements of the party at Washington than was possible. And added to engine trouble there was the mutiny of the crew which increased as the end drew nearer.

The crack-up, therefore, was hardly unexpected, although Bailey and his free silver colleagues scarcely realized that in wrecking the ship they would strew Democratic hopes in bits from one end of the country to the other. Two acts, and two only, of the executive's met with Bailey's approval. One was the blustering Venezuela affair in which Cleveland with sweeping bravado preserved South American sovereignty against the perfidious designs of England. The other was Cleveland's withdrawal of the treaty annexing the Hawaiian Islands from consideration by the Senate. But with these exceptions the Texan was severely critical of the "maladministration of the outgoing President." \* He caught up and repeated the current sneer of "this snivel service," characterizing Cleveland's objective of reform as a "colossal humbug." † One of Cleveland's civil service commissioners was Theodore Roosevelt, a young Republican from New York who held a place on the commission by virtue of its bipartisan nature. And, when the occasion arose, Bailey struck at the executive directly on a matter that was personal as well as official.

In 1895 the Hon. Thomas F. Bayard of Delaware was rounding out a distinguished public career by serving as Ambassador to Great Britain. Secretary of State in Cleveland's first cabinet, he had been selected in the second term for this premier post in the diplomatic service. In accordance with the almost universally accepted belief that a foreign Ambassador can spend his time to no better advantage than by addressing schoolboys, His

\* *Record*, February 23, 1897.

† *Record*, February 23, 1897.

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Excellency went down from London one August day and by invitation spoke to a graduating class in a school in Boston, Lincolnshire. The exercises over which he presided were, the Ambassador reported later, "of a simple and informal nature, and I made a short prefatory speech and handed over the prizes. . . . In the afternoon we adjourned to a public hall or hotel. . . . Toasts were drunk and I responded. So far as I was concerned, everything was impromptu, and a kindly, humorous, postprandial tone prevailed. . . . I made the journey at some personal inconvenience, only hoping to strengthen ties of friendly good will." But fatally enough, at least for strengthening the ties of friendly good will between Congress and the President back home, the Ambassador overlooked the presence of one obscure fellow in his audience. "It seems," the Ambassador, in the same letter of explanation to the Secretary of State, continued, "a reporter was present, but I did not see him." Thus it was that the reading public of America soon were treated to the following observations, made August 2, 1895, on English soil:

"The President stands," His Excellency was quoted as having said postprandially to his foreign audience, "in the midst of a strong, self-confident, and oftentimes violent people—men who seek to have their own way. It takes a real man to govern the people of the United States."

A few months later Mr. Bayard took a much longer journey, this time to Edinburgh, where, in a formal address to a society of scholars, he poured oil on a sea that was already blazing:

"In my country I have witnessed the insatiable growth of a form of socialism styled Protection," declared the Ambassador, "which has done more to corrupt politics, to banish men of independent mind from public councils and to lower the tone of national representation than any other single cause. Protection now controlling the power of taxation, (that power) has

been perverted from its proper function of creating revenue to support the government into an engine of selfish profit allied with combinations called trusts. It has thus sapped the popular conscience by giving corrupting largesses to special classes, and it throws legislation into the political market where jobbers and chafferers take the place of statesmen."

Infuriated, the Republicans could scarcely wait until Congress reassembled in December to introduce resolutions aimed at the impeachment of Ambassador Bayard. The Democrats were immediately placed in a quandary; as historic defenders of the low-tariff position they were expected to relish the sentiments of the Edinburgh speech; former Speaker Crisp did point out that it was "a clear and able one against the pernicious doctrine of Protection." \* But the earlier, more postprandial speech in Boston was not so easily defended. For months the affair was dragged through Congress. By spring it was seen that impeachment was hardly possible under the law, but Congress did have the right and power by solemn vote to censure the Ambassador of the President of the United States. Some of the older Democrats in the House objected; Representative McCreary opposed this "unprecedented invasion of the rights and authority of the President." \*

§

At this point Bailey took the stage and outstripped his more cautious elders. He began by saying that if he "could have controlled the matter now under consideration," he would not have brought it to the attention of the House. For, he admitted, he did not think it proper for the House to scrutinize remarks made by foreign representatives of the government. But since the matter was before the House, he would voice his convictions. "The precise question," Bailey declared, "was not the

\* *Record*, December 28, 1895.

\* *Record*, March 18, 1896.

Ambassador's views on the tariff." The Texan could even overlook the Ambassador's "gross exaggeration of the degradation of American politics." But the Boston speech, to his way of thinking, presented a "much more serious question." Then after weighing all the defenses that had been brought forward in behalf of the Ambassador, he concentrated on "the precise question."

"Mr. Bayard was extolling the President," said Bailey, "and in order to exalt the magistrate, he defamed the people. He sought to prove Mr. Cleveland's greatness by the fact that he governs a people who are difficult to govern. . . . (In that he committed) an offense not merely against good taste and diplomatic etiquette but also against common sense and sound patriotism. . . . But, Sir, the characterization of our people as violent is not more offensive than the statement that we frequently need to have our will obstructed. That the President should be praised for obstructing the public will is in itself subject to the most severe animadversion. The President, Sir, is our servant, not our master . . . and the man who will stand before the subjects of a monarchy and stigmatize the citizens of this great Republic . . . is unworthy to represent this country anywhere or in any capacity." <sup>10</sup>

The House acted, 192 approving the resolutions of censure while only 59 upheld the President's appointee. Bailey voted with the majority. If the anti-Cleveland Democrats of the House sought a leader, they were now to find him in the forthright young man from Texas. This speech alone underscored his qualifications. In the five years of service at Washington his reputation had altered greatly; the eccentricity of dress had been forgotten as his eloquence, his parliamentary skill, and his intellectual capacities had appealed increasingly to his colleagues. From the rôle of gadfly annoying members of his own party he

<sup>10</sup> *Record*, March 20, 1896.



had been transformed into their voice, their knight in shining armor. And the lance that he tilted against the ogre in the White House—that assured his primacy beyond question—was made of pure but free silver.

As the Cleveland era drew to its end, the money issue overshadowed all other discussion in Congress. The debate in Washington in the spring of 1896 only forewarned of a mightier contest which would soon rage throughout the country. There was no more persistent, no more effective advocate in Congress than Bailey. By this time his argument for free silver had shifted from earlier, more emotional grounds of reasoning; no longer was he seeing simply a conspiracy against the white metal. His appeal now had surer economic footing. The weakness of gold as the single source of money, he argued, lay in its insufficiency.<sup>11</sup> In the face of the facts of history, he was largely correct. Who in 1896 could foresee the discovery of new sources of gold in the Yukon and in South Africa? But right or wrong, Bailey knew that the temper of the country demanded that the money question be decided soon. On the eve of the presidential campaign, while many a Republican and not a few Democratic leaders were still hopeful of another comfortable straddle on this issue, he was reading the times correctly.

"Gentlemen of the majority," he declared, "your party might as well face this question and our party might as well face it. . . . Does the Republican party intend in its national convention to face this question fairly, or will it resort to cowardly and disgraceful evasion of it? As the time approaches when the question ought to be decided, the Republican leaders manifest a disposition to shrink from its decision; but, Sir, unless I mistake the present temper of the American people, it would be better for your party to decide it boldly, although you decide it wrong, than it will be for you to trifle with it. Millions of

<sup>11</sup> *Record*, December 28, 1895.

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American voters believe in the single gold standard and will cheerfully support a party which avows its intention to maintain it. Millions of American voters believe in the bimetallic standard and will enthusiastically support a party which promises to restore it; but there is nowhere a handful of self-respecting American citizens who will cordially sustain any party which fears to tell the world on which side of this great question it stands. The country knows that you believe in the single gold standard, and it expects you to have the courage and candor to say so." <sup>18</sup>

<sup>18</sup> *Record*, June 11, 1896.

## CHAPTER VII

### CANDOR AT CHICAGO

IN the summer of 1896 the attention of the country was centered first on St. Louis where the Republicans would gather at the end of June, and then on Chicago where a few weeks later the party of Jefferson and Jackson would choose a standard bearer other than Grover Cleveland. As the time approached for the Texans to select a delegation to Chicago, it was obvious that the masters of the party would not countenance again the compromise of four years earlier. The voice and vote of Texas would now be heard in an unequivocal demand for the free and unlimited coinage of silver at the ratio of sixteen to one. Two years had passed since Hogg retired to private life, but his control seemed unchallenged as the presidential convention assembled at Austin early in June. In his general staff surrounding him were Governor Culberson, Chairman Reagan of the Railroad Commission, Senator Chilton, and the Attorney-General, M. M. Crane. The gold-standard men under the leadership of George Clark foresaw the outcome and, as anticipated, withdrew to hold a rump convention which would send a futile rival delegation.

But Hogg's supremacy now received an unexpected jolt. Bailey's influence in politics had been spreading far beyond his home counties; his defiance of Cleveland and his championing of free silver at Washington had begun to endow him with the first crude outlines of the folk hero to thousands of Texans

who had never seen him. The Hogg chieftains, scornful, however, of congressmen who had never held State office, were not prepared for the popular demonstration which greeted Bailey in the convention at Austin. When the ballots were counted for delegates at large, the Cooke County man had been given the largest vote of any of the four chosen to head the delegation. He had made his first raid into the Hogg domain, and it had been successful. Instantly tongues were wagging; surely Bailey's ambition was now reaching beyond the bounds of the congressional district. It could be nothing less than a place in the United States Senate. "This much is settled right now," wrote one observer. "While (Mr. Bailey) has not formally announced for the Senate, he said to me during the recent silver pow-wow that it would be useless for any man to deny that he would like to represent Texas in the American House of Lords."<sup>1</sup>

The Texas delegation was charged with another objective at Chicago in addition to the acceptance of the free silver banner by the national party. This related to the tariff policy of the Democracy. The loudest fulminations at Austin, in fact, were reserved for the tariff ideas which the outgoing President had enjoined on both his party and on Congress. The "Cleveland heresy" of free raw materials must now be renounced by the supreme council of the party. Reagan lead the denunciation of the heresy adopted in 1892 and wrote the following plank in the Texas platform:

"We believe that the present tariff law (the Texans declared), "which lets raw materials into the country free of duty and levies heavy duties on manufactured products, thus subjecting our agricultural and pastoral classes to competition with the world while it enables the rich manufacturers by means of combinations and trusts to extort their own prices for their goods

<sup>1</sup> Thornton, Austin, July 4, 1896.

from the people, violates the Federal Constitution as well as the fundamental principles of the Democratic Party." <sup>3</sup>

Armed with this clear statement of creed, the Texas delegation prepared to leave for Chicago. In the meantime the Republicans met at St. Louis and nominated Major William McKinley and, in all candor and courage, met the money issue squarely by placing themselves behind the gold standard. Although a few of the Texans arrived in Chicago on Saturday, the Fourth of July, the main body of the delegation reached there on Sunday, "very cocky, all smoking red hot for free silver, and as dirty as if they had been travelling in a cattle train." <sup>4</sup> They were immediately heard and seen in hotel lobbies and other public gathering places; so conspicuous, in fact, was one Texas delegate that Colonel Sterett pretended not to know him. "One of the demonstrations in the hotels today," wrote the correspondent, "was Albert Burleson of Austin. I was never so shocked as I was to see him in the hotel with clenched fists far above his head, defying the golden light. . . . On this occasion there were men who nudged me and asked where he came from and I told them he was from Michigan." <sup>5</sup>

The rump delegation of Gold Democrats arrived the same day under the guidance of Clark. One trip around the lobbies was enough, though, to convince these men that their trip had been futile, and they decided to return home without even presenting their credentials.

For two days there had been talk at various headquarters of Bailey being named temporary chairman of the convention. But on the congressman's arrival on Sunday he immediately stopped this movement. In the interest of party solidarity he insisted on excluding himself, so clearly aligned with the free silver faction,

<sup>3</sup> Quoted, *Record*, June 24, 1909.

<sup>4</sup> Sterett, Chicago, July 5, 1896.

<sup>5</sup> *Ibid.*

from any personal prominence before the convention. It was expedient, he felt, to avoid taunting the gold standard faction, especially now that the silver men would easily control the deliberations.

"In fact Mr. Bailey does not want this convention to do one thing that will drive the Gold men out of the Party or exasperate them," wrote Colonel Sterett. "He is very solicitous about the integrity of the Party, and though he and his people have won, it would be wrong to ostracise or antagonize politically those who disagreed on the financial question. As he said, there are a great many more things in Democratic principles than the mere question of gold or silver." \*

### §

"Mere question," indeed! Neither Bryan, who was hard at work behind the scenes, nor the main body of Texas delegates were prepared to be half so self-effacing or solicitous over the integrity of the party. On Monday the Texans met in caucus to assign parts for the convention. Culberson as Governor was made chairman of the delegation, while Reagan, doubly sound on the tariff and free silver, was named Texas representative on the great convention committee on platform and resolutions. Then the sixteen votes of Texas were formally pledged to Richard P. Bland of Missouri for President; in view of his veteran and unsullied record in behalf of bimetallism, any other choice seemed inconceivable to the Texans. Not once did the name of William Jennings Bryan occur to any in the caucus for the presidential nomination.

Up to this moment, the gathering of Texans had been unusually harmonious. Then, almost as an afterthought, Senator Chilton proposed that the delegation should support Bryan for temporary chairman of the convention. The head of the

\* Sterett, Chicago, July 5, 1896.

National Committee, it developed later, had prompted the suggestion to come from the Texans as a means, apparently, of burying the Nebraskan with kindness. Hogg at once seconded Chilton's proposal. Bryan was, he said, "a most profound thinker, a most lordly orator and a most beautiful man." Judge Reagan followed with "encomiums not as beautiful as Governor Hogg's, but just as intense," and then several of Hogg's old reliables trailed in with bouquets for the Boy Orator of the Platte. \*

Bailey lay low until the eulogies were finished; then he pounced. "Mr. Bryan is unsound in Democratic principles," said the man who had been Bryan's tutor on free silver four years earlier. "Mr Bryan is not a Democrat," continued Bailey. Recalling their joint service in Congress, he added that Bryan had voted against the repeal of the ten per cent tax on notes issued by State banks, although the national platform of 1892 had called for such action; Bryan had, he said, further advocated the government ownership of railroads and telegraphs. But these were only minor disqualifications for temporary chairman beside Bryan's one unpardonable weakness: his readiness, announced long before the Chicago gathering, to bolt the ticket if its makers should fail to embrace free silver. "He told me so himself," declared Bailey with moving conviction. This was enough for even the blindest Hogg partisans; memories of the nearly disastrous bolt of the Clark forces in 1892 were still sharp in the minds of these men so far from home. And after Bailey spoke the delegation refused to act on Chilton's suggestion, although Chilton was empowered to deal further and finally on his own judgment with the inner circle of the convention. Only, Senator Jones of Arkansas, chairman of the National Executive Committee, must understand that the name of William Jennings Bryan for temporary chairman could not,

\* Sterett, Chicago, July 6, 1896.

in fact that it must not, be written in on this blank check signed by the Texas delegation.'

A direct challenge had been thrown down to Hogg by Bailey, and the congressman had won. It was time to look for the first desertion in the Hogg ranks, and Colonel Sterett cannily regarded the Governor of Texas. "Culberson did not open his mouth," he noted, "but it is said that he agreed with Bailey." \*

Thus the Texans went into the big tent. Soon the platform was under construction and Reagan brought back news of the sort most gratifying. Not only was the majority report unmistakable on the issue of free silver, but the tariff plank as well was wholly to the liking of the Texans. The latter had occasioned considerable argument, and the pleadings of Bailey were responsible in part for the victory in the reversal of the free raw material stand adopted four years earlier. As adopted by the convention, the tariff plank declared that "duties should be so adjusted as to operate equally throughout the country, and not to discriminate between class or section. . . ." \*

Progress having been made thus far, Bailey was all the more unprepared for the event which happened three days after the Texas caucus. For Hogg's "most lordly orator," in closing the argument for the free silver plank, stampeded the convention, including all but one of the Texas delegation. When the balloting began, the leaders of the delegation struggled to keep their votes true to Bland of Missouri; but when the Missouri delegation itself went over to Bryan, they gave up the struggle; Democracy had found a new prophet.

### §

Utterly oblivious of any personal consequence, Bailey now gave vent, as in more youthful crises, to his chagrin and disgust;

\* Sterett, Chicago, July 6, 1896.    \* *Ibid.*    \* *Record*, June 24, 1909.



from Chicago he wired a statement to the Democrats of his congressional district announcing that he would not accept a renomination to Congress.

"The National Convention of our party (he telegraphed) has nominated as our candidate for the Presidency a gentleman with whom I disagree so widely in respect to certain fundamental principles of this government that if he should be chosen President, and I should be returned to Congress, my frequent and serious disagreements with him would be inevitable. For the last three years I have been compelled by my sense of duty to antagonize the present Administration on some important questions, and having learned the bitterness of such a struggle, I am unwilling to place myself in a position where it is certain that a sense of duty no less imperative will compel me to antagonize the next Administration on other important questions." <sup>10</sup>

The decision to quit fell most heavily on his constituents, and most cruelly so in Gainesville. Three days later Bailey crossed the border of Texas and at each halt homeward anxious, dismayed groups gathered around him on the depot platforms. Did he really mean it? And to each group he replied that he had reflected maturely and that his decision was final. At Whitesboro he laid low the report that he would not even vote for Bryan: "My loyalty to the Democratic party binds me to the ticket." But loyalty to the fundamental principles of the same party, he continued, "precludes the thought of surrendering them . . . for any office in this country." <sup>11</sup>

No cannons boomed, nor bells rang in Gainesville, as they had the previous day in Lincoln, when Bailey's train pulled in. A pall had fallen over the whole town as if "the train had brought in Bailey's corpse" instead of a young man in his full

<sup>10</sup> Bailey papers.

<sup>11</sup> *Dallas News*, July 19, 1896.

vigor.<sup>13</sup> But the leading citizens of Gainesville were not willing to accept his resignation. They moved quickly; soon telegrams and delegations from the adjoining counties were pouring in, demanding that Bailey reconsider. By afternoon a crowd that overflowed the Cooke County courthouse had taken matters in their own hands, determined to keep Bailey in Congress. A committee was deputed to go to his home and soon he was being dragged tenderly before the mob. When he appeared in the door "the crowd went wild, cheer after cheer went up and when he reached the judge's platform and viewed the scene before him it is not strange that he was deeply moved and big tears could not be restrained."<sup>14</sup> Before such a demonstration the firmest resolves of the thirty-three-year-old statesman quailed. Reconsider he would not, though, until he had first unburdened himself of his deep-seated divergence from the political vagaries of Mr. Bryan. For an hour he retraced these disagreements, from Bryan's advocacy of government ownership of the telegraph to Bryan's failure to vote for repeal of the State bank tax. But when he had finished his confession the crowd loved him still. "The strength of the attachment of the people up here for this young man," wrote a reporter from Dallas, "is indeed remarkable."<sup>14</sup> And at last, having confessed all, he agreed to reconsider, providing that the nominating convention of the district, after weighing all he had said, so decreed. This, a few weeks later, the convention decreed unanimously.

A month later Bailey was addressing the State convention in Fort Worth. Here an impolite member of the audience demanded: "But tell us, what's the matter with Bryan?"

"For thirty days I have been on the stump in this State, speaking for Democratic success, State and National," he answered,

<sup>13</sup> *Dallas News*, July 19, 1896.

<sup>14</sup> *Ibid.*

<sup>14</sup> *Ibid.*

**'with flashing eye but otherwise calm demeanor.' "The sweltering heat and sickness have not deterred me in my work, nor will it. The man who insinuates that I am not loyal to the Democratic ticket, and not loyally supporting it, is a liar." <sup>18</sup>**

**<sup>18</sup> Dallas News, August 20, 1896.**

## CHAPTER VIII

### MINORITY LEADER

HAD Bryan been elected President in 1896, it is reasonable to assume that Bailey would have suffered much the same fate at the hand of another Democratic President that had been meted out to Bryan by Cleveland in 1894. With the prestige of having won, the Nebraskan logically might have asked the people of the Fifth Texas District for the head of the congressman who characterized Bryan as "unsound in Democratic principles." But if the retribution had not been that extreme, it might easily have gone to the extent of relegating Bailey to a minor position in the House. As the election went, however, Bailey was not at the mercy of the new but defeated spokesman of the Democrats of the country; in Congress the Texan was in the stronger position of the two, and it was Bryan, not Bailey, who must come to Canossa before the next presidential campaign. For a time their paths separated, but less than two years later the Peerless Leader would be sitting again by the side of the Texan.

On March 4, 1897, Major William McKinley entered the White House, his last earthly residence; almost immediately he called the new Congress into extraordinary session. The Fifty-fifth Congress met and organized March 15. The Republicans were once more in control of the House, and there was no uncertainty over whom they would select as Speaker. Reed of Maine would again take the reins, resuming his control with a

minimum of excitement over the repetition of the honor. The offering of a candidate for the same office by the Democrats was only a formality. But among the Democrats, of course, the choice of a candidate was significant, for it meant in fact their selection of a leader of the minority. When the party caucus chose the Texan, therefore, as candidate for Speaker, Bailey was the object of genuine congratulations. Not yet thirty-five years of age, and in Congress less than three full terms, he was receiving an unusual tribute from his party associates. But with this election went heavy responsibilities. In the badly shattered state of the fortunes of the national Democracy, much now depended upon the performance of the party in the national legislature. The party had need of a skillful and successful leader in the House.

## §

Before that Congress would run its allotted span of sessions, the question of Cuban freedom would wedge itself into the consciousness of the nation, paralyzing for a time the great social and economic battle on the home front, and playing strangely into the hands of the parliamentary leaders on each side in Congress. In the spring of 1897, however, the Republican majority in Congress was concerned with an older and more immediate question. The chief and sole reason for the extraordinary session, in the eyes of the masters of the Republican party, was to restore the tariff to a real protective basis. Or in the less impartial language of a Democratic partisan, "to liquidate in part the campaign obligation of the distinguished chairman of the Republican National Committee, Mark Hanna."

This instant demand by the Republicans for a higher tariff presented a strange paradox to Bailey as he took up the work of leading the opposition. "It is worthy of remark," he said, "that four years ago we had a presidential election which turned

almost entirely on the tariff question, and yet the Congress then chosen was called into extraordinary session to deal with the financial question. Last year we had a presidential election which turned almost entirely on the financial question, and now Congress is convened in extraordinary session to deal with the tariff question, all of which justifies me in saying that those in authority are not always swift to enforce the decrees which the people render at presidential elections." <sup>1</sup>

With this observation, Bailey then announced himself to be ready; but not, to be sure, to seek vainly to deny the will of the Republican majority. "We only ask," he said, "for a reasonable time in which to expose the iniquities of your measure, to expose your privilegeing of incorporated greed to still further prey upon the wasted strength of the American people . . . to expose the vicious error of the protective system." <sup>2</sup> Beyond this reasonable time Bailey would not employ the rights of the minority to delay the work of the dominant party. In fact he did not conceive of the opposition as solely an instrument of obstruction. That, he felt, was not the way to rebuild the fortunes of the Democratic party; its reconstruction must grow out of a positive, not a negative program of political action. But this view was not accepted by all of his fellow members of the party either inside or outside of Congress. It shortly provoked a stinging criticism which found its way into print.

"The leadership of young Mr. Bailey in the House is the leadership of old, old Mr. Reed, and the Democrats who submit to it might have as consistently and more sensibly voted for Mr. Reed for speaker," <sup>3</sup> the criticism read.

Bailey rose on April 15 on a point of personal privilege; he defined his exact position, now that his attitude toward the

<sup>1</sup> *Record*, March 19, 1897.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Record*, April 15, 1897.

Speaker and the Speaker's party had been so "greatly misunderstood by some and so greatly misrepresented by others."

"I recognize that the Republican party has a large majority in this House," he said, "and will therefore be held responsible by the country for the good which it fails to do, as well as for the evil which it does; and in my judgment the Democratic party neither desires nor expects that its representatives here will resort to useless and factional obstruction to prevent the Republican majority from carrying its policies into execution." This attitude of reasonableness, he recalled, was being urged by such "arch Democratic" organs as the *New York World* and the *Atlanta Journal*, as well as by Senator Jones of Arkansas. And he concluded with this plea: "Let us rise above the narrow and illiberal partisanship which fights for the mere sake of fighting and let us invite even our adversaries to make the country prosperous, if they can." \*

Prosperous, that was the blessed state in which every American yearned to be in the spring of 1897; when, for that matter, have the American people, or any people, not? But Bailey hit upon the happy and exact shibboleth that was later to dominate the concern of both political parties to the exclusion of practically all other matters.

"Prosperity," he declared, "that is the one question in the minds of the American people, that is the supreme issue. If you gentlemen of the majority fail to bring it, the country will dismiss you from its service." \*

But if Bailey succinctly mouthed the truism of American politics, he was convinced that the Republicans could not accomplish it merely by jacking up the tariff. Throughout the four months of the special session he maneuvered, using all his skill as a parliamentary strategist, to hold the gates of debate ajar while his colleagues directed their fire on the pending

\* *Record*, April 15, 1897.

\* *Record*, May 3, 1897.

Dingley Tariff. Then on July 19, as the main objective was about to be realized in the nineteenth general revision of the tariff since the Federal government was created, the minority leader attacked in person. If there had been doubt in the rank and file of Democratic congressmen over their choice of leader, it was now largely dissipated when Bailey had finished his "brief and dispassionate statement of our views."

Two points in this statement of "the old and unchallengeable creed of our party" are to be noted. The first related to the income tax rider on the Wilson Tariff of 1894, which the Supreme Court by now had rendered unconstitutional. Here Bailey voiced a warning of the uncurbed power of the judiciary to nullify popular legislation, a theme which recurred with variations throughout the remainder of his public career. He termed that action of the Supreme Court as "a remarkable decision which has done more to destroy popular confidence in the integrity of the Supreme Court than all the enemies of the court could have done in a hundred years." And he served notice that the Democratic party was still committed to tax reform.

But his tariff manifesto went further, stating in unmistakable terms the repudiation of the "Cleveland heresy" of free raw materials by the Democratic party. He demanded a return to the earlier Democratic view which would place a tariff on sugar, hides, tobacco, and other raw products from abroad which were in competition with American-produced crops. The Walker Tariff of 1846, a Democratic measure, had embodied this viewpoint. In the eyes of certain Democrats who had not studied the Chicago platform closely, this was a bold and unwarranted stand for the minority leader to take. Representative Benton McMillan of Tennessee, earliest of the anti-Bailey men in Congress, spoke against the taxing of raw materials. He sought to discomfit his own chieftain by citing, first, that Bryan while in Congress had supported the "Cleveland heresy" in speeches as



well as votes. But more damaging still, so he thought, the Tennessee statesman read from the *Record* of both the Fifty-second and Fifty-third Congresses to prove that Bailey himself had voted repeatedly to admit raw materials free of duty. For a moment the citations seemed disastrous, a thrust to the heart of Bailey's sincerity. Then the minority leader rose, calm and almost indifferent to the source of the attack. "When I cast those votes," he replied, "the raw material doctrine was the endorsed policy of my party, and as a loyal member I subordinated my own individual judgment to its platform. I never ventured to renounce the theory until I had first appealed to the supreme tribunal of the party at Chicago in 1896, which reversed the doctrine and gave me a commission to renounce it here and elsewhere; and I intend to do it." \*

But when talk was exhausted, the Republican majority enacted the Dingley Tariff with scant attention to the wishes or views of the minority.

## §

The Cuban question managed, however, to crash into the brief session dedicated to upward revision of the tariff. It was able to force its way to the attention of Congress because it was set adrift on emotional currents far beyond the control of that body. An old tribal force of the American people, tricked out afresh in the phrase "Manifest Destiny" was the propelling one, but the Democrats, under such leaders as Bailey, promptly welcomed the intrusion. The Cuban revolt had broken out in February, 1895; in the closing months of the Cleveland Administration the Republicans had developed a tendency to harass the President with a demand for recognition of the belligerent rights of the rebels, once Cleveland had made it clear that he opposed any such overt sign of sympathy. By the time the Demo-

\* *Record*, May 3, 1897.

cratic national convention met in Chicago the revolt had been dragging out for more than a year, with few signs that the Spanish Government was restoring order; besides, the Cleveland policy was one of non-interference and here was another chance for the convention to voice disapproval of the outgoing President. Thus the Democratic convention went on record as sympathetic with the Cuban patriots. In the spring of 1897, Senator Morgan of Alabama offered a joint resolution to recognize the warring status of the Cuban patriots. Already throughout the country the great moral and religious sentiment was mobilizing in behalf of freedom for the patriots, who were pictured as bleeding under "unbelievable cruelties" inflicted by decadent, European, and most Catholic Spain. The geniuses of inflammatory journalism were providing the word pictures. But the masters of the Republican party, representing the tradition of business caution, were not quick to rush into a crusade that might easily end in war. McKinley was especially averse to embracing an international complication; Mark Hanna's voice was against Manifest Destiny; and if young Mr. Roosevelt, recently added to the Administration as Assistant Secretary of the Navy, was strenuously thinking up the word "mollycoddle" to apply to some of his superiors, Czar Reed, the second most powerful man in the Administration, was cynically deaf to this latest plea of humanity. Thus the Morgan resolution was denied passage through the needle's eye which is the door of the House of Representatives.

But the Republicans that spring were sensitive to the pressure from home which was being felt increasingly; they offered therefor an appropriation of \$50,000 for the relief of American citizens in Cuba who had suffered in the two years of civil strife.

"We shall be glad to give unanimous consent for that,"

Bailey declared promptly as spokesman for the minority, "provided the House will couple with it unanimous consent to consider a resolution recognizing the belligerent rights of the Cuban patriots." \*

The offer was received coldly by the Republican bosses. "We will attend to one matter of business at a time," replied Representative Nelson Dingley of Maine, with the cool assurance of complete mastery of the House.

"You will attend to both before you will attend to either," answered Bailey. It was the ultimatum of the Democratic caucus. From that instant the Democrats were on the offensive, driving their opponents unsparingly with the spur of popular sentiment, pressing deeper and deeper into the flanks of the cautious leaders of the majority. A month later the relief appropriation was debated; Bailey again demanded recognition of belligerency. Such a resolution, he assured the Republicans, would merely recognize that "public war exists in Cuba"; he was willing that the United States, in the same resolution, should declare its strict neutrality between Spain and her rebellious colony. "We do not ask you to declare war against Spain," he assured the Administration, "or do anything which shall justify Spain in declaring war against us. Our recognition of Cuban belligerency cannot constitute a just cause of offense to Spain. . . . It is a right conceded by all authorities on international law." \*

But if Bailey believed that the United States might extend approval of the purchase of arms in this country without the United States becoming a party to the conflict, he was nonetheless ready to face any eventuality.

"Much as I should deplore a war, even under such circumstances," he added, "I would not shrink from it; for bad as war is . . . I would not weigh its dreadful consequences against the

\* *Record*, May 17, 1897.

\* *Record*, May 20, 1897.

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performance of our duty toward a weak and struggling nation." \*

As he took his seat the applause in the gallery was unexpectedly drawn out; it might have seemed a personal triumph, but it was far more, the prelude to a New World symphony soon to be given its première. As the patter burst into a roar it seemed to come from beyond the four walls. But the session ended late in July, and the Cuban patriots had not been recognized. They were still in the eyes of official Washington mere conspirators against a friendly government.

\* *Record*, May 20, 1897.

## CHAPTER IX

### MARCHING AS TO WAR

THE Cuban question was waiting at the door when the Fifty-fifth Congress reassembled in December, 1897. In the intervening months, sympathy for this stray from the Caribbean had been awakened throughout the country; many a Republican lawmaker who had been contemptuous the summer before toward the Democratic demand now returned with a more tolerant view. But the President and his closer advisers seemed insulated against the stirrings of Manifest Destiny. When McKinley sent his message at the opening of the new session, his attitude on the Cuban question was unchanged. "It is, in short, for Congress to hold hands off in the matter of recognizing belligerency . . . to give the Spaniards an opportunity to carry out their policy of placating the island."<sup>1</sup>

But if the Administration had neither advanced nor receded from the stand taken in the summer, Bailey and his importunate followers were equally determined upon action. On December 14, the House Democrats met in caucus to define the party's policy on various matters. On this overshadowing issue the caucus redefined the position taken by their spokesman in the special session. "Mr. Bailey spoke for a clear-cut position in favor of Cuban belligerency," it was reported from the caucus, "and there was not a dissenting voice to his proposition."<sup>2</sup> The caucus vote seemed an equally unanimous endorsement of

<sup>1</sup> Sterett, December 7, 1897.

<sup>2</sup> Sterett, December 14, 1897.

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Bailey's leadership; but there were murmurs of discontent. It was being said that "Bailey does not take Bryan's political views from end to end." The charge was so persistent that Bailey, in the interest of party unity, felt obliged to state that "I would endorse anything William Jennings Bryan would say at this time on a public question." \*

Discontent within the ranks faded, however, as Bailey began flaying the majority on the Cuban question. His manner, his objective, and above all his first victim delighted his colleagues. It was a surprise attack in January when, during the consideration of an appropriation bill, he stuck on a rider to recognize the warring status of the Cubans. Instantly the Republican floor leaders, cracking the whip at the command of Reed, forced defeat of even consideration of the rider. This was accomplished by the customary majority vote, but many a Republican was observed to squirm as he seemed, by his vote, to turn a deaf ear to Cuban woes. Bailey complained, insisting that the chairman of the Foreign Relations Committee had made an agreement with him to permit the House to vote on the rider directly.

"There has been no such agreement," interrupted the Speaker. To this curt denial Bailey responded with a correspondingly short answer that there had been such an agreement. "If the Chair needs any corroboration, it will be furnished," Czar Reed condescended to reply.

Bailey turned toward the throne itself and, meeting the astounded gaze of the Speaker, "coolly told him he needed corroboration." The House was electrified at this first rift in the entente cordiale of young Mr. Bailey and "old, old Mr. Reed." Then as the minority leader read from the printed proceedings of the House to prove that such an arrangement had been

\* *Record*, March 25, 1898.

agreed upon several days previously, he was raised to new heights in the eyes of his colleagues by this successful challenge of the autocrat in the chair.

"At the end of it everyone in the galleries declares Bailey had routed the whole Republican side," Colonel Sterett reported. "The Democrats fairly revel in the misery of the other side. The Democrats today present a more solid front than I have ever seen. . . . It is evident to the careless observer that the Democrats are getting the best of the fight all along the line." <sup>4</sup>

§

By the end of January the Administration had grown doubly apprehensive over the citizens of the United States who were caught in Cuba; in addition to providing funds for their relief, the battleship *Maine* was ordered to Havana, and shortly steamed past Morro Castle to take up its post of watchful waiting in Havana harbor. The arrival of the *Maine*, the Navy Department assured the public, was purely a social act in line with the ordinary intercourse between friendly nations. In answer to a direct question, the spokesman of the department denied that Consul-General Fitzhugh Lee at Havana had requested the presence of the warship.

The industrious agents of Mr. W. R. Hearst, in the meantime, were losing few opportunities to strike matches in their investigation of the status of the international gas tank. On February 9 the national Capital was titillated by a juicy diplomatic scandal which these same agents had managed to ferret out and illuminate. Señor Dupuy de Lome, the Spanish Minister at Washington, had written a private letter to one of his countrymen. In the letter, it developed, the Spanish Minister had referred to President McKinley as "weak and catering to the

<sup>4</sup> Sterett, January 19, 1898.

rabble . . . a low politician who desires to stand well with the jingoes of his party." \* The translation may not have been letter perfect, but it was sufficient; Señor de Lome was asked immediately to leave the country.

But to Bailey and the other members of the Texas delegation, even more interesting reports arrived from Texas. Both tradition and geography conspired to make Texas a favored soil for Latin American filibustering; the warm-hearted sympathy, especially of the younger generation of Texans, had been pledged for over a year to the struggling patriots of Cuba. The young Texans were familiar enough with the beauties of the language of Bolivar and Torquemada to be thrilled by the high endeavor and the poetry of *Cuba Libre*, even though the "r" in the final trilling syllable presented some linguistic difficulties. In the previous summer the *Dallas News* had learned that military drilling was in progress throughout the State "in which young Texans were training to fight Spain," and the newspaper had at once felt bound in its public duty to publish a warning that the neutrality laws of the United States were thus being violated. But it was not until February, 1898, in the same month that the *Maine* was dispatched to Havana, that the newspaper (and detectives hired by the Spanish Government) learned from United States Commissioner John H. Finks at Waco that "there is good ground for the report that there is a movement on foot in Texas to give military aid to the Cubans." \* Deputy United States Marshal Burke of the same city went further. "The fact that Texans generally hope for Cuban independence and would hail a war with Spain with delight cannot be disguised," he said, verifying reports that agents of the Cuban Junta, working from the port of Galveston, had attended meetings of sympathy throughout McLennan County where "material aid" was given to the cause of Cuba. Short of a war, however, Deputy

\* Sterett, February 9, 1898.

\* *Dallas News*, February 15, 1898.



Burke explained, the Texans would be satisfied with recognition of Cuban belligerence, for then "recruits would go from Texas in overwhelming numbers and would soon settle the dispute." <sup>7</sup>

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Then on February 15 the *Maine* was blown up in Havana harbor under mysterious circumstances. Published reports of the disaster threw the American people into a state of great excitement; in Texas the war spirit now flared into a frenzy. Señor de Lome had gotten only as far as New York by the time the *Maine* disaster was cried on the streets. "It was an accident," insisted the departing diplomat, who was found just as he boarded his ship in New York. "There will be no, there can be, no war between this country and Spain. . . . Spain cannot afford to have war with the United States. . . . There is no country in the world that I love as I do America. . . . It is with the keenest regret that I leave as a result of this unfortunate letter incident." <sup>8</sup>

In Washington the shock of the explosion made a profound impression. Representative Joe Wheeler of Alabama dashed off a message to the President. "In case of any trouble with Spain remember that my tender of service is on file at the War Department," <sup>9</sup> wrote this Democrat and reconstructed Rebel officer. As the high priest of the war policy that Bailey had been championing in the House, Senator Morgan of Alabama expressed the opinion that "it is almost out of the question" that the destruction of the *Maine* resulted from an accident.<sup>10</sup> And in the President's official family young Mr. Roosevelt was now convinced that "war was inevitable."<sup>11</sup> For twenty-four hours

<sup>7</sup> *Dallas News*, February 16, 1898.

<sup>8</sup> *Associated Press*, February 16, 1898.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Hibben, p. 211.

the war spirit was dominant in Washington. "Not since the War has there been anything like it," reported Colonel Sterett. The Cabinet was called into session and on the morning of February 17 rumor pulsed over the city that the President was sending a message to Congress that morning. In the House the bankruptcy bill was being debated, and when the presidential message arrived the Speaker allowed it to lie unopened before him. As the talk on the purely domestic bill continued throughout the morning, the press gallery grew more and more nervous; the hour impinged on the deadline for the afternoon editions, and still the sour Czar gave no hint of the contents of the message. Several of the bolder newspaper men then approached the throne; they demanded protection in the matter of this piece of news that might mean either war or peace. This the Speaker refused; he could not permit them to read the message before its delivery to the House. What, then, did the Speaker think might be its import? "Most probably a notice from the President that the last batch of tulips from some of his friends has arrived in good shape," drawled the Yankee. The tension soon relaxed, however, for the House at last gave attention to the message which "amounted to nothing," being merely a routine departmental report.<sup>17</sup>

At the same time the Administration made it clear that no precipitate war move would be made; everything would hinge on the report of the naval experts who had been named by this time to investigate the causes of the destruction of the *Maine*. Another twelve hours and the war spirit was ebbing fast in the national Capital.

There was no corresponding let-down in feeling on the part of the country, however. "The President has received telegrams from every quarter of the disposition of the people to rush into war if he will but say the word."<sup>18</sup> But days and weeks

<sup>17</sup> Sterett, February 17, 1898.

<sup>18</sup> Sterett, February 17, 1898.

followed in which no further word was forthcoming from the White House. While the Administration sat tight on the lid at Washington, the Democratic policy of "action" was fast becoming the policy of the people back home. Mass meetings were now the order of the day; in Texas there was little patience with the course of the Administration at Washington. In Dallas on Sunday, February 27, over 700 citizens choked the city-hall auditorium in celebration of the third anniversary of the outbreak of the Cuban revolt. The mayor presided and twelve leaders addressed the gathering, eleven of whom spoke in favor of war with Spain. Only one, William Hawley Atwell, made a plea for moderation. The question, he said, might be safely left to the President. As the end of the month neared, Colonel Sterett at Washington believed that Congress would soon be moved by this and all the other popular demonstrations over the country; surely within two weeks at the most war would be a reality.<sup>14</sup>

Then as February was torn from the calendar and more than a fourth of March was checked off, the Republican leaders unexpectedly brought forth a bill appropriating \$50,000,000 for national defense. At the moment it seemed a definite promise from the White House of action in the Cuban situation. In the great oratorical heat that now rushed forth in approval of this measure from both sides of the House, party lines melted. The Democrats sought to outreach, in the vibrance and extremity of their patriotic utterances, their new-found brothers on the Republican side. And the minority party imagined that at last it had triumphed magnificently in the almost unanimous vote accorded the measure. In the flush of victory the Democrats gave little consideration to the fact that the defense bill permitted the entire \$50,000,000 "to be extended at the discretion of the President."

<sup>14</sup> Sterett, February 25, 1898.

Both speeches and action were remarkable that day in the House when this huge war chest was created; the final vote showed not one in the negative, and Representative Henry H. Bingham of Philadelphia, himself a Union veteran, provoked hisses with his mild criticism of the temper of the lawmakers.

"I am not for war," said this Civil War fighter. "This generation has had one war, sufficient for it and all time to come, I hope. The honor of this nation is not at stake. . . . I care nothing for what the gentleman calls the bravery of Fitzhugh Lee of Virginia; we do not want his bravery (in Havana); we want his common judgment."<sup>15</sup>

The sentiment of the House in this rare mood of unanimity was, though, more accurately expressed by Representative Charles H. Cochran of Missouri. "I vote," he said, "for this bill since I regard it as premonitory of another step forward in the attainment of Manifest Destiny . . . by its passage the American Congress serves notice on the Spaniards to vacate Cuba or fight . . . the American people will be content with nothing less, and we may as well understand it."<sup>16</sup>

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Standing at the edge of the vortex which they had so effectively helped to create, the Democratic leaders in the spring of 1898 were unable to halt and reflect judicially either upon the causes or the wisdom of the course which they had taken. Indeed the complex of forces which resulted in the Spanish-American War yields to no simple after-the-fact analysis. Nor is it necessary to do more than refer here to those broad outlines which have been used repeatedly to explain the mobilization of the American spirit in 1898. It was in the beginning, at least, the natural child of America's emotionalism, born in the loosely sentimental pocket of the mass mind out of which from time

<sup>15</sup> *Record*, March 9, 1898.

<sup>16</sup> *Ibid.*

to time issue crusades against the Saracens, attacks on wind-mills, and wars to end war; in short, the altruistic idealism of civilized beings. In the case of an individual, however, there are often more discernible causes determining a given line of action. With Bailey the matter is fairly obvious. At base his attitude was also nine-tenths feeling; to a child of the Reconstruction in the South the picture of a subject people ground under the heel of a military government was more than rhetorical; that the Cubans should have every sympathy in overthrowing the satraps of a distantly removed central government was axiomatic with him, and this feeling of itself was sufficient to explain the inner drive which sustained him in his long-drawn-out fight for recognition of Cuban belligerency. It was charged, of course, that the Democrats were seeking solely to make political capital; this was dispelled in Bailey's case by the fact that he fraternized with the Cuban representatives in Washington; he took them into his home and broke bread with them, a symbol of the bond of close personal feeling which linked him with the fortunes of a free Cuba. Once given this emotional bias, his support of the natural outcome of such a policy, war on the part of the United States, appears relatively logical. But here in the fact that Bailey welcomed a war, one encounters a difficulty; how to reconcile this attitude not only with his past views, but also with the paradoxical stand he would shortly take. Bailey was not chauvinistic; among his earliest outbursts in Congress had been denunciations of "a brilliant foreign policy and aggrandizement," those boon companions of military power and triumph; he would shortly become a leader in Congress against America's retention of the fruits of successful warfare; in the very hour of attaining Manifest Destiny he would suddenly declare against the ugly child which the lust of war had bred and seek to brand its illegitimacy. Indeed his sudden *volte-face* a few weeks later would bring on

the first major crisis of his public career. How he met it and through it rose to heights of genuine statesmanship belong somewhat later. That day in March he drifted with the swift-running current toward war. Perhaps there is light on this contradiction of spirit in the fact that Bailey, like other Southern Democrats, suffered from a deep-seated compulsion which gave war even a certain relish in their minds; in fact, he and his colleagues freely admitted it.

"This war, if it be a war, will have at least one compensation," he declared, "it will forever efface from the memory of our countrymen those dreadful times of civil strife, and the men whose courage made the first Manassas historic will join with those who immortalized Gettysburg, and together they will consecrate a new battlefield combining the glories of both."<sup>17</sup>

Nor was this desire to dispel forever the charge of disloyalty against the party of the Confederacy based on the main chance of winning presidential elections; throughout the whole Democratic refrain of that day there runs a personal, heart-felt resentment on the part of men who were sick of having the bloody shirt waved in their faces every four years. The same day, Major Joseph D. Sayers, C.S.A., a member of the Texas delegation, soon to be elected as Governor of his State, had previously made a touching pledge of loyalty.

"And for one," he had told the House, "so long as the danger from abroad continues, I intend to give an honest and sincere support to the Administration as respects our foreign policy to the end that peace may be preserved, and if it cannot, that the dignity and honor of our country may be maintained."<sup>18</sup>

The minority leader would not, however, go this far; Bailey was not ready to commit the Democratic party in the House to every item in the foreign policy of the Administration, in view of the fact that no one, perhaps the President himself least of all, could forecast exactly what that policy might be. He re-

<sup>17</sup> *Record*, March 9, 1898.

<sup>18</sup> Sterett, January 9, 1889.

fused to burn the bridges of opposition behind him out of any faith in the omnipotent wisdom of William McKinley. And in the very act of voting the \$50,000,000 for defense he added a saving clause that since "this is an extraordinary power with which to clothe the President" he would reserve the right to scrutinize any other war proposals in the future. Nor were Bailey's fears long in being aroused. Now came day after day in which there was no sympathetic response in the White House to this extraordinary action of the Democrats; the minority leaders began to feel that the silence was ominous. Perhaps it had been only a low politician's trap, this ruse of war talk to extract \$50,000,000 to be spent at the discretion of the President? It was enough to run the entire Federal government for months without the aid of Congress, and there were rumors that the Republicans had determined to adjourn the session, thereby leaving internal as well as foreign affairs in the hands of the Executive. The Democrats were soon thrown into a panic. "There never was a worse scared flock of partridges," said Colonel Sterett in describing them. On March 15 Bailey called his flock together in caucus, outlined this possibility of adjournment, and, at his request, each Democrat took a solemn oath not to agree to adjourn, even though it meant their remaining in Washington all summer.<sup>19</sup> "The so-called Democratic party," said Colonel Sterett with some scorn, "after having yelled itself hoarse for war, has all at once found it is about to be put into a hole. They have found out they are buncoed. . . . There can be but a guffaw from one end of the country to the other over the stolid and self-satisfied foolishness of what remains of the Democratic party."<sup>20</sup>

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In the midst of Democratic despair, Señor de Lome's successor arrived and was received most impressively by President

<sup>19</sup> Sterett, March 15, 1898.

<sup>20</sup> Sterett, March 16, 1898.

McKinley; this seemed another straw in the wind, indicating that the Administration was scarcely blowing hot for drastic action. The presidential policy, in fact, was now for one delay after another, and it seemed to have spread its infection into the Navy Department itself, for the report on the destruction of the *Maine* was still in the early stages of formulation a full month after the explosion. "The whole truth is," wrote Colonel Sterett, "the President does not know what to do. . . . He is sparring for wind, and he would really like for the present fight (in Cuba) to end in a draw." Then the wind veered somewhat. On March 17 Senator Proctor of Vermont returned from a semi-official visit to Cuba, and after conferring at the White House he spoke in the Senate, "portraying as well as his lack of imagination could the horrible condition of affairs" in the island; Colonel Sterett paid a night call at the Washington Navy Yard and found that three hundred extra hands had been hired; he also felt obliged to "state that McKinley is sending for newspaper men who have been to Cuba. . . . When the President has the men who are busily engaged in raising the anger of the people as informants, he is nearly out on a limb." <sup>21</sup> Perhaps the Democrats were not to be left in a hole, after all.

But another week dragged out; still there was no word from the White House. Then on March 25 the President sent for Bailey and the other leaders of the minority in both House and Senate. It was the first time that the Executive had appealed directly and in person to the opposition, and the Washington correspondents pounced on them eagerly as they left the executive mansion. Although the President's callers "would not open their mouths," several must have talked through their noses or with their fingers, for Colonel Sterett that same night was able to telegraph:

<sup>21</sup> Sterett, March 17, 1898.



"I know enough to make this statement: That the President does not want, and asked the Democratic leaders not to push him for thirty days. . . . That if thirty days would be granted him by the Democrats, then he would either have Spain in a condition to yield, or we would be prepared to fight." \*\*

On the same day the naval experts reported on the *Maine* explosion; while the examining board was convinced that the fatal explosion was from the outside of the ship, the experts had failed to fix the responsibility.

Bailey found the President's plea for time impossible. The minority leader was now angry. He felt that the Democratic minority, as well as the Cuban patriots, were being temporized with. Five days later he gave the President his answer. Rising to a privileged question, he asked the clerk to read the following resolution: "Be it resolved that the heroic struggle of the Cuban people against the force of arms and the horrors of famine have shown them worthy to be free——"

The reading was interrupted by a roar of applause drowning out the monotone of the clerk's voice. The noise was greatest in the galleries, although over the floor itself there were signs of approval. With a scowl on his face, the Speaker rapped for order; he warned both members and the galleries against further demonstration.

"And the United States hereby recognizes the Republic of Cuba as a free and independent state." \*\*

The Democrats were serving notice that they had moved one step forward from a demand for recognition of Cuban belligerency to recognition of Cuban independence, and the galleries, flouting the Speaker's warning, went wild. But on the floor the Republican party whips once more snapped into action; it was a crucial moment, for in the heat of popular fervor Speaker

\*\* Sterett, March 25, 1898.

\*\* Sterett, March 30, 1898.

## 100 JOE BAILEY, THE LAST DEMOCRAT

Reed's machinelike grip on the majority almost slipped. By a supreme effort, though, the managers of the House kept the majority in line, and a motion to table Bailey's resolution won by a vote of 180 to 140. It was a slim margin. When news of the nearly successful revolt reached the White House, the President sent word that he was much affected over the action of his party in not breaking on the Bailey resolution. The President added that "Reed acted nobly." "Bailey, in disgust, taunted the majority as "the Chair's servants," when the motion to table had carried.

The next day Bailey returned to the fray; his anger had now broadened to include the rank and file of Republicans who had bowed to the will of McKinley, Reed, Hanna, and Company. He was most bitter in his denunciation of the proposed purchase of Cuban freedom by the United States; this plan was attributed by him to the White House. Under his lashing the Republicans fought back, hooting and jeering him, and he returned the compliment by addressing them not as the "Chair's servants," but as "the Chair's menials," who, he said, were playing the game of men "who would arbitrate that bloody deed, the destruction of the *Maine*, the most disgraceful event in American history." He demanded to know if such was the policy of the Republican party. The majority spokesmen, smarting under these taunts, answered fire with fire; the same men who a month before were indulging in the stalest and most violent bombast to pass the war-defense bill now flung epithets of "paltry demagoguery" and "cheap politics" at the enraged Texan. Still he would make the majority hear him out. There was still time, Bailey declared, to avoid war, if that was the chief concern of the Administration; in fact the Cuban patriots did not desire armed intervention by the United States. Within the last forty-eight hours, he said, representatives of the Cuban Republic had

<sup>24</sup> Sterett, March 31, 1898.

assured him they wanted only recognition by the United States, not a declaration of war at Washington.

"They prefer that course," he added. "Permit them to obtain arms and heavy artillery and, they tell me, they can put an army in the field which in thirty days will have the flag of Spain trailing in the dust of Cuba." As for the Democrats, they had twice offered an opportunity for Congress to avoid war, continued the minority leader; but for almost a year the Republican majority had simply played for time, wasted useless time in which to solve the question. "Almost a year ago! How much time do you want, while the spirits of the starved and murdered men, women and children of Cuba are revisiting their places? There is your record . . . you need not answer me, but you must answer the exasperated people of this country." \*\*

It was now the first of April. Bailey's hot-headed arraignment of the previous day had been peculiarly galling to the rank and file of Republican members, who knew that the country was daily becoming more exasperated with the policy of delay. Then Speaker Reed was summoned to the White House; perhaps on his word the dogs of war would at last be turned loose; it was at least certain that Reed's summons meant that a presidential message was in process of formation. Colonel Sterett took up the watch at the doors of the White House as the Big White Czar went in. Soon the great hulk of a figure reappeared. "Reed slowly waddled away from the executive session," noted Colonel Sterett, "calm, and with the usual sneer on his face. To a correspondent who asked whether or not a message would be sent in, he said, 'I am not writing messages.' " \*\*

In the tension which was again increasing in Washington, the impression was general, however, that a message would come shortly from the President. Three days passed in the accustomed silence, though, and still there was no sign from the

\*\* *Record*, March 31, 1898.

\*\* Sterett, April 11, 1898.

White House. Instead, on April 4, the Republican masters asked for even more "discretionary power" for the President in the matter of national defense. This was too much for the patience of Bailey.

"Before any other preparations for war are made," he demanded, "I want to know whether we are going to have war. Only a short time ago we placed \$50,000,000 under the absolute discretion of the President of the United States. The situation at that time appeared so critical that no gentleman on this side resisted. . . . I believed then that we were on the perilous edge of war. . . . Yet this House is not in possession of any fact which warrants us in supposing that the executive department believes that any extraordinary emergency is upon the country. . . ."

However, Bailey continued:

"Every gentleman on this side stands ready to vote for every measure which may be necessary to conduct that war to a glorious and successful termination." \*

Once again the galleries, now packed daily, broke out in a demonstration of approval. "One moment," the Speaker interrupted. "The gentleman will suspend." Then the Speaker lectured the galleries for their indecorum. As spectators occupying the space for spectators, they must not express either approval or disapproval of the proceedings of Congress.

"Mr. Speaker," continued Bailey brazenly, "the galleries are but the American people in miniature; and if this Congress could face the people they would hear a condemnation infinitely more overwhelming than that which comes from the galleries of this House." And with a pause the galleries burst into applause, echoing his sentiment.

"The Chair will be obliged, if there is applause in the gallery, to clear it," admonished the Speaker.

\* *Record*, April 4, 1898.

"That is hardly fair," put in a sarcastic Republican, "in view of the fact that the gentleman is talking to the galleries."

"I might as well speak to the galleries," answered the minority leader, "for when I speak to that side of the House I appeal to deaf ears and hardened consciences. I simply state to the majority of this House that they have trifled with the minority and the country too long. I say now . . . that if the President wants one day, or two days, or three days to prepare a message that will be approved by the American people, we will be silent until he sends it here. But if the President of the United States wants two days, or if he wants two hours, to continue negotiations with the butchers of Spain, we are not ready to give him one moment longer for that purpose." \*\*

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But twice one hour many times over passed before McKinley sent in his message. A week later it was laid before Congress. In the meantime the White House had felt it necessary to offer some explanation of this last delay: Fitzhugh Lee at Havana had asked for time until Saturday, April 9, to get Americans out of Cuba. And with that explanation torn from the harassed, almost befuddled Ohio politician by Bailey's petulance, the world at last fathomed the presidential intention. The great powers now knew that the situation was critical; on Thursday the Ambassadors and Ministers filed solemnly into audience with President McKinley; they called "in the interest of peace and moderation." If the call of the diplomatic corps was less disastrous on public opinion than the similar efforts to maintain peace which had previously been made by the Holy See through the President's close friend, Archbishop Ireland, it was equally futile. By Sunday, April 10, the message was passing to its final draft. Even as the President completed it, he had word

\*\* *Record*, April 4, 1898.

from American Ambassador Woodford at Madrid that the Spaniards were ready to capitulate to every demand of the Yankees. But when would they capitulate? That was the deciding question, what with all this ceaseless nagging by country and Congress, this awful suction of the vortex of Manifest Destiny. The Spaniards would capitulate "before August 1, on one of the following bases: either such autonomy as the insurgents may agree to accept, or recognition by Spain of the independence of the island, or cession of the island to the United States," wrote Woodford. "I am satisfied that the present government is going, and is loyally ready to go, as fast and as far as it can." <sup>11</sup> By use of a certain license, the scene may be imagined as the President for the last time hesitated. Once more he read the dispatch which might alter his message; it seemed, indeed, a triumph of diplomacy; every concession would be made by the Spaniards, but—the devious, unpublicized efforts of diplomacy would have to continue in the dark for at least four more months. That would be August; delay until August? Woodford must be mad! He had no conception of days, hours—even moments in the situation in America. And quicker than it takes a bullet to be fired from a crazed assassin's pistol, the President realized that delay was for him the one impossible demand of the Spaniards.

The next morning his message was delivered to Congress. By daylight people had begun moving on the capitol to get good seats for the President's declaration. Before the hour for Congress to meet, the galleries were packed, most of the spectators being women. In just such a mood, Colonel Sterett imagined, the women of Paris must have brought their knitting into the galleries in the bloodier days of the Revolution. A hush fell over the chamber and an excited nation listened. Then as the words fell, the hush shaded into silence; was it possible that

<sup>11</sup> Foreign Relations, 1898, pp. 746-7, quoted by Hibben.

these were the words so long awaited? Even the end of the message devoid of stirring phrases, of throbbing aggression, of even a single note of the "Stars and Stripes Forever," was incredible to that high-strung audience:

"The issue is now with Congress. It is a solemn responsibility. I have exhausted every effort to relieve the intolerable condition of affairs which is at our doors. Prepared to execute every obligation imposed on me by the Constitution and the law, I await your action." \*\*

Not one word about Cuban independence; no approval of Cuban belligerency; a fairly strong denunciation of Spanish misrule, an appeal for funds with which to feed the starving patriots, and ending with a half-hearted invitation to Congress to invest him with power to intervene to stop the war. So the message impressed the Democrats and many of the Republicans at the moment.

"I was greatly disappointed," said Major Sayers. "Disappointment," added Colonel Sterett, "scarcely describes the feeling of the Democrats who are loud-mouthed in their declaration that McKinley is temporizing and praying for yet more delay." Bailey was openly contemptuous: "It is the weakest and most inconclusive speech sent out by any President." The Republicans were far from a unit in believing the message adequate. "I have no patience with the message and you may say so," Senator Foraker, from a mother State of Presidents, said. But at least the President had linked the words "action" and "Congress." Within forty-eight hours the House, now unfettered, rushed through resolutions directing the President to intervene in Cuba to restore peace and to secure "a stable and independent government of their own" for the people of that island. Bailey and his colleagues at ~~long~~ last smiled with satisfaction. "I am gratified to know, Mr. Speaker," the minority

\*\* Presidential message, April 11, 1898.

leader said not too graciously, "that after fifteen months of delay and suspense, it has at last dawned upon the Republican majority of this House that the time has arrived for action." <sup>81</sup>

The next day the resolutions of intervention were before the Senate. Colonel Sterett followed their fate through to the finish. When the ageing Senator Hoar declared himself in favor of war, the "careless observer" knew the final barrier had been hurdled. "It was the Yankee speaking," wrote Colonel Sterett, "the cool, temperate, conservative Yankee whose dollars were at stake. It was capital and manufacturing speaking. . . . He (Senator Hoar) represents the East, the land of dollars and dimes, and his position, as defined today, brushed away the last hope of peace."

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So precipitate were the Republicans of the House in passing the resolutions that they had been unwilling to permit the Democrats to exult over their technical victory. Even Bailey had hardly been allowed to make his caustic remarks when the party in power shut off discussion; confusion followed, feeling between the parties ran high, and a near brawl on the floor of the House was thought by many to have marred the proceedings. A Philadelphia newspaper commenting on these scenes laid the blame on the minority leader. On April 15, Bailey rose on personal privilege.

"Responsibility for that disorder," said Bailey, "is upon the Speaker of this House and he should bear it before the country. . . . His purpose was to force the minority into the false position of either consenting to what we knew was undue limitation on debate or else objecting to immediate consideration of this important matter. . . . The Speaker sought a mean partisan advantage by forcing his opponents into a false position. . . ." <sup>82</sup>

<sup>81</sup> *Record*, April 13, 1898.

<sup>82</sup> *Record*, April 15, 1898.



The House had not yet recovered from Bailey's attack on Czar Reed several weeks previously; the members were shocked as he now continued. Young Mr. Bailey and old, old Mr. Reed had traveled far apart since the beginning of the Congress, but the House was not prepared for Bailey's next remarks:

"Until a short time ago I believed that the present Speaker of the House, while as partisan as an honest man can be, was still as honest as a partisan can be; but after the performance of last Wednesday, I do not entertain that opinion any longer." \*\*

The Speaker's "face was livid and his voice trembled till he was almost incoherent," wrote Colonel Sterett. Although the newspaper man had seen the Czar in many trying places since that day in 1890 when he counted the quorum for the first time and it looked as if he would be mobbed, he had never seen Reed "so furious as he was today when Bailey finished." Then recovering his poise as he spoke, the Speaker declared with a sneer that "whatever he has done has been in the presence of the House and a thousand witnesses. The Chair does not feel it necessary to make any discussion of his conduct." As indeed, being Cæsar, why should he?

War was not yet, though, an actuality. On April 20 the President signed an ultimatum to Spain calling upon the heirs of Columbus to withdraw from Cuba where, it was said, the bones of the Lord Admiral lay entombed; Theodore Roosevelt and William Jennings Bryan would soon be colonels; on April 25 both houses of Congress formally declared war and two days later a cable from Hongkong (copyright, W. R. Hearst) announced that Commodore Dewey and the Asiatic squadron had been ordered to attack Manila. Now at last Bailey seemed tamed and tractable; he would even go as far as Major Sayers.

"There is perhaps no man on this floor who knows less about

\*\* *Record*, April 15, 1898.

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the military service of this government," he said, "but my earnest purpose is to provide what is necessary for this emergency and leave other provisions to be made in time of peace." \*\*

\*\* *Record*, April 23, 1898.

## CHAPTER X

### THE END OF THE OLD REPUBLIC

THE war which had required over a year and a half to reach the boiling point spent itself within the short span of twelve weeks in one expanding rush of steam. One by one the stenciled squares of *papier-mâché* tumbled before the molecular stream—Manila, Santiago, the blockade of Havana harbor, San Juan Hill. To the folks at home it was a grand show, with shrieking sounds, colored flares, spinning pinwheels, and glittering skyrockets silhouetting the heroes and battleships as they shifted and shuffled in the foreground; never before had the American people been treated to such thrills and such realism in a carnival of fireworks; the "Fall of Pompeii" in its most brilliant representations paled in comparison. Then on July 26 M. Jules Cambon at Washington asked for an armistice, declared that Spain was ready to talk peace terms, and the war was over.

With fighting in progress, the rôle of the Democratic opposition had vanished. The war session of Congress had drawn to a close before dwindling and listless galleries. How could the lawmakers expect to compete with a general and third-alarm conflagration? The fire fighters, not the legislators who had simply pulled the box, were now the toasts of the nation. While Dewey and Hobson were being lifted to the company of the immortals, the lawmakers had nothing to do but leave off heroics, vote the necessary sinews of war, extend the thanks of a grateful people to their latest saviors, and early in July to disband. Despite some partisan criticism to the contrary, the

Democrats were satisfied that they had coöperated wholeheartedly with the Administration, once war was actually in progress. Bailey considered himself a model of regularity in the national crisis and only rarely did he step conspicuously above the row of nodding yes-men. Throughout the entire session his leadership of the minority had led him to discuss a flood of subjects pouring through the House, in which flood the war policy was but the broad corelike current. In the conduct of the war he still reserved the right to study all proposals. Holding that only the States could alter the standards of suffrage, he opposed a bill to enfranchise the boys in khaki by Federal enactment; when more war funds were asked, he led an abortive attempt to attach a corporation income tax rider to the bill; in support he made a memorable criticism of the four-to-five decision of the Supreme Court which had held the 1894 rider in the Wilson Tariff to be invalid. It was a strangely cool argument beside his speeches for war, a dissection by technical legal reasoning of the weaknesses of the decision. The speech was prophetic. Was Bailey saying farewell to bombast? On June 29 he appeared as the champion of the right of the Church of which Archbishop Ireland was a member to erect a chapel at West Point.

"I have no religious prejudice," he said to those who would defeat the bill. "I was reared by a Protestant mother; but I would cut my tongue out of my head before I would try to inflame religious prejudice against a large party of my countrymen. . . . It matters not to me under what name a man worships God." <sup>1</sup>

But more symptomatic of a profound readjustment was Bailey's snapping up of a chance remark that Fighting Joe Wheeler, now in the armed service of the government, was "an absent member of Congress." "Let me call the gentleman's attention to one misstatement," interrupted Bailey. "The

<sup>1</sup> *Record*, June 29, 1898.

Gentleman from Alabama is not absent under leave of this House. He could not be as long as I am here. No man in this country can hold military office and his seat in Congress, and I would object if he were my own brother." \*

The Gentleman from Texas, no doubt, was undergoing an odd metamorphosis. He hardly was expected to take a stand at such a time against an incident of militarism; but none of his colleagues saw that in thus turning his back on one of the major "compensations" of the war, in the very midst of that conflict, Bailey was only recovering prematurely from the war psychosis. That he would shortly demand that the fruits of military and naval victory themselves should be renounced could scarcely have been anticipated in Washington.

### §

Upon adjournment in July, just prior to the end of the war, the minority leader turned homeward. Now it was possible to reflect a bit on the developments in Texas politics that had occurred with unusual rapidity during the spring and early summer. Although the State Democratic convention would not meet in Galveston until August to ratify the results, the two principal contests for office had already been decided by the county primaries. Thus it was conceded that Major Joseph D. Sayers, representative in Congress from the Austin District, would be the party nominee for Governor and formally succeed Culberson in January of the following year. This had been a marked upset in State affairs, since the gubernatorial succession established eight years previously by Hogg had been overturned in this instance. By precedent, M. M. Crane, Attorney-General for the past four years, should have received this advancement. He had made his mark as a prosecutor in the Hogg tradition, having carried the fight of the People vs. the Corporations one step farther by attacking the oil trust in

\* *Record*, June 1, 1898.

1896. Crane's suit to oust the Waters, Pierce Oil Company from Texas, then the principal distributor of household-lighting fluid, had had its sensational elements; two years later it would become a *cause célèbre* in the political history of Texas; both then and later it would also play an overshadowing part in the life of Bailey and range Crane and himself against each other in a long and bitter controversy. But in 1898 the Attorney-General's suit was still winding its tortoiselike way to an ultimate decision by the Supreme Court at Washington. When Crane offered himself for Governor, he was consequently deprived of the impetus which a legal victory would have given him. Texas congressmen almost to a man, including Bailey, were supporting his opponent. But the chief reason for the defeat of Crane for the Democratic nomination lay with Edward M. House of Austin. This rich young strategist who had managed Hogg's and Culberson's races for first place now determined to break that line of succession. Choosing Sayers as his candidate, House was able by his masterly knowledge of Texas political psychology and machinery to bring his man so strongly to the front that Crane admitted defeat and withdrew more than two months before the convention.

But the senatorial race that spring was equally if not more important. The Hon. Roger Q. Mills, completing his first term at Washington, was opposed by Culberson who asked this reward for his own services at Austin. Bailey took an aggressive and public part in this contest from the moment in the opening of the year when Culberson announced. In the midst of the fight for Cuban freedom Bailey had turned aside to inform the people of Texas that he stood behind Governor Culberson's ambition and against the reëlection of Senator Mills. And once again the tariff issue of free raw materials, the "Cleveland heresy," was hoisted by Bailey to justify his choice.

"Senator Mills distinctly raises the free raw material issue,"

he said in commenting on Mills' announcement for reelection, "and as I consider his position . . . at variance with all the principles of the Democratic party, I shall take an active part in the canvass and support Governor Culberson." \* Culberson in a letter to the minority leader had already applauded Bailey's stand in the Dingley Tariff fight, and given reassurance of his own adherence to the Democratic tariff stand of 1896. Colonel Sterett interpreted the Bailey manifesto. "It will be seen by this . . ." the careless observer commented, "that Bailey and Culberson are now hitched under one yoke and will go down the road together." † But the greatest interest in Bailey's stand lay in the fact that only two years hence the junior Senator, Horace Chilton, must stand for his first reelection, and Bailey was now the greatest stumblingblock to that reelection. Attention shifted to the Big Governor in private life at Austin; the lines were clearly marked: Bailey stood with Sayers and Culberson; Mills, Chilton, and Crane, perforce, were in the opposite camp. Hogg saw his personal staff disintegrating; Culberson, his own Culberson, was now actually across the line in the company of the Cooke County statesman. "You may say that I am for Governor Culberson this year," said Hogg, "and for Senator Chilton two years from now." ‡ Early in March Senator Mills realized that he could not win against the forces and personalities aligned against him, and he, too, withdrew from the race.

## §

As late as the last week of July the outlook for the State gathering at Galveston was, therefore, dismal indeed to the hotel keepers, bath-house owners, and other dispensers of hos-

\* Sterett, February 11, 1898.

† Sterett, February 11, 1898.

‡ Dallas News, February 11, 1898.

pitality on Galveston Island. With no personal contests promised and no outstanding questions agitating the State, the attendance would be far below normal. Then Bailey suddenly raised an issue in Texas that brought new life into the approaching convention. On the twenty-sixth of the month Spain had sued for peace, and the United States at once faced the problem of what to do with Cuba, the Philippines, and other prizes that had toppled into its hands. On the twenty-seventh of the month Bailey went to Plano to speak before the annual barbecue of the residents of Collin County. There, in answer to questions about possible issues at Galveston, he said that "the State convention ought to take a stand on this question of a policy of colonization." \*

Indeed, and just exactly what was that question? A few of the newspaper men recalled that some days previously the discredited, the almost forgotten sage of Princeton, Grover Cleveland, had growled a warning about America becoming imperialistic. But surely Mr. Bailey was not agreeing with his old enemy? But that was, exactly, the question—"Simply that this view of Mr. Cleveland's is one of the two upon which I agreed with him during his Administration," explained Bailey. "And I am glad to see that he has not changed his position. I remember well that when Mr. Cleveland withdrew the treaty of Hawaiian annexation, I thoroughly approved of that action. . . . The truth is that a Republic, in the nature of things, is incapable of dealing with colonial possessions, and whenever we enter upon a policy of colonization, we must abandon many of our most cherished principles. . . . Our manner of governing territories inside of the United States has always been regarded as a reproach to our system and a violation of the principles of self-government." †

And better still, Bailey concluded by saying that he would

\* *Dallas News*, July 27, 1898.

† *Dallas News*, July 27, 1898.



attend the convention to fight against any program for national expansion; immediately hotel reservations began to flow into Galveston to the delight of the populace.

But if neither Cleveland nor Bailey had changed their positions on the question of territorial expansion, as much could not be said of certain other gentlemen, among whom was the President of the United States. As late as December, 1897, McKinley in his message to Congress had branded territorial expansion as "criminal aggression." At that time the Ohio politician was holding the dogs of war in leash and the argument that war would lead to aggression was a valuable argument; now with changed circumstances he elected to alter his position. To the man in the street the growing dispute between the imperialists and anti-expansionists was decidedly one-sided; with the valuable prizes in the grasp of America, there would be little popular clamor for their renunciation. As for the great body of Texans, the suggestion was positively absurd. Senator Morgan in Alabama heard of this queer twist in the mind of Bailey and a few of his political shadows. "It is certainly very odd for Texans to have any qualms about imperialism," said the old man, who could remember several of the figures who carved out the Southwestern empire from the Mexican Republic.\*

By August 1 the delegates began arriving in Galveston, and it was patent that the single issue to agitate the convention would be raised by Bailey. "It is no exaggeration to say," wrote the ubiquitous Colonel Sterett, "that eight in every ten delegates are for acquisition." \* Judge Reagan was outspokenly a "radical expansionist"; Hogg rode into the island genially insisting that every foot of land over which the American flag then floated should be held in perpetuity. Senator Chilton also real-

\* Letter to Joe W. Taylor, quoted in *Dallas News*, July 28, 1898.

\* Sterett, August 1, 1898.

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ized that the devil had furnished the stick with which to beat him down, and promptly became a leader of the expansionist forces in the convention. The net was promptly adjusted and already tightening around the congressman from the old Fifth District; the joy of the Hogg followers could scarcely be restrained. Only a corporal's guard of minor political factors stuck to Bailey as the convention opened. Bob Henry of the Waco District came in with the resolution which he had wrung from his congressional district in support of the Bailey stand; the people of Waco and McLennan County, at least, had not forgotten their pledge for an independent Cuba. Two other members of the Texas delegation, Bronson Cooper and Thomas H. Ball, were also loyal to the minority leader. But from the moment Bailey arrived on the island, Colonel Sterett as well as other competent observers knew that "it was a dead-game fight"; the cards were unalterably stacked against the Cooke County statesman and none knew this better than he. But, almost perversely it was felt by some of his closer advisers, he insisted on emphasizing the issue. In the hotel lobbies, on the street corners, even into the surf where many were enjoying the strange pleasure of salt-water bathing, Bailey pursued the delegates, urging and appealing to them to renounce imperialistic sentiments. His appeal was based almost wholly on the damage which he felt would result to Democratic principles and to the Constitution itself by annexing conquered peoples. Patiently he would explain how a colonial policy "contravened the genius of our government, how the peoples of the islands could not be brought into full communion with the American republic." But these lessons from his political primer were tiresome to his listeners; he tried, therefore, less abstract reasoning: How could the United States annex Cuba without acting in bad faith? To this the response was faintly sympathetic, and, encouraged, he at once sank to the level of an appeal to the righteous heart. In

this strain he reminded delegates that Bryan was now being quoted as opposed to expansion on the grounds of morals and Christian ethics. Surely these woolly-headed hardshells would now come to their senses!

But the mind of the convention was not to be swayed; the expansionists were only willing to give Bailey enough rope to hang himself politically. When the platform was trundled out of committee where expansionist sentiment had prevailed overwhelmingly, even Culberson, now Senator-nominee, became bold enough to speak, and his voice was for expansion. True, Culberson favored redemption of the promise of Cuban freedom, provided the Cubans opposed annexation, but he was positive that Porto Rico should be retained and at least a coaling station in the Philippine archipelago should become American territory. Crane, Chilton, and Thomas Watt Gregory followed in similar vein. Then Hogg addressed the convention. Perhaps, he asked, there were some of the boys who did not know what expansion was? Well, expansion means that if there is any land on the earth that the Anglo-Saxon people want "they will expand and take it." Hogg said that he had heard much talk about the Monroe Doctrine. Why, President Monroe was the first expansionist of this country. In 1803 (the volunteer historian continued) Monroe had gone to France as Jefferson's Secretary of State to put through the purchase of Louisiana. Then later as President himself, Monroe had faced Spain in 1823. "Monroe put his hand upon his hip pocket," continued Hogg, "and looking Spain square in the face, told her he wanted to purchase Florida. . . . What has come over the American people that they don't want to expand any more? Do you want to tell congressmen to expand? For me, I do!" <sup>10</sup>

To tell congressmen what to do, and above all to tell the leader of the Democratic minority in the House what to do,

<sup>10</sup> Sterett, Galveston, August 3, 1898.

that was the luscious task which Hogg gave himself that afternoon in Galveston.

"At present let us confine ourselves to the Western continent," added the ex-Governor, "but after we are dead and gone and our children's children are crowded, if they want to expand to the Pacific Ocean, then by gatlines, let them do it! If we want to scoop in Cuba and Porto Rico, let's scoop 'em. Spain centuries ago drove out or killed the original inhabitants, so it cannot be immoral to drive out Spain. Cuba is an island at the mouth of the Gulf of Mexico, formed by the washings of the Mississippi River. By gatlines, it's ours, anyhow."<sup>11</sup>

The vote of the convention now only had to be recorded. The final form of the platform utterance was being shaped; a vestige of sentiment for Cuba forced the approval of the "letter and the spirit" of the resolutions of intervention passed in April by Congress, but the Texans declared that they would welcome annexation of Cuba if its inhabitants were willing. As for Porto Rico, this jewel of the Caribbees, "as well as all other Spanish possessions in the Western Hemisphere," were declared of right to be the property of the United States. Then leaving to one's children's children to pass on the ultimate fate of Spanish colonies in the Orient, the convention drew back in part and declared against retention of the Philippine Islands.

Bailey spoke before the convention platform was adopted; his speech commanded close attention, but it was commanding largely for its unnatural beauty, that arresting quality with which even the least musical of swan songs can endow itself in the ears of those who believe it to be a swan song. In more formal language he only repeated his pleas to the delegates outside of the convention hall.

"I oppose this new departure, which is fraught with unspeak-

<sup>11</sup> Sterett, Galveston, August 3, 1898.

able dangers to the peace and welfare of my country," he said, "from the faith of the venerated fathers in the right of local self-government and in their unshakable conviction that government derives its just powers only from the consent of the governed. . . . The time will come when this war fever cools, when the noise of these fifes and drums has died away, when men cease to feel and to begin to think: (then) the people will wonder at the nightmare which possesses them and at the cowardice of some of their Representatives and Senators in Congress."

"Would you haul down the flag of your own country?" interrupted a delegate.

"I would haul it down in any land where the Constitution cannot follow it," continued Bailey. "I know I am right, and if you doubt it now, you will not doubt it in the time to come when in the presence of standing armies and warlike navies the citizen is dwarfed, State's Rights are annihilated, and the Republic has become as imperial as the most devoted follower of Alexander Hamilton could have wished to make it. . . . I do not know how you will vote, but as for me and mine, we'll vote for the Old Republic."<sup>12</sup>

### §

Although by its sheer magnificence, in the face of such odds, Bailey's defeat at Galveston excited the admiration of even the victors, the rout seemed to darken his entire political future. The vote in the convention, in fact, saw his fortunes at the lowest ebb; in the first test of strength with the Hogg forces on an issue of State and national importance, he had lost. The heroes of the convention were Hogg, Chilton, Crane—not Bailey. Even Culberson, now safely on the road to the Senate, had not deemed it expedient to stay with him. The outcome

<sup>12</sup> Galveston, August 3, and speech at Ladonia, August 11, 1898.

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might well prove disastrous to his chances of beating Chilton in 1900; it would certainly weaken his position as minority leader in Congress if the Texas Democracy had pointed the way for the national party on this issue. But more disastrous and more immediate by far, it was now seen that his defeat at Galveston imperiled his own seat in Congress. Unlike his course in 1890, Bailey had forsaken the congressional district before the district nominating convention was held, in order that he might attend the State meeting. The people of his own district were typical of Texas as a whole, in social make-up, in susceptibility to grandiose sentiments, and in their desire to be with the majority. Immediately to the south of their district was the Dallas District, which had adopted the expansionist platform of the State convention. Now Bailey was given a chance to demonstrate the depth of his sincerity; was he ready to pay with his political life for his convictions? There was, of course, another way out; the humbled congressman could take an emergency exit by recanting, by making a deferential bow to the will of the majority. But he spurned such a dodge; neither then nor later would he accept the easy compromises that ordinarily spell eminence in a democracy. His stubbornness, his intellectual integrity, his courage, his defiant gesturing—call it what you will—would not let him trim his sails for his own personal advantage. How many times the same trait had been and would be the despair of his closer idolators, the salvation of his enemies. And some of his enemies were saying that he was only posturing, a charge that Colonel Sterett took occasion to deny. "There is an entirely false impression abroad as to Bailey," said the Washington correspondent. "He is considered (by some) a man with great gifts who utilizes them as he is called upon . . . a man who poses to a great extent and impresses more in the manner of saying than in his knowledge of the subject. This is

the greatest of mistakes. Within my knowledge there is no such student as he. Year in and year out he has studied those things which pertain to this government. He knows its history by heart. . . . He studies questions, not men. I do not think he is a skillful politician, and I don't think he ever will be. But what he will lose in his lack of politics, he will make up in the knowledge of questions on which he will come to a conclusion, whether all the world is against him or for him."<sup>18</sup> Those most familiar with the processes of Bailey's mind knew, therefore, what his choice would be.

Three days before the peace protocol was signed at Washington, Bailey faced the people of his district at Ladonia in Fannin County on August 10. The significance of what he would say was accepted in advance and more than 6,000 people from all parts of the district traveled to the picnic to hear him. And since they wanted to hear him on expansion above all, he did not slur over the issue. He had scarcely begun speaking when he turned to attack the work of the Galveston convention. To prove how unthinking the platform makers had been, he cited the wording of the platform that, in addition to Cuba and Porto Rico, "everything else belonging to Spain in the Western Hemisphere" should be held by the United States. And that in the face of the fact that outside of Cuba and Porto Rico, Spain owned not one acre in the West Indies! The crowd laughed and there was a sprinkling of cheering. Then he became more personal. He had always been candid, he told his fellow citizens that afternoon, with them since he had become their representative at Washington, and he would continue to be candid with them to the end. Not one present or absent, he suddenly challenged, would dare rise in the presence of his neighbors and say that Bailey had ever made a promise which he did not keep, or

<sup>18</sup> Sterett, Austin, August 9, 1898.

that he had said one thing to his constituents and another thing in the halls of Congress. Their relations as electors and elected had ever been such that he felt a personal affection for the Democrats of the district.

"But as much as I am bound to you for your uniform kindnesses to me, and as much as I love you for the generous confidence which you reposed in me, I would a thousand times rather lay down your great office than to vote for what I honestly believe will prove injurious to your best interests and destructive of our free institutions."<sup>14</sup>

Perhaps he had not made himself clear enough? Then be it understood:

"The office I hold is yours, and you are entitled to have it exercised according to your will; if it be your will that your representative shall support this new departure, you must commission some one else, because I would rather be the obscurest citizen of Texas—aye, I would rather be a wanderer upon the face of the earth—than to cast my vote for such a policy."

He had cast the die, and as it spun to quiescence, the result obviously was in his favor: the cheers of the great throng seemed to fill the very heavens.

"I do not speak these things in a spirit of defiance . . . but there are some things which I cannot and will not do. I cannot and will not abandon which I conceive to be the essential and fundamental principles of my party. Democracy with me is a passion—indeed, it is more. I believe in my Democracy as my wife believes in her religion. I do not believe it is possible to preserve this free Republic except it be administered according to the principles of Thomas Jefferson, any more than my Christian wife believes that souls of men can be saved without believing in the Saviour of the world. My friends, I need not

<sup>14</sup> Ladonia speech, *Dallas News*, August 11, 1898.



dwell longer on this line of thought. You know that it is, article for article, the faith of the venerated fathers of this Republic, and I will not yield it to the madness of this hour. You may banish me from your service and I shall not complain. . . . But as for me and mine, we'll stand by the Old Republic!" <sup>18</sup>

To this superb stand the people of the district responded unequivocally. Perhaps he was not a good politician, but his constituents could not resist this matchless bravery. When he concluded it was seen that the crowd was his, ready once more, if necessary, to follow old Silas Hare's command to go to hell with Joe Bailey; there was no doubt now over his renomination. The *Dallas News*, which had disagreed with the congressman on the expansionist question, as it had formerly on the "humbuggery of bimetallism," could not refrain from saying:

" . . . The *News* desires, however, to express its unstinted admiration for Mr. Bailey's courage. . . . Here is a standard of political morals so exalted that the approval of the high-minded citizens of the State cannot be withheld. It is in startling contrast with the code of political ethics which seems to rule the actions of most public men. No popular clamor or platform platitudes are permitted to shackle this young giant's convictions. He is willing to lay down his public honors rather than cast a vote which his conscience disapproves. This is a strain of courage rarely found except in great men. . . . He has given the politicians of this time a lofty example." <sup>19</sup>

The congressional convention met in Sherman on August 25. In unanimously renominating Bailey, the Democrats of his district said:

"We believe that a colonial policy is contrary to the theory of this government. We are opposed to the establishment of pos-

<sup>18</sup> Ladonia speech.

<sup>19</sup> *Dallas News*, editorial, August 13, 1898.

sessions anywhere by the United States without the consent of the people to be governed." <sup>17</sup>

## §

With the reconvening of Congress at the end of 1898, the issue between Bailey and the Hogg forces in Texas was seen to be the same issue that now confronted the entire country. The party in power at Washington was moving unmistakably toward the imperial idea. Reed in disgust had read the future course of his party and announced, before the session began, that it would be his last in Congress. The head of McKinley, Reed, Hanna, and Company, though, was ready to carry the firm in the new direction. The President was even then, one of his biographers has related, praying for divine guidance on the problem of the Philippine Islands, and late one night it came.

"There was nothing left for us to do but take them all," McKinley was quoted, "and to educate the Filipinos, and uplift and civilize and Christianize them, and by God's grace to do the very best we could by them as our fellow men for whom Christ also died. And then I went to bed and went to sleep and slept soundly." <sup>18</sup>

But the Democratic position for a moment lacked definition. As Congress assembled there was talk of displacing Bailey as minority leader in the House; Benton McMillan of Tennessee called for his resignation, ostensibly on account of his taxed raw material stand on the tariff; Hearst's *New York Journal* now demanded his dethronement. But on December 6 Senator Vest of Missouri announced adherence to Bailey's views on imperialism, and in the caucus of House Democrats held three days

<sup>17</sup> *Dallas News*, August 26, 1898.

<sup>18</sup> Charles S. Olcott, "Life of William McKinley," Vol. 11, pp. 110-11, quoted by Hibben.

later, Bailey's leadership was reaffirmed overwhelmingly. It was patent that he had won his colleagues over to his anti-expansionist views, for after the caucus it was noted that "the trend of the party is wholly against expansion."<sup>19</sup> The attitude of the party as outlined by Cleveland and defined by Bailey would now be emotionally underwritten by Colonel William Jennings Bryan. On December 13 the commander of the Third Nebraska Volunteers resigned his commission at Savannah; in addressing a farewell to his comrades, Bryan left no room for doubt about the iniquity of imperialism.

"Our Nation is in greater danger now than Cuba," said the departing colonel. "Our people defended Cuba against foreign arms; now they must defend themselves and their country against a foreign idea—the colonial idea of European nations. . . . The very foundation principles of our government are assaulted."<sup>20</sup>

Then Bryan moved straight on Washington, where he at once went into conference with Democratic leaders. On the first day, Bailey, along with a host of fellow members of the party, called at Bryan's hotel. The next morning, however, at the significantly early hour of 8:30 o'clock, the minority leader returned to Bryan's hotel alone, where he and the Commoner conferred privately for more than an hour. The result of their parley was that the issues of the 1900 presidential campaign were largely determined. On his arrival in the capital, Bryan had told Colonel Sterett that he opposed expansion "even to the limited extent outlined in the Texas platform." Now Bryan and Bailey were "united on the two points of non-expansion and Free Silver."<sup>21</sup> But Bailey refused to make this working agree-

<sup>19</sup> Sterett, December 9, 1898.

<sup>20</sup> Associated Press, December 14, 1898.

<sup>21</sup> Sterett, December 15 and 16, 1898.

ment with Bryan until the Nebraskan first "receded from his position for government ownership of telegraph lines," a third issue which Bryan would have liked to include in the 1900 platform, but "to which Mr. Bailey so strongly objected." \*\*

In view of this understanding, the part which Bailey and Bryan both played three months later in the ratification of the peace treaty is at first mystifying. The treaty to end the war provided for the purchase of the Philippine Islands for \$20,000,000. The President's own party divided over this bold expansionist program in the Senate. But Bryan, sitting on the sidelines, "cajoled and dragooned" seventeen Democratic and Populist senators into voting for ratification, so that the treaty was adopted, although by a single-vote margin.\*\* The House, to be sure, had no voice in treaty-making, but the Philippine purchase must fail unless the lower chamber would approve the bill to appropriate \$20,000,000 for the Far Eastern purchase. And here Bailey refused to use the minority as a deterrent to the appropriation. Without passing on the wisdom of the treaty, he declared that he was of the opinion that the House was obligated to vote the money, now that the vote of the Senate and signature of the President had made the document a legal obligation of the United States Government. The most reasonable explanation of the motives of the two men is that Bryan and Bailey felt that if imperialism were to be an issue in 1900, the deeper the Republican party were dyed in it the more effective the Democratic sharpshooters could be. How little the House Democrats felt their appropriation vote to be inconsistent with the new position of their party is shown in the caucus of February 28; there the minority adopted an anti-expansionist manifesto, the preamble of which, it was noted, read identically with the plank which Bailey had introduced at

\*\* Sterett, December 15 and 16, 1898.

\*\* Hibben, p. 222.

Galveston the summer before, only to be smothered by Hogg, Chilton, and their followers.

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But the Administration calmly proceeded to accept the burden of Manifest Destiny. The day before the Senate vote on the peace treaty, word reached Washington of the outbreak of the Philippine insurrection; a considerable portion of the natives of the archipelago were naïve enough to believe that their new masters were the same Americans who had written a Declaration of Independence and who less than a year earlier had been wrought up over the freedom of the Cubans. The answer to the insurrection, though, was far from sympathetic: "Every Filipino caught with arms in his possession is to be treated as a rebel. . . . They will be treated from this time on exactly as the renegade Apaches were treated." <sup>24</sup> There was no talk now of recognizing the belligerent rights of the Filipino patriots, as the central government at Washington moved to suppress the rebellion in the new dependency. The bitter and sarcastic consolation offered just a little previously by the sage of Princeton was being accepted in all seriousness. ". . . The refusal of certain natives in our new possessions to acquiesce to our rule should not in the least disturb our expansionists," Cleveland had declared. "The remedy is obvious and simple. The misguided inhabitants of our annexed territory who prefer something different or who oppose our designs in their behalf should be slaughtered. The killing of natives has been a feature of expansion since expansion began, and our imperialistic enthusiasm should not be checked by the prospective necessity of destroying a few thousand or a few hundred thousand Filipinos. This should only be regarded as one stage in a transcendently great movement, a mere incident of progress. Of course some unpre-

<sup>24</sup> George M. Bailey, Washington, February 6, 1899.

pared souls would then be lost before we had the opportunity of Christianizing them, but surely those clergymen who have done so much to encourage expansion could manage that difficulty." \*\*

Even the Democratic members of the House, although definitely committed against the imperialistic spirit by their manifesto, offered little resistance to the Administration's new colonial policy. Their deep and unconscious acceptance of the new spirit was soon to give their own leader an unsettling jolt. The job of minority leader had been trying enough, even with the repeated votes of confidence in the caucus; despite an agreement to consider caucus decisions as binding upon them on the floor of the House, there were continual threats by certain Democratic congressmen to break the traces. And in February a test case rose in which Bailey saw his own party desert him on what he considered a most vital issue and principle. This was the Texan's demand, first announced in the war session the year previous, that no member of Congress should be allowed to retain his seat while holding a commission in the armed forces of the country. The most conspicuous victim of such a demand would be Joe Wheeler of Alabama, who was now a brigadier general by appointment of President McKinley. On the reconvening of Congress, Bailey had introduced a resolution declaring the seats of all congressmen in this category to be vacant; it had been referred to the House Judiciary Committee. At last the committee on February 21 was forced, ("a most unpleasant duty,") to make its report. And the committee found that the law, the Constitution, and precedent were so clear that it had no choice but to declare such seats vacant. The House, it would appear, would have to follow the same cogent reasoning, but in this instance reason was not to govern. On March 2 the committee report was laid before the House, and the House, by

\*\* Associated Press, Princeton, January 5, 1899.

an overwhelming vote that transcended party lines, refused even to consider it. The refusal was perfectly understood: Members would not unseat their uniformed colleagues, Constitution or no Constitution. The sentiment of the House was epitomized by one representative who, in the midst of the discussion, exclaimed, "What in the hell is the Constitution among friends?" \*\*

If "the perfect Niobe" was shocked by this expression, he was even more deeply hurt by the action of his own party members. The position of the Republicans might be understood as part and parcel of their prejudice against the opposition leader. The defection in his own ranks, he felt, was unpardonable. The next day the minority leader announced that he was no longer to be considered a candidate for Democratic leadership in the approaching Fifty-sixth Congress.

"I want it distinctly understood that I am not actuated by any feeling of pique or personal disappointment," he stated, "but I am proceeding purely upon the idea that as a large number of Democrats are unwilling to insist upon obedience to the perfectly plain provisions of the Constitution, they ought not to be made responsible for the leadership of a man who believes the Constitution to be the supreme law of the land and ought to be obeyed at all times by all men. I believe those Democrats who voted to allow these military appointees of the President to retain their seats in Congress greatly mistake the sentiment of their Democratic constituents; it is utterly impossible that any man in this country is more popular with the Democratic masses than the Constitution, a reverence for which has been the chief article of our faith." \*\*

The announcement caught his colleagues unaware. They promptly assured him that their vote was in no wise a repudi-

\*\* George M. Bailey, Washington, March 2, 1899.

\*\* *Record*, March 3, 1899.

ation of his leadership. It was simply a gesture of friendship to General Wheeler, and, after all, wasn't he both a Democrat and a Southerner? A poll was promptly taken revealing that Bailey could be reelected minority leader by a large majority in the next Congress. But he had set his head and he would not reconsider. If his own colleagues would not respect the basic charter of the Old Republic, he would no longer serve them. And in that hour he made a personal decision; having cut himself off from the possible chance of becoming Speaker of the House of Representatives, he now turned to the task of becoming the junior United States Senator from Texas.

### §

On March 2 the Fifty-fifth Congress, which had met originally to boost the tariff but ended by creating the American colonial empire, entered its dying hours. A filibuster against the rivers and harbors bill prolonged the death throughout the night. Once more party lines sagged as Democrats, Populists, and Republicans gathered in the corridors while the filibuster raged in the House chamber. Barroom ballads alternated with hymns as impromptu quartets went into close harmony. But with the returning sun the levity ceased. Then in the closing minutes of the session, Bailey, who had not joined in the wakelike proceedings of the night, offered resolutions of appreciation to Speaker Reed for the "able, impartial and dignified manner in which he has presided.

"Mr. Speaker, we have not always agreed with the distinguished occupant of the Chair," the Texan added, "and we have taken more than one occasion to emphasize our dissent. But remembering the momentous questions which have confronted us, the wonder is that those occasions were so few; and in this hour of impartial retrospect, I do not hesitate to say that he has been as fair to us and to our side as any one of us,



were our positions reversed, would have been to him and his side." \*\*

It was a generous speech that went a long way in repairing the breach in the friendship of two intense personalities. A few moments later the gavel fell finally, the galleries joined members in singing patriotic airs; "Yankee Doodle" was followed by "Dixie"—perhaps it was another compensation of the war—and then the war Congress and the leadership of "young Mr. Bailey and old, old Mr. Reed" slipped into history.

\*\* *Record*, March 3, 1899.

## CHAPTER XI

### THE STORM OF 1900

WHEN at the turn of the century Bailey set about to win the senatorship from Horace Chilton, Texas, in spiritual mood and financial status, was a vastly different State from that which Hogg had captured ten years previously. The pendulum had swung far to the right, now that prosperity had been largely restored. A variety of causes had contributed to this changed status, not the least of which were the increase in the gold supply of the world and the victorious outcome of the Spanish-American War. The temper of politics was milder, less radically agrarian, and for the first time since the administration of Sul Ross the merchants and bankers were venturing to raise their voices in the political councils of Texas. Even the movement against the trusts seemed to have been lost in the fervor surrounding the organization of the Rough Riders, and Crane with his fight on the Waters, Pierce Oil Company had passed into obscurity. The tone of the State administration had been given by Sayers in his inauguration as Governor.

"All legislation that affects property either as to value or title should be conservative and just," Sayers had said, "and the rights of ownership as well as the welfare of society should be observed. To acquire and hold property lies at the very base of civilization and cannot be impaired without danger to society."<sup>1</sup>

Even on the issue of imperialism there had been a reversal of sentiment in Texas since 1898. Bryan on a lecture tour

<sup>1</sup> *Dallas News*, January 17, 1899.

through the State since the Galveston convention had commanded large audiences, speaking on the subject of "Naboth's Vineyard"—the fetching title of his *exposé* of the wickedness of colonial possessions. So far from being a repudiated politician because of his anti-expansionist stand, Bailey now enjoyed the prestige of championing the correct view of the party. So sure was he of this triumph over the imperialistic spirit that he used it against Chilton in their first skirmish, a debate held in Fort Worth near the end of 1899. There before an excited throng in the city-hall auditorium the congressman had scored a knock-out by proving that Senator Chilton, in failing to obstruct the passage of the peace treaty through the Senate, had thereby, if only tacitly, approved the purchase of the Philippine Islands.

## §

As the year 1900 opened, the contest for the Senate was abandoned temporarily in Texas, while Bailey and Chilton returned to their respective duties in the new Congress. For a moment it looked as if Bailey's colleagues would force him to resume again the leadership of the minority, so difficult was it to agree upon his successor. At the last he had to ask the caucus not "to place him in any embarrassing position for the reason that he desires to be free to spend several weeks in Texas after the middle of March." \*

In this, the first Congress elected by the people since America's entry into the concert of nations as a world power, new men voicing the new spirit were to come rapidly to the front. Already in the Senate the first Rooseveltian had just arrived, the young, intellectually vain, cocksure Albert J. Beveridge from Indiana. Although it was his first term, the Hoosier had every intention, because of his supreme confidence in his oratory and intellect, of becoming the sensation of the

\* George M. Bailey, Washington, November 30, 1899.

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session. Beveridge had drawn a seat next to the ancient landmark, Chauncey M. Depew of New York, then at the height of his astounding personal publicity. But Beveridge had only compassion for the elder statesman, now that Beveridge had moved into his spotlight. "You see, Depew has been the center of the stage for a generation," the young newcomer was quoted as saying. "He has learned to love adulation. . . . It must humiliate him to see that I am attracting ten times as much attention as he does." \*

Bailey was now in the ranks of the House and after March, as he announced, he would be absent in Texas. However, he was still listened to respectfully as the voice of the anti-imperialists; with the rapid alignment of the Republicans behind the Administration policy, particularly now that the retention of the Philippine Islands had raised imperialism from a theory to an actuality, he was drawn back into the center of the discussion. His first speech of the session was an enunciation of the Democratic belief that the Philippine Islands should ultimately be given independence. This came in his discussion of the creation of a new committee of the House, to be known as that on Insular Affairs. "We do not assent," he said, "to the suggestion that this committee was created for the purpose of permanently dealing with these possessions. The gentlemen on that side, of course, intend that they shall become permanent possessions. Gentlemen on this side entertain a different view." †

There was no doubt of the Republican position. A few weeks later in the Senate a voice of the Rooseveltian era which even then was hovering just beyond the rim of the new century cried out, almost as if in answer to Bailey: "That man little knows the people of this Republic, little understands the instincts of our race, who thinks that we will not hold the Philippine Archi-

\* George M. Bailey, Washington, January 5, 1900.

† *Record*, December 7, 1899.

pelago fast, and hold it forever, administering just government by the simplest method." \* It was young Senator Beveridge making his maiden speech in Congress; for two hours he had spoken. Because it was his *début*, such a lengthy address was, as he intended, a sensation. The orator was rewarded, though, for it seemed that every one wanted to hear him. "The town has been literally billed for a month, and the galleries were packed," said one eyewitness. "It is fair to say that he was thought better of when he finished than when he began. After his brethren had congratulated him, Old Father Hoar took the floor for half an hour and aroused no little amusement at the young Senator's expense." \* Senator Hoar had ridiculed Beveridge's argument that the Filipinos were incapable of self-government.'

But the stretching of the Constitution to cover the skeleton of the new colonial empire drew Bailey's greatest fire that session. The Republicans moved to impose a tariff on imports from Porto Rico in the face of the fact that the island was now American soil. His most baneful prophecies of the violence which a colonial system would work to the Constitution were about to materialize. The Judiciary Committee reported the special tariff bill favorably and declared that "upon reason and authority the term United States, as used in the Constitution, has reference only to the States constituting the Federal Union and does not include territory." Having thus by committee interpretation deprived the territories of the equal protection of the Constitution, these legalists next ruled that Congress, under its plenary legislative power over territories, "may prescribe different rates of duty for Puerto Rico than those prescribed for the United States." The Democrats rushed to demolish this

\* *Record*, January 9, 1900.

\* George M. Bailey, Washington, January 9, 1900.

\* Associated Press, Washington, January 9, 1900.

curious theory, and for ten days the debate raged. Then on February 27, Bailey, in a two-hour speech, concluded the Democratic argument against this "dangerous course of boldly setting aside the Constitution." His argument was almost wholly a legal one, rebutting the "garbled authorities" that had been advanced in support of the theses of the committee. The conclusion, though, had its color.

"Eighteen months ago when the fever of war and conquest was in the blood of our people," he said, "I did not yield to this general excitement. . . . When emotional statesmen cried out to know who would take down the flag, I dared to say that I would take it down from any land where the Constitution of my country could not follow it. Gentlemen of the Republican party, are you ready to present to the world the anomaly of a government restrained by a Constitution in one quarter of the globe, yet possessed of despotic power in all other regions of the earth? The anomaly of citizens and subjects, half Monarchy and half Republic?" \*

Anomaly or no, the Republican majority replied by passing the Porto Rican Tariff bill, and in due time the Supreme Court caught up with the swiftly moving spirit, falling into step with Manifest Destiny by upholding the constitutionality of the bill.

In the Senate, Culberson was making his initial bow in a speech against the same tariff bill. And there was one notable convert, at least, to Bailey's tariff argument in the ranks of Republican Senators, the sparkling Mr. Beveridge. Less than six weeks after his début the junior Senator from Indiana took the floor to denounce the tariff discrimination against the Porto Ricans. But this second flight was not quite the triumph of its predecessor. No sooner had Beveridge been recognized than all but fifteen of the Senators walked out; it was a pointed rebuke based on something deeper than the young speaker's lack of

\* *Record*, February 27, 1900.

Republican orthodoxy. "The old members of the club," explained a Democratic interpreter, "are not inclined to look with favor upon a young thing like the junior Hoosier Senator undertaking to pull off two great orations within six weeks. Besides, they object to little boys assuming to instruct them on constitutional questions." \* Verification of this last fact Mr. Beveridge might have gotten from Bailey, if the two had ever compared experiences.

## §

Before the first blasts of spring had been felt in Texas, the senatorial contest was revived by Bailey. Pausing in his work in Congress, he sent a challenge to Senator Chilton in February. Why not, he asked, submit the issue as to which would be Senator to the people directly? The direct election of United States Senators was still many years distant, but in a State such as Texas, where one party ruled exclusively, an approximate result was possible by submitting candidacies to each county primary for the choice of a nominee by the voters.

"As we are both candidates for the United States Senate, and as we differ widely upon several important questions," Bailey wrote to his opponent, "I think it due the people of Texas that we shall discuss before them our differences of opinion, in order that they may fairly judge between us. With this end in view I invite you to join me in a series of appointments at places to be selected alternately by each of us. After the people hear us and are thus the better prepared to judge between us, it is then important that they shall be afforded an opportunity to fairly decide between us; and with this end in view I invite you to join me in urging our friends to submit the senatorial race to a direct vote of the Democrats of Texas in every county except where, for local reasons, the executive

\* George M. Bailey, March 29, 1900.

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committee shall not deem it best to hold a primary election. . . . The result which will be reached by the methods I have suggested will approach, as near as possible under present conditions, to the election of a Senator by a direct vote of the people.”<sup>10</sup>

Senator Chilton was annoyed, but responded promptly:

“Yours received today. I differ with you as to the existence of any important political issue between us, and I doubt if a joint campaign will be productive of useful results; yet because you invite it, I am disposed to join you in making a list of appointments. You don’t mention the time for beginning this campaign. I do not well see how I can leave Washington very soon. There are public matters pending in the Senate to which I desire to give attention. It seems to me that May 1 will be as early as I can enter upon this work. . . . I will be willing to devote the month of May to joint debates, distributed over the State.”<sup>11</sup>

Bailey already had a number of speaking dates in Texas for the latter part of March, and he left Washington, therefore, to keep them. The matter was left to Chilton’s convenience as to when and where they would come together in May. The congressman formally opened his campaign at Cameron on March 24. There were, he now informed the people of Texas, four major differences of political opinion between Senator Chilton and himself. The incumbent was, first of all, a noted exponent of the Republican doctrine of expansion; their present Senator also favored a big navy; Chilton was, further, in favor of private operation of the projected Nicaraguan canal. In the fourth place, Chilton accepted the “Cleveland heresy” of free raw materials in the tariff. On each of these questions, the contender declared his position to be the exact

<sup>10</sup> Letter, Bailey to Chilton, February 3, 1900, Bailey papers.

<sup>11</sup> Chilton to Bailey, February 4, 1900, Bailey papers.



opposite to that of Chilton's. Thus Bailey pitched the fight, taking the aggressive in a swing over Texas in which he battered his opponent's political record constantly and unmercifully. Such was the nature of those idyllic days that Bailey, who had arrived home with only one month's salary as a congressman in his pocket, was able to complete the campaign without spending any sum greater than that check. Then on April 14, from the far distant Panhandle came word that Potter County Democrats in primary convention assembled had endorsed Bailey in preference to Chilton. Other counties in rapid succession began to return instructions for Bailey's election in the next session of the legislature. The friends of Senator Chilton, even as the friends of Judge Hare ten years previously, were now worried. Telegrams flashed across the fifteen hundred miles, and suddenly, in the middle of April, Senator Chilton left the Capital for Texas. He was physically ill by the time he reached his home at Tyler. There was a consultation, first of his physicians and then of his political managers, and on April 17 he withdrew formally from the contest. The race was ended; already thirty counties had spoken for Bailey and he had no other opponent. Nothing short of accident or political suicide now could halt him on the road to his ultimate ambition. But an accident that verged on the suicidal was just about to happen.

## §

On March 17, 1900, while the contest between Bailey and Chilton still hung in the balance, the United States Supreme Court handed down its decision in the ouster suit brought four years earlier by Attorney-General Crane against the Waters-Pierce Oil Company. The State of Texas was declared victor on two major counts: the validity of the anti-trust laws of Texas was upheld; and the oil company was required to forfeit its charter to do business in Texas because of the violations of those

laws. If Crane, now practicing law at Dallas, felt any bitterness over the long delay that had probably cost him the governorship, he yet had cause for satisfaction in this final outcome. The Supreme Court decision, however, caused contrary feelings in the headquarters of the oil company at St. Louis. At last the complicated legal tangle in Texas had become extremely serious. To no individual was the turn in Texas more disturbing than to H. Clay Pierce, the millionaire head of the oil company who long before the rise of the Rockefellers had shown the way to build up a profitable marketing system for the products of petroleum. With the formation of the Standard Oil combine in 1884, did the Waters-Pierce Oil Company become a part of it? Although some working, and therefore illegal, agreement with the Standard Oil group was freely alleged in Texas, the State in Crane's ouster suit had failed to prove a corporate relationship after the charge had been specified in the State's original pleadings. Viewing the imminent ruin of his business in Texas, Pierce now sought to salvage it to the best of his abilities. Among the first he consulted was his fellow townsman, David R. Francis.

A former member of Cleveland's cabinet and Governor of Missouri, Francis was a prominent figure in the Democratic party as well as a man of large personal means. Ten years before Francis had first met the new congressman from the Fifth Texas District as he and Bailey rode together on the train from St. Louis to Washington to work for the election of Mills as Speaker. The older politician had been favorably impressed with the young Texan's abilities; their acquaintanceship grew into a warm friendship, and during the succeeding years Francis had viewed Bailey's rise in Congress with the fond satisfaction of the patron for a protégé who justifies his expectations. Their friendship transcended politics and was on a firm personal basis. So intimate, in fact, was this relationship that Francis not only

knew the personal, financial affairs of the Texan's, but was a part as well to several of Bailey's personal investments. Among these was a 6,000 acre farm in Dallas County which Bailey had bought the year previous from Barnett Gibbs by paying \$4,000 in cash and assuming a much bigger mortgage; the purchase was made possible largely by Francis' participation in the deal to the extent of deeding a 21,000 acre ranch in West Texas to Gibbs as part payment; it was a real-estate speculation in which Bailey expected to profit by the rapidly enhancing value of land around the metropolis of North Texas. Thus Francis felt free to advise his friend on purely personal matters and his most repeated caution was against a certain prodigality which he had noted in Bailey. He knew that a stock farm which Bailey and a group of friends had leased near Lexington, Kentucky, in 1897 was not yet on a paying basis. Francis therefore had a weather eye open to aid Bailey whenever the opportunity presented itself. When Pierce went to Francis for advice, therefore, about his troubles in Texas, Francis believed, after hearing the story of the oil company's legal difficulties, that here was an opportunity for Bailey to realize a neat fee by the legitimate practice of his profession of law. It is impossible to believe that Francis would have suggested Bailey as special counsel for the oil company, if he had thought such employment of his friend to be either dishonest or unethical. As a result he telegraphed Bailey, asking him to meet Pierce at St. Louis.

This summons reached Bailey just after Chilton had retired from the race and just as Bailey was planning to leave Gainesville for Washington. He had planned to stop en route at Lexington to sell some of his horses, the cash for which he seriously needed at the moment. At his hotel in St. Louis he found a letter introducing Pierce, in which Francis said that he did not know the details of the "complications" met in Texas by the oil company, but that he had advised Pierce to see Bailey who

would "tell him the truth and deal with him honestly."<sup>13</sup> Bailey accordingly called on Pierce, who at once began reciting the outcome of the Texas litigation.

"Mr. Pierce," interrupted Bailey, "I do not believe the people of Texas will, or ought to, tolerate the methods of the Standard Oil Company. I would rather go back to the tallow candle than to do it."

"But, Mr. Bailey," responded Pierce, "you are still laboring under the same impression that all the people of Texas are laboring under. We are not a part of the Standard Oil. I myself never owned a dollar's worth of that stock, and the Standard Oil Company never owned a controlling interest in our company."<sup>14</sup>

On this direct denial by Pierce that he was a part of the Standard Oil combine, Bailey counseled him offhand. "If that is true," he said, "then you go down to the State of Texas, Mr. Pierce, and tell our Democratic officers that that is true. They want to know that you are no part of the trust and you will have no trouble in being relicensed to transact business."

"Will you be my attorney?" asked Pierce. "No, sir," Bailey answered. "If you want to abide by the law, you won't need a lawyer. Go down there and tell the Democratic officers that you will be willing (to abide by) the law, and they will be glad to have you resume business in the state."<sup>14</sup>

As they talked, however, and Bailey looked into the details of the "complications," he realized that the company would probably have to do more than simply agree to respect the laws of Texas in the future. Pierce wanted Bailey to return to Texas with him. The Texan explained that he was going to Kentucky on a matter of personal business which would make that plan

<sup>13</sup> Bailey, Waco convention, August 8, 1900.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

impossible. He had to raise some \$5,000 to meet a personal debt and he expected to realize that sum by a sale of part of his horses.<sup>18</sup> But the plea of Francis to assist Pierce weighed on his mind, and Bailey in the same conference reconsidered. He decided finally to go on to Kentucky and attempt the sale; failing in that, he would borrow the money from Pierce. In this way he would be free to make the trip to Texas and repay Pierce when the horse sale would be concluded later. Proceeding on to Lexington, Bailey found it impossible to sell the horses on such short notice without sacrificing them. He returned, therefore, to St. Louis and accepted the proposal that he himself had made to Pierce, and on April 25, 1900, he executed a note for \$3,300. Above Bailey's signature on the face of the instrument it was clearly stated to be a "demand loan."<sup>19</sup> Throughout the long and unparalleled bitterness that later raged around Bailey, that stood or fell in the final analysis on these personal transactions with Pierce, the weakest point in the whole case against Bailey was the plain evidence of this signed document. If Bailey had had the least feeling of wrongdoing, would he have signed his name to such a paper and handed it over to a stranger? Even a simpleton would be more circumspect with a bribe, he said. Bailey's own defense also was that he would never have given this certificate of his own indebtedness if, as was later charged, he took Pierce's money in reality as a legal fee for aiding the oil company in Texas. The question of whether Bailey did accept a fee or not from the oil company would become, ultimately as we shall see, the crux of the Bailey controversy in Texas.

In company with Pierce and the general counsel for the oil company, Bailey left almost at once for Texas. He had another reason for back-tracking; since leaving Gainesville he had received telegraphic warning from George D. Armistead that the

<sup>18</sup> Bailey, 1907 investigation, p. 839.

<sup>19</sup> *Ibid.*

Hogg forces were preparing to gain control of the delegation to the national convention at Kansas City; their purpose, it was alleged, was to throw the weight of Texas against the anti-imperialism plank agreed upon by Bryan and Bailey. On May 1 Bailey and his companions arrived in Austin. The Senator-to-be at once called on Governor Sayers. After discussing the report that their opponents were planning to control the delegation, he related his encounter with Pierce and told Sayers of his advice to the president of the Waters-Pierce Oil Company. So far from objecting to giving the oil company another chance, the Governor agreed by saying that the policy of the State of Texas was to welcome legitimate enterprises that obeyed the law. "And as long as I am Governor," added Sayers, "I will see that the laws are obeyed." The Secretary of State, D. H. Hardy, was the appointive official directly in charge of issuing permits. Upon being told of the plan whereby the oil company proposed to continue in Texas, Hardy referred the legality of the proposal to the Attorney-General. Bailey and Pierce next called on this legal officer, T. S. Smith, a former Mississippian, who had succeeded Crane in 1898 and, like Sayers, a personal as well as political friend of Bailey's. Undoubtedly his personal preference would have been to approve the simple expedient suggested by Bailey. The law, however, and the decision of the courts, he said, were paramount. Citing the judgment of the Supreme Court, this official added, "Mr. Pierce, this judgment is that your company shall never again transact business in this State." It was not quite so simple, then, as a promise to obey the law in the future. The Attorney-General did, however, suggest a way out: "Let the Waters-Pierce Company 'go and purge' itself; then 'come back to this State with clean hands, take our oath that you will obey our laws, and then we will be ready to welcome you or any other legitimate business.'" In other words, only a newly organized company would satisfy the majesty of Texas

law. This counsel was followed by the dissolution of the company and the immediate organization of the new Waters-Pierce Oil Company of Missouri, and soon the agents, employees, and officers of the company were doing business again in Texas with the approval of the Attorney-General, of the Secretary of State, and by implication of the Governor himself.

"There will be no violation of the law in this," said the Attorney-General, "if they subscribe to the affidavit that they are not in truth a part of the oil trust." Pierce and other officials signed such an affidavit as a condition of being relicensed to do business in the State.<sup>17</sup>

### §

By the middle of May, Bailey was back at Washington. Already his part in the relicensing of the Waters-Pierce Oil Company was being used against him. At first the talk was under cover; serious rumors began to circulate; it was covertly charged that the Gibbs Ranch in Dallas County had been the reward to Bailey for aiding the oil company in its difficulty. In June, upon adjournment of Congress, Bailey hurried to Austin to attend the State convention to select delegates to the Kansas City convention. Here the Bailey forces were completely in the saddle. His simple objective was to send a delegation from Texas in accordance with the bargain made with Bryan two years earlier. To this end the State Democracy, much to the disgust of the Hogg men, now reversed the Galveston platform by demanding "the speedy fulfillment of our pledge to Cuba, and for the people of the Philippines, the same treatment as was promised the Cubans."<sup>18</sup> The rumors and talk about the oil company matter had turned to such a green hue that it was necessary to remain in Texas to guard developments closely. It

<sup>17</sup> *Dallas News*, Austin, May 23, 1900.

<sup>18</sup> *Dallas News*, Austin, June 21, 1900.

was now apparent that forces opposed to his formal election as Senator by the legislature in January were preparing to open war on him at the regular State convention, which would be held in Waco in August. The renomination of both Sayers and Smith would also be granted or refused at the same convention.

Several weeks before the Waco gathering of the party, former Governor Hogg brought the fight out into the open. Speaking before the State Bar Association at Galveston he denounced the relicensing of the oil company, to which Attorney-General Smith had replied in defense of the actions of the State officials. Their debate was confined to legal phases, but all Texas knew that Hogg was out for political blood. Then as delegates began arriving in Waco, Colonel Sterett, who had preceded them, picked up the scent of battle. Before the first day was out Bailey took the offensive in an hour-long speech in which he defended his part, as well as that of the State officials, in the oil-company matter. At the same time he flayed those who were imputing improper motives to him. He denied specifically that he had been the paid attorney of the oil company in these or any other negotiations.

"I believed that I had secured a triumph for the State of Texas by helping to bring the greatest trading corporation within our borders to the feet of the Attorney-General with their solemn oath to abide the laws," he said. "That law was designed to compel men to obey it. What more do you want than obedience? . . . Had I been the paid attorney of that corporation, do you think I would have advised them to re-incorporate at an expense of \$75,000? I would have said, 'Go back to Missouri, sell your oil from St. Louis; then you will be engaged in interstate commerce and no Texas statute will possess any terror for you.' I would have advised that company to do business as the tobacco, the sugar and the cotton bagging trusts do."<sup>19</sup> But

<sup>19</sup> Sterett, Waco, August 8, 1900.



highly significant in the later development of the Bailey controversy in Texas, Bailey made no reference at the Waco convention to the fact that he had borrowed money personally from Pierce. The omission later would prove almost fatal.

As Bailey concluded, the delegates and spectators cheered him enthusiastically. Hogg followed, and his reception was in marked contrast. Carefully steering clear of any personal allusions either to Bailey or to the State officials, he repeated, however, his objections to the relicensing of the oil company and concluded by calling upon the convention to repudiate the action of the Attorney-General and the Secretary of State. Then the tall, erect form of M. M. Crane caught the attention of the crowd. He began by saying that he was not one to withhold unkind remarks or a charge affecting a man's integrity if he had proof of wrongdoing. "But there is nothing of that kind in this," Crane assured his audience. "There has been a great deal of unnecessary animal heat here." He narrowed the issue to less personal grounds: it was simply whether "the people or the trusts would control Texas." "I have been told," continued the former Attorney-General, "that as this is a mere personal fight between Joseph Weldon Bailey and Jim Hogg, I should keep out of it. . . . (But) Has the Democratic convention met to demonstrate which is the bigger man, Jim Hogg or Joe Bailey? Or has it met to map out a policy of government which must be enforced in this country, in order that it may remain a country of the free?" \*\*

The debate was closed by Smith, whose two-hour speech was both "sensational and personal," being not only a defense of his own acts, but a counter-attack as well on the law-enforcement records of both Hogg and Crane while they were in office. The issue came to a head in the platform committee where the vote to censure failed, and no effort was made on the floor to override

\*\* Sterett, Waco, August 8, 1900.

the decision of the committee. Once more Bailey had won over Hogg and the threat to his election as Senator seemed to have been eliminated.

## §

Following the convention, State politics took a strange turn. As the hot, sullen summer wore on, a mantle of peace seemed to fall on the partisans; but it was an unnatural stillness. The very elements seemed to respond to this ominous note. Early in September a deathly haze fell over the coastal plain; a low wind from the Gulf played over the pine forests of East Texas, sounding an eerie warning, while in Galveston the barometer fell lower and lower. Then with godlike fury the storm suddenly broke; rolling up from the womb of tropical cyclones, the wind and waters lashed the island and the neighboring coast line, tearing land from its primeval mooring, bringing death and destruction to uncounted thousands. The blow was felt in the farthest parts of the commonwealth.

Now the elements of politics had received their cue; suddenly the fight on Bailey revived, all the rumors and talk of the previous summer rebounding in a wave of intense fury that threatened, as time for the legislature to meet approached, to sweep him aside from the victory. As the legislators met in Austin in January, David McFall of Travis promptly moved to investigate the relicensing of the Waters-Pierce Oil Company. "The only practical reason for introducing the resolution," McFall stated frankly, "is to ascertain if Mr. Bailey is a proper man to send to the United States Senate."<sup>21</sup> As submitted to the House of Representatives, the McFall resolutions branded the relicensing of the oil company as "a fraud upon the State of Texas," the perpetration of which "fraud . . . it has been charged that the officers of the Waters-Pierce Oil Company had

<sup>21</sup> *Dallas News*, Austin, January 11, 1901.

the passive assistance of certain State officials and the active assistance of Congressman Joseph W. Bailey who is now a candidate before the legislature for the high office of United States Senator." \*\*

Factional lines in the legislature were instantly drawn. The Bailey men in the House felt themselves to be numerous enough to soften the charges if not actually to block the investigation. John Garner of Uvalde, later to hold the place once filled by Bailey as leader of the Democratic minority at Washington and destined to be the first Texan ever elected Speaker of the National House of Representatives, headed the caucus of Bailey men in the State legislature who now went to his hotel to ask what should be done about the resolutions. Should they alter the accusation? "No," said Bailey, "don't let us take one word from (McFall's) resolutions. We will not shape their indictment. Let us leave it as he drew it, except it should be put in his mouth." With this expression the Bailey men returned to the capitol, insisted only on adding "By David McFall" after the wording, "it is charged" and then joined with the other faction in ordering a legislative investigation. McFall was cast in the rôle of both complainant and prosecutor.

The committee named by the House began its work of investigation on January 15. The bars were let down and any and all persons believing they had knowledge pertinent to the inquiry were asked to appear and to testify. A few minor witnesses responded, testifying to incidental matter, but McFall failed to appear. Instead he sent word that illness prevented him. At last, however, McFall from his sick room sent a bill of specific charges, the brunt of which alleged that "by reason of the said Bailey's influence and personal and political popularity and prestige (the oil company) was enabled by a mere sham of dissolution and re-incorporation to evade . . . the force and

\*\* House Journal, Twenty-seventh Legislature, p. 47.

effect" of the Supreme Court decision. Among the witnesses he asked to be summoned was former Lieutenant Governor Barnett Gibbs of Dallas. Gibbs came to Austin, took the witness stand, and exhaustively detailed the business transaction with Bailey; then Bailey later took the stand.

"It is not pleasant to be compelled to make a public statement of my private business affairs," said Bailey, "and it is still more disagreeable to be compelled to state the private business of other gentlemen, but a man cannot stand upon a question of that kind when his integrity is assailed. . . . A duty to myself, my friends, and most of all to my party and to my State, to trace every dollar of the money paid for and received from the land, cattle, horses and mules purchased by me from Mr. Gibbs, so that no honest man can misunderstand the transaction and no scoundrel can ever again successfully misrepresent me." <sup>22</sup> The financial transactions involved in this sale and exchange of land, he said, could be traced dollar by dollar in the public records of the counties of Dallas and Cooke. When he had completed detailing this business, the committee was convinced that it in no wise related to either Pierce or the Waters-Pierce Oil Company.

Continuing on the stand, Bailey repeated the defense he had made at the Waco convention. Again he omitted any reference to the fact that he had borrowed as much as \$3,300 from Pierce. But now, in repeating that he had not accepted a fee for his part in the reentry of the oil company into Texas, he declared publicly that he believed it would have been lawful and right for him to accept such employment, had he in fact desired to accept it.

"Had I known that this company was going to be forced to a legal dissolution and be pursued in the courts," he added significantly, "I would not have hesitated one moment to accept

<sup>22</sup> Bailey, 1901 investigation, January 17, 1901.

a fee. I have practiced law and pretty fairly, too. I am not such a coward as to refuse to represent any business that I consider right; neither am I such a fool as to drive any legitimate business out of the State. . . . As long as this company stays here and obeys the laws, no demagogue is ever going to drive it out, if I can help it." <sup>24</sup> Attorney-General Smith took the stand and defended himself from the imputation of misconduct or poor legal judgment; he also exonerated Bailey from the charge of improper influence. The committee now believed that the whole case had fallen short of proof. A solemn ballot was taken and each member voted that there was no evidence tending to show a legal or moral wrong on the part of Bailey or any of the State officials. Then on January 23, just forty minutes before the balloting for Senator must be started, the House by a vote of 87 to 25 exonerated the congressman of all charges by accepting the report of the investigating committee. At high noon the nominations were made for Senator and on the first ballot Bailey received 110 of the 114 votes of the House and Senate. Two had been cast for Chilton, one for Reagan, and one for M. M. Crane. The new junior United States Senator spoke briefly in accepting the commission; he made no reference to the fight immediately behind him, but dwelt instead in generalities on the present and future welfare of Texas. He left early that afternoon for Washington to take his seat beside Culberson.

<sup>24</sup> Investigation, January 17, 1901.

## CHAPTER XII

### A NEW SENATOR ARRIVES

BAILEY took his seat in the Senate as the new Congress met on the threshold of 1902. Events on the plane of national politics had run a swift course since the spring of 1900 when the congressman returned to Texas to both repair and extend his own fences. Bryan once more had been chosen as standard bearer of the Democrats, running on the two major planks of anti-imperialism and free silver. At Kansas City the Democrats had also demanded the Federal regulation of railroad rates, but in Bryan's defeat and in the reelection of McKinley, the Republican silence on this same railroad issue had apparently been endorsed by the country. A few years later the issue would burst into flames in the Capitol because Theodore Roosevelt would fling it there, but at the turn of the century Mr. Cleveland's former civil-service commissioner was only Vice President of the United States. The presidential election had given the answer of the electorate to the paramount issues as defined by Bailey and Bryan, rejecting the Democratic position. The country thereby underwrote the new colonial policy of the Republican party. The mandate of the people on domestic policies, likewise, had been an order of full steam ahead for prosperity and normalcy. With this second decisive rout of free silver, the East was lulled into a sense of security against rude economic demands from the agrarians of the West and South.

Then fate struck cruelly at Buffalo, and on September 14, 1901, McKinley was dead of an assassin's bullet. And now,

to the horror of the princes of the American plutocracy, Theodore Roosevelt was President of the United States. This unpredictable young man might, for all that most people knew, not only upset but completely smash the apple cart. But there was one bulwark of safety left—thank God—the United States Senate. There at this critical time, at the moment when Bailey entered it after ten years' service in the House, a small group of conservative Senators exercised almost undisputed control. The master of them all was Aldrich of Rhode Island, the word incarnate in the Senate since 1881 of the second Hamiltonian empire, that plutocratic structure of the society which had risen out of the ashes and ruin of the Civil War. With Platt of Connecticut as chief lieutenant, Aldrich had long since perfected a personal and political alliance with the two most powerful Senators from the West, Allison of Iowa and Spooner of Wisconsin. Through friendship and the mutuality of economic interests that they served, Aldrich also commanded the tacit alliance of Gorman of Maryland, the patriarchal leader of the Democratic minority. Had Roosevelt upon his accession suddenly attempted to unleash the forces of social revolt, the Senate, standing as a rock of refuge, would have received and absorbed the shock before they could bring real harm to the established order. But the new President elected instead to play with, not against, this senatorial cabal. Immediately upon taking office he reassured the country that there would be no break in the policy of his predecessor; at the same time, but more privately, Roosevelt entered a "gentlemen's agreement" with Aldrich and his coterie, whereby the Rough Rider pledged to abstain from disturbing moves on the domestic scene; in return for which, Roosevelt was granted by the masters of the Senate a free hand to play to his heart's content with that more shining and fascinating of toys, the foreign policy of the United States.<sup>1</sup> It is

<sup>1</sup> Stephenson, Chapter XIII.

not surprising, therefore, that Roosevelt in 1903 could carry off the Panama adventure with practically no chiding from his inherited tutors and guardians.

Into such a calm atmosphere the new junior Senator from Texas entered at the end of 1901. Unlike Beveridge, he had been ten years schooled in congressional amenities, and his leadership of the House Democrats entitled him to more consideration by his colleagues than if he were a newcomer to Washington. He moved in this new arena, however, with great caution. A whole month passed in the new year and he had not raised his voice. Then on February 4 he spoke very briefly against an increase in pay for Federal judges. It was a happy and tactful beginning in the sharpest contrast to his bow before the House in 1892. Although the majority were not moved by his argument, they indicated their good will toward him a few days later by passing his private bill to provide a new post office at Gainesville. The Texan, it might have seemed, was content to settle peacefully into the *status quo*, now that he had reached his ambition, and to leave pyrotechnics to those still on the make. But even if such had been his intention, an accident beyond his control would lure him into unexpected prominence.

### §

The attention of the country in the opening weeks of the year had strayed from Congress to the White House, where the new occupant, with his happy, normal, yet strikingly picturesque family, was now at home. The minutiae of this family's life was being chronicled daily in hundreds of columns of type and the American public began devouring the publicity with all the zest that later would find release in the comic strip. Already the President's daughter was influencing women's fashions, and soon she would be transformed into Princess Alice for millions of romance-starved Americans. Then as a climax



in this steadily mounting public interest, the White House announced the approaching visit of real royalty. The brother of the Emperor of Germany, Prince Henry of Prussia, was even then on the high seas en route to be a guest, although technically incognito, at the White House.

This was, as the vulgar phrased it, more hogging of the spotlight by the Executive than the Senate could stand. And the Senate, on Washington's birthday, after genuflecting to the memory of the Father of the Country, moved to call attention once more to itself. The chief actors who now staged "one of the most sensational scenes ever enacted in the Senate chamber" <sup>a</sup> were Senators Tillman and McLaurin, both representing the sovereign State of South Carolina. The interlude came as the Senate debated the Philippine Tariff. Senator Spooner, in urging his Democratic opponents to support this additional "violence to the Constitution," reminded them that Bryan himself had made possible the acquisition of the Far Eastern archipelago. Here Tillman interrupted, more in the spirit of historian than legislator, to declare that Bryan's influence had not been the final and deciding one.

"You know," shouted Tillman, shaking his finger at the Republican majority, "how those necessary votes were secured." But the Senator from Wisconsin professed ignorance. "I know if the Senator does not," added the South Carolinian; "I have received information from that side of the chamber. I know from that that improper influences were used in getting the votes."

There were cries from all over the floor, "Name the man!"

"I know that the Federal patronage of a State has been parceled out since the ratification of that treaty." "What State?" demanded Spooner. "South Carolina," yelled the turbulent junior Senator from that State.

<sup>a</sup> George M. Bailey, Washington, February 22, 1902.

The attention of the Senate stiffened at this charge. All eyes turned to the seat of Tillman's colleague, Senator McLaurin, who had voted for the peace treaty, but McLaurin was temporarily absent from the chamber. "Then I leave you to fight out the matter with your colleague," answered Spooner without any intention of prophecy. Almost instantly Senator McLaurin returned from a committee meeting, where a report of the remark had reached him. Calmly, deliberate, he spoke on personal privilege. "The Senator who has just taken his seat said that improper influences had been used. . . . I now say that that statement is a willful, malicious and deliberate lie." \*

The speech proceeded no further. "With tigerlike ferocity," Tillman sprang at his colleague; "without the slightest hesitation" McLaurin sprang to meet the attack. Tillman aimed a wild blow with his right which landed on McLaurin's forehead, just above the left eye. Instantly McLaurin delivered a right uppercut; the blow spent itself in Tillman's face, from evidence after the fact, "apparently on the nose." Then the two drifted into less professional sparring as they went into an aimless tussle. Soon Senators Warren and Scott exercised police power and separated the pugilists. The members were on their feet during this unprecedented scene, and a ghastly silence lingered over the chamber as the two disheveled lawmakers took their seats. Then to vindicate its outraged dignity the Senate immediately voted both South Carolinians to be in contempt, and the farce seemed ended.

But the next day, which was Sunday, the aftermath of the fist fight turned blue, then black, for the Democrats in the Senate. Although Tillman and McLaurin had promptly apologized to their fellow members, their apology had been received coldly and contemptuously, and Saturday's session had ended without the contempt being lifted. As long as the Senators from South Carolina were in contempt, their votes could not be cast in the

\* George M. Bailey, Washington, February 22, 1902.

Senate. And the Republican majority, it was now more than hinted, were prepared to hold the two Senators in that state indefinitely, thus depriving the opposition of two of their votes.

Early on Monday morning, long before the Senate resumed, the galleries began filling. But the predicament of the Democrats accounted only in part for the outpouring of social leaders, foreign diplomats, and high ranking officers of the government that soon packed the space for spectators; Prince Henry of Prussia had arrived in Washington and was scheduled to visit the Senate before noon. True to the worst fears of the Democrats the president pro tem of the Senate, on the first roll call of the day, ordered the clerk to omit the names of the Senators from South Carolina. Bailey, who had prepared over the weekend for such an eventuality, was on his feet instantly. Old Father Hoar objected to the Texan's interruption, declaring that the order of business should not be obstructed.

"I suggest to the Senator from Massachusetts that we are not now raising a question of order, properly speaking," said Bailey, "but a question of the highest privilege." <sup>4</sup>

Then for fifty minutes, before "the most brilliant gathering in the Senate in years," Bailey proved himself a superb parliamentary field marshal. He spoke "not for the Senators from South Carolina, but the State of South Carolina." His thesis was that under the pretense of punishing a disorderly Senator, the Senate was attempting to deprive a State of its constitutional guarantees of equal suffrage in the Senate. This attempt he inveighed against with the full weight of his oratory and of his legal and constitutional reasoning. He had scarcely begun when the Republican majority realized the strength of this newcomer's surprise attack; Spooner and Aldrich immediately threw themselves into the breach. In the midst of the debate, while Bailey was warming to his argument, the imperial guest of the nation

<sup>4</sup> *Record*, Vol. 35, pp. 2127-29.

entered the Senate. Seated beside the presiding officer, Prince Henry listened for fifteen minutes, "apparently as much interested as anybody" in the remarks by the junior Senator from Texas. Then as the visitor left, Bailey continued his crushing rebuttal of the stand taken by the Republicans. Summing up, he declared that under the plain intent of the Constitution the Senate has no power, except by resolution or expulsion supported by two-thirds of the Senate, "to take the name of a single senator from the roll either for a day or for a year." \*

Although it was not until the next day that the presiding officer ordered the names of Tillman and McLaurin restored to the roll, Bailey's triumph was acknowledged at once; it had been "terrific, splendid, complete." \* In his first major appearance on the floor of the Senate he had won a place in the very forefront of that body. He had inaugurated a senatorial career that would assure him ultimately a position as one of the giants in the history of that forum. The Democratic minority were elated over the performance of their newest recruit. "The crafty Aldrich had been silenced," wrote one partisan, "the astute Spooner had withdrawn." Turner of Washington said the Republicans "need time to bury their dead"; Carmack of Tennessee said that the Republicans "have taken refuge behind a tombstone"; Champ Clark from the lower House was in transports: "the result and the manner in which it was accomplished recalled the days of Calhoun and Clay." Culberson termed it a magnificent contest and said that his colleague had acquitted himself with honor. The Republicans likewise were impressed. "The best fighting days of the Democracy have returned," said Platt of Connecticut, while Foraker of Ohio added, "It is a personal triumph which has not been equaled during my senatorial experience." † And so Bailey, once sneeringly referred to

\* *Record*, Vol. 35, pp. 2127-29.    \* George M. Bailey, February 25, 1901.

† George M. Bailey, February 25, 1902.

as "a perfect Niobe" for his solicitude about the Constitution, now emerged, reading and expounding that document, with the highest acclaims.

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And the Senate, for the moment, was again top dog in the distribution of headlines. Roosevelt acted at once to restore the balance in favor of the White House. The President was entertaining that night with a state dinner in honor of the imperial guest who was also an admiral in the German Navy. Tillman, as the ranking Democrat on the Senate Naval Committee, had been invited. But even as Bailey was retrieving Tillman's vote, Roosevelt was deciding to take away Tillman's invitation to the White House dinner in punishment for his physical encounter in the Senate. At first the President sought to get Tillman's last-minute refusal through a third party, but on learning that the South Carolinian refused to send his regrets, Roosevelt addressed him peremptorily by letter: "The President regrets that he is compelled to withdraw the invitation to you to dine tonight at the White House." The rebuke was almost instantaneously made public, and Tillman furiously, and as publicly, complained of "this insult at the hands of the President." Pointing out that the dinner invitation had come to him unsolicited, Tillman called attention to "its indecent withdrawal" and asked his countrymen to decide "which of us is the gentleman in this matter." \* Thus was engendered a personal bitterness between Roosevelt and Tillman that would have a significant bearing four years later on a great issue before Congress.

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At the opening of the new Congress, Bailey had readily submitted to the leadership of his colleague, Gorman of Maryland.

\* George M. Bailey, February 25, 1902.

Now as the most promising new star on the minority side, the Texan was spoken of as the next Senate leader of the Democrats. He promptly scotched this talk. "When the caucus meets in the Fifty-eighth Congress," he said, "I intend to nominate Senator Gorman. I prefer to do my duty in the ranks and am willing to follow a safe leader like Senator Gorman." \* The triumph in the Tillman-McLaurin affair, however, advanced Bailey's stock to new heights. In April, Representative Cochran of Missouri, heartily seconded by Champ Clark, named Bailey as the logical standard bearer of the Democrats for President in 1904.<sup>10</sup> And again Bailey as promptly entered a disclaimer. "I am positive that my nomination for President would be impolitic," he said. Fully aware of his own Southern prejudices, as well as the prejudices against a presidential nominee being chosen from a Southern State, neither then nor later did he ever entertain any serious illusions about such a possibility. In answer to the suggestion, Bailey put forward the name of Senator Gorman as the successor two years hence to William Jennings Bryan.

If in his first session as Senator he had succeeded in hurdling the wall of prejudice of the "old members of the club," he was not so successful in establishing cordial relations with the White House; or rather, in maintaining them, for at first he felt no hesitancy in calling on Mr. Cleveland's former civil-service commissioner on any matter of official business. When his old friend Burk Burnett got into an argument with the Interior Department over an order to move cattle off leased land in the Indian Territory early in the spring before the grass had sprouted, Bailey finally carried the argument to the President himself. As a former rancher, Roosevelt immediately saw the point in Bailey's plea that to move the cattle at that time would result in needless sacrifice of a large part of the animals, and

\* George M. Bailey, April 15, 1902.

<sup>10</sup> St. Louis *Republic*, April 15, 1902.

the President went over the head of the Secretary of the Interior in ordering a postponement of the date to vacate. But the *rapport* was soon to be rudely and permanently broken. One of the Texans who had volunteered in the Spanish-American War and made a record in the Philippine insurrection was Luther Hare, a relative of the same Silas Hare whom Bailey had defeated in 1890. The Texas officer's ambition to be raised permanently to the rank of brigadier general had the approval of many in Texas, including that of the junior United States Senator. Bailey called therefore at the White House in behalf of Hare's preferment, telling the President that, among others, the legislature of Texas desired this advancement. The President informed the Senator that Hare's superiors in the army did not recommend the advancement. "But I don't give a damn for his superior officers," Bailey answered petulantly. "And I don't give a damn for the legislature of Texas," <sup>11</sup> replied Roosevelt, serving notice that he would appoint another. Bailey resented both the manner and the outcome; never again, so long as Roosevelt remained there, would he darken the door of the White House.

But this new-found animosity toward Roosevelt was exceeded, near the end of the session, by a violent outburst against one of the President's chief lieutenants in the Senate, Beveridge of Indiana. Originally a dispute with the State Department, Bailey's contention grew out of what he felt to be an unjustifiable failure of the Administration to protect the interests of certain Texans in Mexico. During the course of a talk in the Senate, Bailey charged that the Hon. William L. Penfield of Indiana, solicitor in the State Department, had been "either grossly incompetent to perform his duties, or else shamefully indifferent to the interests of American citizens." <sup>12</sup> Beveridge interrupted to take exception to this statement.

"My personal interest in this case goes no further than the

<sup>11</sup> Bucklin, and others.

<sup>12</sup> *Record*, Vol. 35, pp. 7657-67.

attack, most unwarranted, against Judge Penfield," said Beveridge, who pointed out that the solicitor had been named on the recommendation of Senator Fairbanks of Indiana.<sup>13</sup> Perhaps as much by his manner as by his remarks Beveridge roused the resentment of the Texan. A few weeks earlier the courtesy of Senator Culberson had been ruffled by the Indiana Senator; Culberson had felt called upon to say that questioning by Beveridge was "impertinent." But Bailey now was truly angered; he was certain that upon reflection the Senator from Indiana would not stand on the floor of the Senate and "charge me with making an unwarranted attack." He asked Beveridge, therefore, to withdraw the statement. "I will withdraw the insinuation," answered Beveridge, ". . . if the Senator will withdraw his words about a high official of the State department . . . but not until then."<sup>14</sup>

Bailey's temper, that serious flaw in his make-up that so often was nearly his undoing both in the past and in the future, now flared up ungovernably. After a further exchange of words which brought the reprimand of the presiding officer, Bailey concluded: "The statement is offensive and deserves a reply that the rules of the Senate will not permit me to make here. . . . But I want to say . . . and without any kind of passion, that neither the Senator from Indiana nor any other Senator can insult me and then require me to withdraw what I have said in the performance of my duty before he withdraws his insulting words. . . . A Senator can defend a constituent without offending a Senator, and it will be understood, sooner or later. . . . Now Mr. President, I say this in the presence of Senators with no view of excusing anything I have done, but in explanation of what I may do hereafter."<sup>15</sup>

<sup>13</sup> *Record*, Vol. 35, pp. 7657-67.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*



It was late in the afternoon and the Senate adjourned shortly. The chamber was emptying rapidly; Beveridge kept his seat, calmly smoking a cigar as Bailey came over toward him. "Beveridge, I don't want to have any trouble with you," said Bailey, "but I want you to withdraw those words which charge me with making an unwarranted attack upon Penfield."

"I did not intend to insult you," replied Beveridge; "there is nothing in my language which you can consider offensive."

"I don't allow any one to say I libel a man, and that is what you do in making that charge. Now if you don't withdraw the words when I ask you, I am going to make you."

Beveridge kept his seat. "I did not intend, I repeat, to insult you, and I have nothing to retract."<sup>16</sup>

As these words were spoken Bailey lunged at the smaller man and seized him by the throat with both hands.<sup>17</sup> The force rammed the chair against the desk, toppling the desk over. Senators Spooner and McComas and an assistant doorkeeper rushed to intervene, separating the two men "before any serious damage was done." A ripped collar and torn necktie were the main evidence of the struggle. But the episode furnished a new sensation for the press wires and Bailey's effort to choke Beveridge was known overnight throughout the nation. Since, technically, the Senate was not in session and no contempt, therefore, had been given, the affair was ignored officially. But privately members on both sides regretted the episode, especially for Bailey's sake, since "on account of his records made in such a short time" Bailey had more prestige to be affected adversely.<sup>18</sup>

<sup>16</sup> George M. Bailey, June 30, 1902.

<sup>17</sup> Associated Press, Washington, June 30, 1902.

<sup>18</sup> George M. Bailey, July 1, 1902.

## CHAPTER XIII

### MIDDLE OF THE ROAD

THROUGHOUT the first four years of the new century, the Democrats in Congress were listless and dispirited. In this they reflected rather than opposed the spirit of the dominant party, for under Republican control the legislative body had passed indeed into the doldrums. With a few minor exceptions, the period is barren of any important legislation.

Having suffered two disastrous presidential defeats on a radical program, the Democratic party after 1900 began looking once more to the conservative leadership of the East, hoping possibly for another Grover Cleveland to lead them to victory. The trend toward a safe middle course was nowhere more pronounced than in Texas where, in 1902, a new slate of State officials was elected and installed without altering the conservative character of the administration of Governor Sayers. The new chief executive, Samuel W. T. Lanham, had been a member of the Texas delegation at Washington, serving with both Bailey and Sayers in the lower House. His nomination had been conceded before the State convention met, once more in Galveston, in July. But this gathering of the State party had provided one more test of strength between the Bailey and the Hogg forces, and both leaders were present to witness and direct the trial of strength. At Galveston in the summer of 1902 the selection of a chairman of the State Executive Committee served as the single issue to reveal whether Hogg would reassert himself as master of the State party.

Bailey stood for the continuance of the existing party ma-

chinery, symbolized by the reelection of James B. Wells of Brownsville as chairman of the committee. Hogg was equally insistent on a change and demanded the election of Joseph E. Cockrell of Dallas to succeed Wells. Hogg arrived on the island breathing fulminations against the "Congressional Trust" in control of the State party; he was, Colonel Sterett noted, obviously "courting a row."<sup>1</sup> The fight, though, was short-lived and one-sided; the Bailey men easily triumphed in the reelection of Wells, and the convention even closed on a note of party harmony. In the first challenge of his power since the unsuccessful attempt to defeat him for Senator two years earlier, Bailey had been reassured of his mastery, for the time being at least. But the bases of political control can shift quickly, and Colonel Sterett knew Texas politics too well to believe that this test would be final. "The peace obtained was simply peace in the convention," he wrote. "There is no harmony in the party. . . . But why not come right out and tell what everybody knows, and has known for years? . . . the Bailey and Hogg elements are now fighting each other (and are) now contesting for ground to be used in a future fight. How that fight is to come . . . and what will be the causes of it, no one states in a way that it can be presented here. But it is well to have the ground fortified . . . and in the hands of friends when that final battle, which is inevitable, comes. These (two) elements are locked in a struggle and one must fall. And let every man interested . . . keep this fact steadily in mind. For by keeping it there he will be enabled to see many things which would otherwise be invisible to him. . . ."<sup>2</sup>

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Back in Congress, Bailey, like his colleagues and their

<sup>1</sup> Sterett, Galveston, July 14, 1902.

<sup>2</sup> Sterett, Galveston, July 14 and July 16, 1902.

opponents, largely drifted with the prevailing temper of the country. Although Roosevelt during the first few years of his regency kept hands off of domestic legislation, in accordance with his agreement with Aldrich and the Old Guard in the Senate, forces were gathering momentum in the country that would ultimately be felt in Washington. In a timid and tentative way, Congress did respond to the demand for economic reform, that vague prompting of desire aroused in large part, or rather revived on a national scale, by the brilliant group of journalists who were occupied during this period in creating what Mark Sullivan has called "the literature of exposure." Perhaps the onward rush of revolt surging out of the West, checked by Bryan's defeat in '96 and put to sleep by the war with Spain, was only gathering force again for a later and more successful onslaught. In 1903 the Elkins Act prohibiting railroad rebates was passed in response to the grievances of the smaller shippers. Congress created a bureau of corporations, but not many of the creators realized its potentialities as an instrument of warfare against intrenched wealth. There was a fruitless agitation for the admission of New Mexico, Arizona, Oklahoma, and Indian Territories as sovereign States. And now that the money question had been settled, apparently forever, Congress even tinkered a bit with the currency and banking system. Under the ægis of Aldrich, chairman of the Senate Finance Committee, a subtreasury bill was enacted providing for a greater diffusion of government funds among the national banks of the country. Bailey parted company with his party associates by supporting the bill. He saw in this plan no radical alteration of the national banking system, but only an aid to trade in making more money, in more sections of the country, available for circulation.\* It was an awkward step toward the Federal Reserve Act, but it was, none the less, a step in that direction.

\* *Record*, February 28, 1903.

But outside the congressional sphere, Roosevelt felt no hesitancy in giving vent to his own temper, which was more closely attuned to the reform spirit then centering, principally, in the Middle Western States, than was the prevailing mood of Congress. By his melodramatic settlement of the anthracite coal strike in 1903 and by his victory in getting the Supreme Court, in the Northern Securities case, to reverse its denial of the validity of the Sherman Anti-trust Act, the President had more than hinted at his determination to strike at corporate abuses, whether they were found at one extreme or the other of the social scale. But in matters of foreign or colonial policy, the President felt at liberty to command the coöperation of Congress in carrying out a positive program under the terms of the bargain with Aldrich. Already the Republic of Cuba had accepted a material curbing of its sovereignty in the form of the Platt amendment which, incorporated in its constitution, provided for intervention by American forces, if necessary to preserve law and order. Roosevelt's most brilliant coup, however, had been the creation of the Republic of Panama, made possible by the instant and armed recognition of one of the rebellious provinces of Colombia. This stroke was effected once it was seen that Colombia would offer difficulties in the building of the Panama Canal. Before construction of the canal could be resumed under American plans and forces, however, the treaty with the new Panamanian Republic had to be ratified by the United States Senate. Bailey and Culberson opposed the ratification, not only because of the criticism arising from the whole Panama adventure, but also because the Texans believed that the Nicaraguan route, since it was five hundred miles closer to Texas, would be the preferable one.

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As the two parties gathered in national conventions in 1904, it was difficult to discover any great divergences of spirit or

program between them. Very calmly the Republicans, meeting in June in Chicago, nominated Roosevelt for his "first elective term" and added Senator Fairbanks of Indiana as his running mate. The President, originally, had wanted Beveridge as his teammate, but the Senate Old Guard saw to it that this plan was knocked into a cocked hat; they were determined that a "safe conservative should be picked as the running mate of the more strenuous leading candidate." <sup>4</sup> All in all, the Republican convention was a depressing experience, its "funeral air" heightened by "the picture of the late Senator Hanna above the platform," beside which a chaste white bust of Roosevelt rested, and Colonel Sterett turned hopefully toward St. Louis where the Democrats early in July were assembling. But prospects for entertainment in the rival camp were equally poor; Colonel Sterett made a few rounds and came to the conclusion that "unless something happens, it is all over but the shouting." <sup>5</sup>

Alton B. Parker of New York, it was now conceded, would lead the Democratic hosts in the November general election. Bryan agreed that other men and other measures should be given a trial, now that he had suffered two straight strike-outs. The Commoner was present at St. Louis, however, determined that the Eastern conservatives, under the leadership of David B. Hill of New York, should not swing the party too far into reaction. Bryan had mild hopes, perhaps, that Hearst, who out-Bryaned Bryan in supporting governmental innovations, might capture the nomination. But the mild Hearst boom was punctured before it reached formidable headway.

If the public part of the show at St. Louis lacked much of the startling and piquant *ad libbing* of other days, the smoothness of the performance was not an accident; it had been achieved only by the most arduous rehearsing, during which a near riot had to be quelled; for the same back-stage fight be-

<sup>4</sup> George M. Bailey, April 2, 1903.      <sup>5</sup> Sterett, St. Louis, July 4, 1903.

tween Eastern and Western factions of the party that had been going on since the '80's broke out again. And in checking that feud for the purposes of a united front before the country, Bailey was now to be the chief peacemaker. The Texas delegation arrived to cast their votes as a unit, in accordance with instructions, for Parker. As a delegate at large Bailey shared control of the delegation along with Culberson and Reagan. Hogg sulked at home, slightly nauseated at the swing in Texas and national politics that had brought even George Clark back into the party fold. Unknown to himself, Bailey had been selected for higher convention honors than the spokesmanship of the Texas delegation. In the meeting of the National Executive Committee Bailey's name had been offered for permanent chairman of the convention; the name of Champ Clark was also proposed, and in the vote of the committee Bailey had won over the Missourian. The night before the convention opened, Clark, who had learned of the committee's decision, sat a little disconsolately in a hotel parlor, writing a speech to nominate General Francis Cockrell for President as a favorite son of Missouri. "A large shadow fell athwart my writing paper," Clark later related, "I looked up and there stood Bailey. 'Quit that,' he said. 'It would do me no good to be chairman, and it will do you much good. You have always stood by me, and I will stand by you now. I am going over now to the National Committee meeting and make them elect you.' " And, as Bailey intended, Clark was chosen chairman of the convention, but not until the Texan had argued long and persistently with Hill, who distrusted Clark for the position. Clark in turn always remembered "the great Texan's magnanimity." \*

The real off-stage contest occurred in the platform committee. Entering the meeting, Bryan suddenly demanded that free silver again be made a "paramount issue." The conservative

\* Clark, Vol. II, pp. 136-9.

spokesmen recoiled in horror, retaliating, as soon as they could recover their breath, by demanding that the convention pledge itself to the single gold standard. Bryan now wheeled into position with another blast: the income tax as a Federal measure must now be incorporated in the national platform. Hill, raging, assured the committee that the income tax plank alone would throw New York into the Republican column. A major rupture impended that might easily spread to the floor of the convention; both Easterners and Westerners seemed to have bowed their necks, and neither would concede a point to the other. At this serious juncture the spokesmen for the Southern States, who held the balance of votes in the committee, were asked to say whether it would be war or peace. Bailey as the Texas member stepped forward as spokesman for the section. The only way out, he declared, was to drop free silver as well as the gold-standard affirmation, and to pass up the income tax plank for the time being. Hill agreed; Bryan, with "a tremor of huskiness" in his voice, also approved the compromise, and again the party had achieved harmony.<sup>7</sup> Bryan a few weeks later in reporting on the work of the convention told readers of the *Commoner* that "Senator Bailey did a splendid work in the shaping of the tariff and anti-trust planks of platform, and in the fight against the Gold Standard. . . ." <sup>8</sup> By a curious lapse of the pen Bryan made no reference to his demand for a restatement of the free silver position, but he did state that the income tax plank had been shelved "on the ground of expediency." <sup>9</sup>

But Bailey had one more task at St. Louis. He was now convinced that the Democratic fight for Federal regulation of railroad rates should be continued, not abandoned. With the aid of George Burgess and Tom Ball of the House delegation

<sup>7</sup> Sterett, St. Louis, July 8, 1904.

<sup>8</sup> *Commoner*, July 22, 1904.

<sup>9</sup> *Ibid.*



from Texas, he wrote and got adopted a plank in the platform calling for the conferring of rate-making powers upon the Interstate Commerce Commission. Thus for the second time the party of Jefferson went on record for such legislation, although the Republican platform of the same year, as would be emphasized later, was silent again on this issue.<sup>10</sup>

With this platform and with Parker to expound it, Bailey felt that the Democrats might well hope to win the election. He felt that the Democratic party still had a part to play in national affairs and he had a definite conception of its function. "The trouble with the Republican party," he said, "is that it represents one extreme—monopoly—and on the other (extreme) stand our Populist friends representing the extreme of Socialism. . . . I would escape them both by strengthening the great conservative party which holds to a safe and middle course."<sup>11</sup> Acting on this conviction, Bailey now threw himself wholeheartedly into the presidential campaign, speaking before the Kings County Democratic club in Brooklyn on August 25 and concluding in Texas at Dallas on the eve of the election. His tactic was to take the offensive, and his speeches were filled with what he believed to be the shortcomings and misdeeds of Theodore Roosevelt. The Panama adventure, the White House dinner to Booker T. Washington, and other acts of the President "who proposed to commit highway robbery in the presence of the civilized world" by sending American troops into Panama, were now discussed by the campaign speaker.

"My countrymen," concluded Bailey in a typical speech, "this Rough Rider who despises Constitutions and laws, and worships swords and cannons, is marching at the head of a mighty army of Goths and Vandals, his right flanked by

<sup>10</sup> Speech by Bailey, Abilene, July 4, 1906.

<sup>11</sup> *Record*, Vol. 38, p. 2353.

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his black legion. . . . Will you return this man to the White House?" <sup>18</sup>

But Bryan's considerate withdrawal, Parker's undeniable stamp of conservatism, Bailey's aggressive campaigning—all were of no avail. "The American herd," as Colonel Sterett had said at another time, "was taking on" and they did not propose to be disturbed in the enjoyment of prosperity. November came and Roosevelt rode the crest of the Republican tide, at last President in his own unquestionable right.

<sup>18</sup> *Dallas News*, November 28, 1904.

## CHAPTER XIV

### FUSE

RETURNING boards had scarcely finished reporting the great Republican victory of November, 1904, when Roosevelt abruptly ended the gentlemen's agreement with Aldrich, reached into the Democratic grab bag of political promises, and demanded in his December message to Congress that railroad-rate making powers be conferred upon the Interstate Commerce Commission. It was an opening broadside in that brilliant offensive which Roosevelt would wage against the inertia and conservatism of the legislative branch, seeking social and economic reforms by political action. If the shot now fired had come from the Democratic national platforms rather than from the Republican arsenal, the minority at Washington raised no objection on that score. To Bailey, who by 1905 had become, with Gorman's failing health, the real leader of the Senate minority, the important thing was to get relief for the shipping public. The cattlemen through Sam Cowan of Fort Worth, and the merchants and farmers through other spokesmen were furnishing him with the proof that the monopolistic power of the railroads should be curbed. And Bailey was not willing to postpone the fight until 1908 on the chance that Democratic victory in that presidential year might give the party complete credit for effecting this reform.

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But a full year elapsed before the fight for Federal railroad rate-making power reached its climax in the United States

Senate; in this breathing spell, political factors in Texas were converging to bring about another and more personal fight centering on the figure of Bailey. Two years more and the junior Senator from Texas must stand for reelection. And Roosevelt, in an oblique fashion, furnished the occasion for the declaration of renewed warfare between the Hogg and Bailey forces. In the spring of 1905 the President went to Texas to attend a reunion of the Rough Riders at San Antonio. At Dallas en route he was met by 25,000 yipping, yelling Texans who lined the streets through which he passed to his hotel. At the banquet that night in his honor, Jim Hogg, having come from South Texas for this special purpose, publicly and pointedly bestowed his political blessing upon the greatest Rough Rider of them all. In the same city where less than six months before Bailey had denounced the President and scored him most heavily for his part in the Panama adventure, Hogg now recommended Roosevelt for his energetic work in making the canal and the Republic of Panama possible.

"We have been working for fifty years to get the diplomats and the robbers out of the White House," added Hogg, "and it has finally been done. . . . All Texas and the South admires President Roosevelt and we feel honored that he has come to visit us." <sup>1</sup>

The repercussions from Hogg's speech, which had gone far beyond the perfunctory amenities of such an occasion, were instantly registered on all the political seismographs of Texas. This was tantamount to a public notice that Senator Bailey had best look to his laurels. But the warning gave no hint of the bases from which the same fight would be launched, although Bailey himself had been traversing and pointing out the ground upon which his enemies would seek to plant their most deadly guns. It is necessary here to revert briefly to several incidents

<sup>1</sup> *Dallas News*, April 6 and 7, 1905.

in his life, more private than public, which would be seized upon by his opponents for political purposes.

At Austin in 1901, before the legislature elected him United States Senator, Bailey had publicly stated his belief that a Senator had the right in his spare time to practice law with a view to laying up a competence for his old age. During the next four years he acted upon this belief, accepting several law cases that netted him large fees. These, it would develop later, would be used as so much powder to set off a blast designed to destroy him as a political factor in Texas or elsewhere. When that final explosion would come, he would be baffled and angered by the use which his opponents would make of these employments, especially in view of the fact that these legal services were always a matter of public record, and related in no wise to matters directly before Congress.

The Waters-Pierce episode seemed to have been buried in the dead past, now that the State of Texas had given its sanction to the reorganized company, and now that Bailey had been vindicated by the legislature of the charge of any wrongdoing in connection with the relicensing of the company to do business in Texas. Unknown to Bailey, however, a cap to a fuse was being formed out of his relations with the president of the oil company. While Pierce knew that Bailey had borrowed the money from him on the definite understanding, implicitly shown on the face of the loan itself, that it was a personal transaction between the two individuals, the oil man promptly went into the till of the Waters-Pierce Company for an amount equal to the loan to Bailey. The loan, therefore, now passed through the books of the company in the form of vouchers reading "account of Texas legal expenses." Thus instruments came into being which, if shown to the public, could be used in an effort to prove that Bailey had in fact accepted a fee for using his influence in Texas in behalf of the oil company in 1900. Later

this very attempt would be made to prove that Bailey had lied to both the State convention and to the legislative committee in saying that he had not accepted employment from the Waters-Pierce Oil Company. But for the next four years Bailey would remain ignorant of the curious methods, the odd reticences, and the even more amazing employees of H. Clay Pierce. Among these employees was J. P. Gruett, Sr., secretary of the oil company, and therefore one of the officials who swore an oath in Texas in 1900 that the Waters-Pierce Oil Company was in no way controlled or owned by the Standard Oil Company. During 1902 the thought occurred to Gruett that these vouchers might better pass into his personal belongings than to remain in the files of the company. He therefore effected such a transfer without informing Pierce and without telling Bailey that such vouchers even existed. To what purpose he would later use these documents, it will be seen later.

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One of Bailey's closest friends in Texas was John H. Kirby of Houston, a leader in the lumber manufacturing industry, who in 1902 needed the best legal talent available and turned, in his difficulty to Bailey. The affairs of the Houston Oil Company, one of Kirby's two closely allied corporations, had become sadly tangled. And with it the future of his other company, the Kirby Lumber Company, was jeopardized. The Houston Oil Company in fact produced no oil, nor even dealt in it, constituting instead merely the holding company for Southeast Texas timber lands valued at more than \$38,000,000. Such a separation of manufacturing and land-holding functions had been made by Kirby the year previous to carry out a general financing plan suggested by a promoter whom Kirby had employed. In accordance with this same financing plan the lumberman had turned over a large part of the stock of the Houston Oil Company to

the promoter to sell to the investing public. By the end of 1902 the promoter not only had failed to sell the requisite amount of stock, but he also refused to surrender the stock certificates to Kirby or to purchase them himself. Such was the tangle which Bailey was asked to straighten out. When Congress adjourned in the spring of 1903, therefore, he had actively undertaken the task, giving the greater part of the summer to this work. Bailey not only recovered the stock but also succeeded in interesting a group of St. Louis investors, among whom were Pierce and B. F. Yoakum, to purchase a large part of this Houston Oil Company stock. Many times a millionaire, Pierce was heavily interested in several railroads including the Mexican Central, of which he was president. Yoakum, one of the more picturesque of Southwestern railroad promoters, was at the time in control of the St. Louis & San Francisco Railroad. While Bailey felt no call to advertise his employment by Kirby, yet it was far from a secret and no effort was made to conceal it. In fact, Bailey's name as counsel appeared on a number of papers filed at Houston and elsewhere in litigation affecting Kirby's corporate interests. The lumberman paid Bailey for legal services a total of \$149,000 between 1902 and 1906. Kirby later declared that "any New York lawyer would have charged me several times the amount" for the volume and character of the work done by Bailey, and Kirby was convinced that his friend was "the best business man I know of, in addition to being a good lawyer." \*

Throughout these years Bailey faithfully followed his plan to lay by a competence. Most of the money earned by his law practice he invested in real estate in Gainesville. The demands made on a nature as social and warm-hearted as Bailey's, however, became a constant drain on his income, and the horse-breeding farm in Kentucky continued to be an expensive luxury.

\* 1907 Investigation, Kirby, pp. 443-45.

He continued, therefore, to practice law in his free time, making certain always that he never carried the interests of his paid clients into the sphere of legislative deliberation. It is significant that later, when he was being most severely arraigned in Texas, his opponents failed to find one instance where Bailey's votes or expressions in Congress were responsive to the narrower interests of these clients at the expense of those of his constituents.

In the early part of 1905 the State of Missouri, under the particularly able and aggressive Attorney-General Hadley, brought suit against the Waters-Pierce Oil Company and the Standard Oil Company, seeking to oust both from Missouri on the ground that they were together violating the anti-trust laws of that State. The suit closely paralleled that initiated by Crane at Austin almost ten years earlier. As the Missouri suit would progress, interest would again be aroused in Texas. But Pierce had other worries at the moment, one of which was the near bankrupt state into which some coal-mining properties in Tennessee had fallen. With Francis and several other wealthy investors of St. Louis, Pierce had invested large sums of money several years before in the Briar Hill Collieries, the Tennessee Construction Company, and the Tennessee Central Railroad, all allied as a single investment. The investors had in excess of \$13,000,000 in these properties and they faced the prospect of losing much if not all of it. They employed Bailey, therefore, to work out some plan of salvage or reconstruction. The railroad itself was a weak short line originally financed by the citizens of Nashville in an effort to get a second rail outlet to furnish competition with the powerful Southern Railway system. It was to the public interest of Nashville to have this railroad continued, and the reorganization finally evolved and carried through by Bailey, bringing as it did the entry of the Illinois Central into the capital city of Tennessee, met with high



favor in Nashville. Later Nashville spokesmen would so testify when Bailey was subjected to cross-fire in Texas for his work for the St. Louis capitalists.<sup>8</sup> During the greater part of 1905 Bailey was engaged in wading through the involved accounts of these properties, and his journeys included a visit to Nashville. On July 7 newspapers of that city carried accounts of the Texas senator's visit and his purpose. The next day Texas newspapers carried dispatches from Tennessee fully publicizing the matter.

"Senator J. W. Bailey is spending a few days in Nashville and today stated that he was here representing the syndicate of St. Louis and New York capitalists which owns the Tennessee Central Railroad," read one dispatch from Nashville which was printed in the *Dallas News*. "The St. Louis parties interested are H. Clay Pierce, Adolphus Busch, J. C. Van Blarcum, D. R. Francis, and others. . . . Senator Bailey stated that he was representing the syndicate in a legal capacity and was here to make recommendations for the Tennessee Central. . . ." <sup>9</sup>

The whole business was as public as a lynching, but attempts would be made a year later to use it sensationally by those who insisted on portraying it as a secret and sinister job.

During the course of this work, Bailey received astounding proof of the evasive methods sometimes resorted to by H. Clay Pierce. The Missouri ouster suit against the oil companies moved to a climax, and during the trial a Standard Oil witness confessed that a controlling majority of the stock of the Waters-Pierce Oil Company, both before and after the reorganization in 1900, had been held by the Standard in the name of an individual. This testimony flatly contradicted what Pierce had told Bailey and what Pierce, Gruett, and other officials had sworn in an affidavit to State officials before the reorganized company was admitted to do business in Texas. Bailey went at

<sup>8</sup> 1907 Investigation, pp. 874-75.

<sup>9</sup> *Dallas News*, July 8, 1905.

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once to Pierce's office in New York for an explanation. "Yes," Pierce now admitted to him, "since the fall of 1900 controlling stock in the Waters-Pierce has stood in the name of Van Buren, although I have always insisted on managing the affairs of the company without dictation from New York. I believe, however, that the Standard people own Van Buren's stock." \* The interview was held in Pierce's private office; J. D. Johnson, general attorney, and two other associates of Pierce's were sitting in the board room adjoining when Bailey stormed out of Pierce's office.

"I am through with Pierce," Bailey now told Johnson. The oil man followed immediately into the room, attempting to mollify the Texan. Johnson said that he, too, regretted the whole business sincerely and that he felt all along that Senator Bailey should have been apprised of the true facts. Then one of Pierce's associates interrupted to say that the higher officials of the Standard Oil Company were denying the testimony of the witness, insisting that the Van Buren stock was not owned by them.

"Of course," said Bailey, "they will make that claim now, in the light of the Northern Securities decision by the Supreme Court." Then turning to Pierce he explained that here was his chance to throw off the chains of the Standard and win complete independence. Mere ownership of Waters-Pierce stock by the larger combine, if proved, was enough to obliterate control.\* First, however, Bailey must learn exactly what the Standard people were saying about this Van Buren stock; requesting one of the Waters-Pierce attorneys to accompany him, he went at once to 26 Broadway, pausing only long enough to send word to the general solicitor of the Standard, M. F. Elliott, that he was on his way. There he was ushered into a room in which were, among others, John D. Archbold.

\* 1907 Investigation, p. 854.

\* 1907 Investigation, J. D. Johnson, p. 129.

"I have been deceived about this Waters-Pierce stock ownership," Bailey told the group, "and I want to know the real facts."

"It is all a mistake, Senator Bailey," declared Archbold, "the block of stock really belongs to Mr. Van Buren, and we have no interest in it." But the words rang hollow in Bailey's ears. His face betrayed his incredulity. "I hope, Senator Bailey," added Archbold, "that you believe my statement." \*

"I don't believe a word of it," replied Bailey with heat. "I believe you own that stock and if you do, I believe it is an unlawful enterprise. I hope the State will indict every one of you and send you to the penitentiary and I will help to do it." \* He left in great anger, recalled one witness.

Rejoining Pierce, he said, "You can have a first-class fight now. I will stand by you and do all I can to aid you." \* Pierce, however, hesitated. Trapped in his own tangle of deception spun over the years, he was fearful; knowing the power of his oil allies, he could see no other outcome than the final crushing of his own company, and he prevailed upon Bailey to let the matter rest for a while. It was, perhaps, for Bailey a dangerous hesitation; there were those later who felt that he should have immediately returned to Texas and cried to high heaven about the deception practiced upon himself and upon the State of Texas in 1900. The Attorney-General of Texas, however, R. V. Davidson, was the chief law-enforcement officer, and he most certainly was aware of the disclosures in the Missouri case; at the proper time, Bailey now resolved, he would contribute his part to any legal action which Davidson might decide upon. There was a further restraint to Bailey's rushing into action prematurely: his political foes, he felt, would certainly charge that, in advance of action by the Attorney-General, Bailey was

\* 1907 Investigation, J. D. Johnson, pp. 129-31.

\* 1907 Investigation, Bailey, p. 855.

\* 1907 Investigation, J. D. Johnson, pp. 129-31.

only trying to muddy the waters for the benefit of the oil company. He kept, therefore, his own counsel.

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In Texas the old spirit of 1890 and 1892 was again stirring in the bosoms of aspirants for public office. The Roosevelt attack on corporate interests would soon be reflected in the State, and public sentiment, having grown tired of eight years of conservatism, would soon be ready for a more spicy diet. The State elections of the next year, when Bailey would also be a candidate for renomination, might well furnish the opportunity of wresting control of the political machinery from Bailey and his followers, once more placing the Hogg men at the helm. Already the State of Texas had adopted a direct and State-wide primary system, one of the more advanced political devices of the period, and it would be given its first trial in 1906. Railroad Commissioner O. B. Colquitt announced in April of 1905 that he would seek the governorship the next year; the real war-cry was given, though, by Tom Campbell of Palestine, another avowed candidate who now "viewed the political apathy" of the people of Texas during the past six years "with alarm." He invited attention to such construction of the State constitution as had been made involving railroad and corporate interests and charged that these interpretations "in that period were invariably decided in favor of the corporate interests." But he was pleased to note that the common people were studying existing conditions, seeking the cause, and he felt sure they would "apply a proper remedy."<sup>10</sup> R. M. Wynne, whom Sayers had defeated along with Crane for Governor in 1898, now called for a break in the congressional succession to the governorship, alleging that it was responsible for

<sup>10</sup> Hallettsville speech, September 21; reported in *Dallas News*, September 23, 1905.

the fact that "the beef, oil, railroad, lumber and other trusts are stalking abroad in the State, exploiting the people in reckless disregard of the statutes of Texas. I want no more harmony and conservatism along these lines," <sup>11</sup> he declared.

Bailey was home again at the end of the summer. On August 26 he served public notice of his candidacy for reelection the following year. He spoke at Wolfe City, in the old Fifth District, reviewing his five years' service in the Senate. Already there was violent but under-cover talk about his private practice of law. In all candor Bailey told his fellow Texans that in his free time during the vacations of Congress he was seeking "by every honorable means to lay up a competency for his family and himself in his old age. Practicing law during vacations is far better than practicing influence before the Federal departments at Washington." And he concluded his address in Texas by touching on the approaching session of Congress. Now President Roosevelt would have a chance, he said, to prove his sincerity on the question of railroad-rate regulation. The Democrats of the Senate were determined, he announced, to drive an effective bill through the upper chamber, and Federal rate-making would become a law, if only fourteen Republican Senators would join with the President and the minority side. Surely the President's Big Stick policy could line up that number of friends for the bill in his own ranks.<sup>12</sup>

By November the list of candidates for the Democratic nomination for Governor had swelled to include District Judge M. M. Brooks of Dallas and former Attorney-General C. K. Bell of Fort Worth. Their names were added to those of Campbell and Colquitt when members of the legislature gathered in Dallas on November 7 as guests of the State Fair of Texas. Hogg was expected to attend to sound the new, or rather revived, note in

<sup>11</sup> Letter to *Dallas News*, October 22, 1905.

<sup>12</sup> *Dallas News*, August 27, 1905.

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Texas politics. But it was announced at the last minute that the ex-Governor, who recently had been to Mineral Wells in search of health, was too weak to attend. Due to the marvels of science, however, the actual sound of his voice would be heard, for Colonel S. E. Moss had taken a recording machine to the sick man, and now on the gramophone those at the banquet would hear Hogg's own words and voice.

"In a recent nocturnal voyage on the watery waves of despair . . . (The sound was tinny and scratchy, but by listening closely the old master's voice could be recognized.) "I drifted over the vortex of eternity, but was wafted back by the breath of fate. In this sensational journey I forgot neither my God nor my State. To Him I stood ready and willing to render a final account, with no fear of my place in the Great Beyond. As to Texas I felt there is yet much political work to be done, in which every patriotic citizen should take part. Before I leave her I should like to see: rotation in office permanently established; nepotism forbidden; equality of taxation a fact; organized lobbying at Austin suppressed; free pass system effectively abolished; oil pipe lines placed under railroad (Commission); insolvent corporations put out of business; transportation bonds and stocks limited and corporation control in Texas made impossible. . . ." <sup>18</sup>

It was a final charge to the Democracy of Texas on the eve of the 1906 campaign; but it was a dying man's valedictory, not a young general's incitement to victory. Less than five months later Hogg would die and direction of that final, "inevitable" battle foreseen by Colonel Sterett would pass into less skillful but more brutal hands.

<sup>18</sup> *Dallas News*, November 7, 1905.

## CHAPTER XV

### HIGH TIDE: 1906

THE passage of the Hepburn Rate Bill through the United States Senate in the spring of 1906 stands as a landmark in the history of the American Republic. For, in addition to its revolutionary altering of the distributive scheme, it also marked the first successful assault on the new industrial society by parliamentary and wholly constitutional means. Unlike Lincoln's wiping out of more than \$5,000,000,000 of property rights through the freeing of Negro slaves, perhaps the only measure of comparable magnitude in all the previous annals of the United States, the grant of rate-making powers to the Interstate Commerce Commission was accomplished by the elected representatives of the people and confirmed by the Supreme Court without any dubious rereading of the charter of the Federal Union. The long, gradual, but ever-mounting sweep of forces and events that finally brought about this law comprises an important chapter in American history. But our immediate concern is with the interplay of personalities who in the final analysis created this instrument.

Roosevelt, as we have seen, chose railroad-rate regulation at the end of 1904 as the spearhead of his program of economic reforms. His demand to Congress was complied with by the House, where Representative Hepburn of Iowa introduced the bill finally bearing his name. The Senate, however, still under the control of Aldrich and the Old Guard, had allowed the

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measure to be smothered in committee by the time of adjournment in the spring of 1905. And it was during the summer of the same year that Bailey, speaking in Texas, challenged Roosevelt's "sincerity" by pledging the support of Democratic Senators, if the President should renew his demand in December. As "the real Democratic party leader in the Senate,"<sup>1</sup> Bailey's challenge carried weight both as a promise and as a prophecy. And when the first session of the new Congress opened on the eve of 1906 the President struck vigorously, leaving no doubt that he considered the railroad bill to be the chief matter before Congress. In accepting the Democratic challenge, Roosevelt in his renewed demand for the rate bill insured "the climax of his crusade for economic reforms."<sup>2</sup>

The Old Guard were equally determined to resist this precedent which, if allowed, might well presage other legislative tampering with the sources and distribution of wealth. The frankest and perhaps the most succinct reflection of the conservatives' viewpoint at the time was given by Foraker of Ohio, who declared in the Senate that "I minimize the necessity for any legislation of this character."<sup>3</sup> He repeated the old argument that Congress had no power under the Constitution to delegate rate-making functions to a commission, and he was given perfunctory support in this view by Spooner himself. Bailey immediately combated this argument, pointing to the decisions of the United States Supreme Court upholding such delegation of power by State legislatures, notably in the cases of the railroad commissions of Texas and Mississippi.

But the Texan moved to demolish another and more compelling general argument advanced against rate-making by the Federal government. Since rates established by the Interstate

<sup>1</sup> *Chicago Tribune*, May 15, 1906.

<sup>2</sup> *Sullivan*, Vol. III, p. 191.

<sup>3</sup> *Record*, January 16, 1906.



Commerce Commission must, under the prevailing decisions of the courts, be so fixed as to enable the railroads to earn a "fair return" upon their property, it was contended that Federal rate-making would bring about a general rise in the charges for transportation. This argument rested on the assumption that the value of the railroad property was measured by the stocks and bonds issued by the companies which, in many instances, were known to be notoriously inflated. Surely no champion of the people would urge a bill, the net result of which would be to raise the nation's freight bills? In answer, Bailey now made his first major incision: ". . . The charges will be fixed upon the basis of actual value (of the railroads)," he said in January, "not upon the fictitious value of floating securities." <sup>4</sup> Thus he anticipated La Follette of Wisconsin in what was, after all, in the light of subsequent history, one of the most vital points in the whole question. Bailey in the same speech went further, settling for himself, at least, one of the most far-reaching questions of American jurisprudence: ". . . and if the Court ever reaches the time when it must specify what the actual value of the property will be, it will be compelled to say that it is the cost of duplication." <sup>5</sup> La Follette, who made his début in the Senate that session, would several years later push this point to its logical conclusion by a law requiring Federal valuation of the actual property of the railroads as a measure of reasonable rates.

Bailey also restated in the Senate his challenge made in Texas. Not only were the Democratic minority heartily in support of a rate-making bill, but they desired it to be considered as a non-partisan issue. "On this side," he said, "we give evidence of our willingness to forego party advantage when we permit a Republican President to take bodily from our national platform an important plank and make it his recommendation to Con-

<sup>4</sup> *Record*, January 22, 1906.

<sup>5</sup> *Ibid.*

gress without a syllable of complaint. We manifest not only a willingness but an eagerness to vote for it." \*

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The Old Guard soon realized that the time for general demurrers was past. The dynamic drive of Roosevelt, the relentless shelling by the engines of propaganda manned by the radical journalists, the insurgent tendencies of many of the Republican Senators from the granger States, and above all the grim design of the Democrats to lend every aid and comfort to the bill—all of these immediate factors called for something more than a blanket denial of the need for such a law. Their strategy, therefore, now became one to temper or even emasculate the bill before its final adoption, so that its effectiveness would be largely lost. Their first stroke was in the Committee on Interstate Commerce, where the Republican members practically disavowed the measure. This was done by refusing to place one of their own party in charge of the bill. Instead, to the vast amusement of Washington and the country, they maneuvered so that Tillman, the ranking Democrat on the committee, became sponsor of the bill as it was reported out for consideration by the Senate. It was incongruous to put a Democrat in charge of the President's ambition, but it was positively grotesque to select Tillman, who carried his grudges well and who, since the "insult" of the White House dinner to Prince Henry, had not so much as spoken to the President, much less gone near the White House. But Tillman and Roosevelt accepted the anomaly with the best grace possible, and the bill was at last out in the open Senate.

Aldrich and his crew next began sniping at the bill with a series of amendments, the intent of which was to deprive the Interstate Commerce Commission of any power, in the last

\* *Record*, January 22, 1906.

analysis, to determine a railroad rate. That is, the conservatives sought, by amendments, to transfer the rate-making power from the Commission to the Federal courts. They sought, in the language of the debate, to amend the Hepburn bill as it had come from the House so that all rate decisions by the Commission should be subject to a broad and all-inclusive review by the Federal courts. Bailey and a large part of the Democrats and Western Republicans resisted these amendments which would, they felt, mangle the bill. Thus was precipitated the long fight between the "broad review" and "narrow court review" factions in the Senate, a dispute that seemed at the time to be the crux of the whole matter and that produced the greatest popular clamor by its colorful dramatization in the press and forum. Roosevelt from the start ranged himself with the narrow court review advocates.

It was obvious from the wording that both factions agreed that some form of court review must be conceded; the intense difference between the two groups of Senators was simply a matter of degree. Bailey, for example, admitted that "every fair-minded man in this country is willing for every other man to have a fair trial of his property rights (in court)"; "this much was guaranteed the railroads on the face of the Constitution. But in the absence of statutory authority from Congress, the courts, he believed, were empowered by the Constitution to decide only if a given rate was either confiscatory of the railroad's property or extortionate to the shipper. For example, a rate, say, of less than 50c per 100 pounds on coal might be confiscatory, while a rate of more than \$1.00 for the same shipment might be extortionate. Thus between the extremes of confiscation and extortion there is a zone of discretion, within which the Interstate Commerce Commission should be allowed to select a rate. Such selection should be made upon considera-

<sup>1</sup> *Record*, March 21, 1906.

tions that are more legislative than judicial. The broad review adherents, on the other hand, believed that Congress by specific law should extend the inquiry of the courts to cover the entire "discretionary zone"; or as Bailey defined the position of his opponents, they wanted ". . . a review that subjects by statute to the determination of a court those matters which constitutionally could be excluded from judicial cognizance." \*

The debate on the general court review feature began in January and continued to the very end of the fight in May. Bailey, however, was only one of a group of Western and Southern Senators who illuminated the narrow court review position "with learning, clearness, and power." \* It was in a particular refinement of this position that Bailey stood out head and shoulders from his associates. His elaboration of this point would not only lift him to a pinnacle of eminence as a constitutional debater, but also materially affect the outcome of the entire contest over the rate bill. Now a major objective of the narrow court review men was to prevent the framing of a bill which, as the conservatives desired, would open the floodgates of litigation, once the Commission had spoken, thereby defeating regulation of rates for practical purposes by undue delays in the courts. This, rather than any radical distrust of the courts, was probably the motivating idea.<sup>10</sup> And the first step by any railroad seeking to "nullify" a given schedule of rates in this manner would naturally be by the time-tested device of a Federal injunction. The President himself in his first demand on Congress in December, 1904, had asked for a law to "permit the rate fixed by the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review."<sup>11</sup> As late as October, 1905, the President had publicly

\* *Record*, May 11, 1906.

\* Adelbert Moot, *Harvard Law Review*, Vol. XIX, p. 487.

<sup>10</sup> James Wallace Bryan, *American Law Review*, Vol. XLI, No. 6, 1907, p. 801.

<sup>11</sup> Message, December, 1904, quoted, *Record*, May 11, 1906.

repeated his request for a law permitting "rates to stay in effect until reversed by the courts." <sup>13</sup>

But the President's request for a law prohibiting the granting of temporary injunctions by the courts against rates promulgated by the Commission had been forgotten, apparently, by 1906. For when Bailey early in March announced briefly, almost casually, in the Senate that Congress had the constitutional right to abridge the injunctive power of Federal district and circuit courts, the Texan suddenly found himself in the category of a radical, if not a revolutionary. The Senate sat, as it were, bolt upright at the voicing of his heretical doctrine; instantly the guardians of the *status quo* were on their feet, desperately repulsing this droll blasphemy. As Bailey stepped into the cloak room he was besieged by colleagues and opponents asking for citations, arguing *ex-tempore*, or giving vent to unreasoned but enthusiastic support. In the "mass meeting" around the Texas Senator were a number of newspaper correspondents who had come from the press box to get a fuller explanation of this doctrine that had catapulted the Senate into such an uproar. Tillman, jubilant and excited, rushed by and paused long enough to say, "I have just told Joe to draw up an amendment on this point, to weigh every word he writes, and then to pray on it." <sup>14</sup> Thus was another and even more controversial bone thrown in the senatorial arena; the amendment which Bailey submitted ten days later brought on "one of the most notable debates heard in the Senate in recent years." <sup>14</sup>

On March 19, Bailey restated and clarified the doctrine which Roosevelt had twice asked to be incorporated in the law. He answered his critics with an impressive list of citations from the highest courts of the land and argued further from the law

<sup>13</sup> Roosevelt, speech at Raleigh, N. C., October 19, 1905, quoted, *Record*, May 11, 1906.

<sup>14</sup> Wasson, March 7, 1906.

<sup>14</sup> James Wallace Bryan, *American Law Review*, Vol. XLI, No. 6, 1907, p. 801.

and the Constitution. He recalled the first judiciary act passed by Congress in the eighteenth century: it had limited the power of inferior Federal courts to issue injunctions in certain cases by requiring the writ of injunction to be withheld until due notice had been given by the court. He quoted the Supreme Court's approval of an act of Congress that regulated the power of a lower court to issue executions for debt. He recalled the famous decision in *ex-parte Robinson* that contained, he said, "a most important abridgement of the power of a lower court to punish for contempt." "When the Supreme Court has expressly decided (these cases)," he added, "in God's name how can a lawyer contend that Congress cannot regulate the right of a circuit court to issue a mere interlocutory decree?" <sup>18</sup> At the same time Bailey emphasized that he both expected and desired a final judgment by the court in every instance where the railroad felt its property was being confiscated. "All that I contend for," he added, "is that the court shall not suspend what has been done until there has been a fair trial (by the court). . . . That is the entire abridgement that I propose." <sup>19</sup>

The Old Guard did not answer offhand; the Texan had raised a question of such far-reaching importance that it should be carefully and thoroughly discredited. Spooner, therefore, as the master exponent of the Constitution on the Republican side, was delegated to dispose of this threatening thesis. Hurriedly, perhaps too hurriedly, the Wisconsin Senator marshaled his arguments and answered Bailey.

### §

The President, in the meantime, was growing impatient with the lack of action in the Senate. On Saturday, March 31, he called five Republican Senators favorable to the bill to confer

<sup>18</sup> *Record*, March 19, 1906.

<sup>19</sup> *Ibid.*

with him at the White House, where they agreed upon the lines of a narrow court review amendment; the week following, Long of Kansas would introduce the amendment. The President on the same day turned to the problem of how best to make an equally definite alliance with the Democrats. A few days earlier Roosevelt had let it be known that the President was quite delighted with Corn Field Lawyer Tillman's management of the bill. But the President was made to realize the utter impossibility of direct intercourse with either Tillman or Bailey, both of whom had announced that they would not accept a call to the White House. In the midst of this quandary, Henry Beach Needham, "one of Roosevelt's 'fair-haired boys' " among the Administration's journalistic supporters, came into the President's office and received the presidential confidence.<sup>17</sup> After a moment's reflection, Needham recalled that former Senator William E. Chandler of New Hampshire was the "one man in all the world . . . who had Tillman's utmost confidence."<sup>18</sup> Chandler, himself a zealot for rate regulation, was a Republican and now sat in Washington as a member of the Spanish War Claims Commission after being defeated in 1903 for reelection. The close friendship of Chandler and Tillman "was one of those odd friendships that Washington life sometimes assembles from far corners of incongruous backgrounds."<sup>19</sup> The President acted on the suggestion "in his usual impetuous way," telling the newspaper reporter that he would summon Chandler to the White House. Although Needham left at once and walked the three blocks to Chandler's office, he had no sooner arrived there than a messenger from the White House also entered and handed Chandler a note.<sup>20</sup> "My dear Senator Chandler," the letter read, "the President requests me to say that he would be glad to have you come to the White House

<sup>17</sup> Sullivan, Vol. III, pp. 250-51.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Wasson, May 16, 1906.

to see him at 8:30 o'clock tonight. Will you please let the bearer know whether you can come? Very truly yours, William Loeb, Jr., Secretary to the President." <sup>21</sup>

At the appointed hour Chandler arrived at the White House and was soon apprised of the President's wishes in his predicament. Chandler was asked to get in touch with Tillman as "the Senator in charge of the rate bill," and with Bailey "representing the Democrats of the Senate"; Chandler was charged to see if "there could be such united action among the friends of the bill in the Senate . . . as would make a sure majority in its favor and against injurious amendments." <sup>22</sup> The President added, Chandler related later, that he had come "to a complete disagreement with the Senate lawyers who were trying to injure or defeat the bill by ingenious Constitutional arguments, naming Senator Knox in addition to Senators Spooner and Foraker." Roosevelt then "carefully and deliberately stated the basis upon which he thought there should be coöperation, viz., an amendment expressly granting a court review, but limiting it to two points: (1) an inquiry whether the Commission had acted beyond its authority—*ultra vires* was his expression—and (2) whether it had violated the Constitutional rights of the carrier. . . ." <sup>23</sup>

Chandler told the President that in his opinion Tillman and the greater part of the Democrats would agree to such a program, but he pointed out Bailey's logical extension of the narrow court review position, the prohibition of *ex-parte* injunctions against the orders of the commission.

"You need not enlarge upon that point," Chandler later reported the President as saying, "because I am heartily in favor of such a restriction of injunction." <sup>24</sup>

Between Saturday and Monday Chandler conferred with both

<sup>21</sup> *Record*, May 13, 1906.

<sup>22</sup> *Record*, May 12, 1906.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*



Tillman and Bailey and he was able, therefore, on April 2 to report back to the President that both Democratic leaders had agreed to Roosevelt's plan of coöperation. Then for more than a month the curious morganatic alliance held up, with Chandler playing messenger between the White House and the spokesmen of the Democratic Senate minority. A few Democratic Senators boldly accepted the President's standing invitation to confer with him on the rate bill. Senator Rayner of Maryland was one of these; to him Roosevelt repeated that he desired to make "an offensive and defensive alliance with the Democrats." \*\* On the floor of the Senate Bailey hinted broadly at the alliance; he explained that ordinarily he felt it unwise for lawmakers to confer with the executive, "but I must say (that) if ever a President was justified in conferring with his friends in Congress, this measure and these circumstances furnish that justification." \*\*

The President could not physically enter the fray in the Senate; the limitations of his office as well as his lack of legal training prevented him from assisting the narrow court review adherents on the floor of the upper house. But he was free to exercise his fighting talents in the larger arena of public opinion, and here by his genius for "directing" news, the President performed his greatest service in behalf of the rate bill. As Mark Sullivan has pointed out, Roosevelt was able to lay a heavy barrage of front-page headlines in support of the bill in the organs of the bitter-enders, such as the *New York Sun*, at the very time that these journals were excoriating on their editorial pages the whole idea of rate regulation.

### §

But in spite of these extraordinary efforts on the part of the President and his new-found friends on the Democratic side

\*\* Wasson, May 16, 1906.

\*\* *Record*, May 12, 1906.

of the Senate, the outcome of the bill was far from promising as March gave way to April. The Republican opposition stiffened; with Knox and Spooner as heavy artillery, the Old Guard sought to wipe out the very thought that Congress could restrain the courts to the slightest degree. Then on April 10 Bailey rose before a Senate and gallery packed with listeners; it had been widely advertised that he would reply to Spooner and Knox on the power of Congress to narrow the court review to the extent of prohibiting the issuance of *ex-parte* injunctions. Bailey not only met but exceeded the warmest expectations in this, his most notable speech in Congress. For four hours he held the attention of the Senate, a feat all the more memorable for the fact that it was a dispassionate legal argument rebutting a finely spun, hair-splitting legalistic distinction that Spooner and Knox had raised to destroy Bailey's thesis. The speech had been prepared with great care with respect to the authorities and citations to be relied upon, the points to be denied or advanced and their sequence. The delivery itself was remarkably free from either meretricious rhetoric or bombast, two notable weaknesses of the Southern tradition in oratory; now as the greatest living exponent of that same antebellum school of oratory Bailey demonstrated again that genuine oratory can lift cold, almost pure argumentation and analysis into the realm of pure art. There was but a semblance of stage tricks; but he knew the value of an occasional melodramatic touch, and as he cited one decision after another from the highest courts, gesturing toward his opponents as if he were "hurling the accumulated decisions of a century to overwhelm and to bury them," he repeatedly "took his stand" with John Marshall and other revered heroes of American jurisprudence. As he sat down "such an avalanche of applause broke from the galleries that the vice president made no attempt to stay it until it had all but spent itself." "The grave men on the floor of the Senate,"

"Wasson, April 10, 1906.

noted one eyewitness, "catching something of the enthusiasm which surcharged the chamber, oblivious of that decorum that is the pride of that body, rushed spontaneously to Senator Bailey and it were but a slight exaggeration to say almost mobbed him in their eagerness to congratulate him. It was a scene seldom witnessed. Men who have been in the press gallery for twenty-five years declared afterward that they did not recall its counterpart." \*\*

If this April 10 speech was the most brilliant single achievement of his parliamentary career, it was also a crucial instrument in deflecting the course of the rate bill. There was one immediate convert among the Republican Old Guard; Senator Hale, "cold, phlegmatic . . . from Maine," rose immediately to say that the Texan's speech "tended more to disentangle this subject and to secure, I will not say an immediate, but a near beneficent result than anything that has taken place . . . (It is) most illuminating . . . I think that the Senator's argument as to the power of inferior courts and their liability to be considered and controlled by Congress cannot be countervailed . . . I think (that) out of this controversy the Commission will be strengthened. . . . That the Senator has largely contributed to this beneficent result is to me very plain." \*\*

A cooler, but even more sweeping, judgment was entered the week following by the *New York Nation*:

"The feeling was general that Mr. Bailey's speech had put a new face upon the whole rate bill situation. . . . Senator Bailey's reputation, already great, will doubtless be heightened by his speech of April 10. To have held a crowded Senate and packed galleries for four hours listening to a close-knit legal argument is an extraordinary achievement." \*\*

The President had reason to be even more delighted with his new-found Democratic friends. But the next day he received

\*\* *Ibid.*    \*\* *Record*, April 10, 1906.    \*\* *Nation*, April 19, 1906.

disturbing news from Chandler that might have shaken his trust in one Democratic ally, had it not been sifted promptly and found to be false. For on the morning of April 11 Chandler called at the White House to report, and on learning that the President was engaged, the go-between wrote out the following communication which he asked Secretary Loeb to hand to the President: "The game of the railroad Senators is to support Bailey's amendment and induce him to agree to a broad right of review. What that is to be is not certain, but the principal object is to 'beat him'—meaning the President. Mr. Tillman, however, considers himself as acting with the President to pass the review clause with the minimum amount of court power and will not enter into any such game." <sup>21</sup>

More than a month later this memorandum would be made public under altered and seething circumstances. By omission it seemed now to imply grave doubts of Bailey's loyalty to the pact with Roosevelt. But less than twelve hours after the memorandum had been delivered at the White House, Chandler saw Tillman "at 9:15 o'clock" that night and learned from him that Bailey, as well as Tillman, was refusing to enter "into games with the railroad Senators." <sup>22</sup> Thus assured, Chandler returned to the White House that same night and repeated to the President what Tillman had said concerning Bailey. Chandler reassured the President that he "need have no apprehensions on the subject." Later Chandler would explain why his written memorandum of the morning hours had been so ambiguous in regard to the Texan's position. "I did not therein give the President any assurance as to your attitude," said Chandler to Bailey, "relative to the so-called game, because I had not seen you." <sup>23</sup>

<sup>21</sup> *Record*, May 16, 1906.

<sup>22</sup> Letter, Chandler to Bailey, *Record*, May 16, 1906.

<sup>23</sup> *Ibid.*

Whatever doubts the President may have had, if any, at the moment about Bailey's loyalty, were apparently dissolved by Chandler's assurance, for the next day Roosevelt invited Bailey and Tillman to meet with the Attorney-General, W. H. Moody, to agree on the details of a narrow court review amendment. By April 15, the three conferees had reduced these terms to writing, the draft in turn had been submitted to and approved by the President, and it was now returned to the two Democrats by Moody.

By the end of April it was all too clear to the Old Guard that they were about to be routed by a Republican President acting in concert with his Democratic and insurgent Republican allies. If the bill must pass, it should not pass under such unholy auspices. Aldrich and his crew decided, therefore, to save the face of the Republican party. On May 2 Senator Crane spent two hours at the White House painting the consequences of a division in the Republican ranks in the Senate; for the first time the President was informed that a great majority of his own party was ready to join him in a great Republican victory.<sup>84</sup> At the same time "the crafty Aldrich" approached Bailey and Tillman with an offer to surrender; the proffer was even more generous than that which was being made simultaneously to Roosevelt. But the two Democratic leaders, smiling, refused to accept the sword of the soon-to-be-vanquished, "first because they thought they could win more in an open fight, and second, because they looked with suspicion on the gifts from the Greeks."<sup>85</sup> But look as carefully as they could, neither Tillman nor Bailey sensed the real purpose of Aldrich's offer to them; for instantly whispers echoed to the White House that Bailey and Tillman were trading out with the Old Guard to leave the President in the lurch when victory should be finally gained. Credulous, Roosevelt now accepted Crane's overtures, dropped his Democratic

<sup>84</sup> Wasson, May 14, 1906.

<sup>85</sup> *Ibid.*

allies without a hint, a word, or a warning, and on May 4 publicly endorsed a much broader court review amendment which, sponsored by Allison of Iowa, now could be passed as an orthodox Republican measure.

## §

The fate of the rate bill had been settled in Roosevelt's acceptance of Aldrich's terms, although the actual vote would not be cast until a week later. But a sequel to the wreck of the alliance between the President and his Democratic allies was yet to be enacted.

Immediately as this latest turn in Republican party politics became evident, the Democrats in the Senate were up in arms. To them the President's action was a downright betrayal; the result of his sudden coming to terms with Aldrich, they felt, had been to dump the minority party "into the mudhole, a spectacle for the country to laugh at." \*\* Bailey as one of the chief victims was not slow to state his resentment. On May 8 he taunted Aldrich for surrendering; he added, however, that the *Rhode Islander* had "illustrious precedent" in the head of the Republican party who "makes a virtue of surrendering by claiming the surrender to be a victory." \*\* It was now the purpose of the Democrats to show that the Allison amendment opened the gates wider for judicial interference and review than did the scrapped Democratic amendment. Three days later Bailey returned to the complaint, alleging that in accepting the Allison amendment which did not prohibit preliminary injunctions Roosevelt had "compromised again with the opponents of this legislation," although the Democrats had shown him the way to secure what the President in his earliest messages and speeches had most desired: "To keep the Commission's rate in effect until it shall be reversed by the court." \*\*

\*\* *Wasson*, May 6, 1906.

\*\* *Record*, May 8, 1906.

\*\* *Record*, May 11, 1906.

The Texan's chagrin carried him at this point beyond what was entirely fair to the President. Bailey's anti-injunction clause had been practically doomed since the middle of April when the Senate Democratic caucus met and failed to give its full strength to the support of the amendment. Calmer reflection on both sides of the Senate had brought a serious implication in Bailey's proposal into relief; it "would give the force of precedent to the labor politicians who are demanding an anti-injunction bill," a dangerous possibility to many Senators who would not have objected to protecting railroad rates alone from such *ex-parte* interference.<sup>88</sup> In the Democratic caucus only sixteen votes could be corralled in support of Bailey's amendment, and this lack of unanimous support on the minority side materially weakened its chances of final adoption. The view of the dissenters in the caucus was expressed by Culberson, who said that "its adoption would be unwise, even if it were not unconstitutional."<sup>89</sup> Bailey was thoroughly aware of this implication in his argument, but he continued to argue for it; often maligned as a Bourbon, a reactionary throwback to days of less social democracy, he always contended that he was a better friend of labor than many of labor's more strident partisans in Congress.

But the President's action had released a torrent of feeling. "Whether the President was weary of the conflict and surrendered, as some men charge," continued Bailey, "or whether he yielded to the appeals for party harmony, as other men believe, I do not pretend to judge. But whether it was the one or the other . . . or neither, he will find it difficult to explain to the American people why he has raised their hopes so high, and then has fulfilled it in such slight degree. . . ." <sup>90</sup> Rayner of Maryland followed in equally carping vein. The next day Carter of Montana came to the President's rescue, insisting that Roosevelt's record upon the rate bill, as upon "every other public

<sup>88</sup> Wasson, April 17, 1906.

<sup>89</sup> Wasson, April 18, 1906.

<sup>90</sup> *Record*, May 11, 1906.

question he has touched, is a record unmatched, certainly unexcelled." <sup>42</sup> The Republican apologist further lectured Bailey and Rayner for presuming to criticize a Republican President in view of their membership in "a party of negation." This was too much for the Texan. In a scornful retort, he concluded: ". . . This turn in the debate is not of my choosing. I have studiously refrained from speaking any bitter word against the President during this prolonged struggle. . . . I love a brave man; I love a fighter; and the President of the United States is both—on occasion; but he can yield with as much alacrity as any man who ever went to battle, civic or political. . . . Let us have no more talk in the Senate and in the country about this iron man. He is clay, and very common clay!" <sup>43</sup>

Tillman also was seething with chagrin. It was being charged now that the Democrats were talking "through their hats" about an alliance with the President. After Bailey had spoken, Tillman got the floor and poured into the *Congressional Record* a carefully written account of how Chandler, acting as an emissary from the White House, had secured the coöperation of himself and of Bailey in this odd concert. He read statements based, it was learned later, on a written summary of the affair by Chandler, whose memory, in turn, was freshened by his own diary of the various talks with principals on both sides. <sup>44</sup> When Tillman reached Chandler's quotation of the President's characterization of Senators Spooner, Knox, and Foraker as "the Senatorial lawyers who were trying to injure or defeat the bill by ingenious Constitutional arguments," a buzz of suppressed excitement ran throughout the Senate chamber. The three Senators thus designated hurriedly conferred together, and soon they called Lodge of Massachusetts, as the President's "next friend," into the consultation. The President, Lodge was informed, must make an immediate disclaimer of these words, or each of the

<sup>42</sup> *Record*, May 12, 1906.    <sup>43</sup> *Ibid.*    <sup>44</sup> Wasson, May 13, 1906.



three Senators would speak from the floor to this offensive quotation."<sup>48</sup> Lodge paused only long enough to get an exact copy of Tillman's words from the stenographer; then rushing to the nearest telephone in the Capitol he was soon in direct communication with the President. Only a few minutes had elapsed when Lodge returned to the Senate to say:

"One statement made by the gentleman from South Carolina struck me as so extraordinary, so unlikely to be correct and so unjust (that) I read (it) to the President over the telephone. . . . He said in reply that the statement attributed to him by Mr. Chandler was a deliberate and unqualified falsehood."<sup>49</sup>

Neither Chandler nor Tillman were of the stripe to take this charge lying down. Late in the afternoon of the same day (May 12) Tillman issued a statement to the public, incorporating an extract from Chandler's diary for March 31, in which the "falsehood" was repeated in the exact language set down by the diarist on the night he talked first with the President about the proposed alliance. Tillman added, defiantly, that he was releasing only so much of Chandler's diary as related to the March 31 interview at the White House "which has become a matter of dispute. But I will retain the remainder for use in case any other parts of my statement in the Senate on Saturday are denied."<sup>50</sup>

With the issue of veracity so boldly drawn, attention switched to the White House; a furious public anathema was expected at once, especially as the newspaper correspondents were asked to be at the White House at six o'clock. Secretaries Taft and Root of the President's cabinet got there first, however, so that when the newspaper men arrived they were received instead with only the bland and noncommunicative smiles of the two cabinet officers who were departing. The President, it was an-

<sup>48</sup> Wasson, May 13, 1906.

<sup>49</sup> *Record*, May 12, 1906.

<sup>50</sup> Wasson, May 13, 1906.

nounced, had no release that night for publication. But on the next day, which was Sunday, the President took steps to present his side of the controversy. Attorney-General Moody was prompted to give the President a letter recalling the negotiations with Senators Tillman and Bailey and assuring the President that as his chief legal adviser the Attorney-General had never committed the President to any specific court review amendment.<sup>48</sup> Then toward nightfall the President released, for Monday-morning publication, a letter from himself to Senator Allison, in which the President's whole course was reviewed by the President. But curiously enough, it was instantly noted, there was now no reference to, much less a repetition of, the assurance that Lodge had given the Senate that Chandler and Tillman were guilty of "a deliberate and unqualified falsehood."<sup>49</sup>

" . . . To all whom I saw," the President stated in his letter to Allison, "I stated that the Hepburn bill (as it passed the House) was entirely satisfactory to me . . . yet I was entirely willing that there should be a definition (of court procedure), provided that this definition did not seek to grant a broad review. . . . In no case, either in the case of Mr. Chandler, or in the case of anyone else, was there the slightest opportunity for any honest misconception of my attitude, or any belief that I had pledged myself specifically to one and only one amendment, or set of amendments, or that I would not be satisfied with any amendment which preserved the essential feature of the Hepburn Bill as it came from the House."<sup>50</sup>

Turning to the charge that he had deserted his Democratic allies, the President refuted this interpretation. " . . . I finally became convinced that it was impossible for Senators, with advantage, to use me as the intermediary in coming to an agree-

<sup>48</sup> Wasson, May 14, 1906.

<sup>49</sup> *Ibid.*

<sup>50</sup> Associated Press, Washington, May 14; also *Record*, May 15, 1906.

ment with their colleagues. . . . About this time I was informed by various Democratic Senators that they could not come to any agreement upon any amendment, and that the best chance for success lay in passing the Hepburn bill substantially unchanged. . . . I was informed and believed that this was Senator Bailey's view, and a number of Republican Senators who favored the bill expressed the same opinion." <sup>81</sup>

But more provocative still, the President now, by indirection, denied that he had sought an alliance with the Democratic leaders. "After the rate bill was reported from the Committee," continued Roosevelt, "and after, by a vote of the committee, Mr. Tillman had been put in charge of it many Senators and many outsiders came to see me with reference to it. Among many others I was asked to see former Senator Chandler, as representing Mr. Tillman. I stated in response that I was, of course, entirely willing to see Mr. Tillman personally or anyone who could speak for him, and I accordingly directed my secretary to make an appointment for Mr. Chandler to see me." <sup>82</sup>

The overwhelming majority of American newspapers carried the President's explanation on Monday as contained in this letter to Allison. Two of the journals closest to the Administration, however, the *Chicago Tribune* and the *New York Tribune*, whose publishers were, respectively, the American Ambassador to France and the American Ambassador to Great Britain, scored a beat on their competitors that would furnish additional repercussions a few days later.

When the Senate reassembled on Monday, Senator Allison made the letter from the President a part of the record. Tillman declared the statement as to who initiated the alliance to be "absurd on its face"; and he proceeded to argue further with the

<sup>81</sup> Associated Press, Washington, May 14; also *Record*, May 15, 1906.

<sup>82</sup> Associated Press, Washington, May 14; also *Record*, May 15, 1906.

President by repeating his charge of bad faith. "Of course the President was not bound to change, but he was bound under the circumstances to give notice, and this was not done. . . . (I am ready, however) to leave the whole question to the thoughtful and honorable men of the country." <sup>55</sup>

But Bailey was not ready to leave the whole question as it now suddenly developed. For on Tuesday morning the Texan saw a copy of the *Chicago Tribune* for Monday in which he was blazoned forth as a deserter; summarizing this second and "unofficial" explanation of the President's about-face, the headlines of the *Chicago Tribune* dispatch from Washington read: "Bailey a Traitor on the Rate Bill—Charged by Chandler That Texan Sought Alliance With Aldrich to Block Tillman's Efforts—Roosevelt Quick to Act—President's Prompt Work in Emergency Unites Republicans and Deprives Democrats of Credit." An examination of the special dispatch to the *New York Tribune* disclosed substantially the same "inspired" version. Both interpretations, it was believed, were based on the written memorandum of a month previous which Chandler had handed to Loeb to be passed on to the President. If, as Bailey implied, this use of the memorandum had White House sanction, it was both unjust and unpardonable.

The Senate had not been convened twenty minutes on Tuesday morning when Bailey rose on personal privilege and began "one of the most dramatic and scathing denunciations ever endured by a President of the United States from a member of Congress." <sup>56</sup> The Senate was so still "that a whisper would have bounded from wall to wall"; Bailey's face was colorless and he was under obvious strain, but he spoke with deadly self-control. <sup>57</sup> During the course of his answer he read both the

<sup>55</sup> Associated Press, Washington, May 14; also *Record*, May 15, 1906.

<sup>56</sup> James Wallace Bryan, *American Law Review*, Vol. XLI, No. 6, 1907.

<sup>57</sup> Wasson, May 16, 1906.

April 11 memorandum and a letter from Chandler to himself explaining how on that same night in April the President had been given definite assurance that Bailey was not "entering into games with the railroad Senators." \*\* Then as he reached the climax the volume of his voice suddenly swelled, his frame shivered with emotion, and his face and manner now disclosed his unbounded anger.

"I denounce," he cried in words that echoed through the doors into the corridors, "I denounce that statement as an unqualified, a deliberate and a malicious lie; I denounce the man who furnished the information on which (these articles) were based, or who inspired their publication, as an unqualified, deliberate and malicious liar, whoever he may be and however high the office which he holds." \*\*

The memorandum had proven "a veritable boomerang; it mocks those who sought to use it." \*\* Tillman on the floor of the Senate promptly repudiated the inference drawn in the two newspapers. "I have never lost faith in the integrity, honor, fair-dealing and purpose of the Senator from Texas," said Tillman. "There has never been the slightest disagreement between us from the beginning of the railroad rate bill debate in the Senate. . . . The story which is concocted now and is being sent abroad by the cuckoos and hirelings of the Republican machine to endeavor to muddy the waters and becloud the situation is only indicative of the desperate straits to which some people have wrought themselves." \*\* Down in Texas the *Dallas News* commented: "In Texas where Senator Bailey is best known it needs no statement from him nor testimony from others to refute the insinuation that he had in fact entered into a trade with Senator Aldrich and other arch-enemies of rate legislation. . . . So much of President Roosevelt's telephonic and written

\*\* *Record*, May 16, 1906.

\*\* *Ibid.*

\*\* *Wasson*, May 17, 1906.

\*\* *Record*, May 16, 1906.

statements concerning this matter have been absolutely disproven that it is impossible to believe that there is anything whatever in the flimsy excuse thrown out for his desertion of the allies whom he sought." \*\*

## §

The ascending series of disclosures that followed the break between the President and the Democrats almost obscured the bill itself. But in the lulls of personal recrimination the work of rounding out the final form progressed. In the consideration of other amendments, Bailey took an active part. La Follette with irrefutable logic returned to his demand for a valuation of railroad property as a basis of rate-making, but his own colleagues rejected the amendment.

"It is a mistake to omit that provision," Bailey complained on the floor of the Senate. ". . . A valuation provision is elementary . . . and primary . . . a fundamental step in the process of rate making. . . . It is an absurdity to require . . . the determination of a just and reasonable rate without first ascertaining the value of the property with which the service is performed." \*\*

Bailey was more successful in getting another amendment written into the law, one which would have a profound effect on business life. For years the railroads, in their competitive race for tonnage, had been buying into the control of the extractive industries of the country. This practice, Bailey believed, was inimical to the general welfare through the unfair discrimination that it produced, and he therefore wrote an amendment to divorce the business of transportation from the business of manufacture or mining. As passed, the Transportation Amendment bore the name of Elkins of West Virginia, but the Texan

\*\* *Dallas News*, editorial, May 18, 1906.      \*1 *Record*, May 18, 1906.

was its real author, his name being left off for tactical reasons."<sup>22</sup> Oil pipe lines were also declared common carriers and subjected to Federal regulation. But most pleasing of all, the principal, if not the total application of his anti-injunction amendment was adopted by the Senate. As the Interstate Commerce Commission took renewed life under the Hepburn Act, its orders and rates were protected against *ex-parte* injunctions for a period of five days, and no single Federal judge could enter any interlocutory decree; such a judge was required to have a member of a circuit court sitting with him before the court's most gracious writ of injunction could be issued. Senator Dooliver had introduced this amendment after Bailey's was voted on and defeated. The Texan contended then and later, however, that the Senate had approved his doctrine, for in limiting the injunctive power of the courts for five days, Congress had differed with him only on the matter of time.

So, balancing gains and losses, Bailey could say on the final vote that "while this bill is not as good as it could have been made and not as good as it ought to have been made, yet it is a distinct and great improvement over the existing law, and I shall very cheerfully cast my vote in its favor."<sup>23</sup> Still indignant at the President's desertion, he was fair enough to admit, however, that without Roosevelt's support "even this imperfect and insufficient bill could never have become a law."<sup>24</sup> And it was one of those rare occasions like that in April of 1898 when Bailey on May 18, 1906, was one of an overwhelming majority in Congress in voting for the Hepburn bill. Only three negative votes were cast in the Senate, one by Foraker and the other two by the Democratic Senators from Alabama, elderly statesmen who did not accept the commerce clause of the Constitution as

<sup>22</sup> 1907 Investigation, Bailey, p. 925.

<sup>23</sup> *Record*, May 18, 1906.

<sup>24</sup> *Record*, May 11, 1906.

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an excuse for this invasion of the rate-making powers of the individual States. It was the conclusion of a great battle, and "the big, handsome, proud, rather arrogant Texan, one of the ablest and most forceful men who ever sat in the Senate . . . " was conscious of his part in the triumph.

•• Sullivan, Vol. III, p. 269.



## CHAPTER XVI

### RE-ELECTION

WITH his part in the railroad rate bill fight as the climax to his sixteen years of public service, Bailey turned in the spring of 1906 to appeal to the people of Texas for another six-year term in the Senate. The new machinery of the State-wide primary would be given its trial by the Democracy late in July. Although it was impossible for the State government to alter the formal election of United States Senators by the State legislature, the new primary law provided, under an optional clause, for the submission of senatorial candidacies to the voters directly in the primary election. This option he exercised, so that his name would be before the Democrats of Texas at the time they selected nominees for State office "from Governor to constable." It was a challenge to his critics and political enemies to meet him in the open field. Already popular sentiment was veering toward the Hogg men with their tradition of trust busting, including the "Congressional Trust" which had been in control of the State since Sayers' first election. But if the "inevitable fight" between the Bailey and Hogg factions, predicted four years earlier by Colonel Sterett, was about to break, there were no surface indications of it in Texas. Then Hogg died unexpectedly at Houston on March 4 and there was no real leader to step instantly into his place. Spring gave way to summer and still no one offered to contest with Bailey before the voters of Texas. Congress continued in session well into June and, as

he had no opponent, the junior Senator remained at work in Washington.

## §

But as tranquil as the Texas front seemed, there were individuals both within and without the State who were determined that Bailey should not return to the Senate. They laid their plans carefully and for the most part without resource to publicity; at the right time they would set off the fuse to the explosive compound that was being manufactured out of every scrap of Bailey's private activities. The Brutus of this patriotic conspiracy was furnished by the Lanham Administration in the person of the Attorney-General of Texas, R. V. Davidson. Judging by his subsequent course, Davidson himself would not spurn a crown, once Bailey were destroyed politically. But in the spring of 1906 Davidson appeared no more ambitious than to protect the majesty of Texas law against the assaults of corporate greed and chicanery. We have seen that in the year previous the State of Missouri had wrung the confession from a Standard Oil Company witness that the larger combine had controlled the Waters-Pierce Oil Company since 1884. If true, this was *prima facie* evidence that H. Clay Pierce, J. P. Gruett, Sr., and other officers of the Waters-Pierce had lied to Texas officials in their affidavit of 1900, swearing that their company was in no wise a part of the Standard Oil combine. By April of the Texas election year the Missouri ouster suit against both the Waters-Pierce and the Standard Oil promised to repeat Crane's victory in Texas of six years before. Although District Judge Sam R. Scott at Waco was telling a grand jury that the anti-trust laws of Texas were "not worth the paper on which they are written,"<sup>1</sup> the *Dallas News* was predicting that the enviable reputation of the Attorney-General of Missouri would

<sup>1</sup> Quotation from *Waco Times-Herald*, in *Dallas News* editorial of March 9, 1906.

soon furnish an example "to be followed by men exercising a similar power in other States." <sup>a</sup> At that very moment, Davidson, aided by Jewell P. Lightfoot, a young attorney specially employed as an assistant for the purpose, was preparing to foment "antitrust developments on a large scale . . . in the near future." <sup>a</sup>

While Lightfoot went to Jefferson City to study the records in the Missouri case, Davidson went to Washington to consult the Federal Commissioner of Corporations, whose investigations of certain phases of the Standard Oil combine had been made public with telling effect by Roosevelt. "Whether I bring suit against the oil people or the beef people will depend on the nature of the information I get during this trip," Davidson announced at Washington. "I shall not," he added with curious and significant emphasis, "institute suits merely to afford excitement to newspaper readers."

On learning of Davidson's presence in the national Capital, Bailey called on him with offers of assistance in securing audiences with Federal officials, but to each offer Davidson was noticeably cool and indifferent. Lightfoot came on from Missouri to Washington, and soon Bailey began to get strange rumors; it was said that Lightfoot and Davidson had run across the trail of money transactions between Bailey and the Waters-Pierce Oil Company in 1900. Unaware of the fact that Pierce's private loan to him had been run through the books of the oil company as vouchers, Bailey now wrote Lightfoot for an explanation.

"Yesterday a gentleman told me that someone had represented to you that either I had given my notes to the Waters-Pierce Oil company or that that company had given its notes to me," wrote Bailey, "and that the transactions had some connection with the readmission of the Waters-Pierce Oil company to

<sup>a</sup> *Dallas News* editorial, April 1, 1906.

<sup>a</sup> Thornton, Austin, May 15, 1906.

Texas. It is immaterial (which) this party stated . . . because either statement is false. . . ." <sup>4</sup>

Bailey sent an almost identical demand to the Attorney-General of Texas, but neither Lightfoot nor Davidson so much as acknowledged the requests. If Bailey was mystified about the exact nature of the papers, he soon learned of the source of the rumors. On June 26, L. S. Flateau, a former Texan then living in St. Louis, used the United States mail to make Bailey an amazing proposal. Gruett, Sr., it developed, was seeking \$28,000 from Pierce in alleged back salary. Gruett had been discharged by Pierce as secretary of the oil company in 1904, but had been assigned by Pierce to work with Bailey as an actuary in the unraveling of the affairs of the Tennessee companies. On the strength, perhaps, of reports by Bailey, Pierce had finally severed all business relations with Gruett. Flateau now reported to Bailey that he had seen and read in Gruett's possession "letters and other *prima facie* documents that look very bad for your interests." Flateau also wrote that he had seen "communications from the head of certain departments in that State (Texas) wherein they hope to arrange matters for (Gruett's) appearance there." Flateau asked, therefore, "as a friend" that Bailey intercede with Pierce to pay Gruett the \$28,000. Thus Bailey could stop, he said, Gruett's legal proceedings against Pierce, "wherein you will be implicated in transactions that the people of Texas might construe far beyond what they really amount to. . . . No one as yet but myself knows of these facts, as I have narrated them to you, or could give you the warning that I give you without price of any kind. . . ." <sup>5</sup>

Bailey was thrown into a state of great indignation. The

<sup>4</sup> Bailey to Davidson and Lightfoot, June 21, 1906, quoted, 1907 Investigation, p. 862.

<sup>5</sup> L. S. Flateau to Bailey, June 26, 1906, quoted, 1907 Investigation, p. 999.

proposal sounded like a chapter from a dime novel. Let them produce these incriminating papers; there was none in existence, he felt certain, "with my name signed to it that would embarrass me or that would contradict anything that I had ever said to the people of Texas." \* It was both safer and cheaper to expose than to buy forgeries. He scornfully ignored the "warning" by refusing to reply to Flateau, but he had learned the company in which Davidson and Lightfoot were now running.

While the fuse of powder to the Gruett papers was being perfected, a published attack on Bailey was flung before the country. Less than eight weeks before he would stand before the Democracy of Texas in the July 28 primary, the July issue of the *Cosmopolitan Magazine* appeared with its fifth installment of a series of muckraking articles designed to prove "The Treason in the Senate." Written by David Graham Phillips, who brought the novelist's touch to what Mark Sullivan has called "the literature of exposure," the series represented the baroque flowering of that journalistic movement which earlier had so effectively aided Roosevelt and the forces of economic and social reform. Phillips now sought to prove that the Democratic and Republican Senators had effected a tacit "merger" against the welfare of the general public and in favor of "the special interests." As the tale opened, Aldrich and Gorman were painted as "the masters of the Republican-Democratic machines, the deciders of what 'the party' shall do and what it shall pretend to do. Spooner and Bailey are their chief spokesmen, the men who strike the 'keynotes.' " † The installment devoted to Bailey was a sensational review and republication of all that had been charged against him since that day in 1900 when he agreed to help Pierce in the Texas "complications." In addition Bailey's employment by Kirby, and by

\* 1907 Investigation, p. 864.

† *Cosmopolitan Magazine*, Vol. 41, p. 276.

the St. Louis group in the reorganization of the Tennessee properties, was now spread on the canvas floridly.

Although senatorial custom was against it, Bailey decided to reply to the article from the floor of the Senate. He was convinced that the owner of the magazine, W. R. Hearst, was using this method to eliminate, if possible, the Texas Senator who stood, Bailey believed, as a bar to the publisher's own political preferment. Hearst that same year had captured the Democratic endorsement for Governor of New York, and if successful in that State, Hearst might well be a contender for the Presidency two years hence. The article had referred to the fact that "if this young Joseph Weldon Bailey is reelected by the Texas Legislature next winter," he would, in the event that the Democrats won control of Congress before 1913, become "the leader of the Senate."<sup>9</sup> But to those who expected thunderbolts of denunciation from Bailey, the Texan spoke "with perfect composure. . . . It was more an argument . . . a resort to logic to destroy a structure of misrepresentation."<sup>10</sup> The *Dallas News* correspondent was convinced at the conclusion of the speech that "Mr. Bailey had made a most favorable impression."<sup>11</sup>

What effect would this stirring up of the old feud have in Texas? It was of interest beyond Texas to know if he might be eliminated from politics. To a representative of the *Baltimore Sun* Senator Culberson promptly predicted that his colleague would be reelected, and he took this opportunity to speak in defense of Bailey.

"In the primary to be held July 28 under the new law," said Culberson, "my colleague, Senator Bailey, will have no opponent, and beyond question will succeed himself, as he should. The recent personal and political attacks on him in a magazine article and in an editorial in a New York paper which

<sup>9</sup> *Cosmopolitan*, Vol. 41, p. 266.

<sup>10</sup> *Wasson*, June 27, 1906.

<sup>11</sup> *Ibid.*

is understood to be associated with this magazine, will have absolutely no effect on his return to the Senate.

"While naturally I have no information regarding the details of his private business affairs, and although he needs no defense from me, still it is not improper for me to say at this juncture that the people of the great State we represent in the Senate, whose opinion I share, have absolute faith in his personal integrity and honor. His probity is such that an inquiry into his personal affairs to discover dishonorable conduct is absurd, and the suggestion is repulsive to the gentlemanly instincts of anyone who knows him. . . . As a matter of course I do not believe his adherence and loyalty to Democratic principles is open to the slightest doubt." <sup>11</sup>

Returning to Texas, Bailey took the stump in his own behalf six weeks before the July primary. The *Cosmopolitan* article apparently had fallen on rocky and sterile ground, for as he swung around the State no one came out into the open asking that he be denied re-election, much less that another be named in his place.

"For six years I have been one of your Senators at Washington," he told the people of Texas from the stump, "and an accounting might be expected from me. But as no citizen of Texas has offered himself against me, I may assume that I have served you acceptably and that no accounting is necessary. I will therefore speak to you not of men but of measures." <sup>12</sup>

But if there were no public manifestation by the anti-Bailey forces, there was an undercurrent of opposition given renewed force by the magazine article. Bailey was aware of this and answered to the extent of saying that "my most malignant enemies cannot point to a single speech made or to a single vote cast that was against the honor or interests of the people whom

<sup>11</sup> Baltimore *Sun*, June 23, 1906.      <sup>12</sup> Dallas *News*, July 16, 1906.

I represented. And this is my challenge to my critics, and I have some." <sup>13</sup>

## §

The outcome of the race for Governor was not, however, so foregone. The strength of the four candidates was fairly evenly divided, with the odds admittedly in favor of Tom Campbell of Palestine. He had been adjudged in the true apostolic succession, for in May, 1905, ex-Governor Hogg had written a letter saying, "For my part I am unequivocally for Tom Campbell for Governor and believe that he would make an excellent one in all respects." <sup>14</sup> Campbell had opened his campaign on San Jacinto Day by declaring "the time for action is at hand." There was just cause, he felt, "for complaint and apprehension in Texas and throughout the country . . . for the railroad, beef, lumber, oil, steel and hundreds of other trusts are preying upon the people . . . thriving under the protection of political trusts with which our country is cursed today." <sup>15</sup>

Bailey chose one of Campbell's three opponents to support. Although the junior Senator was friendly with Railroad Commissioner Oscar Branch Colquitt and C. K. Bell of Fort Worth, his deepest personal as well as political loyalty was pledged to District Judge M. M. Brooks of Dallas. Speaking to "my neighbors" at Gainesville, Bailey introduced his friend and said, "I want to appeal to you to help Judge Brooks to be Governor of Texas because he helped me to be Senator." <sup>16</sup>

Then on July 28 the Democracy of Texas went to the polls to hold their first State-wide primary election. In that first

<sup>13</sup> *Ibid.*

<sup>14</sup> Letter, James Stephen Hogg, May 17, 1905, to W. F. Cameron, Atlanta, Texas: published, *Dallas News*, July 6, 1906.

<sup>15</sup> *Dallas News*, April 22, 1906.

<sup>16</sup> *Dallas News*, July 14, 1906.



experiment, Bailey received more votes than were cast for all four gubernatorial candidates combined. But the race for Governor was far from decided, since none of the four had received a majority. At that time the election law made no provision for a second run-off primary to be held between the two highest candidates, and the nomination, therefore, for the highest State office was again thrown before the State convention of the party for final settlement. Campbell, as was expected, led the field, with Colquitt a close second. Bailey's candidate disputed with Bell for third place as the returns dribbled in from the farthest precincts. It was promptly seen that the Brooks vote in the convention might easily decide whether Campbell or Colquitt would be Governor of Texas, and Bailey again occupied a strategic position as the party delegates met in Dallas in August. Would the junior Senator throw the balance in favor of Colquitt, or Campbell? It was the one quickening topic of conversation; and Bailey's answer was given on the first day of the convention when, in addressing the hosts, he effected one of the most spectacular scenes ever witnessed in Texas politics. In a discussion of national prospects for the party, which seemed entirely innocent of any Texas implications, he admonished his hearers not to be discouraged, not to despair of final Democratic triumph. He pointed his prophecy by retelling in stirring language "the story of that fearful siege of Lucknow." As he began this heroic tale of distant India none of the thousands of delegates perspiring in the awful heat of the State Fair auditorium thought it more than a fascinating allegory; but when he reached the climax wherein the fevered child in the stricken and besieged English colony cries "Hold out; hold out just a little longer; the Campbells are coming," the convention went wild. Bailey could not finish the sentence, for like a thunderclap the Campbell delegates broke into a demon-

stration that seemed to last for hours. At last able to proceed, he added very gravely, "My fellow citizens, I see that you have given my story a local application." And once more the chairman was unable to control the convention. When at length quiet prevailed once more Bailey executed the coda of his speech without further explanation. "They thought it was a delirium, but it was not. The rapt and praying spirit, trembling 'twixt heaven and earth, had caught that sound in the distance, and within an hour the flag of old England was waving in triumph over their heads. So it will be with us if we hold out a little while. The civic virtue and righteousness of this Republic will come to our rescue and the flag of an undefiled and unsullied Republic will wave in triumph over the Nation's capitol."

Two days later Campbell was acclaimed the Democratic nominee. As an expression of the gratitude of the Campbell men, Cone Johnson of Tyler, one of Campbell's chief lieutenants, made the formal nominating speech for Bailey. The convention endorsed the records of both Senators at Washington and went on record, further, to denounce "the malicious and unjust attacks made upon the personal character of Senator Bailey." Declaring full faith in Bailey's integrity, the resolutions passed by the convention added its belief that "these slanders have emanated from persons who have by design willfully attacked him for the specific purpose of weakening his influence as the great champion of the interests of the people."<sup>17</sup>

Once while he was speaking before the convention, some one yelled, "Hurrah for Jim Hogg!" "Yes, my friends," Bailey answered quickly, "I join with all of you in paying tribute to the memory of a great man and a patriot."<sup>18</sup> For a moment it

<sup>17</sup> *Dallas News*, August 15, 1906.

<sup>18</sup> *Ibid.*

seemed that death and politics had healed the last great breach in the Democracy of Texas. As the convention adjourned, the personnel of the next legislature had been instructed to reelect Bailey.

## §

The name of Bryan, in the spring of 1906, had been once more on the tongues of millions of Americans. On a tour of the world, the Commoner had visited the Sphinx and the Holy Land, dined with emperors and kings, studied German State railways and the home life of Chinese coolies. As his journey ever westward brought him nearer home, his highly syndicated travelogues in the newspapers of the country had brought to mind once more his position as a political philosopher and reformer. The progressive triumphs of Roosevelt and the popular enthusiasm with which they were met now convinced Democratic leaders that Bryan, rather than another Alton B. Parker, must again be the champion in 1908. As early as February, Colonel Watterson stated his belief that the people "seem at length ready for a clean sweep," if they could be unified under the banner of a fighting and adequate leader. Hearst in 1906 was bidding for the governorship of New York on a Democratic fusion ticket, and the Kentucky party mentor was convinced at the moment that Hearst and Bryan should unite at the next national convention of the party to make certain that no conservative would again be chosen to make the race for President.<sup>19</sup>

By the fore part of June, Bryan's popularity in Democratic circles, particularly in Washington, had become dominant. Certain Eastern party organs became alarmed over this swing toward

<sup>19</sup> Associated Press report of *Courier Journal* editorial, *Dallas News*, February 10, 1906.

the Western radical and sought some rival strong enough to offset him. Senator Gorman of Maryland, after a lingering illness, died on June 5 at Washington. Now Bailey was suggested by some as the logical conservative to be opposed to Bryan in 1908.<sup>20</sup> In Missouri, however, David Francis, ancient enemy of free silver and conservative of the conservatives, was throwing the State convention of the Democrats into transports with a speech "nominating" Bryan as the national leader two years hence.<sup>21</sup> In Washington, Bailey promptly robbed Bryan's enemies of any hope that he might lead a counter-movement. "Senator Bailey has never believed that the nomination of any Southern man in 1908 would be wise," said Congressman George Burgess, the head of the Texan delegation in the House and known to enjoy the closest confidence of the junior Senator. "He and all of us . . . are of the opinion that political conditions point to the nomination of Mr. Bryan as the logical candidate in 1908. . . . It can be assumed without question that Senator Bailey and his friends are in hearty sympathy with Bryan's nomination." <sup>22</sup> On July 4, Bailey in Texas publicly announced his adherence to Bryan's candidacy.<sup>23</sup>

The arrival of Bryan in New York toward the end of August was made the occasion of a notable reception, a triumphant home-coming to which Democrats from all parts of the United States contributed by their presence. Secure in the approbation of the Democrats of Texas, Bailey traveled East to take part in the welcome to the chief. But on the night of the triumphal return, Bryan, in addressing the faithful in Madison Square Garden, suddenly threw a large part of the Democratic party into a hard chill.

"I have reached the conclusion," Bryan announced, "that rail-

<sup>20</sup> Wasson, June 8, 1906.

<sup>21</sup> *Dallas News*, June 5, 1906.

<sup>22</sup> Wasson, June 22, 1906.

<sup>23</sup> *Dallas News*, July 5, 1906.

ways partake so much of the nature of a monopoly that they must ultimately become public property and be managed by public officials in the interest of the whole community in accordance with the well defined theory that public ownership is necessary where competition is impossible. . . . Public ownership is the sure remedy for discriminations . . . and for the extortionate rates charged for carrying freight and passengers." <sup>24</sup>

To Bailey, this was another of Bryan's erratic, unbalanced outbreaks, of a piece with Bryan's earlier advocacy of public ownership of the telegraph lines, and peculiarly untimely in view of the part played by Democratic Senators in the passage of the Hepburn rate bill. The conservative elements of the party were shocked by the voicing of such heretical doctrine. The Commoner, however, with his genius for saving clauses, added that night: "I do not know that the country is ready for this legislation." But there was panic among the leaders of the party. The next day as Bailey passed through Washington en route home he "plainly indicated his dissatisfaction" with Bryan's utterance. "Although Mr. Bryan may be the Democratic nominee two years hence," he said with obvious feeling, "he cannot make the platform." <sup>25</sup> From his congressional district in Mississippi the Democratic leader of the House, John Sharp Williams, telegraphed that if Bryan offered such a plank in 1908 at the convention, "we will simply vote it down." <sup>26</sup> Colonel Watterson added to the outcry over Bryan's speech, which had caused particular dismay in the South. Quick to sense the disaster, the Commoner corrected himself in a speech on September 11, before fifteen thousand at St. Louis. "It is government supervision which I stand for first," Bryan now assured

<sup>24</sup> Associated Press dispatch, New York, August 31, 1906.

<sup>25</sup> Wasson, August 31, 1906.

<sup>26</sup> Dallas *News*, September 9, 1906.

the country. "If it fails, then we must try more radical measures." <sup>27</sup>

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But news more sensational to Texas readers than Bryan's recantation now flashed from St. Louis toward the middle of September. Gruett's personal suit against H. Clay Pierce for \$28,000 had gone to trial, and during the course of that trial Pierce related on the witness stand the details of Bailey's employment in the Tennessee Central case. Gruett's claim against the oil man rested in part on services which he contended he had also rendered in that case. In the course of the testimony Pierce testified that the investor's syndicate had given Bailey power of attorney to act for their \$13,000,000 interest in the allied properties.<sup>28</sup> Instantly this testimony revived much of the antagonism toward Bailey that had apparently subsided in the harmony of the Dallas convention. Ignorant or unscrupulous men now twisted Pierce's testimony to make it appear that Pierce had given Bailey \$13,000,000. A storm of criticism swept over the State, and loose talk was general of calling mass meetings to instruct the new legislature to disregard the primary instructions of the voters when the actual election should be held in the legislature. In Houston a Good Government League sprang up overnight to acquaint the people of the shortcomings of their junior United States Senator.

Hurrying home after realizing the intensity of this renewed outburst, Bailey commented that "there was never the least attempt to conceal my attorneyship for these properties, nor was there the least reason why it should be concealed." <sup>29</sup> "The public seems to be morbid on the subject of a Senator or

<sup>27</sup> *Dallas News*, September 11, 1906.

<sup>28</sup> *Dallas News*, September 15, 1906.

<sup>29</sup> *Dallas News*, September 26, 1906.

Representative practicing law for pay. It has always been a common practice in Congress to practice their profession. The complaint against me is that I have accepted large fees." <sup>10</sup>

The *Dallas News* took prompt cognizance of the movement to defeat Bailey for re-election. Stepping into the ring as his champion, its voice was given additional weight by the admission that "a new day has broken on us in which, perhaps, it is no longer best for the people's representatives to accept employment outside their official duties. . . .

"But returning directly to the contest between Senator Bailey and his political enemies," the editorial continued, "these latter appear in their heat to have been carried to the point where they . . . individuals without any official character . . . wish to set aside the will of the people as expressed at the polls. . . . The primary law was passed in response to the demand that the people should be heard through their direct vote, and not through conventions and mass meetings. Senator Bailey . . . under no legal obligations to do it . . . submitted his name to the primaries. . . . The people spoke emphatically in his behalf. . . . His record as published by his enemies was published broadcast before the primaries and the daily papers gave truly every investigation of corporation action in which his name was mentioned and, above all, the fact that he was the attorney for Pierce and others, which fact is now presented as the reason why he should be forced from public life. . . . The *News* plants itself firmly on the ground that the people nominated him at their primary election . . . and until they . . . retract what they have done, no mass meeting nor convention has the right to demand his deposition." <sup>11</sup>

For a moment it seemed that this latest and more violent storm would be stilled. But at Austin there were men prepar-

<sup>10</sup> Wasson, September 20, 1906.

<sup>11</sup> *Dallas News*, editorial, September 29, 1906.

ing to lend real aid and comfort to Bailey's enemies. Attorney-General Davidson and Lightfoot, joined by County Attorney John W. Brady and two Austin lawyers, Thomas Watt Gregory and R. L. Batts, now brought suit against the Waters-Pierce Oil Company, seeking to oust it from Texas and to collect penalties aggregating many millions of dollars for alleged violations of the Texas anti-trust laws since the company's reintroduction to the State in 1900. In contrast to the Missouri procedure, the Texas suit did not name the Standard Oil Company as a defendant, although the basis of attack was the fact, admitted by Standard Oil witnesses in the Missouri case, that the larger combine had owned a controlling interest in the Waters-Pierce unit since 1884. The State's pleadings were filed September 21, in the district court at Austin. These accusations declared that Pierce in 1900 had practiced a fraud upon the State of Texas by coming "into Texas with a large sum of money (to accomplish) settlement of pending cases" where he secured readmission of his company "through supposed political influence." \*\*

Bailey immediately took exception to this veiled reference and served notice on the Attorney-General that he considered this portion of his pleadings to be a gratuitous political attack on him.

"I have intended to offer my services to the State to assist in the prosecution of the Waters-Pierce and the Standard Oil companies," Bailey wrote Davidson from Gainesville, "but in view of a certain allegation in your petition," Bailey added that he would not now associate himself in the case. Both Bailey and his friends were compelled by that allegation, however, the letter continued, "to consider the filing of the suit simultaneously with the attack of my enemies . . . (as) an attempt to aid (them)." The allegation was, Bailey declared, the result of "a deliberate purpose." Even so, he would gladly come to

\*\* *Dallas News*, November 27, 1906.



the trial at Austin to testify about representations made to him six years previously by Pierce.<sup>22</sup>

Three days later Davidson replied that Bailey's testimony would not be "of any material value to the State's case." As for Bailey's objection, Davidson brazenly answered, "You failed to point out the particular allegation in the petition to which you except. Had you done so, I would have probably been in a position to point out its materiality. I expect to prove every allegation made."<sup>23</sup>

Infuriated, Bailey now felt that the last doubt as to the Attorney-General's attitude toward him was removed. "If I had any doubt before about your animus in this matter," he responded, "the tone of your letter would remove that doubt."<sup>24</sup>

Emboldened by the attitude of the Attorney-General, the anti-Bailey forces sought a leader to make an open fight and found him in M. M. Crane at Dallas, who agreed to enter the field in an effort to deflect the legislature from returning Bailey to Washington. Under this fire, Bailey took the stump in his own defense. After some argument he agreed to meet Crane in joint debate in Houston under call by the Good Government League. There on October 6 the two ancient political foes met in one of the most tempestuous word battles since the Hogg-Clark campaign of fourteen years earlier. Crane, however, refused to attack his opponent's integrity, insisting that the issue was "simply a question of public policy," of whether a United States Senator should render a private service to any corporation that might be subject to governmental regulation. But Bailey's response was more personal. It was packed with stinging words and phrases for those who at this late hour sought to snatch

<sup>22</sup> Letter, Bailey to Davidson, October 3, 1906, Bailey papers.

<sup>23</sup> Letter, Davidson to Bailey, Austin, October 6, 1906, reprinted, *Dallas News*, October 8, 1906.

<sup>24</sup> Letter, Bailey to Davidson, Fort Worth, October 9, 1906. Bailey papers.

the toga from him. Claiming that a certain class of men in Texas, "instigated and spurred on by one man of great wealth and overweening ambition," were seeking to eliminate him from the Democratic party, Bailey roused some four thousand or more into a near riot by adding, "if they could destroy men like me and John Sharp Williams, there would be more chance for men like Hearst and Crane." \*\* But the debate scarcely settled the issue. Although the *Dallas News* correspondent believed that "if noise be made the test, even Mr. Crane must have been convinced that Bailey won," the evening ended in a draw. It was now seen that Crane's courtly, almost considerate fencing was not sufficient; a sledge hammer as a last resort now remained as the only hope of giving the *coup de grâce* to Bailey. And in Austin there were men who believed they had such a blunt and efficient instrument.

Throughout October Bailey continued his tour of the State. Senator Tillman came from South Carolina to the opening of the State Fair at Dallas toward the middle of the month. Reciting the triumph of the rate bill in the previous session of the Senate, Tillman gave Bailey full credit for his part in that "Democratic" achievement. Then referring to "the situation in Texas," the South Carolinian added that "all I have to say is this: if they don't give us any more corrupt men, any more men who can be debauched, any more cowardly men than the two Texas Senators, by the Eternal Gods we will be able to hold our own." \*\* At the banquet given by the Fair association to members of the legislature, Pat M. Neff of Waco, a youthful lawyer who had been speaker of the Texas House of Representatives, introduced the junior Senator as "the brave, the great and brainy Bailey." \*\*

\*\* *Dallas News*, Houston, October 6, 1906.

\*\* *Dallas News*, October 14, 1906.

\*\* *Dallas News*, October 25, 1906.

November brought the general elections over the country and the electorate of New York heartened Bailey by their repudiation of the Hearst candidacy for Governor. The campaign between the publisher and Charles Evans Hughes, the Republican candidate, had run a peculiarly bitter course, with the Roosevelt Administration in the closing hours throwing its full weight against Hearst. Speaking the night before the election at Utica, Secretary of State Elihu Root delivered a severe indictment of the Democratic-endorsed candidate. "With the President's authority," Root said, "I say to you . . . that he regards Mr. Hearst as wholly unfit to be Governor, as an insincere, self-seeking demagogue. . . ." \*\* Bryan, however, came to the support of Bailey's party enemy by endorsing him in the columns of the *Commoner*, and on Election Day direct appeal was made to the Democrats of New York. "I am very anxious to see Mr. Hearst elected," Bryan said in a letter made public. "If I have any friends there, I want them to vote for him. . . ." \*\* But Bryan and Hearst together lacked just enough friends voting in New York, for Hughes won the election.

§

Overconfident, perhaps, that the latest fury against him in Texas had spent itself, Bailey returned to Washington early in the same month to prepare for the opening of Congress in December. It was not until November 26 that the Texas suit against the Waters-Pierce Oil Company went to trial at Austin. To the chagrin of the State's attorney, the presiding judge on the opening day ruled out that portion of Davidson's petition which was offensive to Bailey. The judge expressed the belief in support of his action that allegations of "supposed influence"

\*\* Associated Press, Utica, November 1, 1906.

\*\* Letter, Bryan to Bird S. Coler, November 3, 1906, quoted, *Dallas News*.

would "introduce an element in this case for which I can see no reason should be." <sup>41</sup>

The Attorney-General had one trump card left, the Gruett papers. The people of Texas, as well as Bailey, were still ignorant of the nature of the documents which had passed into the hands of the Attorney-General as early as the preceding August when Gruett agreed to come to Texas to testify. They were equally unaware of the agreement concluded with Gruett whereby he was to receive a large share of any penalties recovered by the State of Texas and whereby the Standard Oil Company was to be exempted from any part in the suit. Now, if ever, was the time to wield the sledge hammer. The blow fell when the State at once filed amended pleadings, serving public notice on George Clark and other attorneys for the oil company to produce various original papers including "books showing correspondence between counsel for the Waters-Pierce Oil Company and Joseph Weldon Bailey, and various vouchers of specified number and date purporting to show payments to Joseph Weldon Bailey. Notice is given that if the originals are not produced upon trial of pending cases . . . the State will offer secondary evidence." <sup>42</sup>

Now with the highest legal officer of the State of Texas challenging Bailey's word that he had never received payment from the Waters-Pierce Oil Company for any service at any time, the controversy took on new proportions.

"Inasmuch as the Attorney-General of Texas thinks that I am on trial, I will leave at once for Austin," Bailey declared at Washington, issuing at the same time a denunciation of all papers as forgeries which purported to show that he had received such fees from the oil company. Bailey summed up his contempt for Davidson by adding that he was "absolutely con-

<sup>41</sup> *Dallas News*, Austin, November 27, 1906.

<sup>42</sup> *Dallas News*, Austin, November 28, 1906.

firmed in the opinion that (Davidson) is a part and parcel of a deliberate and sedate conspiracy to defeat a Democratic nominee and defame an honorable man." <sup>42</sup>

Davidson hit back with both fists. "For more than six years the people of Texas have lived under the shadow of the wrong perpetrated against them by the re-introduction of the Waters-Pierce Oil Company into Texas under your guidance and direction," he stated in a public letter to Bailey, "after it had been outlawed by the highest courts of the land. . . . That our investigation has developed your connection with its re-introduction has only filled me with shame and sadness. . . . I have had no feeling other than that of sorrow that one to whom has been entrusted the high office of United States senator should resort to abuse and villification in an effort to silence the righteous indignation of our people. . . ." <sup>43</sup> Then with the vouchers and audited notations, which at least showed that Pierce had saddled the entire amounts borrowed by Bailey upon the treasury of the oil company rather than on his own pockets, the Attorney-General advanced. Under each itemization Davidson suffixed the question, "Was this sum given you as a loan or as a fee? If a loan, has it ever been paid? If a fee, for what service?" <sup>44</sup>

Bailey had reached Austin by the sixth of December. In the guise of another letter to Davidson, he now issued another statement to the people of Texas in which, for the first time, he made public the fact that he had borrowed several thousand dollars from Pierce, personally, in 1900. He had signed a note for \$3,300 and shortly afterwards drawn by draft the remainder of the \$5,000 originally agreed upon.

Here Bailey reviewed the transactions under fire and recalled

<sup>42</sup> *Dallas News*, November 29, 1906.

<sup>43</sup> Davidson to Bailey, Austin, November 30, 1906, Bailey papers.

<sup>44</sup> *Ibid.*

that he had said on the witness stand in 1901 that, his time permitting, he would have accepted employment from the oil company itself, for he was then convinced that it was no part of the Standard Oil combine. "How can any sensible man suppose for a moment that I would deny, or attempt to conceal, what I had done, and at the same time publicly and solemnly declare that I would do that very thing without the slightest hesitation?" <sup>40</sup> Next he called upon the Gruett documents themselves to prove his contention that the money was borrowed from Pierce personally, rather than received as a legal fee from the oil company. "I understand . . . the voucher . . . expresses on its face that it is a 'demand loan,'" he continued. "You are presuming very far upon the intelligence of Texas Democrats when you ask them to suspect that a lawyer would give a demand obligation for money, if he were collecting a fee. An idiot knows better than to believe that a man gives an evidence of indebtedness when he is collecting a debt. Certainly the most stupid man must know that if I had felt even a sense of impropriety in my dealings with Henry Clay Pierce, and I had been willing to violate the proprieties of public or professional life, I could and would have conducted my transactions without reducing them to writing." <sup>41</sup>

To Bailey and his friends this seemed a complete and disarming answer. A quarter of a century later the dictates of common sense as well as the record itself tend to uphold Bailey. But at the end of 1906 the politics of Texas had been churned to such a state that cool judgment was impossible for hundreds of thousands of partisans. Inflamed by the rumors and charges of the past year, many Texans construed this seriatim reply to Davidson as an admission of guilt. Mighty political convulsions wracked the State and the ground trembled and buckled

<sup>40</sup> Letter, Bailey to Davidson, Austin, December 6, 1906.

<sup>41</sup> *Ibid.*

under the idol's feet. In less than a month the legislature would meet to decide the issue. The fury reached its height shortly after the *Dallas News* on December 7, reversing its stand of September, thundered for the head of Senator Bailey. This abandonment was announced under the heading of "Why Senator Bailey Should Be Defeated." It was predicated wholly upon the citation of the Gruett papers and upon Bailey's answer to this revelation. "The *News* . . . does not consider Senator Bailey's explanation satisfactory," read the editorial. "(The explanation) speaks for itself. In so far as Senator Bailey's eligibility is concerned, the *News* does not now deem an investigation necessary. . . . His influence and usefulness have been so sadly impaired by the charges against him and by his own responses and explanations that the Democracy of Texas should unite upon some other man for the high place he now holds." \*\*

Under this powerful journalistic call, General Crane, aided by Joseph E. Cockrell and others prominently identified with the opposition to Bailey, now redoubled the appeals for his overthrow. On the other side, Bailey's friends rallied to his defense with equal enthusiasm, and the fight went on with speakers haranguing thousands daily.

State Senator Ben F. Looney of Greenville, S. Bronson Cooper of Beaumont, Nelson Phillips of Hillsboro, J. Waddy Tate and James J. Collins of Dallas, William Bacon of Greenville, Chairman George A. Carden of the State Democratic executive committee, John J. Simmons, and the Revs. George C. Rankin and George W. Owens were representative members of the Swiss guard who closed in to defend Bailey. Looney was the first member of the legislature, after this latest fury broke, to announce his intention to abide by the primary instructions of the year previous and vote for Bailey's re-election.\*\*

\*\* *Dallas News*, editorial, December 7, 1906.

\*\* *Dallas News*, December 9, 1906.

The brunt of the attack was borne by Bailey himself. Taking the field once more he spoke several times a day in a counter-attack upon those whom he felt were besmirching him; convinced that he was being persecuted, he figuratively tore the hide from his opponents and his speeches poured out from an embittered heart; for the *Dallas News*, which refused itself to use invective on Bailey, he reserved his most scathing vitriol. In his eyes this journal had now become "that Hessian," and he soon was branding it as "the scarlet woman of Texas journalism." He felt certain that the Texas Democrats "will not take their lessons from the polluted columns of the *News*." <sup>80</sup> The larger dailies of the State were fairly evenly divided on the Bailey issue. Clarence Ousley of the Fort Worth *Record* and Rienzi M. Johnston of the Houston *Post* were his chief supporters in the State press; abroad, the newspapers of the country were largely content to note developments. In Nebraska the *Commoner* impartially recited the events leading up to this crisis and concluded: "It is conceded now that Mr. Bailey has a fight on his hands for reelection." <sup>81</sup> The year ended with the outlook dreary and undecided. So confident were Bailey's opponents of victory that in a mass meeting at Dallas the names of Mills, now seventy-five years old, of Chilton, Crane, and of others were seriously discussed as successors to Bailey.

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A second and more sweeping investigation was a foregone conclusion as the legislature met early in January. From South Carolina Tillman sent word that "I do not believe Senator Bailey is crooked. I watched him like a hawk in the Senate . . . like I watched every Senator when I had charge of that rate bill. If Senator Bailey had been crooked or could have been

<sup>80</sup> Bailey, speech at Proctor, December 20, 1906, *et seq.*, *Dallas News*.

<sup>81</sup> *Commoner*, reprinted, *Dallas News*, December 23, 1906.



bribed he would have shown it." " But a large element in the legislature believed otherwise. William A. Cocke of San Antonio, serving his first term in the Texas House of Representatives, sought the distinction of being Bailey's accuser. State Senator E. G. Senter of Dallas headed the anti-Bailey forces in the upper house. A third leader offered himself in the person of John Duncan of Tyler, long identified with the Hogg forces. Campbell, the incoming Governor, refused to take sides. With Bailey's active approval, the House on January 18 ordered an investigation on the basis of a formal bill of complaint filed by Cocke. Forty-two separate charges were set down in this bill, ranging over the whole course of Bailey's public career and luridly setting forth every rumor of a misdeed that could be found. The State Senate named a committee of its own to sit with the House committee in the conduct of the investigation.

Both Cocke and Bailey were permitted to attend all sessions of the committee, but the actual prosecution was confined to attorneys selected by Cocke, who were M. M. Crane and Joseph E. Cockrell of Dallas. Bailey chose D. W. O'Dell of Cleburne, Crane's former law partner, and W. A. Hangar of Fort Worth as his own counsel. W. M. Poindexter of Cleburne was retained by the Senate committee to assist in getting the facts in the matter. Then for more than a month, or from January 18 to February 26, the Bailey investigation continued almost daily. Almost an army of witnesses for both sides now passed before the investigators, pouring out facts and rumors, observing few rules of evidence, for the bars, literally, were let down. From the lowest to the highest walks of life they came to support or deny the allegations: ranchers, cotton farmers, district judges, bank clerks, millionaire lumbermen, bookkeepers, wholesale grocers, commercial-club executives—the list seemed to broaden out to include every phase of Texas life. From beyond the

" Interview, *Houston Post*, reprinted *Dallas News*, January 4, 1906.

borders came Gruett and his son, J. P. Gruett, Jr., auditors and officials of the Waters-Pierce Oil Company, and then former Governor David R. Francis of Missouri, who detailed the part he had played in bringing Bailey unwittingly into this long controversy. Only Pierce remained away. Criminal indictments were out against him in connection with the State's prosecution of the oil company's supposed violation of the anti-trust laws and he refused, therefore, to submit himself to Texas jurisdiction in the current state of public feeling. His absence was felt by both sides in the investigation, but it worked the greater hardship on the defense.

But if the majority of the legislature were willing to have as free, full, and thorough an investigation as possible, they were not willing to have the junior senatorship from Texas left vacant while the charges and insinuations were tracked to their origin and proved or denied. Two days after the committee began its sessions, the time fixed by law for the election of a Senator arrived. Although thirty-one others were nominated along with Bailey, the roll call disclosed his reelection on the first ballot, 108 votes being cast by both houses in his favor compared with 39 against.<sup>88</sup> That night the citizens of Austin were given permission to use the House chamber for a reception to Bailey, and the next morning four thousand crowded into the State capitol attempting to hear Bailey's speech of acceptance.

A month later the investigation came to a close. Convinced that the presiding officer had stacked their committee against Bailey's interest, a majority of the Senate took the matter out of the hands of the Senate investigating committee and voted a complete exoneration for Bailey. This high-handed procedure, of course, antagonized the anti-Bailey forces and became the seed for further argument. The House committee, on the other hand, was left to make an untrammelled report. This group of

<sup>88</sup> *House Journal*, Thirtieth Legislature, regular session, p. 235.

seven representatives which had real control of the investigation was divided: four members, T. D. Cobb, J. A. Wolfe, I. A. Patton, and the chairman, Hardy O'Neal, presented a majority report declaring that their findings in each of the forty-two separate counts entitled Senator Bailey "to the further finding that he is not guilty of the charges preferred against him and he is hereby exonerated." <sup>14</sup> The remaining three members, T. H. McGregor, C. H. Jenkins, and James H. Robertson, concurred in a minority report which, while holding Bailey guiltless of any legal wrongdoing, was yet far from satisfactory to the Bailey partisans. The minority report declared that "the evidence fails to establish any act of corruption on the part of Senator Bailey, or any act of malfeasance in office which would disqualify him as a United States Senator; but at most the evidence shows a course of dealing on his part deemed by many to be inconsistent with sound public policy and indiscreet (1) in the dealings above detailed, (2) in his failure, when his acts were first challenged, to take the people of Texas fully into his confidence regarding the transactions." <sup>15</sup>

It was past nine o'clock on the night of February 27 when the debate in the House on the two reports closed, and the vote disclosed a 70 to 40 ballot for adoption of the broader and more sweeping exoneration. While the defeated minority left the chamber, Bailey's friends staged a demonstration. When their idol entered shortly afterward, on invitation of the majority, a group broke through the escorting committee and, raising Bailey on their shoulders, carried him to the Speaker's platform. Then for more than an hour he addressed the legislators. All the anger, resentment, and anguish of the past months, all the pent-up bitterness of the six-year fight, welled up within him to be vented in one consummate paean of hate.

" . . . They say this is a bitter speech," Bailey declared. "I

<sup>14</sup> 1907 Investigation, p. 1073.

<sup>15</sup> 1907 Investigation, p. 1090.

intend it to be bitter. . . . I want to record a prediction tonight. Out of the forty men who voted against my exoneration in this legislature, not four will be back in the next. . . . These infidels who have waged war on me . . . have made their own graves. We are going to lay them gently in those newly made graves. We are going to bury them face down so that the harder they scratch to get out, the deeper they will go to their eternal resting place. . . .

"My countrymen, let us not be hypocrites. They have drawn the line . . . in my home I intend to put the photograph of this legislature. . . . Over one (part) I am going to write the 'Roll of Honor' . . . over the other, 'the Rogues Gallery,' the pictures of the men who betrayed the Democratic party of Texas. And I am going to swear my children never to forget the one nor to forgive the other. . . . I owe no grudges that I have not tried to pay, and I owe no obligations that I have not tried to pay to my friends. I warn you now that the man who does not hate his enemies never loves his friends. . . . I do not despair. Although the iron entered my soul, it has not lessened my faith in the integrity and intelligence of my people. . . . I am not so tried to meekness that I pretend to forgive the men who brought this battle on. I will not forgive them this side of the grave, not because they assailed me with injustice and falsehood . . . but (because) they made a furious attack upon the authority and integrity of the Democratic party in the great State of Texas. . . . And tonight I can breathe about my country's altar as fervent a prayer for my country's glory as I could when all men proclaimed me with their applause." \*\*

Never before or since have Texans known the supreme eloquence that the black passion can inspire. But when he was done, his soul had been purged.

That same night Bailey served notice that he would return

\*\* *Dallas News*, February 28, 1907.

a year hence to seek a final adjudication of the controversy before the people themselves. He knew that it would be charged that he had gained their instruction of the legislature before the investigation had laid bare practically every side of his life, and he would be ready, therefore, to submit his cause again to the people direct. Such a referendum could be held in connection with the selection of delegates from Texas in 1908 to the national Democratic convention.

"We are going to line up next year," he continued, "well, we won't have any contest over the Governor. He is all right. (But) They intend to control, if control they can, the delegation to the National convention. I invite that contest, and if I live I will devote my best energies to seeing that not one of their kind goes as a delegate from the State of Texas. If I live, not one of their kind will ever again disgrace the State of Texas by holding an office under its authority. They made this contest, now let them abide by the consequences. Call the roll!" "

Bailey left later that night for Washington, for the second time commissioned to represent the sovereign State of Texas. Abroad his relection was commented on extensively. The *Wall Street Journal* believed that his leadership of the Senate minority would suffer. "That Mr. Bailey will probably have to accept the place of fallen idol is regrettably and unfortunately true," editorialized this journal, "for there are many men in the Senatorial grand ducal ring who have committed acts of ten times the turpitude of those which the Texas Senator stands charged . . . and Mr. Bailey in general integrity is above the average of the Senate." " The "arch-Democratic" New York *World* avoided any expression of regret and probably passed the most enduring judgment of the whole matter when it said: "To be sure his vote has been cast in accordance with his words where

" *Ibid.*

" Reprinted, *Dallas News*, January 7, 1907.

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the corporations were concerned, but he sinned grievously against appearances . . . when he accepted a loan . . . from Henry Clay Pierce. . . . Senator Bailey's mistake was in not baring his heart before a sceptical world when the dangerous facts began to leak out." \*\*

\*\* Reprinted, *Dallas News*, January 4, 1907.

## CHAPTER XVII

### "THE CRISIS OF MY LIFE"

As was expected, the action of the legislature prolonged rather than disposed of the issue between Bailey and his opponents in Texas. Nothing short of a direct vote by the people would satisfy either side. Throughout 1907, forces shaped themselves into the contest which he had invited at Austin. The first signal of the renewal of war was given by the same Cone Johnson who had renominated Bailey at the Dallas convention. Scarcely two months after Bailey's reelection and exoneration, Johnson publicly denounced the junior Senator for his speech before the legislature, calling it "a threat of vengeance . . . in the spirit of the feudist." He added that Senator Bailey "is revealing himself in a new, and to many a disappointing light."<sup>1</sup> Only a year later Johnson himself would be the leader of a feudist group sworn to the extirpation of Bailey as a political figure.

Bryan that year once more invaded Texas. The Commoner refused to be drawn into the Bailey controversy; politics in any form hardly figured in his lectures over the State, but he paused long enough to say that he favored the direct election of United States Senators and to renew his old advocacy of the initiative and referendum. Bailey instantly took exception to the latter proposals. The initiative and referendum, the Senator declared at Washington, was a revival of "the Populist heresy"

<sup>1</sup> *Dallas News*, interview, March 23, 1907.

of the '90's that would "discard altogether the idea of representative government and substitute the rule of the mob." It was a scheme, he said, in which "the minority has no rights that the majority is bound to respect; that the test of a law is not, is it just—but is it popular?"<sup>a</sup> Four years later this "Populist heresy" would become a dividing line between Bailey and Bryan, between the sheep and the goats in the Democratic party, and would be the focal point in a battle determining the course of history.

Toward the end of the year, Bailey found a vulnerable point in the heel of Attorney-General Davidson, and he promptly took advantage of it. The Texas suit against the Waters-Pierce Oil Company had been won by the State in June when the court canceled the company's permit to do business in Texas and imposed a fine of \$1,623,900, a verdict ultimately sustained by the highest court. But almost a year had passed without any move at Austin against the several other units of the Standard Oil combine operating in Texas, all of which were thought to be owned completely by the parent organization. On October 15 the citizens of Dallas gave a public dinner to Governor Campbell. Bailey as well as the Attorney-General were among the guests. The speeches turned largely on the successful fight of the State administration against various trusts, including the Waters-Pierce Oil Company. When it came Bailey's turn to speak, he likewise joined in the general praise given to Campbell.

"But I want to say to him," Bailey suddenly added, "that the Standard Oil company is doing business in Texas at this very hour without molestation. For this condition the Governor is not to blame, but if he will order his Attorney-General tomorrow to bring suit against the Standard Oil company, I pledge myself

<sup>a</sup> Letter to New York *Sun*, signed "Constitutionalist," June 18, 1907.



to furnish the proof to convict that combine of violating the anti-trust laws of Texas." \*

The remark was a public affront to Davidson. But Bailey continued in a series of speeches over the State to harass the Attorney-General for his failure to bring suit against the larger oil group, making much of the immunity granted the Standard in the Waters-Pierce suit. Davidson was now on the defensive and parried criticism with criticism. On November 6 the State of Texas filed suit, however, against eleven Standard Oil defendants, including the Security Oil Company, the Navarro Oil Company, and other concerns and individuals in Texas, as well as the Standard Oil Companies of New York, Indiana, and New Jersey. Cancellation of permits to do business in Texas and penalties aggregating \$75,900,000 were prayed for by the State.

This belated action by officials at Austin was used by Bailey as so much salt to rub in an old and open wound. The anti-Bailey men countered with the formation of a new "Democratic Club," designed to prevent any Bailey partisans from attending the national convention as a delegate in the summer of the approaching year.

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The year ended, though, in a nation-wide panic, and partisan politics in Texas were momentarily forgotten. On October 22 the Knickerbocker Trust Company in New York closed its doors, ushering in a currency and credit shortage that almost paralyzed trade; call money jumped to as high as 70 per cent; the Roosevelt Administration rushed to the relief of business with emergency and desperate remedies. As Congress convened in December the currency question was again uppermost in the minds of the public.

\* *Dallas News*, October 20, 1907.

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In the first session of the Sixtieth Congress Bailey found himself on two of the Senate's most important committees. As a member of the Committee on Privileges and Elections he would be called upon three years later to take part in one of the most notable disputes ever arising from an election of a United States Senator, the trial and expulsion of William Lorimer of Illinois. But at the opening of 1908 Bailey's membership on the all-powerful Senate Finance Committee seemed by far the more important assignment; for this committee was charged immediately with the task of bringing in some form of currency relief or reform to meet the disaster then facing the country. Aldrich as chairman arrived in Washington with the draft of a bill to palliate the money famine. Its chief purpose, of course, was to increase the volume of currency in circulation. In accordance with the traditional Republican view, the added amount of paper currency was to be issued against and secured by bonds. But to make a larger volume of money possible, the base of bonds then confined to securities of the Federal government was to be enlarged to include securities of the more substantial railroad and public-utility companies. Aldrich's proposal also was in the orthodox Republican vein of providing for issuance by the national banks, rather than by the government directly.

The historic Democratic position was opposed to both the bank issuance and to the use of other than government bonds as the base of the currency. Bryan came to Washington in the emergency and after a conference endorsed Bailey's stand against bank issuance.<sup>4</sup> Then on March 9 Bailey spoke for two and one-half hours in support of a substitute Democratic measure which he sponsored in the Senate. This differed chiefly from the Aldrich bill in providing for issuance by the Federal government. The speech was Bailey's first major effort since his

<sup>4</sup> Frank H. Bushick, *Houston Post*, March 9, 1908.

reëlection, and the floor and galleries were crowded for the performance. The diplomatic gallery was noticeably packed, there being among others James Bryce and Jules Jusserand.

"Considering the tremendous consequences to all the people," Bailey said in his summary and conclusion, "and remembering that its effect reaches into every home and determines the profits of every business, the currency of a free country ought forever to be kept under the absolute control of the government. . . . It is to my mind an amazing proposition that this power, second only to the power of taxation, shall be committed to men whose private interests might be wholly at war with the public welfare.

". . . If my substitute is rejected, and if this bill is defeated, Congress will either establish a great central bank of issue within ten years, or authorize the national banks as now constituted to issue an asset currency." \*

The accuracy of the prediction could not be tested at the moment, but the speech itself sustained Bailey's reputation as one of the leading orators in the Senate. "In concluding, Senator Bailey so played upon the emotions of hearers," telegraphed the correspondent of the *Dallas News*, "that when the last word fell there was a spontaneous outburst of applause which swept the galleries. . . . On the floor perhaps fifty men from both sides and both Houses surged about him to offer their congratulations." \*

But the Bailey substitute was defeated and the Aldrich-Vreeland Act became a law instead. Before final passage the Democrats succeeded in preventing the use of any commercial bonds in the issuance of new currency. At Bailey's suggestion Aldrich amended his own bill to insure the distribution of the new currency throughout the country in proportion to the banking

\* *Record*, March 9, 1908.

\* *Praeger*, March 9, 1908.

capital and surplus of the various communities.' But leaders on both sides of the Senate admitted that the measure was only a temporary one. The need for a comprehensive analysis of the currency system was recognized by the creation at that time of the National Monetary Commission. Aldrich headed this commission while Bailey was named on it as a spokesman of the Democratic position. During the ensuing five years, largely under the enthusiasm and impetus of Aldrich, the commission would evolve the basic lines of what, ironically, the new Democratic Administration at Washington would incorporate into the Federal Reserve Act of 1913.

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But neither the immediate effects of the Roosevelt panic nor the deliberations of Congress could long smother the fires of politics in Texas. The Democratic Club renewed its campaign to insure an anti-Bailey delegation to the Democratic convention at Denver. Bailey accepted the challenge in January.

"I had never expressed a desire to be a delegate . . . and had no thought of becoming a candidate," he said, "until the conduct of my enemies forced me to do so or appear to shrink from a test of strength. . . . (Last year) I traversed the State for months . . . but did not attempt to organize my friends. . . . I had hardly passed beyond the borders of the State when I found my enemies were organizing the 'Democratic Club' whose only object is to prevent my election as a delegate. . . . This plain statement of facts must satisfy every fair-minded man where the responsibility for this disgusting and senseless strife must rest." \*

The question, now, was simply how best could the Bailey issue be submitted once more to the people. It was found that

\* Praeger, June 25, 1908.

\* Statement, *Fort Worth Record*, January 14, 1908.

the State primary law allowed the State Executive Committee to order, at its discretion, a State-wide primary election to choose the four delegates-at-large and as many alternates to the national convention. At first the State Executive Committee refused to order such a primary, but when it was charged that Bailey feared such a referendum by the people, he pleaded personally from Washington for it. He not only welcomed the test, but indicated that in this manner the people were to say whether he should remain as their Senator at Washington or not.

"The charge that I am afraid to submit my name to the people is exactly the reverse of the truth," he said. "I earnestly urge every friend I have to favor (the primary). . . . I would not have any position within the gift of Texas, unless I felt sure that the people desired me to have it. The man knows little about my political record who can be made to believe that I will ever shrink from the test of a primary vote. . . . Nothing will please me better than a test before the Democratic voters of Texas." \*

The battle lines formed rapidly. Early in March more than 2,000 anti-Bailey zealots met in Waco and selected a list of eight men, with Cone Johnson of Tyler at the head to oppose Bailey directly. On March 28 the Bailey forces met in Fort Worth with their leader present and the junior Senator accepted the gage of battle by heading the other slate of eight candidates. Scarcely a month remained before the verdict would be rendered at the special primary election, but in that short time Texas experienced its mightiest and most harrowing political struggle. The high-water mark of bitterness of the famous Hogg-Clark campaign was now to be submerged. All Texas knew that the real issue in this contest was the political life or death of Bailey. The entire population seemed to split into two sharply divided camps, to such a tension had the feud been raised, now that

\* Statement, *Fort Worth Record* and *Houston Post*, February 25, 1908.

the whole Bailey controversy was again reopened. It is scarcely an exaggeration to say that not one sentient being then living in Texas escaped being hurled by his emotions into one camp or the other. Families, lodges, churches, entire communities were rent asunder; even children in their play marched to the rival battle chants, and many a small boy lived to exult in a bloody nose or blackened eye. If their elders seldom resorted to physical violence, they were none the less violent and merciless in their political tactics; all bars that had heretofore prevailed in Texas politics were now let down. Not only were the public records of Bailey and Johnson raked with fire, but their private lives as well were riddled with insinuations and charges not fit to whisper in back alleys. Rabid and malicious perversions of the printed testimony taken at Austin the year before, embellished by riotously imagined cartoons, were circulated against the man on trial before the people of Texas. Every engine of opposition that could be found was wheeled into position; although the voice of the lamented Hogg was beyond recall, his eldest son publicly declared his belief that "any Texas Democrat who has a sympathetic knowledge of my father's record should have no doubt just where he would stand on the vital ethical question involved in so-called Baileyism. . . . I am not for Mr. Bailey as a candidate for delegate-at-large and assuredly never will be for him as a candidate for reelection as United States Senator from Texas."<sup>10</sup>

Bailey knew that it was to be a supreme fight, the crisis of his life as he ever afterward referred to it, and he fought accordingly. Sustained only by the deathless loyalty of his followers, he threw himself unsparingly into the field, opening in Lufkin in the eastern part of the State on April 4. Then for twenty-two days he talked to the people of Texas from the stump; traveling more than 3,500 miles, making forty-two full-length speeches

<sup>10</sup> Letter, Will Hogg, Houston, April 30, 1908, to John S. Dickey, *et al*, Collinsville, printed, *Dallas News*, May 2, 1908.

on a schedule that required as high as three speeches on one day, he thus faced and talked to more than 100,000 of his fellow Texans. In the midst of the campaign, Dr. J. R. Rucker of Temple, the husband of a favorite sister, died suddenly. From the grave Bailey resumed his campaign, speaking shortly afterward at Waco. There, near the end of the fight, the agony and strain began to show in his body. "Senator Bailey is very tired," noted a newspaper correspondent who had traveled with him. "(His) voice is in wretched shape. By putting force behind it he makes it reach his audiences, but it sounds hollow, flat; lacks the musical quality which ordinarily lends charm to his oratorical efforts. . . . The outer side of his right hand is a mass of corns produced by shaking hands. . . ." <sup>11</sup>

He was a sicker man, though, than even his appearance betrayed; only desperation and a great bull-like determination gave him strength to make the last lap of the race. He rested his case at Dublin on the night before the election. There was no appeal for sympathy in his closing speech, even as there was no trace of warning of the approaching physical collapse.

"You do for me tomorrow what I have done for you for seventeen years," he said to the Democratic voters of Texas. "I have kept your honor sacred; I have defended your name; I have kept the faith. I could not beg you to vote for me. I would not beg from your charity what I am entitled to from your sense of justice. . . . If you banish me in your bitterness, you will live to regret it. I have done much service for the people of this State. I say this not as a boast, but as a truth. I have linked my name with yours forever in the history of this great Republic; I am not alone Senator Bailey. I am Senator Bailey of Texas, and, God being my judge, I think I love your part of my name." <sup>12</sup>

The next day the people of Texas went to the polls to render

<sup>11</sup> Tom Finty, Jr., *Dallas News*, April 24, 1908.

<sup>12</sup> *Dallas News*, and *Houston Post*, May 2, 1908.

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the verdict. When the returns were in, it was seen that Bailey and his seven running mates had won a clear-cut, State-wide victory; they carried every grand division of the State and only a few scattered counties went against him. One of these few Johnson counties was Bell, where, Bailey was informed, a young lawyer-banker by the name of James E. Ferguson had been the leader of the anti-Bailey forces. The course of the primary election for delegates-at-large foreshadowed the complexion of the State presidential convention that would select the body of the Texas delegation to Denver. This State meeting was held in Fort Worth May 26 and a solid Bailey delegation was chosen. Now, surely, with this verdict of "not guilty" by the voters themselves, rendered after all the accumulated charges had been brought into the open and hurled at his head, the long feud would die out in Texas politics. Or so it seemed as the victorious Bailey men prepared to carry their reëstablished idol to the Democratic national convention.

But the ordeal through which Bailey had passed exacted its toll on his body; a serious throat affection developed and he went East to consult a specialist. An immediate operation was decided upon; the operation proved successful, but in his weakened condition complications followed, so that Bailey was confined to a sick room in a New York hotel hovering between life and death as the Democratic hosts met in Denver early in July.

According to custom, the party in power had held its national convention first. At Chicago the Republicans had already concluded their colorless gathering, nominating Roosevelt's Secretary of War, William Howard Taft, on the first ballot. The Democratic gathering lacked equally any contest over the choice for a presidential candidate. Hearst had long since been eliminated from consideration, and the Commoner once more led the party, chosen more unanimously than ever before. The major



issue revived by both parties was the ancient one of the tariff. The Republicans at Chicago had indicated that they once more would tamper with the tariff if returned to power; limited revision was the phrase used by them, the interpretation of which would shortly have momentous consequences. The Democrats, for their part, equally committed themselves to a readjustment of the tariff. Two years before, Bailey and John Sharp Williams, aghast at Bryan's Madison Square Garden pronouncement on government ownership of railways, had declared that the Commoner would not be allowed to write the 1908 platform. Now in Bailey's absence Bryan had a free hand to incorporate practically any views he might hold, and as a result his loose views on the tariff were now made party dicta. At Bryan's word the Democratic party now exhumed and readopted the "Cleveland heresy" of free raw materials, demanding in the tariff plank that wood pulp, print paper, lumber, and logs be placed on the list of duty-free articles.<sup>13</sup>

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There was another issue that Bryan might have raised in 1908: National prohibition. But a month earlier Bryan had declared, "I do not regard it as a national question; it is not to be made an issue by either national convention."<sup>14</sup> Prohibition, however, was fast working a new line of cleavage within the ranks of the Democracy of Texas, now that the Bailey issue had been settled once again. The campaign for State offices ended on July 25 in the regular State-wide primary when the question of instructing the legislature to submit a State-wide prohibition amendment to the constitution was also submitted to the voters. By a narrow margin of 4,917 votes the Democrats of Texas had instructed the next legislature to submit such an

<sup>13</sup> Senator Stone of Missouri, *Record*, July 10, 1911.

<sup>14</sup> Special to *Dallas News*, Lincoln, June 12, 1908.

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amendment to the people. The State election resulted in returning Campbell as Governor and Davidson as Attorney-General.

Bailey's own views on State-wide prohibition had altered materially since that campaign in the last century when he crossed swords with Cone Johnson on that question. In his race for delegate-at-large he had won much strength, undoubtedly, in the wet-sentiment areas of the State by announcing against such a fiat. He had always opposed national prohibition because of its unavoidable disruption of the police powers of the individual States. But he had previously taken his stand in favor of prohibition over all of Texas, at a time when such a view was almost heretical. Now he must explain his reversal of position.

"I believe it was a grave mistake for the Democratic primary to declare in favor of a State prohibition election," he wrote shortly afterward, "and I think it would be even a graver mistake if such an election should result in the establishment of prohibition in every county and precinct throughout Texas. I do not think that any man familiar with the conditions and population in the various portions of our State can bring himself to believe that prohibition can be enforced in many counties and communities without abolishing the local authorities and substituting a State constabulary. This, of course, would be offensive to all real Democrats. No matter what we might think about the sale of liquor, we cannot regard it as such a serious matter as to justify us in depriving any of our people of the right of local self-government. . . .

"I supported the Constitutional amendment prohibiting the sale of liquor in Texas twenty-one years ago; but I was not then, and I have never been since, thoroughly satisfied that the people of Cooke county have any right to say what shall be sold in Harris county, so long as what they sell in Harris county does not injuriously affect the people of Cooke county. I did not

pretend during that campaign to consider that question free from the greater difficulty, but I solved it then in favor of what I considered the side of morality and temperance. I might solve it in the same way now, except for the fact that a wider and a closer acquaintance with the people in all parts of Texas has fully convinced me that prohibition could not be enforced in twenty or twenty-five counties in the State.

"To apply the law to every county in the State and confess our inability to enforce it in twenty or twenty-five counties would tend to bring the law into disrepute everywhere, and we would be compelled to make the demoralizing admission that the State was unable to enforce her laws, or else we would be compelled to supersede the authority of locally elected constables and sheriffs with the Rangers and other State constabulary. . . ." <sup>18</sup>

The presidential campaign moved toward its conclusion, however, as we have seen, without any reference to the liquor question. By September the contest was in its more hectic stages. Hearst, now completely outside the pale of either of the two major parties, was making a bid for the Presidency as the candidate of the Independence League. John Temple Graves of Georgia had likewise left the Democratic fold to run with him as the vice presidential candidate. In Atlanta Hearst attacked Bryan as "a trickster, a trimmer and a traitor." <sup>19</sup> With the Democratic party and its leader deserting Bryan's Madison Square Garden tenets on government ownership, Hearst was now convinced that the party of Jefferson and Jackson was "decadent" and no longer the party of progress and liberation. C. N. Haskell, the first Governor of Oklahoma, had been chosen treasurer of the Democratic National Campaign Committee by Bryan himself. Hearst from the stump charged that Haskell was

<sup>18</sup> Letter, Bailey to J. F. Wolters, October 19, 1908: Bailey papers.

<sup>19</sup> Associated Press, Atlanta, Georgia, September 11, 1908.

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a tool of the Standard Oil combine, while Roosevelt from the White House chimed in with a denunciation of Haskell's administration in Oklahoma. The result was that Haskell was forced to resign from the National Committee in the middle of the campaign.

But Hearst was not through with his task of exposing leaders in the two major parties. Fortunately for his purposes, he had been able to procure a file of private letters from the office of John D. Archbold of the Standard Oil Company. As Hearst continued his campaign throughout the country, the publisher read other installments from his latest and most sensational serial. Taft had previously dispatched Senator Foraker of Ohio, Roosevelt's most unrelenting foe within the Republican party, with a public letter demanding Foraker's dethronement in Ohio politics. Hearst now obliged by firing a bullet into the dead body of Foraker; this was in the form of letters between Foraker and Archbold, the reading of which was intended to prove Foraker's recreancy to public trust. Then on September 19 at Memphis Hearst thought to give Bailey the *coup de grâce*. He reproduced and read a letter from Congressman Joe Sibley of Pennsylvania written to Archbold in February, 1905, referring to "Mr. B."

"Yesterday I had a long talk with a friend in the Senate," read this three-year-old letter from Sibley, "whom you know I have always regarded as one of the strongest men in that body. (Mr. B., a Democrat). He is wholly and unalterably opposed to the President's and to Garfield's policy . . . the vicious principle that the Government can open any books or reveal any trade secrets because some one thinks I am engaged in making too much money. . . . I think he is prepared to make a great fight against (this policy). He has courage and ability to make a legal argument on the floor of the Senate second to no man of that body. Had you thought to have a con-

sultation with him some day? One great man at the proper time would be a tower of strength and safety. He comes nearer today to being the leader of his party than any one in it. If you want to see him, I think I can manage for him to call when in New York. . . ."<sup>17</sup>

The letter caused momentary repercussions in Texas. Bailey was at Gainesville at the time and promptly replied that the letter itself disproved the favorite charge of his opponents that he was intimate with Standard Oil officials.

"Assuming that the Sibley letter which Mr. Hearst read is genuine," said Bailey, "and that I am the Senator B. to whom it refers, I am very glad that it has been given to the public, because it completely refutes the charge that I am the attorney of the Standard Oil and, . . . that I have been friendly to it in matters of legislation. . . . As a matter of fact Mr. Sibley never made to me the remotest suggestion of a conference with Mr. Archbold. . . ."<sup>18</sup> Curiously enough, as those with longer memories recalled, Bailey had told of one conference in the same year of 1905 in which Archbold had been present, but so far from being a tower of strength and safety to the oil magnate, the Texan had appeared in the guise of an enraged fury, denying the word of Archbold and his associates to their faces and expressing an ungracious hope that they would all be sent to the penitentiary.

A little more than six weeks later the national elections were held and once more the country went Republican by "a safe majority." Perhaps it was too large a majority to be safe for the Republican party.

<sup>17</sup> Associated Press, Memphis, September 19, 1908.

<sup>18</sup> Bailey's statement, *Dallas News*, September 22, 1908.

## CHAPTER XVIII

### THE INCOME TAX

THE presidential succession of 1909 failed to produce any great despondency in Bailey. It was discouraging, of course, to see the Democratic party defeated once more, but perhaps there was a minor if private satisfaction in seeing Bryan at last "knocked into a cocked hat."<sup>1</sup> Bailey did not voice such an explicit prayer; the president of Princeton University, Woodrow Wilson, had actually incorporated the phrase in a letter to a friend two years earlier. But the sentiment was perhaps equally Bailey's. The whole course of the relations between Bryan and Bailey since the Texan's manifesto at Chicago in 1896 had revealed their serious disagreement on the philosophy underlying the party as well as upon several determining issues. Had Bryan been elected in 1908, it is certain, however, that Bailey would not have resigned or been forced from public life by that victory. He was immeasurably better intrenched in both Texas and national party circles than he had been at the height of the free silver frenzy. The contest in Texas the year before had left Bailey in almost complete mastery of the party in that State, while his position in the Senate, both by seniority and by virtue of his ability and achievements, was such that he might have resisted successfully the prestige of one of his own party in the Presidency. An indication of the place which Bailey held at this time in the opinion of a large and perhaps domi-

<sup>1</sup> Letter of Woodrow Wilson to Adrian H. Joline, April, 1907, Johnson, p. 122.

nant section of the Democratic party was given by Colonel Watterson:

"The Senator from the Lone Star State is conspicuously and confessedly the most brilliant Democrat now in official public life." <sup>a</sup>

The first and most serious clash that would have occurred between the Nebraskan and the Texan lay in the tariff issue. As, indeed, it did occur regardless, with Bryan still in private life.

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Thus for Bailey the election of William Howard Taft was, from a personal standpoint, a negative good; but it was more. Temperamentally Bailey was attracted to the new occupant of the White House in approximately the same degree as he was repelled by the Commoner. The friendship that now crystallized between Taft and the junior Democratic Senator from Texas was to prove of great significance in Bailey's own life and obliquely, as we shall see, in the political destiny of the country four years later. After sixteen years of unceasing, habitual antagonism toward the White House, Bailey in the spring of 1909 capitulated to the disarming friendliness of the former Ohio Federal judge who now succeeded Roosevelt. Taft was not without guile in his move to win the good will of Bailey and other leaders of the opposition. The Texan, in fact, was only one of the Democratic leaders who responded to the overtures of the new President; by his actions as well as his words Taft bestowed particular favors upon the South, and the political representatives of that long-neglected area were quick to meet their friendly enemy halfway; but the President succeeded in binding Bailey closer to him personally than might have been expected,

<sup>a</sup> Louisville *Courier-Journal*, July 5; reprinted, *Houston Post*, July 10, 1909.

and the warmth of their friendship, lasting well beyond the span of their political careers, was only matched by the frigidity between Bailey and the four other Presidents since 1890. The signal that Bailey's long feud with the White House was at an end came shortly after the inauguration, when he and Mrs. Bailey accepted an invitation to dine there on April 24. The chatty Major Butt, Taft's military aid, who was an ex-newspaper reporter as well as a Georgian, jotted down a social item for posterity. "I was much interested to see Senator Bailey of Texas in a dress suit," commented Butt on the dinner party which he otherwise considered "very doleful." ". . . he was the trimmest-looking man in the room. He loses the heavy, bulky look when in evening clothes, and I was quite proud of him as a Southern Senator. His wife was beautifully gowned and had a wonderful set of pearls." \*

Publicly some days earlier Bailey placed himself in the Senate among those "who expect and who sincerely hope that the present President of the United States will distinguish himself in his great office. I fervently pray that his administration will be an unmixed blessing to all the people." \* This statement was by its cordiality in marked contrast to the Texan's epitaph for the outgoing Rough Rider.

"The good he (Roosevelt) has done by arousing public attention to certain evils of corporate management will give him an enviable place in the history of his time. But the harm he has done in dwarfing the States and exalting the General Government can not be measured. Unless the tendency which he has set in motion is arrested and reversed, our splendid Federal system will ultimately be destroyed. We have never before witnessed such a mixture of good and evil in any public man." \*

\* Taft and Roosevelt, *The Intimate Letters of Archie Butt*, Vol. I, p. 62.

\* *Record*, April 10, 1909.

\* *Record*, March 9, 1908.



It was typical of Bailey, though, not only to be aware of Taft's objectives in his campaign of winning the South by kindness, but also to allude to it publicly. It was a warning that while personal friendship might exist outside of party lines, he for one was first of all a party man.

"This Administration might as well apply itself to other questions," Bailey declared before the first month was out, "if it supposes for a moment that either by flattery or bribery—and by bribery, of course, I mean only appointment to office—it can make any inroads upon the Democratic party of the South. Your only hope there, and you are not without hope, is an appeal to the intelligence and conscience of your countrymen in the Southern States. Men of brains and men of character are there who agree with your policies, and you may organize both a respectable and a formidable Republican party. . . . But the President wastes his time and strength in giving heed to those men who tell him that they can disrupt the Democratic party in the South." \*

The firmness with which Bailey set his face against the Taft policy of blandishment was to be given a peculiarly personal trial less than a year later. During 1909 the United States Supreme Court lost Associate Justice Peckham, the first of several members who were to be replaced by Taft. The Republican President now offered Bailey a place on this great tribunal. He as promptly declined it, perhaps the greatest mistake of his life, in the opinion of many of his intimates. Typically enough, then and later, he refused to allow personal or political capital to be made of the offer; when two years later zealous adherents sought to bring it to public attention, he related the whole matter, including "exactly what was said," in a letter to one of his closest friends in Texas, John J. Simmons; then he asked that it remain private.

\* *Record*, April 22, 1909.

" . . . The President sent for me to come to the White House," wrote Bailey, "and after I reached there invited me into the Cabinet room where he began the conversation by saying that he wanted to talk with me about a successor to Mr. Justice Peckham. Almost immediately, and perhaps exactly after that statement, he said to me: 'Knox insists that I ought to appoint you,' and I immediately said to him that I would not accept an appointment to the Supreme Bench, and before I could finish the sentence by stating my reason, he interrupted me with a statement that he did not think anybody would refuse a place like that; to which statement I replied that he had himself refused it, though I did not refuse it for the same reason he did, because I had no thought of ever being President. He then told me with a good deal of amusement that the real fact was that Mrs. Taft declined that appointment for him. . . ."

Taft's interruption cut short this explanation of his reasons for refusing the appointment. Old John Stevens of Osceola, Hill County, perhaps Bailey's most devoted and unselfish idolizer throughout the years, characteristically interpreted the action:

"Spell . . . tells me you turned down the appointment—don't think you should have done it. But I don't see how we could have got along without you. So far as I am concerned I am glad you did. I know you *done it* on account of your friends but you should not sacrifice so much for them." \*

Perhaps personal financial considerations influenced him; his later course might indicate that he was determined even then to retire to build up a private law practice; to his son in later years he explained that he made the decision on a frank realization of his own mixture of abilities and shortcomings; "I do not have a judicial temperament," he was quoted as saying in this

\* Letter, Bailey to John J. Simmons, Dallas, July 18, 1911.

\* Letter, John A. Stevens, Osceola, to J. W. B., April 4, 1910.

connection to Joseph Weldon Bailey, Jr. But whatever the reason, it is certain that Taft and Knox did not accept his own estimate of his judicial abilities, while Spooner, who spoke out of knowledge that only a worthy antagonist may glean, thought that Bailey "ought to be the Chief Justice of the Supreme Court, in which capacity he would be the rival of Marshall and Storey." \*

The following year death took two other members of the court and Justice Moody resigned because of illness. Although Taft called on New York State to furnish one appointee, Charles Evans Hughes, the President's eyes were still turned southward and westward. In the end he raised Associate Justice Edward Douglass White of Louisiana to be Chief Justice and called Joseph Rucker Lamar of Georgia and Willis Van Devanter of Wyoming to be Associates.

In Texas in 1910 another kind of appointment would be made by the Governor. In December, Colonel Sterett became State Fish, Game and Oyster Commissioner, and the "careless observer," fast approaching the age of reminiscence so far as politics were concerned, now had a trim little State yacht at his disposal. Perhaps there was, after all, about as much sport in disputing the waters of the Gulf Coast with the tarpon, red fish, and other denizens of this fisherman's paradise, as in watching the antics at Washington or Austin.

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Much as Taft might have wished it otherwise, providing for the judiciary was only a small part of the task of the Presidency. The first and almost immediate challenge of his abilities came from the legislature. When the President invoked Congress into special session in the spring of 1909, he raised the

\* Quoted by Joe Sibley, Franklin, Pennsylvania, in letter to J. W. B., December 19, 1913.

lid on the Pandora's box of American politics, the revision of the tariff. During the fateful summer session that now drew out, the Payne-Aldrich Tariff, that initial step taken by the Republican party toward the perdition of 1912, was painfully hammered into shape. It would reveal once more the horrible, grimacing crack in the Grand Old Party caused by the growing conflict between Western and Eastern Republicans; it would uncover the naked ineptness of the President in dealing with master politicians such as Aldrich, who proceeded to lift the protective schedules higher with complete scorn of all party promises to revise the tariff downward. In this wise it hastened the doom of the Taft Administration, for the revulsion throughout the country was quick to be felt one year later when the House went Democratic. But infinitely more fateful, the deliberations over this revenue measure, the first piece of tinkering with the tariff since 1897, gave the adherents of a Federal income tax an opportunity to drive through their revolutionary formula for redistributing wealth in the United States. In Bailey of Texas and Cummins of Iowa were found the guerrilla chieftains who engineered and led this surprise counter-attack. That they only succeeded in capturing the bridgehead, thus permitting the Wilson Administration four years later to possess the citadel technically, does not detract in the least from the completeness of their victory.

After 1894, the income tax, it will be remembered, was not a major issue between the two parties in their quadrennial contests. The Democratic National Convention in 1904 had dropped the income tax plank in its platform at the excited demand of Hill and other Eastern party leaders. The Denver Convention four years later, however, had resurrected the plank, announcing that the Democratic party favored "an income tax as part of our revenue system" and urging Congress to submit "a constitutional amendment specifically authorizing Congress

to levy and collect a tax upon individual and corporate incomes, to the end that wealth may bear its proportionate share of the burdens of the Federal Government." <sup>10</sup> The party position was an acceptance of the decision by the United States Supreme Court in 1897 declaring the income tax feature of the Wilson tariff to be unconstitutional. The Republicans, on the other hand, were detonating in their silence in convention assembled on the same subject.

Taft in his inaugural address sought to make up for the deficiency of his party on the question of revenues to supplement the governmental income from tariff sources. After announcing that "it is thought that there has been such a change in conditions since the enactment of the Dingley Act . . . that the measure of the tariff . . . will permit the reduction of rates in certain schedules and will require the advancement of few, if any—" a question naturally arose among his hearers. Suppose a lower tariff fails to provide all the money needed by the government? Then the President said, "New kinds of taxation must be adopted and, among these, I recommend a graduated inheritance tax as correct in principle and as certain and easy of collection." And proceeding upon the assumption that they were actually going to lower the tariff, the Republican House adopted an amendment providing for a Federal inheritance tax.

Neither the stand of the Administration, which ignored the income tax, nor the acceptance of the Supreme Court decision by his own party met with Bailey's approval. On April 1 he announced in the Senate with a certain dramatic boldness that "unless I am persuaded against it by my colleagues over here," <sup>11</sup> he would offer a general income tax amendment to the tariff bill. Thus he flouted the 1897 decision and challenged the highest court to reverse the judgment of twelve years earlier.

<sup>10</sup> Kenman, *Income Taxation*, 1910.

<sup>11</sup> *Record*, April 1, 1909.

On April 15 he introduced an income tax amendment to the bill, thus beginning one of the most notable contests in his legislative career, setting forces irresistibly in motion to bring about one of the most significant and enduring changes in the American government.

On April 21 Cummins of Iowa proposed a graduated income tax which was consolidated later with the Texan's proposal in what was known as the Bailey-Cummins amendment. In this way the agitation crossed party lines and the new Republican Senator from Idaho, William E. Borah, joined with the bi-party sponsors of the amendment, including the two Democrats from Texas, in an effort to force the "General Manager of the Senate," Nelson W. Aldrich, to swallow the bitter dosage of an income tax. It was much the same alliance of South and West that had driven the Hepburn Rate bill to success in the Senate three years earlier.

Bailey rejected the inheritance tax scheme on the ground that thirty States then had such form of taxation while only two imposed taxes on incomes. A Federal income tax, therefore, would interfere much less with the established policies of the individual States.<sup>18</sup> His proposed Federal tax, he explained, was practically a duplicate of that passed by a Democratic Congress under Cleveland, but subsequently declared unconstitutional. It provided for a three per cent tax on all incomes above \$5,000. In so far as the Supreme Court had said that Congress might not tax government securities, he had drawn his amendment in the light of the 1897 decision. But he contradicted the judgment of the court in all other particulars. "I want to say that this far, and only this far, have I drawn this amendment for the purpose of meeting this decision. . . . In all other respects—the amendment distinctly challenges that decision. I do not believe that that opinion is a correct interpretation of the Con-

<sup>18</sup> *Record*, April 1, 1909.

stitution, and I feel confident that an overwhelming majority of the best legal opinion in this Republic believes that it was erroneous. With this thought in mind, and remembering that the decision itself overruled the decisions of a hundred years, I do not think it improper for the American Congress to submit the question to the reconsideration of that great tribunal. . . .”<sup>13</sup>

There were rumors current that Taft himself favored the income tax and believed that it might be imposed even in the face of the 1897 decision. Bailey believed that such were the President's views and there was, at least, the warrant of Taft's own words spoken in Cincinnati on July 28, 1908, when he said, in accepting the Republican nomination: "The Democratic platform demands two constitutional amendments, one providing for an income tax and the other for an election of Senators by the people. In my judgment an amendment to the Constitution for an income tax is not necessary. I believe that an income tax, when the protective system of customs shall not furnish income enough for governmental needs, can and should be devised which, under the decisions of the Supreme Court, will conform to the Constitution."<sup>14</sup> The President, however, had shifted to the inheritance tax in his official addresses, and Aldrich was on record that no form of direct taxation would pass the Senate if he could prevent it.<sup>15</sup> Aldrich's opposition, in fact, was adamant at the beginning of the fight. He thought he saw in the proposal an undermining of the protective tariff system, and Bailey was frank enough to argue for the tax on the ground that it would weaken any supposed justification of high import duties to supply the government with funds. On May 27, Aldrich reached the height [for him] of denunciatory eloquence when he declaimed: "If Senators sitting on this side

<sup>13</sup> *Record*, April 15, 1909.

<sup>14</sup> Kenman, *Income Taxation*.

<sup>15</sup> Praeger, April 15, 1909.

of the chamber desire deliberately to abandon the protective policy and to impose an income tax for the purpose plainly avowed by the Senator from Texas, to reduce or to destroy the protective system, I will say to those Senators that I do not intend to consent to the program as far as I am concerned."<sup>16</sup> Oh, for a Spooner or a Knox to confute these damned insurgents in his own party who were trailing with Bailey!

But unlike the railroad-bill fight, it was not a matter that could be muddled up by churning the seas of constitutional argument. The income tax adherents had a special leverage in that they could also withhold passage of the tariff bill unless they got what they wanted. Nor did they hesitate to use their lever. The tactic of Bailey and others in the coalition was to nag Aldrich at every step, demanding that the Senate be allowed to vote on the tax amendment. By the fore part of June the Administration began to realize that the tariff bill itself might easily be lost unless the tax adherents were treated with. . . . "The movement in the West in favor of some kind of income taxation had become exceedingly strong," wrote Professor E. R. A. Seligman shortly afterward. "So loud was the opposition of the Insurgents to the proposed Payne-Aldrich tariff that the leaders of the Republican party recognized the impossibility of securing enough votes to carry the tariff unless some concessions were made on the question of the income tax."<sup>17</sup> There is some dispute as to which of the Republican leaders goes the credit of first deciding to offer terms to Bailey and his crew. On June 9 the Washington correspondent of the *Dallas News* wrote that Aldrich had announced a compromise, suggesting a two per cent tax on the incomes, not of individuals, but of corporations.<sup>18</sup> But the President himself laid the compromise officially before Congress one week later in a special message.

<sup>16</sup> *Record*, May 27, 1909.

<sup>17</sup> Seligman, *The Income Tax*, p. 592.

<sup>18</sup> *Praeger*, June 9, 1909.



This was, in the characterization of Professor Seligman, "an attempt to placate the Insurgents by agreeing to enact at once a tax on corporate incomes, and to couple with this the submission of an income tax amendment to the States." <sup>10</sup> Major Butt took the view that Taft had not only suggested but also fought for this income tax proposal in a series of bouts with Aldrich, Hale, Root, and other members of the Old Guard. On June 20 the military aid jotted down: "The President has played some pretty shrewd politics of late, and instead of being duped by Aldrich and the other Senators, he has chloroformed them, as Senator Bourne explained to me yesterday while going around the links. . . . Several Senators have told me confidentially that his message took everyone by surprise, and none more so than the members of the (Senate) Finance Committee." <sup>11</sup> Then four days later the same confidant quoted Taft directly.

"However," said the President, "I think that both Hale and Aldrich felt that unless they acceded to some of my views there would be no tariff bill. In fact, I said to them, when they first met with me on the subject, that it was either the corporation tax or the income tax or no bill at all, and Aldrich answered frankly, 'That is why we came to you.' Aldrich is frank, if anything." <sup>12</sup>

Taft's message referred to his inaugural suggestion of a graduated inheritance tax which the House had passed, but he was satisfied from "the course of debate" that it would not pass the Senate. Then the President referred to the general income tax amendment submitted by Bailey, "in form and substance of almost exactly the same character" as that which the Supreme Court held "to be a direct tax, and therefore not within the power of the Federal Government to impose unless

<sup>10</sup> Seligman, p. 593.

<sup>11</sup> Butt, *Roosevelt and Taft*, Vol. I, pp. 124-25.

<sup>12</sup> *Ibid*, p. 131.

apportioned among the several states according to population." This new proposal, which he had not discussed in any official way, made it appropriate, he added, to submit certain additional recommendations to Congress.

"The decision of the Supreme Court in the income tax cases," continued the President, "deprived the National Government of a power which by reason of previous decisions of the court, it was generally supposed that the Government had. It is undoubtedly a power the National Government ought to have. It might be indispensable in the Nation's life in great crises. Although I have not considered a constitutional amendment as necessary to the exercise of certain phases of this power, a mature consideration has satisfied me that an amendment is the only proper course for its establishment to its full extent (which course the present Congress should take)." \*\*

"Second, the decision in the Pollock case," continued the President, "left power in the National Government to levy an excise tax, which accomplishes the same purpose as a corporation income tax, and is free from certain objections urged to the proposed income tax measure. I therefore recommend an amendment to the tariff bill imposing upon all corporations and joint stock companies for profit, except national banks (otherwise taxed), savings banks and building and loan associations, an excise tax measured by two per cent on the net income of such corporations." \*\*

Bailey at once accepted this compromise. He insisted, however, that the Cummins' provision for a graduated income tax should be specified in the amendment to the Constitution which was being submitted to the States. This was a wise provision, as history has shown since the amendment was adopted, and Bailey was prompt to recognize the value of Cummins' planning. The majority of the income tax adherents in the Senate

\*\* *Record*, June 16, 1909.

\*\* *Ibid.*

also accepted this compromise, although Cummins, La Follette, and several other Republican insurgents refused. Aldrich made a pretense of explaining his own rout, declaring that he was accepting this tax on the income of corporations as a temporary measure to defeat the income tax! As if a twenty-foot crack in a concrete dam would lessen the flood waters and prevent the whole structure from being swept down the valley. The Senate on July 2 voted overwhelmingly for "this half loaf"; only three Democrats and eight Republicans opposed. The Democrats generally were jubilant over the part they had played in writing in this principle of Federal taxation. The *New York Sun*, almost alone among Democratic organs, was not happy. To the cold, fishy, and ultra conservative eyes of its very able editorial writer, Bailey was the culprit most responsible for this infamy. This paper, ironically, joined in offering congratulations.

"Senator Joseph Weldon Bailey of the Lone Star State seems to be open to congratulations," said the *New York Sun* editorially, "and from the standpoint of political audacity to deserve them. All of the ambitious Texans, including Representatives Burleson and Randell, who have been aspiring to his place might as well hide their diminished heads like the little lone stars they are. The big Lone Star is Bailey. If he has not made enough political capital out of the special session of Congress to insure his reelection, then Texas is more exacting of political capital than had been supposed. . . . Whenever his senatorial campaign begins in earnest with what demagogical acclaim can be present himself to the electors as the taxer of corporations and the incomes of the rich!

"In the last analysis this is what the situation in Washington comes to. It is the accepted version of the tax measure which the Republican majority in Congress is fostering, the 2 per cent bill and the Constitutional amendment, that Bailey bluffed the Republicans into their present position.

"Alone and single-handed he did it, with no other materials than a futile minority, a handful of majority malcontents and an effrontery as sublime as Catiline's. This is no inconsiderable achievement when it is surveyed in all its aspects, but it still seems disproportionate to the necessity of reëlecting Bailey in 1913." <sup>24</sup>

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The corporation income tax and the constitutional amendment were, after all, only an unwanted by-product of the tariff discussion. Aldrich and the Republican majority were determined to get one result from the special session, and though they were forced to make these costly sacrifices to accomplish it, in the end they got it. The surest way to boost the tariff is to boost it. When, after five raucous months of parliamentary and interchamber jockeying, the Payne-Aldrich tariff bill became a law, it was seen that the high protectionists had won hands down, carrying the level of the tariff to a new, outrageous high. One may wonder who now used the chloroform, for Taft, despite his advice to Congress to revise the tariff downward, signed the bill. The sequel for the Republican majority would be found a year later in the congressional and State elections of 1910.

But the tariff contest of the spring and summer of 1909 wrought more immediate and equally portentous results within the ranks themselves of the Democratic party. And Bailey was again the precipitating factor. It will be recalled that at the Denver convention, Bryan, in the absence of Bailey, had committed the party in the platform not only to the general doctrine of free raw materials as originally made party dictum by the Cleveland forces, but to specific schedule reductions as well. If Bailey was the guiding Democratic force in the Senate

<sup>24</sup> New York *Sun* editorial, June 30, 1909.

in giving life to the income tax demand of his party, he was equally ready to defy and denounce the tariff demands in the same platform. This he did, instantly calling down the maledictions of Bryan on his head and bringing on a duel between himself and Bryan that helped to alter the destiny of the Democratic party.

Early in the special session he repudiated the Denver tariff plank calling for the repeal of duties on wood pulp, print paper, lumber, timber, and logs. He voted to lift iron ore from the free list and to place a duty of twenty-five cents a ton on it. Dixon of Montana sarcastically called upon "the great expounder of Democratic doctrine" to square his votes with the Denver platform. And Bryan, out of the mouthpiece of his *Commoner*, excoriated Bailey and the seventeen other Democratic Senators who had followed him on the iron-ore vote, declaring *de fide* that "the Democratic party is not now opposed to free raw materials." <sup>22</sup> In Texas the anti-Bailey men took renewed courage in this latest breach between Bryan and their junior Senator. Colonel Watterson took the side of Bryan at first, thundering against Bailey's "apostasy" at Washington in the editorial columns of the *Courier-Journal*. Bailey's answer was clear cut. He admitted that he was aware of the demand of the Denver convention on the four specific raw materials.

"But," continued Bailey in the Senate, "I utterly refuse to be bound by it, because it is not a Democratic doctrine. Yielding obedience, absolute and implicit obedience, to any declaration of principles which my party (in convention) may make . . . I yet refuse to allow a set of delegates selected by the people absolutely without reference to a question of that kind . . . to assemble in a convention and assume the function of legislators. The business of a national convention is to declare the principles of the party; and if they are not willing to trust the Sen-

<sup>22</sup> Quoted in the *Dallas News*, June 4, 1909.

ators and Representatives belonging to that party to apply those principles according to wise details, they ought to select some other Senators and Representatives, and they will have to do it in my case. That is my answer." \*\*

Then in a series of speeches in the Senate he made an extended attack on "the Cleveland heresy" of free raw materials and charged Bryan with being the deserter of historic Democratic doctrine. In a scholarly fashion he once more retraced the stand of the Democratic party, insisting that while the party fought the protective system, it should fight without quarter this protectionist device of free raw materials which Alexander Hamilton had declared to be an essential element of the protective system. In the middle of the controversy, Colonel Watterson was won over by Bailey's defense, admitting that the Texan's argument was "exhaustive and unanswerable," and that "no Democrat can contest" Bailey's general position.

"It (the *Courier-Journal*) has bushwhacked a lick or two with Bailey, 'jess for fun,'" wrote Colonel Watterson, "and skirmished a bit on the outer edges with Aldrich, to keep its hand in; but of serious interest or purpose it has not had a particle. . . . It knows full well that the only way to reform the tariff is to begin by tossing the monster entitled 'An act for the raising of revenue and for the protection of American industries' into the flames and so reducing it to cinders.

". . . In his elaborate speech of June 24, in general answer to criticisms provoked by certain of his votes, Senator Bailey of Texas makes a very strong case. He shows conclusively that the 'doctrine' of free raw materials is of recent origin (in the Democratic party); that it had no place in the 'doctrines' laid down by Walker whose famous report (of 1847) constitutes the bed rock of the Democratic tariff gospel; and he defends himself with spirit and success from the accusation of his

\*\* *Record*, May 24, 1909.

critics. . . . The Senator from the Lone Star State is conspicuously and confessedly the most brilliant Democrat now in official life. That he should be required to enter upon such a defense attests the confusion in the average mind. . . . Briefly, Senator Bailey declines to give the manufacturer free raw materials without a corresponding reduction of the duties on his finished product. No Democrat can contest that proposition. Nor can any Democrat successfully dispute the Senator's history of the appearance of the 'doctrine' of free raw materials as an adjunct to a Democratic tariff measure. It was the quasi-protectionist device of the quasi-protectionist scheme of the quasi-protectionist Cleveland administration to placate the manufacturers of the East, and it finally wrecked us." "

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During the course of this defense and counter-attack in the Senate, Bailey reminded the country of the exact and continuous stand of the Democracy of Texas since 1896 when it sent Reagan, Bailey, and others to Chicago to repudiate the national plank written by the Cleveland men in 1892. His last, and to Bryan the most disturbing, stand was on this unchallenged position of the voters who sent Bailey to the Senate. When, therefore, the special session ended in August with the enactment of the tariff bill, the contest between Bailey and Bryan immediately shifted to Texas. The junior Senator returned home at once and began touring what Tom Finty, Jr., termed "the Fourth of July and Old Settlers' Reunion" circuit. Throughout this series he lauded the stand of Texas Democrats in opposing the Cleveland-Bryan doctrine. On Labor Day he was a speaker with Railroad Commissioner O. B. Colquitt at Denison. Their political fortunes would merge less than a year later.

" *Louisville Courier-Journal*, July 5, 1909, quoted in *Houston Post*, July 10, 1909.

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Bailey's speech that day also is memorable for the fact that he now first definitely announced against granting the ballot to women. It was a doctrinaire statement at the time, but eleven years later the same views would vitally affect a contest in Texas in which Bailey would be the central figure.

Bryan as promptly recognized that the crux of the tariff-position fight lay in Texas. On September 14 he entered the State, speaking at Dallas before a packed house. He served notice on Bailey by announcing that "I am not going to discuss whether a platform is binding. I would not discuss with a Christian whether the Ten Commandments are binding." The crowd, which had a large element of anti-Bailey forces in it, went wild. "Hit him again," they yelled, emotions welling at the smell of political blood. "Don't say 'him,'" replied Bryan, "say 'them.'" But for all of the gesture, the crowd knew the gong had rung for the present round. Bryan admitted that Bailey had truthfully reflected the tariff stand of the Democrats of Texas, but with an audacity of which he was capable on occasion, he demanded that the Texans about face. The Commoner pictured himself as the defendant in the thirteen-year-old suit which the Texas Democracy had brought to the Chicago convention in 1896 when they condemned the Wilson Tariff because it allowed free raw materials. He declared that the National Democracy in its 1908 stand at Denver had taken the correct tariff position. And in conclusion he declared that the Democrats of Texas must reverse themselves on pain of practical excommunication from the party. "Unless you can convert the Democracy of the Nation to your position on the tariff," he added, "we are going to have two kinds of Democracy—a Texas Democracy and a Democracy of the rest of the country." \*\*

Four days later Bailey answered Bryan in Dallas. The Commoner, in the meantime, had moved on over Texas and the

\*\* *Dallas News*, September 15, 1909.



debate at long range continued for almost a month. Bryan's parting shots were fired at El Paso. Culberson spoke out, ranging himself with Bailey.<sup>22</sup> The year ended with politics seething in Texas in certain and approved manner. In the gubernatorial race not six months distant the Bailey controversy could be revived over an issue on which the Peerless Leader was flat-footedly opposed to the master of the party in Texas.

Shortly before the Christmas season, Bryan shifted his conversation from the tariff.

"The right to drink," the Commoner now began on a different theme, "does not necessarily include the right to demand the establishment of a saloon. The right to drink is sufficiently protected by any arrangement that permits the reasonable use of liquor under reasonable conditions; and it must be remembered that the right to drink, like any other right, can be forfeited."<sup>23</sup>

<sup>22</sup> *Dallas News*, October 14, 1909.

<sup>23</sup> *Commoner*, November 18, 1909, quoted in *Dallas News*, November 19, 1909.

## CHAPTER XIX

### THE NEW FREEDOM

BRYAN had used the tariff dispute as a sword to draw the line between himself and Bailey; unmistakably he had challenged Bailey's leadership in Texas, and the Democracy of that State must now choose between two old and formerly identified loyalties. The answer was not long delayed.

The State campaign of 1910 was a peculiarly complicated one, even for Texas politics. Having completed the two terms allotted by common consent as the span of the governorship of one man, Tom Campbell did not ask for reelection. The contest turned largely on the nomination of his successor. But issues remote from the personalities of the gubernatorial candidates and equally disjointed from one another came into play to make the outcome baffling. First of all there was this purely national question of the tariff which Bryan had thrown among the partisans. A second major issue was ever present, the personality and prestige of Joseph Weldon Bailey. The political forces who had failed to prevent his reelection three years before and had been routed in 1908 in a direct trial of strength before the voters in the Bailey-Johnson primary election, were now making another bid for power. The crushing, unrelenting action of the victorious Bailey forces in the State convention which selected the delegation to the Denver Convention in 1908 had created a voracious thirst for revenge. But above all there was a third issue, State-wide prohibition, that threatened for the first time to disrupt old alignments. An insignificant question in Texas for almost twenty-five years, a few stray seeds of

this movement had been blown into the field of politics by cross-currents in the winds of popular sentiment. Suddenly in 1910 the politicians discovered that it had taken root overnight and spread with all the speed and usurping ubiquity of Johnson grass. To none was the issue of prohibition more disturbing and more politically embarrassing than to Bailey.

The race for Governor quickly narrowed down to four candidates. The last chapter in the Waters-Pierce suit had been written the year previous when the oil company paid its fine of \$1,623,000 to the State of Texas and withdrew from business. The outgoing Attorney-General, R. V. Davidson, now asked for his reward at the hands of the electorate. Davidson's candidacy was, of course, openly anti-Bailey. The destroyer of trusts did not, however, consider rum as a demon that should be rooted out of Texas. He was, as his old antagonist, an anti-prohibitionist. Cone Johnson, on the other hand, offered himself for the governorship as the strictest of the straight and narrow sect of prohibitionists, thus appealing to all anti-Bailey elements who could not follow Davidson on the liquor question. William Poindexter of Cleburne, himself an ardent prohibitionist, was both by close friendship and political association Bailey's first choice for Governor. The junior Senator early announced his preference and from Washington exerted himself in behalf of his personal friend. Bailey noted early in June that he had written "more than two thousand letters in his behalf . . . to men who were undecided whether they would support Judge Poindexter or support Mr. Colquitt as a means of making the defeat of Johnson and Davidson certain."<sup>1</sup> But Railroad Commissioner O. B. Colquitt, the second anti-prohibitionist in the race, was ranked as a Bailey man. During the 1906 investigation and subsequent fight he had taken his stand with the accused. For this reason, as well as for their agreement on the

<sup>1</sup> Letter, J. W. B. to W. R. Luton, Ector, Texas, June 10, 1910.

liquor question, a Colquitt victory would equally be a victory for Bailey. Critics sought to prove that the junior Senator was playing a double game, in reality favoring Colquitt while he hypocritically urged Poindexter's election. At last he was forced to take a hand in the campaign directly. Answering his critics in a letter published to the people of Texas, he said:

" . . . I have never made the slightest concealment from anybody that, if the Anti-Saloon League should succeed in eliminating Judge Poindexter from the contest," . . . "I would take the stump for Colquitt as against Johnson or Davidson. What else could any man expect me to do? Would any man who thinks I ought to value my character and reputation expect me to support a candidate for Governor who had tried to destroy me by infamous slanders? Conscious that the things which Johnson and Davidson have done and said about me were infamously unjust—I would be lacking in my duty as a citizen of Texas if I did not exert myself to prevent them from reaching a high position, the powers of which they are certain to abuse——" \*

The campaign moved to its close on July 23 in the State-wide primary election. And with the issue of the nomination of State officers there was also submitted the question of whether the next legislature should submit an amendment to the Constitution to permit State-wide prohibition. Before the vote was taken Bailey repeated his views on liquor control. "Not that I have changed my opinion about the whiskey traffic," he stated at Gainesville after his return from Washington, "for I have not. But I know there are fifteen or twenty counties in the State where you couldn't enforce a prohibition law without abolishing their local government." \* Colquitt won by a large

\* Letter, J. W. B., Washington, May 13, 1910, to J. L. Wilson, Collinsville, printed in *Dallas News*, May 25, 1910.

\* *Dallas News*, July 23, 1910.

majority over his three opponents, while Ben F. Looney of Greenville, one of Bailey's "Swiss Guards," was made Attorney-General. It was such a revenge upon Davidson and Johnson as even Bailey in his bitterest moment might not have anticipated. Strangely enough the prohibition submission issue carried by a small majority, lending color to the interpretation that Colquitt, without Bailey's tacit support and running solely as an anti-prohibitionist, would have lost the race. There is reason to suppose that this vote of the Texas Democrats toward State-wide prohibition affected Bailey profoundly. Acutely sensitive to this drift that was dividing many of his oldest friends, he was to feel a peculiar helplessness in the face of it.

Contrary to the myth that has spread far and wide, Bailey was not forced from public life by a waning of support in Texas. As early as 1909 his opponents were seeking some one strong enough to defeat him for reelection in 1913. In Texas, Morris Sheppard of the House delegation, rather than Burleson or Randell, was recognized as the strongest possible contender. But Sheppard repudiated a published suggestion that he attempt to oust him. "It is hardly necessary for me to say that it is entirely erroneous," commented the Texarkana man. "I shall be a candidate next year for reelection to my present position." "The outcome of the State elections of 1910 tends to undermine the belief that Bailey's political decline had set in. The State convention met once more in Galveston in August to ratify the nominations. Bailey attended. A chance reference to him in the opening moments of the convention set off a demonstration that lasted forty-one minutes, an all-time record in a Texas gathering of the party. The pandemonium ceased only when he was brought from his hotel and escorted to the platform by the temporary chairman, Clarence Ousley. "It is a Bailey convention above all else," noted Tom Finty, Jr., whose predilection for

⁴ Praeger, Washington, March 16, 1909.

facts never varied in deference to his personal wishes.<sup>5</sup> Never before or since was Bailey ever the supreme master of the Democratic party of Texas. And the convention unstintingly gave him the decision in the tariff controversy with Bryan, at the risk of excommunication opposing the Democracy of the State once more to the "Cleveland heresy." "We reaffirm the tariff declaration of the Democratic State and National Platforms of 1896," the platform read defiantly, "and we expressly condemn the proposition to remove all duties from the manufacturers' raw material so long as such duties remain on the manufactured product." \*

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As the November general elections approached, national Democratic hopes were higher than they had been in fifteen years. The tide, obviously, was running against the Republicans. That party was disintegrating as a result of internal differences: the Westerners against the Eastern men, supporters of the Taft Administration against the zealots who felt that the progressive policies of Roosevelt had been betrayed by his successor. The Ballinger-Pinchot episode had dramatized the break between the Rooseveltians and the Taft forces. The Payne-Aldrich tariff, though, was the most serious act for which the Republicans had to answer before that large bloc of voters who convert congressional minorities into majorities. There was no more caustic critic of this bill than the dictator of the Republican party in Wisconsin, Robert M. La Follette. "It is a slap in the face of the overwhelming demand for tariff revision downward," he had said on its passage. "It will stand as the crowning infamy of its sponsors and will hang as the 'old man of the sea' upon the neck of the political party responsible

<sup>5</sup> *Dallas News*, August 8, 1910.

\* *Dallas News*, August 10, 1910.

for it." <sup>1</sup> Viewing the handiwork of the Republicans and noting their fratricidal strife, Bailey predicted that "the next House of Representatives will be Democratic by a majority of forty members." <sup>2</sup> Seven months before the general election the president of Princeton University, in a Democratic rally at Elizabeth, New Jersey, declared that "the day when the Democratic party must take charge of this country's affairs is almost at hand." <sup>3</sup> All three analysts were supported by the vote of the people. The House majority of forty enjoyed by the Republicans was blotted out as the Democrats returned two hundred and twenty-three representatives. The Democratic majority, instead of being forty members, was in reality fifty-five. The Senate, as was expected, remained Republican by a small margin—ten members to be exact. The elevation of Champ Clark to the speakership of the House was now assured, thus thrusting the Missouri man into a place of great prominence from which to launch his candidacy for the presidential nomination in 1912.

But even more significant, the November elections allowed the Democrats to capture the governorship of three pivotal States. A member of Taft's own cabinet, Secretary of War Henry L. Stimson, was beaten in New York by John A. Dix. In the pivotal State of Ohio, the Democrats elected Judson Harmon, who automatically became one of the strongest contenders for the presidential nomination two years hence. And in New Jersey Woodrow Wilson rode the Democratic whirlwind into the Governor's office at Trenton. A more curious and fateful emergence of a new political force of the first magnitude has probably never before occurred in the history of the United States. The circumstances alone, in view of the later course of

<sup>1</sup> *La Follette's Weekly*, July 16, 1909.

<sup>2</sup> *Record*, May 13, 1909.

<sup>3</sup> Woodrow Wilson, Elizabeth speech, March 29, 1910, Associated Press report.

history, were grotesque; here was a scholar and an idealist, the hem of whose garment had never before so much as been touched, much less soiled, by the rude processes of traditional American politics, striking for and securing the highest office in his State, all with the single purpose of using that office as a stepping-stone to the Presidency. This new and greater prophet of Democracy rising in the East, soon to out-Bryan Bryan in challenging the vested interests, would challenge particularly the vested interests of organized party machines. The Pauline apostle of the New Freedom had begun the long road to Versailles, sounding the first hypnotic note of his demand that the common people throw off their political chains and follow him. Yet that first step was accomplished under as unholy auspices as the most excited enemies of bossism might conjecture.

The strange circumstances of Wilson's nomination for Governor of New Jersey make a tale not quite so lurid, although equally instructive, as his nomination two years later for the chief magistracy. The means which Fate used to work out this event, the interplay of vaulting ambitions and petty intrigue necessary to further them, are elements in an extended and intricate account; while the outward details have long since been carefully laid down, a residue of the mystery remains unsolved, and will so remain until the science of understanding human personality itself has vaulted far beyond its present state. Outside the unraveled enigma that was Wilson himself, the moving force was George Harvey, a perfect example of that unending line of super-egoists who would spurn a throne in their own right to gain the greater title of king-maker. As early as 1902 the New York journalist had met the president-elect of Princeton University at a dinner where Thomas B. Reed, Grover Cleveland, Mark Twain, and a few others were gathered. A few days later he was asked what he thought of the



new college official. "I think," he replied, "that he will make an excellent President of the United States." <sup>10</sup> Later Harvey would modestly disclaim the honor of "discovering" Woodrow Wilson, insisting rather that "he discovered himself," <sup>11</sup> but during the next ten years he acted on the *fait accompli* of the discovery with a singleness and relentlessness of purpose that, by comparison, makes Lady Macbeth's fixed idea seem a passing whimsical fantasy. Harvey's vicarious ambition came into the open in 1906 at the famous Lotus Club dinner to Wilson; two years later Harvey was listing the thirteen points of a Wilson-for-President manifesto in *Harper's Weekly*, although, his biographer assures us, Harvey had no real hope of Wilson becoming the nominee that year. By the opening of 1910 the affairs of the Republican party had become so disorganized that Harvey realized a Democratic Governor could be elected in New Jersey. That meant to him Wilson, provided Wilson could get the nomination. But that, in the circumstances, was the rub. James Smith, Jr., of Newark, who had been a United States Senator during the Cleveland Administration and had been one of the implacable foes of Cleveland, was, by common consent, the most powerful boss of the minority party of New Jersey. Fifteen years before in Washington, in making common cause against Cleveland, he and Bailey had become fast friends. Smith's lieutenants were James Nugent and Bob Davis, themselves past masters in the same type of political management as their superior. Harvey for years had lived on the Jersey side, had been intimate with the mechanism of the party in that State, and therefore he felt no hesitancy in seeking the support of Smith to aid in the nomination of Wilson. Smith not only agreed to help Harvey achieve this goal for his friend, but also entered into the scheme with enthusiasm. From the standpoint of practical politics there was a distinct advantage in advancing,

<sup>10</sup> Johnson, p. 105.

<sup>11</sup> Johnson, p. 102.

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at this particular time, a candidate whom the people might feel was innocent of the machinations of politics. Wilson, for his part, aware of the nature and function of a New Jersey political boss and of Harvey's close association with Smith, at first hesitated. Finally, however, Wilson agreed to accept the nomination "if it could be offered him without any promises."<sup>13</sup> A voluminous dispute would soon arise over this precise point. The weight of the evidence tends to be in favor of the contention of the Wilsonians that he agreed to accept the nomination "without any requirement or suggestion of a pledge whatsoever,"<sup>14</sup> to use the quoted words of Harvey himself. The ultimate determination of the facts of this dispute is not, however, material to this narrative. But the fact that Smith believed, and wrote Bailey that he so believed, that Wilson had made promises to him, is, as we shall see, peculiarly germane. In the end, and far above this source of later bickering, the stars, we are assured by Wilson's most able advocate, "were shaping their course to future events. That summer Smith 'lined up' the delegates to the Democratic convention in the way American bosses usually do when great matters are afoot."<sup>15</sup> And the convention proper, meeting in Trenton in the same month that the Texas Democrats met in Galveston, nominated Woodrow Wilson for Governor on the first ballot. The smoothness of the performance at Trenton was admittedly due to the work of a master. When the balloting began, "the big delegations from Essex and Hudson, and some from other counties, kept their eyes upon Smith as the members of a great orchestra watch for the stroke of the conductor's baton. There was not a single defection."<sup>16</sup> But when the nominee himself was brought before the convention a few moments later, the coolness of his

<sup>13</sup> Dodd, p. 85.

<sup>14</sup> W. O. Inglis, narrative in *Collier's Weekly*, quoted, Johnson, p. 141.

<sup>15</sup> Dodd, p. 85.

<sup>16</sup> Johnson, pp. 157-58.

immediate reception being in the sharpest contrast to the warmth of Bailey's reception in distant Texas, Wilson's backers were to hear a revelation so profound that they were forced to dismiss it as a convention pleasantry. After a brilliant speech in which the future President, by his genius of phrase-making, "won all hearts," <sup>10</sup> the candidate selected by Harvey and Smith declared very solemnly that he felt he owed his nomination to the representatives of the people alone, not to any leader or combination of leaders! <sup>11</sup>

"Whether that utterance should be credited to *sancta simplicitas*, or to sublime audacity, I am thankful that it is not mine to judge," later recorded an eyewitness. "But when I think of the calm, impassive countenances of George Harvey and James Smith, Jr., as they listened to those words and looked into each other's eyes, I am impressed above all else with the superiority of modern men to those of the classic age. For the Roman augurs could not look at each other without grinning." <sup>12</sup>

### §

The Democratic victories of that year might well have recalled Bailey's plea to the cohorts of the party in Texas four years earlier, "Hold out, hold out a little longer," for the prospect of capturing the Senate and the Presidency as well two years hence was now doubly cheering. So firm in the saddle in Texas that he had no reason to doubt his renomination in 1912, he had much to gain personally in such a prospect. With a Democratic majority in the Senate, he would have been the unquestioned leader of that body and perhaps the second most powerful person in the government. But in that hour of approaching reward, the prospect seemed to turn to ashes in his mouth. For an explanation, one must keep in mind Bailey's own temperament,

<sup>10</sup> Inglis, quoted, Johnson, p. 159.

<sup>11</sup> *Ibid*, p. 159.

<sup>12</sup> *Ibid*, p. 159.

seeking out at the same time that impalpable yet exact climate to which every human being reacts—the temper of the times. It was a day of warring tags and labels; public men and the public suddenly found themselves the heirs of resounding shibboleths, and if to-day these same terms and distinctions appear rather trivial in retrospect, they were none the less real to that generation.

The same restless undercurrent of American life that had been slowly altering the eighteenth century content of governmental forms since Bryan first gave it national expression did not die with the passing of Roosevelt from the Presidency. Nor was it in fact thwarted by his less spectacular and more indolent successor. During the Taft régime the progress toward social democracy was fully as unimpeded as during the Roosevelt era or during the first administration of Wilson; it was in Taft's Presidency that the real groundwork and determining principles of both the Federal income tax and the reform of currency and banking were laid; Taft's record in checking the abuses of corporations by suits brought by the Federal government surpassed that of either Roosevelt or Wilson. The Standard Oil and Tobacco combines, to mention only two of the more powerful, were brought to bay at this period by dissolution suits prosecuted from Washington. But, paradoxically enough, contemporary public opinion failed to take the measure of what actually was happening. The significant fact is that a large and rather articulate mass of the people felt that their desire for a greater control of the new engines of commerce and industry was being thwarted. They overlooked the substance of things hoped for in the absence of the flaming words and gesturing of a Roosevelt. The result was that there grew up in both parties a mighty battle of words and counter-poised epithets. With the return to the country in 1910 of Roosevelt, whose personal ambition to become President again could not long be concealed,

the cleavage between "insurgents" and "reactionaries" in the Republican party became sharp and apparently permanent. Two years later, Roosevelt, heady with the wine of his New Nationalism and prattling of Armageddon, would bring the temple of the Grand Old Party crashing to ruin as he pushed the supports aside. The same demarcation was being made in the minority party. All Democrats were unthinkingly brushed by the organs of public opinion into one of two grand divisions: the "progressives" or the "conservatives." And Wilson, the "progressive" Governor of New Jersey, capitalizing this temper of the times with his call for the New Freedom, would triumph at the polls in 1912.

The political unrest of the people afforded, of course, a rich harvest for certain politicians in both parties. An impartial and not unduly cynical historian of the period, Frank R. Kent, has written that "as a rule the 'progressives' were those out of office, the reactionaries were the ones in office—a great many of the orators in both parties who mouthed the words reactionary and progressive at this time could not to save their souls have told what the two words meant, or what they meant by them. It was a day when it was popular to be progressive, unpopular to be reactionary. It was not so much a matter of ideas as it was a matter of the crowd you trained with and the tag placed on you by the papers."<sup>10</sup>

Bailey in his own mind was in doubt as to what all the talk was about and just where he stood, although his opponents in Texas and Eastern organs of the party had no hesitancy in discarding him among the Bourbons. He had been at Roosevelt's side in the great railroad rate-bill fight; he was a deep-dyed Bryan radical in insisting that the Federal Government should control the money and banking system. Because of his part in the imposition of a tax on corporate incomes and the

<sup>10</sup> Kent, pp. 386-87.

submission of the general income tax amendment to the Constitution, Bailey was being listed in 1911 by Professor E. R. A. Seligman as, first, one of the "insurgents" in the Senate whom the Administration had "to placate" by accepting the principle of the tax, and, secondly, as one of the "progressive" Senators who forced this concession.\*\*

On the other hand, Bailey's stand on taxing raw materials imported for manufacture was proof to Democrats in importing centers that he was a reactionary of the reactionaries. The *New York Times*, particularly, was convinced that he was impeding the "progressive" tariff policy of the Democratic party. Throughout 1909 and 1910 he opposed the creation of the Postal Savings Bank system on the ground that the government should not set up such direct competition with the private business of banking. He opposed Federal child-labor laws on the ground that they were unwarranted invasions of the police powers of the States. He opposed the extension of Federal regulation over the telegraph and telephone companies. These and more minor expressions of conservatism were enough for his critics. Goaded by this increasing criticism, he sought to meet it and place himself in his true light.

"I have recently acquired a prejudice against the word 'conservative,' " he said in the Senate, "which I once valued as the best of adjectives with which to describe a Democrat. They have used and abused that word until a conservative now means a man who is unwilling to deprive men of unfair and special privileges because they have long been unmolested in the enjoyment of them. That is not my conception of conservatism; nor do I think that it is in the least radical to abolish an ancient abuse—it is the essence of conservatism to correct a wrong wherever we find it, because it is by correcting

\*\* Seligman, p. 593.

the wrongs which exist today that we can hope to prevent the greater wrongs which may be inflicted upon the country tomorrow." <sup>21</sup>

Throughout the closing half of the Taft administration, though, the tag of a conservative was fixed ever more fast on him. Nor was it, even in the special meaning of the day, altogether unwarranted. He did react to the fitful, somewhat frenetic state of public opinion, being particularly convinced that the movement toward direct political democracy was ominous for the public good, and he veered accordingly sharply to the right.

"The public mind has become infected with a distemper which frets under every limitation upon its power," he remarked. A plaintive personal note crept into his addition that "the people, even more than their Senators or Representatives, jeer at those of us who invoke the Constitution, and they applaud the men who scoff at it as progressive statesmen." Then in a moment of peculiarly personal reflection, he added: "I realize that I am out of harmony with the spirit of my time and I am sometimes almost persuaded that I am living in an age and attempting to do a work for which my opinions totally unfit me." <sup>22</sup>

§

Bailey was never more out of harmony with the spirit of his time than when, in the fore part of 1911, he came to the defense of William L. Lorimer, United States Senator from Illinois, and temporarily saved him from expulsion from the United States Senate. Had the Texan had even one weather eye cocked on the vane of popular sentiment, he could scarcely have undertaken such a task under the circumstances. The popular election

<sup>21</sup> *Record*, June 1, 1910.

<sup>22</sup> *Record*, February 24, 1910.

of United States Senators was one of the most popular objectives of the progressives. A constitutional amendment was even then before the States for adoption to effect this great reform, and the public uproar following the exposure of corruption said to have prevailed in the Illinois General Assembly in the election of Lorimer in 1909 proved the final driving force that abolished senatorial elections by State legislatures. "Forces as irresistible as the tides" were unleashed by this case, declared La Follette of Wisconsin, whose campaign for the Republican nomination for President was under way, and who, consequently, was deeply interested in such political phenomena.<sup>22</sup> As a member of the Senate Committee on Privileges and Elections, Bailey was brought to a direct consideration of the Lorimer case. A subcommittee held hearings in Chicago and Washington in the latter part of 1910, after a campaign of exposure led by the *Chicago Tribune* had forced the Senate to take judicial cognizance of the charges of bribery and corruption in Lorimer's election. Both the subcommittee and the committee reported at the opening of 1911, exonerating Lorimer. Beveridge of Indiana, who was spending his last few months in the Senate, introduced a resolution on January 9 to reject the committee report and to expel his colleague from Illinois. With the exception of Bailey and three other Democratic Senators, all of the minority members, at the opening of the debate, were in favor of Lorimer's expulsion.<sup>24</sup> There was, moreover, a formidable group of Republicans convinced that the committee report should be rejected. Root of New York joined with Borah of Idaho, Culberson of Texas, La Follette, and others on both sides to expel Lorimer. The doom of the accused seemed sealed. Then for more than a month, with Bailey taking the unpopular side, the contest raged both in and out of the Senate. In the middle of February, Bailey made his extended defense of

<sup>22</sup> *Record*, March 1, 1911.      <sup>24</sup> *Praeger*, Washington, January 9, 1911.



Lorimer, holding the attention of the Senate for a large part of two days. Reviewing the mass of testimony gathered by the committee of the Senate, he weighed the evidence, expounded the law in the case, rebutted the arguments of Root, Borah, and others, and rested his case finally on what he believed to be "not only the plain law, . . . but also the unassailable reason of the law."

"The law governing the case is," Bailey continued, "that if you can identify and separate the dishonest from the honest votes, then the result as ascertained by the honest votes stands unaffected by the misconduct of the dishonest ones." <sup>88</sup> He admitted, for the sake of argument, that seven votes in the Illinois Assembly were corrupt as charged. But separating these from the total vote of 202 cast in Lorimer's election, he insisted that Lorimer had been legally elected by a majority of the remaining and presumably honest votes. Bailey's argument profoundly affected the result. How many minds of Senators he changed is not of record, but at least one, Tillman of South Carolina, credited the Texan with influencing his change of intention. "A week ago I would have called the man a liar who said I would ever vote for Lorimer," said Tillman. "I was bitter against him and had intended to help expel him from the Senate, but after hearing Bailey's speech and studying the records more carefully, I have decided that I shall not vote to unseat him. . . ." <sup>89</sup> The Beveridge resolution came to a vote on March 1. The Senate by a vote of 46 to 40 rejected it and thus Lorimer remained a member of the United States Senate for the time being. Eleven Democrats joined with thirty-five Republicans to give the majority of six votes in Lorimer's favor. Twenty-two Republicans and eighteen Democrats voted to expel him. No man was more convinced that Bailey had

<sup>88</sup> *Record*, January 23, 1911.

<sup>89</sup> *Praeger*, Washington, February 16, 1911.

brought about this result than "he whom you saved from a fate worse than death," <sup>87</sup> William Lorimer himself. But a year later, under slightly different circumstances and in the light of subsequent disclosures, Lorimer was swept out of the Senate by forces as irresistible as the tides.

### §

But even this striking proof of his old-time power to move his fellow Senators could not arrest the despondency that had crept into Bailey's soul. The popular uproar over the action of the Senate and the scathing attacks flung at him personally for daring to defend Lorimer only served to aggravate his spiritual malaise. As unexpected, therefore, as it seemed at the moment, Bailey's act three days later in the Senate, "precipitate, unwise—the result of passion," <sup>88</sup> as Tillman characterized it, was not, we see now, unmotivated nor unforeshadowed. Of all the catch-words and slogans that divided "progressives," and "reactionaries," none seemed more real at the moment than the initiative, referendum, and recall. Because it is seen in retrospect as the most sterile of all the objectives of the reform movement, it is difficult to realize that on this relatively innocuous issue many public men felt that the fabric of government would ultimately survive or be rent. Bryan had flirted with this "Populist vagary" for years, advocating it before State legislatures as far back as 1907. Bailey had denounced it, as we have seen, at the same time as a dangerous undermining of representative democracy. To Taft the popular recall of judges and other officials appeared as a death thrust to the American system, a species of revolutionary tinkering for which, unfortunately, the word "bolshevism" had not yet been coined, and he took his stand on a bridge, veto in hand, determined that this "most vicious" heresy

<sup>87</sup> Telegram, Lorimer to Bailey, March 5, 1911.

<sup>88</sup> Associated Press, Washington, March 5, 1911.

should not pass."<sup>22</sup> The innovation was primarily of interest to the individual States and municipalities, a number of whom, particularly in the West, had adopted it amid a great deal of soul-stirring. The proposal came before Congress in connection with the admission of the Territories of New Mexico and Arizona as States. In the fore part of 1911 the Senate was asked to approve the new State constitution of Arizona in which the recall of public officials was to be found as one of the accessories in the latest governmental model. Bailey now took his stand with Taft, denouncing this feature of the constitution with great heat, announcing his belief that the government of the United States should never admit a State to the Union which insisted upon this provision in its organic law. On March 4, the debate ended, the vote was taken, and the record showed that all but three Democratic Senators had voted with the majority to approve the recall provision in the new State's proposed constitution.

Bailey at once resigned. Without a moment of further reflection or hesitation he wrote out his resignation and presented it to Vice President Sherman to offer in the record. The presiding officer as promptly refused to announce the act, thrusting the hurriedly written piece of paper into his pocket. The enraged Texan next turned to Bacon of Georgia, who also refused to enter it in the proceedings."<sup>23</sup> Whereupon Bailey telegraphed Governor Colquitt at Austin: "I have this day tendered my resignation as a Senator from Texas to take effect immediately." It was then shortly after eleven o'clock forenoon. A few minutes later the act was being cried on the streets of Texas cities in extra editions.

The enormity of the move was nowhere more appalling than at Austin where, with the legislature in session, more than half of the controlling heads of the Democratic party of Texas were

<sup>22</sup> Butt, Vol. II, p. 744.

<sup>23</sup> Praeger, March 4, 1911.

gathered. His political allies were shocked and dazed by this sudden, uncalled for, and inexplicable action. They realized, accurately enough, that his withdrawal in this manner would shatter alignments painfully won throughout a generation. The glee of the anti-Bailey forces exceeded even the despair of his political allies, for Bailey of his own accord was making that very thing a reality for which they had fought vainly in three major conflicts—his elimination from public life and political power. Colquitt was the first to act, refusing pointblank to accept the resignation: "Your telegram is just this moment received. I decline to accept your resignation as a Senator from Texas and respectfully ask you to withdraw it. Please wire me fully." Then during a hectic afternoon and evening, Bailey learned, by a shower of telegrams, how inconsiderate his political friends in Texas construed his move. "For Heaven's sake hold up resignation till present legislature adjourns," wired Rienzi M. Johnston of Houston. "For God's sake, don't!" urged John H. Kirby. "Your friends much disturbed. Answer quick." "Don't gratify personal enemies and embarrass your friends," counselled John W. Hornsby of Austin in insisting that he withdraw the resignation. Even T. J. Brown, the venerable Chief Justice of the Supreme Court of Texas, whose concern could never be construed as selfish, admonished: "If you must retire, wait. This is a bad time. Bad for you to do so. Conditions will be more complicated if you persist." Telegrams of a less personal nature poured in from other parts of the country. "Who is the pessimist now?" asked George Harvey. "You have no moral right to insist upon resignation at this critical juncture. Don't." George W. Hinman, editor of the Chicago *Inter-Ocean*, begged him to reconsider. "You are a pillar of the Republic. You are so regarded North, South, East, and West by the loyal and intelligent men of both parties. For

God's sake, for the sake of all respectable and dependable Americans, stand fast and help the rest of us stop the deluge. There is no other man who would be missed just now as you would be. Do not desert the sane men of the country as the hoots, coots, and loons will pick our bones." <sup>21</sup>

In Washington, Bailey's party colleagues acted to avert his sudden withdrawal. Bacon on the floor of the Senate expressly denied that the Democratic Senators approved the principle of the recall in voting to admit the State of Arizona. Tillman, criticizing Bailey's action, added that the Texan "is the ablest man in the Senate without exception, one of the best equipped men in public life." <sup>22</sup> Eleven Senate Democrats then drafted a message which they sent to the Governor of Texas.

"We, Democratic Senators, speaking for ourselves and other Democratic Senators, regard the proposed resignation of Senator Bailey as a National calamity and we urge upon the people of Texas to demand that he withdraw the same and continue to serve in the Senate, in which he is the undisputed and most conspicuous leader." It was signed by A. O. Bacon, Murphy J. Foster, Lee S. Overman, James P. Taliaferro, T. H. Poynter, J. H. Bankhead, Leroy Percy, Joseph F. Johnston, Robert L. Taylor, Clarence V. Watson, and Duncan V. Fletcher.

The legislature of Texas also spoke in the emergency. By majority vote that afternoon the State senate urged Bailey to recall his decision, declaring that his departure from the Senate would be "a great and irreparable injury to the State that he has so long and so faithfully served." A majority of both houses met in caucus after adjournment and pledged to reelect him if he insisted on resigning.<sup>23</sup> Then, later in the evening, a message signed by seventy-nine members of the thirty-second

<sup>21</sup> Bailey papers.      <sup>22</sup> Associated Press, Washington, March 5, 1911.

<sup>23</sup> Bailey papers, telegram, Jacob Walters to J. W. B., March 4, 1911.

legislature of Texas, "carrying out the specific instructions of a unanimous caucus," formally demanded that he continue to serve in the United States Senate. "Your friends have never betrayed you in any crisis, as you have never betrayed your countrymen. Trust us as we trust you," <sup>84</sup> the message concluded.

Faced by these combined forces and reasons and with vanity salved as few men ever have it during their lifetime, Bailey late on the same day withdrew the resignation—at least for present purposes.

"You know how unalterably opposed I am to those Populistic heresies known as the initiative, referendum, and recall," he telegraphed to Governor Colquitt, "and I would not be willing to remain in the Senate or any branch of the public service if a majority of the party friends associated with me were willing to give their approval to them. I construed the vote of the Democratic Senators this morning, . . . as giving their support to these vagaries, and under that impression I promptly tendered my resignation. The ablest and most conspicuous Democrats who voted that way have given me their assurance that they did not intend their vote to be so construed, and have made, through Senator Bacon, a statement in the open Senate expressly declaring that they utterly disapprove them. Under those circumstances and at their earnest request, as well as at your own request, supplemented by many messages from my friends in Texas and some from other States, I have concluded to withdraw my resignation." <sup>85</sup>

Thus the "crisis" in Texas was temporarily saved, and Bailey went through the form of remaining in the Senate. But the decision to leave public life, on the surface as impetuously made as several earlier crises in his life, was in fact deep-seated and

<sup>84</sup> Bailey papers.

<sup>85</sup> *Ibid.*

irrevocable. Almost at once his closer friends learned that he would not ask to be returned two years later. Then in September, at home in Gainesville, he made public his final decision.\*\* And now, with this utterance clearing the way, Representative Morris Sheppard of Texarkana announced himself as a candidate to succeed Bailey.

\*\* Associated Press, Gainesville, September 5, 1911.

## CHAPTER XX

### BALTIMORE

THE three-cornered race for the Democratic nomination for President was well on its way by the middle of 1911. Governor Harmon of Ohio and the newly elected Speaker of the House, Champ Clark, shared one advantage rather evenly: support from existing party machinery in many of the important States. But what is one man's meat is another's poison, and this same advantage of the first two candidates was early seen to be a millstone around the neck of the third, Governor Wilson of New Jersey. Since Clark, particularly, had achieved popularity and influence among the old-line leaders by twenty years of drudgery for the party, and Harmon was almost equally acceptable to "the bosses," there was but one desperate tactic for Wilson to follow: full and widely noised repudiation of machine politics. Although the odds were still tremendously against him, there was the chance that by appealing to the disaffected elements of the party in each State, and by sounding the trumpet of progressivism to rally them against the "reactionaries," enough delegates to the convention might be rounded up to bring about his final nomination.

The sleight of hand of presenting Wilson to the country as a progressive might at first blush appear difficult. Those who knew anything of his past political leanings at all knew that Wilson had had little sympathy with the ground swell of Western, Bryan radicalism that during the first decade of the century had brought about the revolutionary reforms of Federal



railroad regulation and Federal income taxation. In fact he had first been urged seriously for the Presidency in an editorial in the "arch-Democratic" New York *World*, in 1908, as the man who, because of the soundness of his principles, could save the Democratic party from falling into the hands of William J. Bryan as a permanent receiver in bankruptcy.<sup>1</sup> This editorial portrait is worth more than a glance, first, because there is no reason to doubt that Wilson considered it other than a just estimate of his political philosophy, and secondly because it was written by none other than George Harvey himself. Harvey had been out of the employ of the *World* for a number of years and at the time was directing the affairs of a dependency of the House of Morgan, but Joseph Pulitzer, with a sensitiveness to the niceties of impersonal journalism which would hardly have been credited, allowed Harvey's editorial to be printed anonymously in the *World*.

"Dissociated opposition (to Bryan) will no longer suffice. There must arise a real leader around whom all Democrats uninfected by Populism, and thousands of dissatisfied Republicans, may rally. . . . The man's principles must be sound. He must be a defender of the Constitution, but not the worshipper of a fetish. He must realize that 'a return to the old ways' of government by Plutocracy, Privilege, Protection and Plunder is impossible; that the moral regeneration begun in violence must be completed in sobriety. . . . He must detest, on principle, any taxing of the people beyond the actual requirements of their government. He must favor immediate reduction of the tariff. He must be a hater in equal measure of paternalism and Socialism. He must set his face like flint against government ownership of railroads, initiative and referendum, government guaranty of deposits, and all other Populistic notions. He must demand from all corporations publicity, obedience to law, and

<sup>1</sup> Editorial, New York *World*, January 18, 1908.

recognition of the rights of the whole people, but he must also observe the obligations of the State to protect its own artificial creation in all legitimate and authorized undertakings. He must favor the singling out and rigorous punishment of individual wrongdoers, not merely the fining of an impersonal corporation. He must be a radical conserver, not a destroyer, of both public and private credit. He must be an opponent of imperialism, militarism and jingoism. He must prefer too little government to too much government, and must insist unceasingly upon rigid application of the basic principle of government of the people through their authorized representatives in Congress in preference to any government by commissions." \*

## §

Except for those portions of this creed which would strike down the income tax and abolish the Interstate Commerce Commission, the declaration of principles was fully as true a reflection of Bailey's political beliefs in 1908 as it was of Wilson's. Four years later the portrait was still an accurate one of the Texan, but the progressive Governor of New Jersey was now set off in sharpest contrast, at least in the public mind, to the Bourbons of the Democratic party, to which damning category Bailey had by then been consigned. By what steps had the Eastern conservative's metamorphosis been wrought so that by 1912 Woodrow Wilson stood before the country in the guise of an unfettered progressive? The initial move, we have seen, was made at the New Jersey State Democratic Convention in August, 1910, when he received the nomination for Governor. It is recorded that neither Harvey nor Smith had even grinned, augur-like, as the new nominee decided, *ex post facto*, to credit the people of New Jersey with his selection. Were either aware,

\* *Ibid.*

by some touch of divination, of the ruthless lengths to which Wilson would carry the logic of that speech? Smith, at least, was not kept long in suspense. Smith desired, it was known at the time of Wilson's selection, to be returned to the United States Senate if the State legislature were to go Democratic. The general election which raised Wilson to the governorship also saw a Democratic majority established in the legislature at Trenton, and in the forepart of 1911 the legislature was called upon to name a United States Senator. In the general election, however, Democrats had provided for a preferential senatorial ballot, an entirely unofficial referendum under the election laws as then existed. Smith had not bothered to submit his candidacy in such a preferential primary, but James E. Martine had. When the legislature came to vote, therefore, Wilson had the basis of a right to hold it to Martine's candidacy. The situation was such that the State executive could publicly and finally sever the cord that bound his career to the political boss of New Jersey. When Smith refused to obey Wilson's command to retire in favor of Martine, "a sharp canvass of the State ensued in which Wilson made it plain that the election of Smith would be a surrender to the evil forces of New Jersey life and that it would break the faith of the common folk in the sincerity of the new movement." \* A less ardent admirer of Wilson than Professor Dodd fails to credit the canvass of the State with accomplishing Smith's defeat, recording instead that the new Governor, insisting that Martine must be elected, "literally compelled the legislature, under the whip and spur of threatened executive displeasure," to elect Farmer Jim Martine.<sup>4</sup> The first head had fallen; now there remained only Harvey's.

Not without some justification from his point of view, Smith was furious. His friends and many neutral observers immediately raised the cry against "the ingrate Governor." On the

\* Dodd, p. 90.

<sup>4</sup> Johnson, pp. 169-70.

other hand the open rupture with the State machine undoubtedly raised Wilson's stock in distant States, especially among those Democrats in each area who were not in the controlling majorities. In Texas, for instance, Wilson's defiance and annihilation of Smith raised a thousand sparks of hope in the breasts of the anti-Bailey forces. This pothor about progressivism might mean very little at that distance, but the "outs" in Texas immediately sensed the practical value of a new leader committed to smashing existing party machinery. By the middle of 1911, Texas was dotted, in strategic points, by Wilson-for-President clubs. Almost without exception the guiding hands in this Texas movement were men who so far had unsuccessfully challenged Bailey's mastery of the State party. Bailey's decision to retire had loosened the whole party machinery in Texas; with the cotter pin once lifted out, even though it was temporarily replaced for expediency's sake, the mechanism could run safely and smoothly for only a little while longer, and it might fly to pieces, as it actually did, in coming to a dead stop. Thousands of riders naturally enough then started looking around for another place to ride. The habits of a lifetime prompted Bailey, even though he was leaving public life, to offer some resistance to this new movement in Texas. Wilson's behavior toward Smith and the old line leaders of New Jersey had convinced him that Wilson was a dangerous man to raise to further political power. He was, likewise, inwardly resentful of the treatment of his personal friend Smith. His growing prejudices against the man from Princeton were generously fed by Smith himself.

"I was pleased to hear from you, and am glad to find you are taking up the question in your state of Dr. Wilson as regards his Bryan move," Smith wrote Bailey on August 30, 1911. "He never voted for Bryan, as we understand it here, and did not vote at all, as you will see by the records enclosed,

at the Bryan-Taft election. He was known as a Palmer and Buckner man at that time, but as you will see, he did not vote but very seldom at Princeton. Mr. Devlin who is referred to, is an attorney at Trenton, and opposed Wilson's nomination.

"I regard Wilson as the most dangerous man we ever had in public life. He has learning, he is one of the most convincing talkers that you ever listened to, and as our mutual friend, Mayor McClellan, informed me two days after election, 'is the king of liars,' as he termed him. That makes a powerful combination. It is most unfortunate that a man of his great abilities should have no regard for truth. He has beyond question destructed the Democratic Party in this State, and at the next election in November, it now looks as if we would be hopelessly in the minority. Of course, he and his friends, no doubt, will charge these conditions to me and my friends.

"You will, no doubt, wonder why I ever nominated him, and then financed him. It is too long a story to tell on paper, but the facts are, he convinced me that he would be the most loyal man to me and the organization in the State, that I ever had anything to do with in politics, and that he would do nothing but to build us up, and that if he was elected governor, he believed he could be nominated for the presidency. I went West, and remained in Chicago for two weeks, and sent for many of our friends out there, whom we know in the different states, and they all agreed that if he was made governor, and was loyal to me and the organization, they would stand for him. Before nominating him, I had a committee wait on him of the prominent men of the State, and he made more promises than any man you or I ever knew, as to what he would do, all of which he immediately forgot after his election.

"As you know, the Governor of New Jersey has more power than any man in the country, excepting the President, in the way of appointments. He appoints all our state officers, all our

judicial officers of all kinds, and all our commissioners of every kind and character. Having five hundred offices to give out, you can imagine how easy it is for him to have a large following here.

"He came to my home right after election, and a more effusive man you never heard, and stated that our Primary Preference Law, here, which gave a Senator or member the right to declare whom he would vote for the United States Senate, if he so chose, was a farce, as no senator or member who ran had declared for any one, leaving themselves free to vote for any person they saw fit. He said that Mr. Martine would be an eternal disgrace to the State of New Jersey, and that if I made up my mind what I wanted to do, in case I did not want to go to the Senate, he and I would sit down and select a candidate, which I agreed to do, but within forty-eight hours after that, he came out in a letter demanding the nomination of Mr. Martine and that it would not do at all to elect me, as I would represent 'special interests.'

"If you wish, I will try and trace down further as to his voting, but think this will answer your purpose, as it was taken from the records of the polling place where he votes, for the last election.

"Since writing this, this evening's paper just came in showing our people, at his home advertising for candidates to run for Assembly—he has destroyed us in this State." \*

### §

Bryan, in the meantime, was neither forgotten, nor asleep in his own right. Reassuring the country that he was not a candidate himself, he was nominally neutral as between the other contestants, although he was insisting that the forces of righteousness, in this instant identified with the banner of progres-

\* Letter, James Smith, Jr., to J. W. B., August 30, 1911.

sivism, should prevail at the next conclave. The Commoner had found his latest shibboleth in the initiative, referendum, and recall, and he was now ready to separate the sheep from the goats in preparation for the Baltimore Convention. Bailey's denunciation of the constitution of Arizona in March, 1911, in the closing days of the Sixty-first Congress gave Bryan his cue.

"If there is to be a clash between Senator Bailey and the right of the people to rule," declared Bryan on hearing of the Texan's spectacular protest against the initiative, referendum, and recall, "it does not require a prophet to see that Senator Bailey is going to get the worst of it. Lay this matter away and watch events, learn from what follows how impotent a man is, even a great man and one idolized by his friends when he battles against a truth, and Senator Bailey has challenged a truth. It will be noticed he does not single out the Recall for denunciation. He opposes the Referendum and Initiative as well. He is not only opposed to these reforms, but he is unwilling to walk with those Democrats who believe in them. That is illogical." \*

Taft called the new Congress into extra session on April 4 to act that spring and summer on his proposal of tariff reciprocity with Canada. Bryan hurried to the Capital to assist the Democrats to take control of the House through Clark's election as Speaker and to strengthen their forces in the Senate. The Texans in the lower House seemed at last to be coming into their reward. Albert Burleson was made permanent chairman of the House Democratic caucus; C. B. Randell of Sherman, Bailey's successor from the old Fifth District, became the ranking majority member of the Ways and Means Committee; eight committee chairmanships in all fell to members of the Texas delegation. Over Bryan's express disapproval, Bailey and

\* The *Commoner*, Lincoln, March 5, quoted in *Dallas News*, March 8, 1911.

a majority of the Senate Democrats elected Thomas S. Martin of Virginia the minority leader. Martin's greatest crime in the eyes of Bryan was his open friendship with Thomas F. Ryan of New York. A Virginian himself Ryan had had the bad taste to retain his millions in profitable investments as well as his interest in the fortunes of the Democratic party after Bryan in 1906 had instructed George Harvey to "tell Mr. Ryan that . . . he should rid himself of all personal pecuniary interests in, at least, all corporations having to do with public utilities, railroad stocks and bonds, traction stocks and bonds, and all such properties, and invest his money in Government bonds." Although Bryan in the same instructions had referred to the Savior's advice to the rich young man who came to ask what he should do to be saved, the latter-day political saint did not ask Ryan to go and do likewise. Instead, with charming logic, the Commoner believed that if the vast Ryan fortune could be converted into a first mortgage on the government itself, the holder of the mortgage might then stand before the country as "the most potent individual factor in National life." So fascinated was Bryan over his own suggestion that he told Harvey, "under these circumstances I would much rather work to make him (Ryan) President of the United States than to become President myself." \*

But Martin's selection, five years later, in view of Ryan's obstinacy was, Bryan felt, "a reflection upon the Democratic body (in the Senate); that he should have been chosen is amazing." \* Bryan's attitude and his activities in Washington stirred Bailey to a final and irrevocable break.

"Mr. Bryan deliberately came to Washington to organize the radicals and to make war on everybody else," the Texan

\* Johnson, pp. 119-212; letter quoted, George Harvey to Thomas F. Ryan, London, July 5, 1906.

\* The *Commoner*, April 21, 1911.



complained publicly. "He had no business here except to make trouble and to try to drive his party away from its sound and historic position. . . . Before Mr. Bryan came down here there was no trouble among Democrats in the Senate—harmonious, no hint of dissension. Mr. Bryan came on the ground, went about among the new members and stirred up not merely a protest, but a riot." \* More privately the feud between the two wings of Democracy represented by Bryan and Bailey continued; and years later we are treated to the curious spectacle of a Republican President being the confidant of the two enraged Democratic captains. Bryan called on Taft on this same visit to Washington. As Major Butt wrote down immediately after Bryan's call at the White House, Taft remarked, "I find him (Bryan) pretty frank, especially when it comes to his prejudices. He told me, for instance, that he would like to tell me what he thought of Bailey, but it was too long a story." Taft laughed as he added to his Military Aid, "I might have told him of an interview I had with Bailey a few evenings ago when Bailey assured me that should Woodrow Wilson be the next Democratic nominee he would support me for reelection." †

## §

As the year drew to a close, the Wilson boom in Texas had reached good-sized proportions. Colonel E. M. House, after a lapse of many years, had renewed his interest in Texas politics, directly as a part of his plan of strategy to secure Wilson's nomination. A much later "discoverer" of the next Democratic President than Harvey, he was soon to replace the journalist as chief groomer of the candidate. The Wilson clubs in Texas, ably financed and well manned by such active and thorough field captains as Cone Johnson of Tyler, Thomas Watt Gregory of Houston, Thomas B. Love of Dallas, and Cato Sells of

\* *New York Herald*, April 9, 1911.

† Butt, II, p. 610.

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Cleburne, had practically reaped their harvest by fall. The Texas forces made few demands on national Wilson headquarters; their single demand was easy of compliance—that, in return for bringing the Texas delegation solidly behind Wilson, there should never be any recognition of a single Bailey man by the winner. This was promptly accepted by the Wilson strategists in the summer of 1911 after the demand had been made in person by emissaries from Texas.<sup>11</sup> But the anti-Bailey forces wanted their magnetic candidate to be brought to Texas to offset the old but dying frenzy of the mass for the retiring junior Senator. The Governor of New Jersey spent much time on the road that year. "Calls came to him from Wisconsin where Republicans were fast becoming progressives, from Texas where the old Democracy was almost democratic, from the nearer West, the old state of Pennsylvania, and even from New England, to visit them and make evidence of the faith that was in him," <sup>12</sup> relates Professor Dodd.

On October 28 the candidate arrived in Dallas for Woodrow Wilson Day at the State Fair of Texas. The fondest hopes of Wilson's backers were realized. All that had been said in advance of this "really wise man of the East" <sup>13</sup> seemed to be accepted by the great crowds of Texans who responded, as other and larger masses would later, to the spell of the new political messiah. He spoke to 5,000 at a luncheon in the auditorium of the First Baptist Church and in the afternoon addressed a great part of the 46,000 Texans who passed through the gates of the State Fair to hear or see him. "The visit here yesterday of Governor Wilson inspired one of the most extraordinary gatherings of political leaders ever seen in Texas," said the *Dallas News*. "Governor Wilson was given one of the most enthusiastic receptions ever received in Dallas." <sup>14</sup>

<sup>11</sup> Interview with Pat O'Keefe of Dallas, September 16, 1930.

<sup>12</sup> Dodd, p. 95. <sup>13</sup> Dodd, p. 95. <sup>14</sup> *Dallas News*, October 29, 1911.

But the noteworthy fact was that the visit drew those leaders together around a new common cause, the final extinction of Bailey. Released by his retirement, many Bailey men, acting on their own decisions, had drifted already to the Wilson banner, and these gave a semblance of harmony to the Wilson luncheon. Governor Colquitt attended and Senator Culberson sat at a place of honor. It was noted, however, that Horace Chilton, General Crane, and Cone Johnson were conspicuous by their presence. The new harmony was voiced by Johnson, who declared that "only a remarkable man could have assembled such a gathering of those who have differed so much in the past. As a matter of fact, if our guest of honor should retire, we would be fighting in five minutes."<sup>18</sup> But, as a matter of even more material fact, had Joseph Weldon Bailey suddenly appeared in the midst of the banquet, there would have been a fight in five seconds. A remarkable man indeed was Wilson if he ever believed that he made the conquest of Texas without the assistance of at least certain political bosses there.

## §

In December, with the national convention now only a question of months ahead, there occurred the historic break between Wilson and Harvey, whose editorship of *Harper's Weekly* gave rise to this significant decision. The king-maker and candidate met at lunch in a New York club with Colonel Watterson, who had been brought over to the Wilson camp some months earlier by Harvey's zeal, as the third party. Professor Dodd, believing with Calvinistic resignation that "the break with Harvey and his friends had to come,"<sup>19</sup> disposes of the whole incident thus: ". . . Governor Wilson was asked directly if the activity of Col. Harvey was thought to be harmful. The reply was in the affirmative and the relations of the two men ceased from

<sup>18</sup> *Ibid.*

<sup>19</sup> Dodd, p. 94.

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that day.”<sup>17</sup> At the time, however, the incident provoked a storm in the Democratic party. Early in January, 1912, the editorial page of *Harper's Weekly* carried an announcement:

“. . . The name of Woodrow Wilson as our candidate for President was taken down from the head of these columns in response to a statement made to us directly by Governor Wilson, to the effect that our support was affecting his candidacy injuriously.”<sup>18</sup>

Already the matter had reached channels of political gossip, but the Kentucky colonel in a series of public statements raised its status to that of a *cause célèbre*. It was he who, in his vicarious anger, dramatized the break before the country and gave absolute confirmation to Bailey and other old line leaders of the party that Wilson's nomination would be a disaster, and his election, a calamity. Colonel Watterson's account of the conversation at lunch was damning to the Wilson cause in the eyes of all but that element of the party who approved any rebuff to anyone even suspected of being affiliated with Wall Street.

“. . . From the first there was a certain constraint in Governor Wilson's manner,” recalled Colonel Watterson, “the absence of the cordiality and candor which should mark hearty, confidential intercourse, intimating the existence of some adverse influence. His (Wilson's) attitude was autocratic, if not tyrannous. . . . When Col. Harvey, apparently overcome by Gov. Wilson's austerity, put the direct question to Governor Wilson whether the support of *Harper's Weekly* was doing him an injustice, and received from Gov. Wilson the cold rejoinder that it was, I was both surprised and shocked.

“I had myself as far back as last October suggested to Gov. Wilson that, in view of his supposed environment, it might be well for Col. Harvey to moderate somewhat the aggressive character of *Harper's Weekly* in the Wilson leadership. I am

<sup>17</sup> *Ibid*, p. 95.

<sup>18</sup> Johnson, p. 192.

not sure that I had not said as much to Col. Harvey himself, but that Gov. Wilson, without the least show of compunction, should express or yield to such an opinion and permit Col. Harvey to consider himself discharged from the position of trusted intimacy he had up to this moment held, left me little room to doubt that Gov. Wilson is not a man who makes common cause with his political associates, or is deeply sensible of his political obligations, because it is but true and fair to say that, except for Col. Harvey, he would not be in the running at all." <sup>19</sup>

Once more the name of Ryan was flung before the public as the uproar continued. Friends of Wilson returned the fire, permitting the story to circulate that the real cause of the Wilson-Harvey break was an attempt to persuade the Wilson managers to accept some of Ryan's money. In an exchange of letters with Senator Tillman of South Carolina, Colonel Watterson now repudiated the story that Harvey had been a party to such a suggestion, but added that "at Gov. Wilson's instance I had undertaken to assist his accredited managers in raising considerable sums of money needed to the prosecution of his campaign. As the business proceeded the name of Thomas F. Ryan not unnaturally came into my mind. He is my friend. Knowing him to be a disinterested man, having no axe to grind, I hoped that I might induce him to help out what I believed a worthy cause. Gov. Wilson's managers were delighted with the suggestion." <sup>20</sup>

When, after three days' lapse from the publication of this letter, neither Wilson nor his spokesmen answered the Kentuckian, although Wilson had previously denied that he had requested Colonel Watterson to help raise funds, the editor of

<sup>19</sup> Editorial, *Louisville Courier-Journal*, January 17, 1912.

<sup>20</sup> Letter, Watterson to Tillman, January 25, 1911; quoted, Johnson, pp. 204-5.

the *Courier-Journal* issued a statement "to the Democrats of the United States" in which he sought to conclude his part in this "distasteful episode."

"To confuse and mislead the public (Gov. Wilson) has latterly adopted a policy of alternate silence and sneering," wrote Colonel Watterson. "Giving the lie direct to my statement that I was asked to help the financial end of his campaign, and declining my offer to submit the proof of its truth to a body of gentlemen and Democrats equally concerned with ourselves for the well being of the party, he thinks to cloud the issue and escape its menace by turning upon me the irresponsible chatter of a literary bureau which claims to live off the immaculate contributions of subscribers having wings, harps and haloes, and which has for weeks been flooding the country with every manner of falsification. . . .

"Meanwhile, let me say that while the Governor's tardy repentance may placate the forgiving Colonel Harvey—while it may even satisfy the susceptible Mr. Bryan—I refuse longer to follow a man whose nomination would, in my judgment, be a disaster, and whose election would be a calamity. He who would show himself so disloyal to a private friendship cannot be trusted to be loyal to anything. Within a single year Gov. Wilson's radical change of base, his realignments and readjustments, have been exactly concurrent with his selfish aims. There seems no abasement into which he is unable to descend with equal facility and grace. May God protect Democracy from such a leader and such leadership!" <sup>21</sup>

### §

Although this second and more sensational desertion of a political friend undoubtedly aided in building "a passable bridge" between Wilson and Bryan, to which constructive task

<sup>21</sup> *Louisville Courier-Journal*, January 28, 1911.

Colonel House had dedicated himself, the Wilson boom was temporarily checked by the incident. In Texas, however, the organization went forward; the Harmon, Clark, and Underwood forces sought converts, but they were too late. Clark swung down through Texas and at Dallas took stock. Among those with whom he talked was Thomas B. Love, a Wilson manager, later to be national committeeman from Texas during the Wilson ascendancy and for a time Assistant Secretary of the Treasury under William Gibbs McAdoo. Love, as a former Missourian, welcomed Clark personally. From their conversation Clark drew a slant on the Texas boom for Wilson which he carried back to Washington with him. Hastening to Bailey, he informed him that Love had said "We are using Wilson to rid Texas politics of Bailey." The truth of the remark was denied by Love then and the remark was emphatically repudiated many years later. Love had been Speaker of the Texas House of Representatives in the 1907 investigation of Bailey, had thrown his weight against those who clamored for Bailey's head then, and he refused to be put in the light of kicking Bailey down the stairs now when he was leaving public life of his own accord. But the junior Senator was goaded by the report to return almost immediately to Texas to hurl a final defy at his enemies. It was a fatal misstep. Less than two weeks remained before the presidential primary election in Texas would be held; the Wilson forces were impregably deployed; Bailey's own lines of offense and defense were gone. He made three or four stump speeches, largely in the northern half of the State. It was difficult to know whether he preferred Harmon or Clark, but there was no doubt that he opposed Wilson with a singular, and almost personal hate. The primary closed in on him and for the first time in his life the Democracy of Texas in a State-wide vote rejected his advice. The State convention of delegates chosen in the primary met in Houston late in May to

choose the delegation to Baltimore. When it convened it was seen that the tables were exactly reversed from 1908 when the Bailey forces had been ruthless in control. Not one man who still adhered to the junior Senator was placed on the roll of the "immortal forty" delegates. In addition to instructing the delegation to vote as a unit for Wilson "so long as his name is before the convention," the State presidential convention adopted a platform that should humiliate if not bury Bailey by its numerous contradictions of his views. Among these implied criticisms was the voicing of the doctrine that all platform pledges are binding on all elected representatives of the party, and the voicing of the belief that the people of each State had the right to adopt the initiative, referendum, and recall at their pleasure. But more direct a slap, the convention completely reversed the tariff stand of the party in Texas, returning to the "Cleveland heresy" of free raw materials.

" . . . We believe in the old-fashioned Democratic doctrine of a tariff levied solely to produce a revenue sufficient for the support of the government and not levied for the protection of any interests, incidental or otherwise," read the tariff plank. " . . . When this principle is applied and enforced, it will put an end to any basis for the contention that certain raw materials or products should be put on the dutiable list because other articles are so placed; because Democrats would levy tariff duties solely in the interest of the body of the people and not in response to the appeals of the particular interest to be affected. . . . " "

Naturally enough Bailey did not attend the Baltimore convention. The old sequence had been followed with the Republicans holding their convention first. The fateful split at Chicago in renominating Taft had already occurred when the Democrats began moving on Maryland. With Roosevelt heading the new

" " *Houston Post*, May 30, 1912.



Progressive Party, dividing the Grand Old Party from stem to stern, it was seen that the man named at Baltimore would be the next President of the United States. The exciting and prolonged contest from Bryan's demand in the opening hours that Ryan, Belmont, and all associated with the wicked personalities of New York be thrown out of the convention, to the final, forty-sixth ballot on which Woodrow Wilson was nominated, has produced a literature of analysis and interpretation. Was Bryan the master political mind who snatched the laurel from Clark after he had first achieved a majority? Was the Commoner victor in his sincere aim of placing the destiny of the party in the hands of progress, or was he the dupe of his own cupidity, losing the nomination to Wilson through the shrewdness of George Harvey? A score of reasonable critiques have been made of the extremely complex play. But the fact remains that out of the desire for revenge upon Bailey, the solid phalanx of forty votes from Texas was originally formed, and Wilson, at least, seemed to accept Colonel House's own estimate that "without the work . . . loyalty and intelligent support . . . of those forty delegates from Texas . . . the President could never have been nominated." \*\*

## §

The end of the Taft Administration came with a Puccini-like flourish. The general election in November moved into place, the people voted to mighty, crashing, brassy chords, and as the curtain fell on the melodious tragedy the stage, strewn with the corpses of the Taft and Roosevelt forces, was dominated by a new hero. Was it a Parsifal or a Machiavelli, or a little of both, who in the person of Woodrow Wilson had now succeeded to the power and the glory?

Bailey refused to wait even for the curtain calls. Personally

\*\* House, Vol. I, p. 63.

his sympathies were too closely projected into the personal fate of the defeated Taft for him to enjoy the spectacle of the death of the protagonist. "My personal relations with the President of the United States have been of the most delightful nature, and I would not lightly interrupt our friendship," <sup>24</sup> Bailey had said publicly as the end approached.

Although he had fought the Republican President on the major party issues, opposing Taft's reciprocity plan with Canada, supporting Lorimer while Taft attempted to "line up" senatorial forces for Lorimer's expulsion, resigning from the National Monetary Commission because he opposed the Republican majority's plan for a centralized national bank, the Texan felt himself spiritually at one with the executive who early in the régime showed such confidence in him in the matter of a place on the Supreme Court. As the whole emotional conflict induced by the war cry of progressivism came to a head, so perfectly symbolized by the empty issue of the initiative, referendum, and recall, Bailey took his stand with the unpopular Taft. And he chose to go down to political extinction by his side, chanting hymns to the glory of "the Old Republic" while the furious waves of feeling, frothy with the faith of a more direct democracy, rolled over them. On January 2, 1913, Bailey rose in the Senate to deliver his farewell address. At the same time, three months before the first Democratic President since Cleveland would be inducted, he formally resigned. In this way Governor Colquitt was enabled to name Rienzi M. Johnston of Houston to serve *ad interim* as United States Senator, pending the entrance into that body of Morris L. Sheppard.

Nominally an exhaustive analysis of the weaknesses of the initiative and referendum, the speech was in fact Bailey's final summing-up of his political faith, an apologia *pro sua vita*

<sup>24</sup> *Record*, July 16, 1912.

that makes a claim to-day to remembrance without respect to the original, specific issue that provoked it. It was not in Bailey's day in the Senate, nor even in Wilson's crusade "to make the world safe for democracy" that the American system of government was seriously threatened. But in a later era, when many reasonable and wise men honestly doubt if the "American experiment" of political democracy has not about run its course, perhaps these words of a radical conserver of 1912 are of interest:

"They tell us that the doctrines of the fathers were good enough for the time of the fathers, but that we have outgrown them, and this cunning appeal to the pride of an age has flattered many weak-minded men into scoffing at what they irreverently call 'the wisdom of the dead.' Mr. President, that the growth of a nation may call for the adoption of new policies, and that it may even call for either a lesser or a larger application of old principles, is undoubtedly true, and no man could be more ready to recognize and act upon that truth than I am. But, sir, I utterly deny that the growth of a nation in area or population or wealth can ever alter the fundamental principles of a free government. Policies must change with changed conditions, but principles are as eternal as the stars; they are as immutable as God's laws. Will they tell me that we have outgrown that cardinal principle of personal liberty which guarantees that no citizen can be condemned without a trial or tried without a jury? Will they tell me that we have outgrown that other great security of freemen which guarantees to every man the fruits of his own labor by providing that his property shall not be taken, even for the public use, without a just compensation to him?

"It is just as foolish to discard one proposition because it is old as it is to reject another because it is new. The men who made our Constitution realized that their great work was not

so perfect as to permit no change. Absolutely confident of their patriotism, and reasonably confident of their wisdom, they could still foresee that time might disclose some defects in the Constitution, and therefore they solemnly provided in that instrument for its amendment. Devoutly as I cherish the spirit of it, and faithfully as I strive to live up to the letter of it, I do not hold it in any superstitious reverence. I do not look upon it as the ark of a covenant, which shall provoke the curse of God against all who touch it, and I have twice voted to amend it. But, sir, while I have been willing to amend it, I am not willing to destroy it. That Constitution is definite enough to protect the humblest citizen in his every right, and it is elastic enough to punish the mightiest corporation for its every wrong. Through more than a century's trial it has been sufficient for every emergency. It carried us successfully through three foreign wars; it walked with this Republic like a redeeming spirit through the fiery furnace of a civil war; preserving the Union even against the wrath of the men who would now give their lives in defense of its flag; and when that cruel war was over, it was held aloft by brave and generous men in the North as a shield over the bosom of the bleeding and prostrate South. That Constitution, like a flaming sword, waved back from the gates of our stricken land the merciless adventurers who had come to prey upon our misfortunes. Ah, sir, so long as I remember how that Constitution saved my father and his vanquished comrades from the awful fate of those who surrendered to the armies of an unrestrained democracy of old, I shall cherish and defend it."

One of the advantages urged at that time for direct political democracy was that it would largely abolish political parties, permitting the economic interests of particular groups to be expressed in action more effectively. Bailey's answer was both a defense of the party system and denunciation of the bloc sys-

tem which even then had shown the way in Congress for control by minority groups.

"We can never correct the violence of party spirit by substituting factions for parties," continued Bailey, "because the factional spirit is always incomparably more violent than party spirit. . . . No, Mr. President, you can not moderate party spirit in this country by breaking up the great parties into small factions, but you can in that way destroy all responsible party government and turn this Republic over to the management of a minority. The rule of a minority is not the kind of a government which is desirable in any country, and least of all in this country. . . . The Senate has witnessed within the last two years the group system in operation, and we have seen the legislation of this body controlled by less than a dozen men, who were in turn largely controlled by one man. With something like 45 regular Republicans and with 42 Democrats less than 10 Progressives have dominated this body upon some of its most important measures. They would first vote with the regular Republicans to defeat our Democratic bill and then force us to join them in passing their own bill, or else defeat all legislation on the subject.

"Political parties, if organized and manipulated merely as a means of working out personal or partisan ends, are, of course, worse than useless; but political parties organized and used as a means of conducting the government according to certain great principles upon which the members of it agree in the main are instruments of good government the value of which it would be difficult to overestimate. Indeed, sir, it is inconceivable to me that a free government could be administered safely and wisely without political parties, because men of the same mind could not otherwise render their opinions effective in the conduct of the government. As long as they serve this useful purpose parties are necessary and partisans may be patriots. . . . It is

in this sense, I hope, that I am myself a partisan. I am a Democrat purely because I want to preserve the principles of that party and not because I am anxious to elect some man to an office. I believe, too, in party organization, and my record for party loyalty is untarnished. I have never scratched a single name from a Democratic ticket, and my vote has not been given grudgingly to the nominees of my party. But, sir, while I am a partisan, I am not an intellectual slave. I have always reserved the right to think for myself, and I have always held it to be my duty to vote according to my own judgment on every great question. My first speech in the House of Representatives was made against the rule which clothed the Committee on Rules of that body with such extraordinary powers. That rule was reported by the Democratic leaders and made a party question; but that fact could not convince me that all of the committees of the House should be subjected to the control of a single committee, and I felt obliged by my sense of duty to say so. Exactly what I predicted would come to pass under that rule did come to pass, and everything I said against it has been fully justified. If I thought my party were about to make a mistake like that today, I would make my last speech against it just as readily as I made my first. But, sir, while exercising a liberty of thought and speech, which no self-respecting and patriotic man will ever surrender, I am a firm believer in the value of party organization, and I can support no policy which, in my judgment, is certain to eventuate in the decay of political parties. If we do not follow parties we will follow persons, and when we have walked in that course long enough the man on horseback will come and a military despotism rise upon the ruins of a free Republic."

## §

Then turning to a more personal note, Bailey reviewed his twenty-two years in service in the two houses of Congress, an-

swering his critics and denouncing those whom he considered had slandered him. Including opponents and colleagues alike, he defended the general integrity of Congress from the "distrust which, I regret to say, now so largely pervades the minds of our people—due largely, if not entirely, to a certain class of newspapers and magazines." Here Bailey paused to make his final counter-attack on Hearst, using the most highly publicized forum in the United States to disseminate his enmity toward the publisher.

"I have here a sample of these attacks, in a magazine owned and published by one William R. Hearst, who affronts the decency of this Nation by posing as an apostle of civic righteousness. Politics with him is a trade and patriotism a pretense. . . .

"What we need in this country and at this time," he continued, "is more confidence in our representatives, because this eternal war against them has made too many of them cowards. . . . Mr. President, I am soon to terminate my public service, and I shall henceforth have no interest in this government other than that of a private citizen; but before I go I want to bear this testimony in behalf of the men with whom I have served: I want to say of those with whom I have differed, as well as those with whom I have agreed in politics, that they were as much above treachery and dishonor as any equal number of men ever assembled for any work. . . . Among them I do not believe that there have been five men who could have been bribed with any sum of money to do what they knew was wrong; but candor toward all and good faith toward the people require that I shall also say that I have known a much larger number whom fear sometimes deterred from doing what they knew was right. I do not mean that they feared some special interest, or that they feared the lobby, of which we hear so much and see so little; but, sir, they feared the displeasure of their people.

"To please those who have honored him with their confi-

dence is a noble purpose and ought to animate the mind of every Representative, but to my way of thinking it is nobler still to serve the people than it is to please them. There was a time when Senators and Representatives, having done what they believed their duty required of them, did not fear to go back to their States or districts and lay the question fully and frankly before their people. By such a course a Senator or a Representative sometimes lost his office, but he saved his self-respect, and that ought to be worth more than all of the offices in the world. Under a system like that the people can be educated on public questions; for in those great debates principles instead of men were the themes and they became the high schools of American politics, where the people were trained in the difficult art of self-government. Let us pray that those days and those debates will come again so that in them and through them we may learn to appreciate the debt we owe 'the fathers' for this government which in the words of Jefferson is 'so free as to restrain us in no moral right, and so firm as to protect us from every moral wrong. . . .'

"Mr. President, I am now, and I shall be to the end of my life, opposed to kings, aristocracies, and mobs. I support now, and shall support so long as I live, the glorious Republic of our fathers." "

" *Record*, January 2, 1913.



## CHAPTER XXI

### WILSON

IN the spring of 1913, as the Wilson administration went into harness, Bailey thought that he was leaving the struggle of partisan politics behind forever. As Hogg had believed two decades before, he felt that he was retiring to the side lines, free at last to serve the interest of his family and his old age exclusively, now that he had given more than twenty of his best years to the public service. But also as Hogg before him, he made the mistake, so far as any purpose might hold to gain the calm and peace of the retired warrior, of remaining on the ground of his old contests. In choosing Washington as the place where he would practice law, he blocked effectively any hope of achieving political aloofness.

The decision could not have been based on any hope of building up a lucrative private practice of law before the multiple bureaus and agencies of the central government. Any such lame-duck scheme was absurd on its face, considering the wounds not yet healed into scars which the campaign to nominate Woodrow Wilson had left. The President's chief appointments widened rather than bridged the breach between the two wings of the party. Bryan was now raised to the first place in the Cabinet; William Gibbs McAdoo of New York, basking in the glare of the old line, anti-Wilson Democrats of that State, became Secretary of the Treasury; and for the highly important post of liaison officer between the White House and the working

forces in Congress, the President had chosen Albert Sydney Burleson for Postmaster-General.

Nor was Burleson the only Texan committed to Bailey's extinction who was singled out for preferment by the Administration. Later Thomas Watt Gregory, who was recalled for his association with R. V. Davidson in the 1906 ouster suit against the Waters-Pierce Oil Company, would become Attorney-General of the United States. Two other Wilson organizers in Texas were generously remembered. The Hon. Cato Sells of Cleburne was installed at once as Commissioner for Indian Affairs; Thomas B. Love, elected Democratic National Committeeman for Texas in 1912, would be consoled with an assistant secretaryship of the Treasury after 1916 when Bailey would unceremoniously dislodge him from the place of committeeman. The only important appointee credited to Texas who was not opposed to the former junior Senator was David Franklin Houston, who became Secretary of the Treasury. And Houston was not, strictly speaking, a Texan, having left the presidency of the University of Texas and the State a number of years previously. But more significant yet, there was, finally, flitting behind the throne itself in the place to which Harvey had long aspired, Colonel Edward M. House.

Even with such an array of his old antagonists raised to the seats of the mighty, Bailey might have made a personal peace with the Administration. By swallowing his pride and by joining in the adoration of the new master of the party, he might have won personal advantages. Much stranger reconciliations had and have occurred in the opposite party. But Bailey was incapable of being even neutral, once the black flag had been raised against him. He took the offensive almost at once, as a private citizen subjecting the acts and aims of the Administration to such acid scrutiny that he soon became its most conspicuous critic within the fold of the party. His notice that

he neither expected nor would give any quarter was served at the beginning of 1914. It took the form of his attorneyship in a case that was peculiarly offensive to the President himself, that of Newman versus Frizzell.

Oliver P. Newman was a newspaper reporter who had served Wilson well during the pre-nomination campaign and had been a member of that same literary bureau, the chatter of which had so annoyed Colonel Watterson. The President rewarded Newman shortly after taking office by naming him one of the two civil commissioners of the District of Columbia. The Senate hesitated for a moment in confirming Newman's appointment; the question of his eligibility had been raised in view of the Act of Congress creating the job, which stated that the civil commissioners must "have been actual residents of the District of Columbia for three years next before their appointment and have, during that period, claimed residence nowhere else."<sup>1</sup> The Senate resolved the doubt in Newman's favor, and he took office. Shortly afterward, William J. Frizzell, a citizen and taxpayer of the city of Washington, became convinced that Newman had not lived within the district for the required period and had claimed residence elsewhere. Frizzell attempted without success to interest both the District Attorney and the Attorney-General in seeking the removal of Newman. Whereupon he engaged Bailey to bring suit for him as a private citizen to accomplish the same purpose. Frizzell lost his suit in the lower district court, but on appeal to the Court of Appeals, following a jury trial on the question of fact as to whether Newman had met the qualifications, Bailey and his client won. Not only did the jury decide that Newman had not fulfilled the requirement of residence, but the court also granted a writ of *quo warranto* for his removal. The jury trial was the first in which Bailey had engaged in ten years, and it made him wonder before it

<sup>1</sup> Newman versus Frizzell, U. S. Reports, Vol. 238, p. 537 *et seq.*

started "whether I had lost the 'lick.' " Newman was represented by able counsel, the Solicitor-General himself, John W. Davis, being a direct representative of the government in the case. The winning of the jury verdict especially pleased Bailey, gratifying him much more, in fact (as he wrote to a friend in the horse-racing fraternity) "than if one of my colts had trotted better than 2:10." <sup>9</sup> Newman ultimately retained his office, for on appeal to the Supreme Court of the United States the whole proceedings were dismissed, largely on the ground that Frizzell, "as a citizen and taxpayer merely," was not entitled to institute the suit. The fatal defect had been the failure to persuade either the District Attorney or the Attorney-General to bring the action. The decision of the highest court in no wise considered the fact of Newman's eligibility. The effect of the court fight was, however, to put the Administration before a large element of public opinion in the light of conspiring to retain an appointee in office whom twelve good men and true had, in effect, declared should not be there.

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But more important issues revealed Bailey's antagonism to the Administration. The prewar legislative program which Wilson now brought to effective and brilliant fruition aroused, by some of its measures, some of Bailey's most caustic denunciation. He had no cause to complain of the extension of the income tax law to include personal incomes, now that the amendment to the Constitution for which he was so largely responsible had been finally adopted.

There was no expressed antagonism to the final triumph of the popular election of United States Senators. There were serious flaws, however, to his way of thinking, in the Federal Reserve Act. As a member of the Aldrich Monetary Commis-

<sup>9</sup> Letter, J. W. B. to C. C. Watts, Charleston, West Virginia, June 29, 1914.

sion he had known the general Republican scheme for a central bank, which, in many respects, was carried into execution by the Democratic Congress.<sup>3</sup> He had resigned from this commission in 1911 rather than be a party to its final report to Congress. Now with the Federal Reserve Act a reality he found it from a Democratic point of view "utterly indefensible in more than one respect," although he refrained from "any public discussion of the existing law" because he felt the Administration was entitled to a fair trial of the law "before being required to defend it from Democratic criticism." Bailey's main complaint was against the features of the act which seemed to make the expansion of currency wait on the consent of the banks, rather than on the sole discretion of the government.<sup>4</sup>

The passage of the Alaska Railroad Bill which provided for both ownership and operation of a railroad by the Federal Government in that Territory met with Bailey's wholehearted disapproval. Wilson's efforts to have Congress pass a ship-subsidy bill, defeated at the time, raised a further objection by Bailey. Not only was the proposed purchase of ships "as a means of relieving our commerce" unsound in Bailey's opinion, but it also underscored Wilson's inconsistency, for the President had opposed the government offering any direct relief to the distressed farmers of the South when, at the outbreak of the World War in August, 1914, the bottom dropped out of the cotton market.

Bailey himself did not favor government purchase of cotton, but "the government has just as much right to buy cotton for the relief of the cotton farmers of the South as it has to buy ships for the purpose of transporting the manufacturer's goods." <sup>5</sup> And Wilson's act of negation, the vetoing of a measure to restrict immigration, gave the critic an opportunity

<sup>3</sup> Warburg, "The Federal Reserve System," pp. 130-31, *et seq.*

<sup>4</sup> Letter, J. W. B. to W. Y. Carver, Farmersville, Texas, October 14, 1914.

<sup>5</sup> Letter, J. W. B. to J. C. McNealus, Austin, Texas, February 3, 1915.

to insist further upon the President's inconsistency. The veto message was based on America's historic policy of asylum for immigrants and gave him an opening. "It would not seem strange that a 'reactionary' like your humble servant should seek to justify something he was doing at this time by citing what was done a hundred years ago," wrote Bailey, "but it sounds funny to hear a 'progressive' invoking the opinions of the fathers to justify his conduct. But the inconsistency of that message and many of Wilson's speeches might be overlooked except for the lack of comprehension which it displays. Nothing could be more absurd than that we should continue under our present density of population an immigration policy adopted when our whole country contained but a handful of people. Then our only serious problem was that of obtaining a sufficient number of men to do the work required, while now our greater problem, which is being constantly aggravated, is to find work to keep all of our laborers employed." \*

But the "crowning infamy" of the legislative program at Washington was, Bailey believed, the early enacted Underwood Tariff. "My judgment and my conscience alike revolt against such an injustice toward our people," he declared. "How could I approve the present tariff law or even pass it *sub silentio* without stultifying myself?" \* Accordingly he attacked the new tariff law loudly and publicly. Let "Burleson, Gregory, and company rush to the President with the story that (he) was trying to embarrass the Administration." \* This surrender of a Democratic Congress and a Democratic President to the free raw materials heresy of Cleveland and Bryan was so outrageous that Bailey had no choice but to speak out in meeting. "After denouncing the tariff for a century as a special favor to the manufacturer," he added, "a Democratic Congress, under the

\* *Ibid.*

\* Letter, J. W. B. to T. B. Ridgell, Rockwall, Texas, February 16, 1915.

\* Letter, J. W. B. to George F. Burgess, Gonzales, Texas, May 4, 1915.

\* Letter, J. W. B. to W. Y. Carver, Farmersville, Texas, October 14, 1914.

coercion of a Democratic President, has passed a tariff bill which is filled, from its enacting clause to the last sentence, with discriminations in favor of the factory and against the farm. . . .<sup>10</sup> The President, who is largely responsible for free farm products and free raw materials, must understand as well as I do the injustice of that discrimination against the people of the South and West; but it seems that he has adopted the view of the North and East on that particular question. . . . I am aware that men who can offer no valid answer to this objection endeavor to evade the force of it by charging that those who make it are protectionists. What an insult to the intelligence of the people! They vote for a thirty-five per cent duty on the clothes which the toiling millions must buy from the manufacturers and call themselves revenue-tariff Democrats, but assail us as protectionists because we would lay a duty of thirty per cent on the wool which the rich manufacturers buy from our farmers and ranchmen. . . . I am further from being a protectionist than any of our opponents, and I will vote for a duty as low as any of them; but I believe that all duties, whether high or low, ought to be laid so that they will not discriminate against any class, industry or section. If the farmers of this country must sell what they produce in competition with the world, simple justice demands that they shall be allowed to buy what they consume under the same conditions. They are the very last of all our people against whom the law should discriminate, for upon the fruitfulness of their toil depends the prosperity of all classes, and upon their unselfish patriotism depends the permanence of our free institution. . . . How Senators from Southern and Western States can aid in the accomplishment of that purpose is utterly beyond my comprehension.”<sup>11</sup>

There was an approving response in the Senate to Bailey's

<sup>10</sup> Letter, J. W. B. to T. B. Ridgell, February 16, 1915.

<sup>11</sup> Public letter, J. W. B. to Dr. J. A. Allen, Fulbright, Texas, May 17, 1913.

widely publicized criticism of the free raw material provision while the Underwood Tariff was still pending, but it came from one who was neither a Southerner nor a Democrat.

"You are either a Republican or I am a Democrat on that feature of this bill," wrote Senator Borah. "I agree with the unanswerable argument which you make against this bill. I think it a great misfortune that any great party should lose an opportunity wisely to put into effect the policies which it has so long advocated, rather than yield to conditions which make a monstrosity out of what ought to have been a scientific piece of legislation."<sup>18</sup>

Not content with a criticism of the bill itself, Bailey shortly afterward directed an attack on the Administration of the act by the Treasury Department headed by McAdoo. This grew out of an order of the Treasury Department to custom officers to admit Cuban sugar after March 1, 1914, at a reduction "of 20 per cent upon the reduced rates fixed by the Underwood Act."<sup>19</sup> The State of Louisiana through its Attorney-General, Ruffin T. Pleasant, and represented by Bailey, went into the Supreme Court of the United States seeking permission to ask for a writ of mandamus against the Secretary of the Treasury to compel him to collect a higher duty on Cuban sugar. The State of Louisiana based its plea to sue the United States without its consent on the ground that the State, as a part of its economic policy, operated three sugar plantations and three sugar mills, and that the State of Louisiana as a producer of sugar would suffer "irreparable injury" unless the "arbitrary, unjust and illegal" action of the Secretary of the Treasury was prohibited. Although the complainants averred, contended, alleged, and charged at length against the action of the Secretary

<sup>18</sup> Letter, William E. Borah to J. W. B., July 23, 1913.

<sup>19</sup> *Louisiana versus McAdoo*, United States Reports, Vol. 234, pp. 627 *et seq.*



of the Treasury, the counter-action in court accomplished no more than a wide distribution of criticism in the press, for the Supreme Court refused to permit the case to be brought, holding that the courts will not interfere with the ordinary functions of the executive department of the government, that the United States may not be sued in the courts of this country without its consent, and that a State which happens to operate sugar plantations by its convict labor may not review the action of the Secretary of the Treasury any more than any other producer of sugar may do so.<sup>14</sup>

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If the criticisms thus far advanced left any doubt in the mind of the Administration of Bailey's implacable attitude, such doubts were finally dispelled by his attorneyship in the legal feud that raged for almost three years between the Administration and the Riggs National Bank of Washington. This celebrated controversy ranged on one side the Secretary of the Treasury, the Comptroller of the Currency, John Skelton Williams, and rather more innocently the Treasurer of the United States, John W. Burke; opposed directly were the officers of the local bank, one of whom, Milton Ailes, had served as an Assistant Secretary of the Treasury under Roosevelt. But the cross-fire of these principals was so wide and public that the ramifications of the quarrel were soon disclosed to be embedded in much larger and very powerful sections of the body politic.

Williams' initial brush with officials of the local bank came in December, 1913, when the New York *Tribune*, on two successive days, carried special dispatches from Washington that were highly critical of the assistant secretary's conduct as an officer of the government. McAdoo promptly made Williams'

<sup>14</sup> *Ibid.*

cause his own. Both accused the bank officials, of whom Charles C. Glover was president, with inspiring the adverse criticism.<sup>18</sup>

In February, 1914, Williams was promoted to be Comptroller. In May the new Comptroller went to McAdoo with the complaint that the Riggs National Bank had "a large proportion" of its loans in stocks and bonds and "revealed the New York Stock Exchange stock-market operations of its officers." Williams as Comptroller opened fire on the conduct of the bank. Determined to prove his suspicion that past as well as present officials of the bank had violated the national banking laws regarding loans to officers, the Comptroller made the first of fifty-one demands which he was to make upon the bank for extraordinary and special reports of its operations; a voluminous correspondence between the Treasury and the little white bank across the way grew up, a total of 503 printed pages being required to reproduce this extraordinary record of mutual bitterness and truculence. Not since the day in which Jackson smashed the Biddle Bank had there been such bad blood between Federal officials and a banking institution.

For ten months the officers of the bank, in the face of repeated slurs upon their integrity and veracity, writhing under their task, attempted to meet Williams' demands. Finally on January 22 the Comptroller made a demand that exhausted what little patience the bank still had. "In view of conditions in your bank brought to light by the national bank examiners," wrote the Comptroller ". . . and in order that (this office) may be more fully informed as to the extent to which the funds of your bank have been used by its officers for their personal and private benefit through indirect, or 'dummy,' or concealed loans, as well as direct borrowings," the Comptroller demanded a sworn record of such transactions since the bank was chartered

<sup>18</sup> Riggs National Bank versus J. S. Williams, W. G. McAdoo, and John Burke, Supreme Court of the District of Columbia, Equity No. 33,360.

in 1896.<sup>16</sup> After entering a sweeping denial of the use of "dummy" or concealed loans, the officers declared that every penny borrowed by any of them had been legally done, amply secured, and fully repaid. They pointed out that a detailed record such as Williams demanded would entail a close examination of the books of the bank for the past eighteen years, that the bank examiners were still entitled to look over the same books if they had not already transcribed the identical information during their two months' examination, and the bank therefore refused to comply with this final request. So far there had been only threats of penalties. Now Williams slapped a penalty of \$5,000 upon the bank for its immediate failure to respond, and continuing penalties of \$100 a day were placed over the heads of the officials. Since the bank refused to pay the penalty, McAdoo instructed Treasurer Burke to withhold the April 1 payment of \$5,000 in interest due the bank on its \$1,000,000 of United States bonds on deposit with the Treasurer to secure currency issued by the bank.

At this point the bank went into the Supreme Court of the District of Columbia, seeking injunctive relief against the diversion of the \$5,000 in interest. Bailey and Frank J. Hogan were counsel for the bank; government lawyers, with Samuel Untermyer as special counsel, defended McAdoo, Williams, and Burke. A temporary injunction was granted the bank, and the legal battle was on. Neither side was content to rest its case solely in the court. Each sought to enlist the sympathies of the public, the bank calling upon all national banks to witness its resistance to flagrant abuse or prostitution of official power, the Comptroller replying that the bankers were attempting "by unwarranted and untrue statements" to place themselves in a position of martyrdom at the hands of the Administration.<sup>17</sup>

<sup>16</sup> Bill for injunction.

<sup>17</sup> New York *Tribune* summary, *Literary Digest*, April 24, 1915, Vol. 50, p. 929.

Meanwhile the case moved toward judicial determination. During the course of the civil suit certain depositions of officers of the bank were introduced, in connection with the allegation of "dummy" loans, which the Department of Justice pounced upon and declared to be perjured testimony. Indictments for perjury were now returned and Ailes and Glover were given a jury trial in the same court while the civil suit was still pending. Neither Bailey nor Untermeyer acted as counsel in this cross-action. Both Ailes and Glover were acquitted, following a trial that lifted the whole affair into great national prominence. The Riggs bank, founded originally as a private banking institution, had been the Washington bank for every President from Van Buren to Wilson, and during the course of the trial both Roosevelt and Taft appeared as character witnesses for the accused. It was not, however, until May 31, 1916, that the Supreme Court of the District of Columbia concluded the controversy by writing the final order in both cases. Freed of the charge of perjury, the bank officers also won their main point, the permanent restraining of the Comptroller of the Currency and the Secretary of the Treasury from collecting the \$5,000 actual fine and the \$150,000 potential fine. But the decision was in the nature of a compromise, for the court definitely wiped out the charges that McAdoo and Williams had conspired against the bank, and it also refused to enjoin the Comptroller from calling for other reports in the future from the complaining bank.

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But Bailey's disagreements with the domestic policies of Wilson were inconsequential compared with his early, growing, and finally complete repudiation of the foreign policy of the same Administration. Taft, on leaving office, had more or less bequeathed the so-called Mexican imbroglio to his successor.

Following the Madero revolution of 1911, the Republic of Mexico enjoyed only a brief interlude of peace before a stronger and more ruthless revolutionary, Victoriano Huerta, seized control. Washington refused to recognize this bloody pacifier, and relations between the two countries were strained almost to the point of war. In 1914 occurred the Vera Cruz incident, the arrest of a detachment of American sailors in the Mexican seaport when they landed to buy provisions. Wilson now sent warships to the Mexican coast and war seemed imminent. Bailey was scornful of the attitude of the Administration which would "provoke a war over an incident for which an ample apology was tendered.

"No civilized government has ever so persistently blundered with respect to any international question as our government has with respect to the existing situation in Mexico," he continued. "In the first place, the United States ought to have recognized the Huerta Government just as soon as he was put at the head of it according to the constitutional forms of that country. It was a great mistake for the United States to assume that it either possessed the right or rested under the duty to recognize or ignore foreign governments according as it might approve or disapprove the character of the particular person charged with the administration of it. All of that is a matter for the people of each country to decide for themselves, and our whole obligation is to recognize and respect their decision when made. But the initial mistake of refusing to recognize the Huerta government was, of course followed by one continuous series of mistakes culminating in this last and greatest one of involving this country in a war because Huerta did not take off his hat to us. . . ." <sup>18</sup>

The outbreak of the European war in August soon overshadowed in interest the troubled state of affairs in Mexico.

<sup>18</sup> Letter, J. W. B. to Hunt McCaleb, Fort Worth, Texas, April 22, 1914.

Now, on this infinitely greater problem of foreign policy the Administration, Bailey believed, made a wise choice to begin with. Wilson's firmly announced policy of neutrality was, he felt, the logical and just one for America to take in a quarrel that in no wise involved this country. It was only when, in his opinion, the Administration veered from its open path of neutrality that he began criticizing once more. Almost from the start of hostilities in Europe the United States became a battleground for propagandist forces, England and her allies pitted against Germany and her associates in an active struggle for the sympathies and active support of the great federated democracy. England by her superior tactics, aided covertly by perhaps a majority of the most powerful financial, social, and economic leaders in the United States, in which was the President himself, finally won this transatlantic battle. But in the fore part of 1915, after England's blockade had necessarily begun to set up an irritation among those Americans trading with the Central Powers, it was not easy to forecast this final result. Particularly in Texas, which has always exported such a large part of its cotton, was the English blockade a cause of high complaint. With the outbreak of the war, cotton prices had fallen to disastrously low levels and many farmers and shippers were convinced by the succeeding year that "the method which England has employed to starve Germany is well calculated to starve us."<sup>19</sup>

While the English blockade might be inconveniencing certain producers, the profitable munitions trade was distinctly an allied contribution to American prosperity, and the complaint of the Texas cotton farmers, therefore, might well be dismissed as so much more pro-German propaganda. But the Germans themselves early began shifting the balance of American public

<sup>19</sup> Petition, Milam County, Texas, farmers to Woodrow Wilson, June 21, 1915.

opinion to the side of England by their retaliatory measures on the high seas. The German policy of submarine warfare against all ships carrying munitions and supplies to the Allies was announced early in the spring of 1915. On May 7 the *Lusitania* was torpedoed off the Irish coast. With the sinking of this British ship there was a heavy loss of life, a number of Americans being among those lost. The immediate reaction in the United States was violent. If the sinking of the *Maine* in Havana harbor had made war with Spain "inevitable," this overt act of Germany's might well have precipitated a conflict within twenty-four hours, because, in the case of the *Lusitania*, there was no doubt to be cleared up by a naval board of inquiry. The act was deliberate and premeditated, and passengers had been served notice in advance before the ship left the docks at New York. But not two months but two years would lag before the United States would declare war on the Imperial German Government. Was Wilson a weaker and more cautious McKinley? To the contrary, he was the most strong-minded of all the Presidents since Lincoln, but he was also a sane politician. For all the uproar in large sections of the press he knew that the country was still too divided in its sympathies to be thrust into the conflict immediately on the side of the Allies. Bryan, for instance, upon whom Wilson had depended most heavily for contact with the great regions of the West and South, opposed anything bordering on warlike steps. When the President sent a note of protest against the result of the submarine policy, its sternness repelled Bryan to the extent that he resigned as Secretary of State less than a month after the sinking of the *Lusitania*. Bailey did not wait a month to voice his views, stating them publicly just seven days after the disaster.

"I would regard it as a crime to involve this country in a war with Germany on account of that disaster," he said. "The war, as it now exists, is a great calamity, and to draw the United

States into it would be an unspeakable calamity. I understand, of course, that nations, like individuals, sometimes face situations where they cannot stop to count the consequences, but certainly no such situation now confronts our country. . . . The people who insist that our manufacturers and our people have a right to the open sea for their commerce or their pleasure assert a truism; but like nearly all other truisms, it is not safe to act upon it without regard to circumstances. I have a perfect right to walk the public streets and yet if when going from my office to my house I should find two blocks ahead of me that six or seven men were shooting at each other from opposite sides of the street, I would very promptly forego my natural right to use that street; and I would regard myself as criminally foolish to continue on my way, simply because I have a natural right to use the public streets. The case with the nations is in nowise different. When two nations are at war, all other nations ought, so far as they can do so without sacrificing their self-respect, to keep out of the danger zone; and it is just as foolish for this country to ignore the fact that when nations are fighting they do not scrupulously regard the rights of other nations as it would be for an individual to ignore the fact that when two men are fighting they do not give a due consideration to the rights of other people. I would regret to see the profitable commerce which this war has brought to us interrupted, but all of the profits which that commerce would yield would not cover one year's expense of a war; and we must not forget that millions who derive no benefit from this commerce in war materials would be compelled to give of their blood and of their scant earnings to sustain our country if an armed conflict should come." \*\*

The views held by Bailey and Bryan were the controlling ones throughout the remainder of 1915 and the months leading

\*\* Telegram to *Dallas Times-Herald*, May 14, 1915.



up to the presidential election of 1916. The Administration was subjected to increasing criticism from Roosevelt and a large part of the Eastern, industrial section of public opinion which by now had thrown off the pretense of neutrality and was aggressively exposing its Anglophile colors and intentions. There was an election to be won, though, and the slogan "He kept us out of the war" would have a determining effect upon large blocs of Middle Western and Far Western voters, as well as the strategically located groups whose sympathies were influenced by blood relationship with the Germanic or Irish races. But if the *Lusitania* disaster did not bring war immediately, it acted as a primer of the engines of war. The movement for preparedness for national defense took root overnight as the country was aroused to view its weakness for combat. The Administration brought forth plans for a great increase in the land forces, while the President in the fore part of 1916 announced in St. Louis that America must have the greatest navy in the world.<sup>21</sup> Bailey and Bryan, both now private citizens, invaded Texas during the latter part of 1915. Although they never met, many of Bailey's old supporters were shocked to hear him voicing much the same objection to preparedness as the Commoner. The Mexican situation continued to keep the Texans jumpy and nervous; the Columbus raid by Villa and other border threats culminated in 1916 in the sending of a large part of the Texas militia to the Rio Grande for border patrol, while National Guard units and sections of the regular army were also used in large army maneuvers along the southern boundary of the United States. Despite the obvious increase in sentiment in Texas for larger armed forces, Bailey spoke freely over the State in opposition. The demand for a larger army and navy, he said, was being promoted by two classes of people, one "out of its greed," the munitions manufacturers, and the other "out of its

<sup>21</sup> Dodd, p. 179.

weakness," the worthy "but emotional people who are foolish enough to deal with an abnormal condition as if it were to become permanent." <sup>22</sup> In a letter widely published in Texas at the end of 1915, Bailey scored the big army and navy movement as an undermining of the Democratic party's tradition. <sup>23</sup> The response to this letter convinced Bailey that his own views were now running counter to perhaps the majority opinion of his fellow Texans. He was deluged with letters from old friends and constituents, and the view of J. S. Williams of Paris is typical: "I think a large majority of your friends disagree with expressed views on preparedness in your letter to Mr. Larue of Athens, while many that oppose you in all things say you have at last cast your lot with Bryan and Cyclone Davis." <sup>24</sup>

Throughout 1916 Bailey refused to modify his anti-war sentiments, but with the approaching national election, he refused to furnish ammunition to the Republicans in their effort to turn the Democratic Administration out of office. Privately, however, he continued to criticize the preparedness movement and to point out the bias of the Administration in not objecting more strenuously to English interference with American trade, especially at a time when relations with Germany became daily more strained over the submarine policy.

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Meanwhile the presidential campaign of 1916 rolled into place, and the issue of intervention in Europe was now submitted to the great mass of citizens. As early as August, 1915, Wilson indicated in a conversation with Professor Dodd that he "saw and felt all the time that the whole world must reckon

<sup>22</sup> Letter, J. W. B. to Frank L. Tiller, University of Texas, October 12, 1915.

<sup>23</sup> Public letter, J. W. B. to Eldred B. Larue, Athens, Texas, November 15, 1915.

<sup>24</sup> Letter, J. S. Williams to J. W. B., December 2, 1915

with Germany," but he "knew that he could not make a positive move nor even adequately resent the wrongs upon American ships and American lives, lest he set loose in his own country the chaos of party rivalries and social conflicts." <sup>11</sup> Elsewhere Professor Dodd in his apologia speaks of the months after the *Lusitania* disaster "when the conditions of American politics commanded patience." <sup>12</sup> Patience for what purpose? The plain and obvious answer is, from any analysis of Wilson's actions and reticences, so infinitely more revealing than his winged phrases, the reelection of Woodrow Wilson.

If, as the country was later convinced, the conscience of humanity and the future welfare of the people of the world demanded the extinction of imperial Germany, and if the President early recognized this demand, was it not craven on his part to stultify his own convictions to save his own political scalp? The most plausible answer is that Wilson had become convinced of a Messianic mission that would win or lose as he stayed or left the White House; drifting into that state of attenuated idealism so rare and noble that one loses the power to distinguish between discreet silence and downright equivocation, he allowed the campaign to be pitched on the major issue of neutrality. Charles Evans Hughes, the Republican candidate, did not offer a clear-cut alternative on the issue of war or peace, but he did indicate that, if elected, he would no more permit England to deny the freedom of the seas to American commerce and travel than permit Germany to block the highways of the ocean. The Wilson campaigners rested their appeal, though, as the campaign closed, on the one positive achievement of the foreign policy of the Administration, that summed up in the slogan that "Wilson has kept us out of the war." It was indeed, as Professor Dodd admits, "the one note that seemed to appeal to the voters most effectively as the campaign neared

<sup>11</sup> Dodd, p. 208.

<sup>12</sup> Dodd, p. 211.

its end." "The President surely felt the unworthiness of such an appeal," adds the same apologist, "but he knew that if he intimated that he would recommend war, he would surely be defeated and all his half-finished work might be 'scrapped.' " "

On the morning of November 8 it was seen that Woodrow Wilson had been reëlected. Free now to reveal his true convictions, the President soon found sufficient grounds on which to make such revelation. The desperation of the German Government in seeking to tighten the submarine cordon around England and the Allies soon played directly into his hands. In January of the new year the German Ambassador at Washington served notice that the blockade maintained by his government would be extended to include neutral as well as belligerent nations of Europe and that the submarine policy of enforcing it would be directed at neutral as well as belligerent ships that attempted to run the blockade. The Germans had now matched the English in their arrogant attempt to control the seas. The German policy, however, appeared infinitely more frightful because of the actual destruction of lives which the use of submarines as the instrument of force implied. It was a long and desperate chance that the rulers of Germany took, but it was not a stupid one. The Marquis of Queensberry's rules do not apply in war, as even the English had shown in their bombing raids over inland cities of Germany. The risk for the Germans lay in the possibility that the more stringent enforcement of the blockade might draw America into the war on the side of Great Britain.

But the *Lusitania* and her victims had been in their graves almost two years, and the head of the American nation had just been returned to office on the strength of his feat of keeping America out of the war, despite the gravest provocations. The voters of the United States had taken Wilson at his phrase;

" Dodd, p. 191.

why should a chancellery in Europe believe a great democracy to be mistaken in their man? But the Germans were mistaken, as Wilson himself proved three days after receiving this latest notice. On February 3 the President severed diplomatic relations with Germany, which, in the circumstances, was tantamount to a declaration of intention to war. The dramatic and aggressive move caught the imagination of the United States, suddenly rallying practically all disaffected elements around the President. Psychologically the country "was at last ready." <sup>22</sup> Even Western and Southern newspapers that had formerly been, in Professor Dodd's opinion, "unequal to an understanding of the issue in Europe," endorsed the prospect of early war with Germany. Instead of the outbreak of party rivalries and racial conflicts which the President had feared eighteen months earlier, the great moral and spiritual forces of America mobilized overnight, ready once more to embark on a great crusade. The President promptly called for the first of a series of large empowerments, and the filibuster in the Senate, led by a "little group of willful men," as Wilson called them, brought storms of criticism from over the nation. It was amazing how rapidly public sentiment had solidified around the President; soon it would be forbidden to criticize even the personality of the head of the government.

## §

In Texas the warlike moves met with hearty response. Leaders in the State legislature called upon the citizenship to "stand behind the President." To one of these, a personal friend, Bailey addressed a scolding.

"In effect, you have demanded that we approve everything the President does," wrote Bailey. "I am not surprised that smaller men should give way to their emotions and lose their

<sup>22</sup> Dodd, p. 215.

heads in a time like this; but I am surprised when men like you do that. I would not pledge myself in advance to indorse everything which any man might do. If Thomas Jefferson, Andrew Jackson, John C. Calhoun, Jefferson Davis, and Samuel Houston could all be resurrected tomorrow and made a council of safety, I would not bind myself in advance to say that everything they did was the proper thing to do. If we are ready to make the power of one man absolutely supreme and renounce all other men who question the wisdom with which that supreme power is exercised, then I prefer the old Roman method of appointing a dictator, because in that way we would not only pick the man who seemed most suitable for the emergency, but we would limit the duration of his unlimited power to a period of six months." \*\*

By the middle of February, as the unrestricted submarine warfare continued, a declaration of war had become but a matter of days. Bailey now had "little hope" that the war could be averted, being convinced that his countrymen were resolved to follow "lightheaded fools and greedy traders into the very fire of that European War." As the country had already reached the verge, he felt "it is, perhaps, the duty of everybody to adjourn all debates about whether or not we ought to have brought on that war until after it has been concluded," but he could not refrain from adding that "I am in favor of making war upon those who destroy our commerce as well as upon those who kill our people." \*\* In the fevered interim the Administration lost no opportunity of lashing public opinion into the proper fury. Through the kindness of the British secret service, Washington was able early in March to reveal the note intercepted between the German Foreign Office and the German Ambassador at

\*\* Letter, J. W. B. to Claude B. Hudspeth, El Paso, Texas, March 22, 1917.

\*\* Letter, J. W. B. to W. P. McClardy, McKinney, Texas, February 22, 1917.

Mexico City which instructed his excellency to seek the aid of Mexico and Japan, in the event of American intervention on the side of the Allies. The desired effect on popular opinion was obtained. Bailey felt that the President had belittled his office by using the note for propaganda purposes.

"It has always been easy to excite our people during a time when a war seemed imminent," wrote Bailey, not without some experience, "but we have never before this had a President who would deliberately seek to excite them. In order to coerce Congress into giving him the extraordinary powers which he desired, the President gave out the so-called 'German plot note' and straightway all the hysterical newspapers and emotional statesmen in the land began to cry the alarm. To men who will read that note with such calmness as those charged with the duty of governing this country ought always to preserve, the uproar about it is most amazing. In the first place, the note expressly declares that while Germany intends to resume its unrestricted submarine warfare, it hopes that the United States will remain neutral. That far all will concede that the note contained nothing to agitate us, nor should be startled at the further contents of the note; for it simply instructs the German Ambassador, in case of a war with us, to solicit the coöperation of Japan. Can that proposition really surprise any man of sense? Could we expect that Germany would stand and watch us join the Allies in warring on her without endeavoring to enlist assistance wherever she could? I am for my country, right or wrong, but I do not regard it necessary to be foolish in order to be patriotic. Indeed, the graver the crisis, the greater the necessity for deliberate judgment; because nations, like individuals, seldom pursue a wise course when they act under excitement. Instead of pretending that we have discovered some great plot on the part of Germany, and in inflaming the popular mind with appeals to both fear and horror, our statesmen should

recognize that Germany has done no more than we might have expected under the state of facts that her note contemplates, and we should proceed deliberately and firmly to see that she does not effect the alliance which she had sought." <sup>81</sup>

## §

Wilson appeared personally before a joint session of the new Congress on April 2 and read his recommendation for war. Although four days lapsed before Congress acted formally on the recommendation, the war "to make the world safe for Democracy" was at last a reality. On the same day Bailey wrote a five-thousand word letter to his old friend, John Stevens of Hill County. In it he summed up his considered opinion of "the mistake" which the United States was making, became a prophet of more than ordinary accuracy, and then announced his intention to write no more on the subject until the war would be over:

"It is probable that before this letter reaches you we will, through a formal declaration of Congress, be involved in a war with Germany and facing the unspeakable calamities which that condition must inflict upon our country. If I thought war necessary to vindicate our national honor, or to protect our substantial rights, I would be in favor of it, without stopping to count its cost or its consequences; for I am not one of those who believe in peace at any price. I realize that nations must sometimes fight to preserve their integrity, or to defend the rights of their people, just as individuals must sometimes fight to resent an insult, or to protect their families; but I do not believe that either nations or individuals should ever fight when it is possible, without compromising their self-respect, to avoid it. . . . I would deprecate the mistake which we are about to

<sup>81</sup> Letter, J. W. B. to John F. Hird, Shreveport, Louisiana, March 7, 1917.



make less than I do, if I did not know that those who are responsible for it have not been candid with our people, and that while pretending to be moved by one consideration, they have really been moved by another. I do not, of course, mean to say that all who have been urging us on to a war with Germany have been insincere; but I do say that the men and the classes who have been most influential in producing the present state of public mind, have not dared to avow the real reasons which controlled them. . . .

"The first of the sinister influences at this work, and they are not only first in time, but they are still first in their activity, are those who have been profiting by the manufacture and sale of ammunition and other war materials. . . .

"You must not for one moment suppose that anything I have said, or that anything I may say, in this letter is intended to excuse or to extenuate the misconduct of Germany; because no man abhors more than I do her wanton destruction of life, and I feel, as every loyal Texan must, an intense indignation at the offer to help Mexico recover Texas, even though that offer was contingent on war with the United States which Germany expressed herself as anxious to avert. But why fight against Germany for what she has done, and fight for England when she has done almost as much in all respects, and very much more in some respects against us?

"Undoubtedly a larger number of Americans have suffered death through German than through English violence; but that is due to the fact that our people have been warned against attempting to deliver supplies to Germany, while they have been encouraged to deliver supplies to England. If we had been sending ammunitions and provisions by the shipload to Germany as we have been to England, we would have encountered English force when serving Germany as often there as we have encountered German force around the coast of England. . . .

I would not declare war on either country, or assume a position towards either which would necessarily eventuate in war; because it is my judgment that when European nations were fighting, our people should keep out of the range of their guns. . . .

"Appalling as will be the sacrifice of life and the waste of treasure, they will not be our only, nor our greatest, misfortunes. The existence of this war will be, as the imminence of it has already been, seized upon by the advocates of a strong government to advance their undemocratic views. Those men do not seem to understand that only a weak people need a strong government; and that a strong government will ultimately reduce a virile people to weakness. Heretofore we have always relied upon a voluntary response to our country's call in the first stages of every war, but I do not believe they will do so in this instance. They may ask for volunteers, but at the same time, under the pretext of a military necessity, Congress will be urged to adopt at once a system of compulsory military training. . . . The wholesome fear of a military spirit which our fathers diligently cultivated is yielding day by day to senseless assertions about our duty to humanity and our destiny in the world's affairs. . . .

"Then this new militarism will call for other laws of its kind, which like itself will tend to subvert the Republic. I can see, even now, indications in the public press, and I hear men declare in conversation doctrines abhorrent to every man who believes in that American freedom which necessarily includes the right of free speech. I would not be at all surprised to see 'espionage laws' enacted, reinforced by still harsher ones, and the whole administered in a way which must forever silence Democratic criticism of those alien and sedition laws which contributed so much to disrupt the party of John Adams, and to bring the party of Thomas Jefferson into power.

"If the American people once become accustomed to seeing men sent to prison for expressing their opinion or tried and convicted for condemning public officials, we may still call this a Republic, but it will be a Republic only in name. My one hope that this calamity will be averted lies in the belief that the American people will discover this hurtful tendency before it has wrought its infinite mischief, and will compel their representatives in Congress, and their officers of every degree, to repeal those un-American laws and restore to the people of this country the right to think and to express their thoughts honestly and without fear.

"Those so-called progressive statesmen, having abandoned every principle of domestic legislation and administration which you and I have been taught, as Democrats, to cherish, now propose to abandon our immemorial policy of abstaining from the conflicts and alliances of Europe. We will be allied with England, France, Italy, Russia and Japan, in the beginning of this war, and the end of it will find us seated around a council board with kings and emperors settling the terms of peace as they relate to European institutions and the territorial integrity of European monarchies. . . . I owe you an apology for the length of this letter, but I have made it a long one because it is the last one I shall write on this subject until the war, which will soon be upon us, is over. You will understand, of course, that what I have written is for your eye only; because I do not want to do or say anything calculated to moderate the zeal of our people when once in the war." \*\*

\*\* Letter, J. W. B. to John A. Stevens, Covington, Texas, April 2, 1917.

## CHAPTER XXII

### WAR AND PEACE

ONCE war was declared, Bailey's worst fears were promptly and magnificently justified. With an enthusiasm and holy zeal that made the crusade against Spain nineteen years before seem like the dress parade of some minor fraternal order, the United States marshaled men and spirit with speed and efficiency. America's decision to intervene in Europe was almost enough of itself to turn the balance in favor of the Allies, but when the stream of food and munitions, despite the German submarine cordon, began to thicken with thousands, then tens of thousands of fresh, armed men, the doom of the Central Empires was sealed.

But to wage war so effectively at such a distance required the concerted action and mind of the whole people, not that of the armed forces alone; the time had now passed when even skeptics of America's war aims and of God's allegiance with the Allies, much less pro-German sympathizers, could be tolerated. In the middle of June Congress passed the Espionage Act, to be reinforced a year later by even more oppressive amendments urged by the Department of Justice. And with the revival of legal measures to suppress espionage and sedition, there was set up a carrier wave of hysteria in the mass of citizens that would not vanish with peace. Soon the conscription act would be passed, and a food dictatorship, with Herbert C. Hoover as administrator, would be created. Congress at once appropriated \$3,125,000,000 for the conduct of the war, voting an additional \$7,500,000,000 seven months later. Within two years a grand

total of \$30,000,000,000 would be spent or lent to the Allies, thereby saddling an unprecedented public debt on the people of the United States. To raise the larger part of this huge sum the government resorted to patriotic loans; as much as \$6,000,000,000 was asked for and received in a single Liberty Loan drive. All the technique which a great profession had been evolving over the years was called into action to round up the laggards in bond buying. Campaign leaders at Washington turned to Bailey, asking that he take the stump in this sales campaign.

It was a day of intoxicating speechmaking when any one pretending to even the rudiments of oratory was, at least in the brief appearances before the crowd, a replica of a Revolutionary hero, a minuteman in tweeds who was giving his lungs for his country. But the directors of this nation-wide campaign did not believe that patriotism was enough; they insisted on urging the purchase of the bonds as a safe and conservative money investment. Bailey resented this mixture of thrift and unstinted patriotism; he believed the appeal was not only unsound but downright dishonest as well. He refused, therefore, to take the stump to use the prepared speeches of the Treasury, whereupon the invitation was withdrawn and he was set down in the minds of certain high officials in Washington as an obstructionist to final victory.

## §

Bailey now was definitely on the side lines, helpless and silently raging over the turn in his country's history which he deplored and dreaded. His two sons would soon be in the armed service, but his concern was scarcely personal. It was not the actual fighting that struck horror to his soul; he had little of the temperament of the ruthlessly logical pacifist. But he had spent his childhood under ravages far worse than war, and he had learned to his sad instruction the distorting

intensity of the aftermath of such a mild military adventure as the Spanish-American War. It was what war does to the whole structure of democratic society, not the inevitable tragedy to certain individuals, which caused him to recoil from the war. He kept silent, though, even as the first few weeks and months saw the fulfillment of some of his more baleful prophecies.

In the summer of 1917, Secretary McAdoo went personally into the front-line trenches in the Liberty Loan drive. This spokesman of the Administration announced in Boston that the war must be continued not only until the enemy was defeated but also until the Germans overthrew their constituted authorities and established a democracy instead. Shortly afterward Senator William H. King of Utah, one of Bailey's old cronies in the Senate, voiced much the same sentiment. Bailey could no longer restrain himself, writing to King that such a purpose violated "the immemorial position of our Party"; it was more—the violation of the most fundamental principle of the American Republic; recognition of the right to choose their own form of government. For any country to impose by force upon the people of another country even a better government than the one which they choose of their own accord, must be regarded as "no less than a political crime." "To assert that we are fighting this war in the interest of democracy, and then to proclaim that we have determined to compel Germany to accept that form of government which we decree, is a contradiction so palpable that it discredits both our intelligence and our sincerity."

But Bailey, in the same letter, went further, directly assailing the chief war aim as promulgated by the President:

"I know that you would not say what you do not believe, but it is difficult to reconcile my great respect for your ability with the idea that you really think the war in which we are now engaged is intended to establish democracy throughout

the world. In a democracy there would be neither King, nor Kaiser, nor Earl, nor Duke, and yet we are invited to witness the spectacle of Kings, Princes, Earls and Dukes applauding the United States for the unselfish sacrifices which it is asked to make in spreading the gospel of democracy at the point of the sword throughout Europe. All this is such an obvious piece of hypocrisy that it would not in normal times deceive the American people for even a single moment. . . . I am one of those who believed that this country ought not to have become involved in that European war; but the judgment of other men prevailed, and now that we are in, I realize that there is no course open to us except to fight our way out; but we should adhere steadily to the purpose for which we entered—the defense of American rights—and having accomplished that purpose, we should promptly agree to an honorable peace.”<sup>1</sup>

For less vigorous comment, hundreds of men and women would soon lie in jails throughout the United States, and Bailey himself would ultimately pay for his committal of the unforgivable sin of refusing to run with the herd. But he realized, as he said, that “there is no course open to us except to fight our way out,” and he restrained himself fairly well from attacking the conduct of the war itself. There were measures and movements, though, not directly a part of the prosecution of the war, but unloosed or speeded up by the war psychology, which aroused his fighting spirit and caused him to take the field against them. Two of these movements that came to full flower under the hothouse impetus of strained nerves and war fever were the two amendments to the Constitution providing for national woman suffrage and national prohibition. To both and with equal feeling Bailey opposed the full measure of his intellect and his persuasive powers.

<sup>1</sup> Letter, J. W. B. to Senator William H. King, Washington, July 24, 1917.

## §

On no single question did Bailey reveal more sharply the basic conservatism of his background and upbringing than on the question of extending the franchise to women. Misguided as many felt it to be, and no more so than by many of the "dear, good women" of the South who were its supposed beneficiaries, the chivalric tradition was one of the most persistent ideas surviving in the post Civil War generation in the South. Unlike the question of liquor control, on this question Bailey never wavered or doubted, holding dogmatically to the end of his days that women were not qualified to vote on any but the most local of questions. As early as 1913 many of the leaders in Texas had read the signs in the political heavens and admitted that "woman's suffrage is coming." In a widely circulated appeal to his fellow citizens at the time, Bailey voiced the classic arguments against this proposal. Woman, he contended, is incapable of performing the "three highest duties of citizenship—military service, *posse comitatus* service, and jury service." Since she cannot fight battles, he added, she should not be permitted to vote for a declaration of war; since she cannot help the sheriff to suppress a riot or arrest an outlaw, she should not be permitted to make the laws under which men are required to undertake that dangerous service, and since she cannot serve upon juries, she should not be permitted to make laws under which men may be compelled to serve on juries. He admitted a certain weakness in this third objection, since there was no physical disability barring women from passing on matters of fact and testimony in the jury box. But so immersed was Bailey in the traditions of his race that he could not conceive of man's being willing to allow his mother, wife, daughter, or sister to go into the jury room "and have her locked up overnight with strange men deliberating upon a case, the testimony in which



it might happen would be such that a woman of refinement would not be willing to discuss with her neighbors of her own sex." \*

But it was not entirely a question of protecting the good women themselves; it was also a question of protecting men from "an intolerable moral despotism" which women would tend to set up.

"It would be useless to talk to a woman about the great and fundamental principles of the government as an argument against anything which she wanted done. To her way of thinking, no man should be permitted to do anything which she thinks a good man ought not to do, and she would promptly proceed to pass a statute forbidding him to do it, and punishing him if he did not obey her prohibition. We have already gone so far in that direction that we have abolished the distinction, so far as the law is concerned, between bad habits and crimes by making almost every bad habit a statutory crime. The paternalism of this day, however, would seem a great moderation when compared with the state of the law after women had been voting a sufficient length of time; the good women would be reformers to suit the most fanatical. The men, having made bad habits a criminal offense, would soon see themselves surpassed by the female reformer who would soon make bad manners a crime. Oh, no, my dear Jeff, let us preserve rather than obliterate the distinction between men and women, and let us take the government back to less interference with our habits rather than take it on to a greater interference." \*

The advocates of women suffrage were able to gain their greatest and final victory during the war sessions of Congress. Dissatisfied with the gradual but growing enfranchisement of

\* Public letter, J. W. B. to Jeff McLemore, Houston, Texas, April 17, 1913.

\* *Ibid.*

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women by the individual States, they succeeded in persuading the House and Senate to submit an amendment to the Constitution which would cause the surrender of more of the cherished powers of the States, control over their suffrage. In January, 1918, while the submission was being debated, Bailey appeared before the House Committee on Woman Suffrage to make a final if futile argument against the proposal. A majority of the committee, although Democratic, was openly antagonistic to his views. With Miss Jeannette Rankin, one of the more notable suffrage leaders, by his side to prompt the cross-examination, the chairman of the committee allowed the former Senator from Texas to be baited unmercifully and his views to be construed in as ridiculous a light as possible. It was such a give-and-take duel of wits, though, as Bailey relished, and the final score of jibes and counter-thrusts was not one-sided. Although the purpose of Congress to submit the amendment was obvious even to Bailey, he made a last stand. He repeated his old views and arguments against the innovation, but predicated his chief argument on the plea that the qualifications of suffrage were extremely important powers of the individual States that should not be transferred to the central government. While in complete frankness admitting that he was opposed to women "voting anywhere except in their societies," he drew his main argument now on the damage which the proposed amendment would work to the system of dual sovereignty of the State and the Federal government. But as he proceeded the temper of the committee as well as the temper of the times brought sharply to his consciousness the fact that not abstract concepts of political principles, but something more intangible and powerful in an era of crusading faith, would be the deciding factor. He attempted to answer in kind.

"Mr. Chairman, the good people who advocate this and other innovations are constantly talking about their ideals, and

they sometimes talk as if we cherish only idols. But, sir, we have our ideals. They may not be such as are acceptable to what some call 'progress' and what I call the iconoclasm of this age, but we have the satisfaction of knowing that they are such as were cherished by the men who declared the independence of the country, and they made that declaration good through seven years of suffering and privation. We have our ideals of government, of home and of women." <sup>4</sup>

Congress acted finally in June, 1919. Immediately the fight was transferred to the legislatures of the individual States. That summer the State of Texas was moving to ratify the amendment. By the following summer, Tennessee, in August, acted favorably upon the amendment, thereby giving the requisite thirty-sixth State approval; the prompt action enabled women for the first time on a completely national scale to participate in a presidential election, and that fall saw the turning out of the Democrats, bag and baggage, and the triumphant, overwhelming election of Warren G. Harding.

### §

Bailey's final adjurations against the adoption of Federal woman suffrage had been made by letter to friends in Texas. In these he cited the swift and almost unimpeded success of Federal prohibition as an example of "this mental infirmity of woman" in deciding public questions.

"If a woman wants something done she wants it done and she will not hear about the right way and wrong way of doing it," he said. "She believes that any way is the right way of doing what ought to be done. This mental infirmity has been thoroughly demonstrated in the discussion of this question of woman suffrage itself, as well as in the question of prohibition.

<sup>4</sup> Hearings before Committee on Woman Suffrage, House of Representatives, January 7, 1918.

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You can take the first 100 women you meet who are in favor of woman suffrage or prohibition, and 99 of them make absolutely no distinction between Federal and State action on either subject. If a woman believed a man ought not to drink liquor, she would make a law against him doing so, and you might as well cry out against the winds as to talk to her about the difference between regulating the business of selling liquor and regulating the personal habit of drink. She regards those very proper distinctions as merely subterfuges, intended to prevent the passage of what she considers a very proper law.\*

The liquor amendment, in fact, had already been adopted before Congress even submitted the woman suffrage question to the individual States. And if the suffrage proposal aroused Bailey's gravest fears for the dual system of State and Federal sovereignty, the adoption of the prohibition amendment had seemed to him to be the final and disastrous surrender of Democratic principles.

Although Texas voters had rejected State-wide prohibition on the only two submissions of that issue—in 1887 and 1911—Morris Sheppard, Bailey's successor in the United States Senate, became "the Father of National Prohibition" in 1917 by introducing the measure that finally brought about the Eighteenth Amendment. The House of Representatives approved by a two-thirds vote, on December 18, 1917, the resolution to submit the amendment to the States. There were 141 Democratic congressmen voting for submission and only 64 of the same party opposed.

"What a radical change that exhibits!" commented Bailey in a widely published public letter to R. M. Johnston of Houston. "What a radical revolt that exhibits! Twenty years ago a man who favored national prohibition could not have been elected a delegate to a Democratic county convention from any precinct

\* Letter, J. W. B. to Charles L. Stowe, Sherman, Texas, May 23, 1919.

in the United States; and yet an overwhelming majority of the men now elected to Congress as Democrats voted yesterday for that proposition. But astounding as was the vote itself, it was not more astounding than the debate. Those who supported the amendment discussed it as if it merely presented the question of prohibition, and they spoke exactly as they could have properly spoken in the legislature of a State. I cannot at this moment recall any discussion in Congress, or outside of it, which so thoroughly illustrates the strange confusion of political thought in this day, or which so strongly emphasizes the need of a recurrence to our first principles. . . .” \*

As the year 1918 opened, the legislatures of the various States fairly scrambled to be among the first to ratify national prohibition. Bailey's own native State of Mississippi was actually the first, followed in order by Virginia, Kentucky, and South Carolina. Shades of Thomas Jefferson, Jefferson Davis, and John C. Calhoun! That summer the legislature of Texas would be convened in extraordinary session to affix the Lone Star seal to the new compact. Bailey now moved to defeat ratification in Texas and elsewhere, if possible. By letter campaign ranging from the Governor of Texas up and down he argued against approval by his own State. His chief argument was a plea not to transfer the police power of Texas to deal with the liquor problem. Admitting that if the evils of the liquor problems were increasing there might be justification for more drastic means of curbing it, he argued, however, that there was no such increase. He pointed out that for the past thirty years the people of the various States, “without surrendering any power which belongs to them,” had been gradually abolishing the saloon until eight-tenths of the saloons had disappeared as a result of the temperance movement aided by State laws pro-

\* Public letter, J. W. B. to R. M. Johnston, Houston, Texas, December 18, 1917.

viding for either State-wide prohibition or local option. Not only were the States powerful enough to control the liquor traffic within their own borders, but the Federal government had also abdicated its power to override State laws on interstate shipments of liquor by the passage of the Webb-Kenyon Act.

"Why, then," he demanded, "do these people insist on national prohibition? There is but one answer to that question, and that answer is that they intend to suppress by Federal agency the manufacture and sale of liquor in States which do not desire the suppression of it. In other words, and in plain words, these men are stripping these States of a vital police power simply because some of the States will not exercise that power as these misguided reformers desire." \*

There was at least one response to the appeal out of Texas. Colonel Watterson, almost as a voice out of the dead past, called it "a most illuminating letter" which ex-Senator Joseph W. Bailey, "a Democrat without fear and a constitutional lawyer of the Daniel Webster class," had written.

"The vermin at Frankfort," wrote Colonel Watterson, "passing the word to their hinder parts, tumbled heels over head into the mud puddle of fanatical federalism . . . by snapping up the amendment without so much as a word of 'by your leave' or 'damn your eyes' or any other politeness to the people. They may be described as two-thirds jackass and one-third rogue. Most of them need to be bored for the simples." \*

### §

The crux of the ratification campaign lay soon, however, in the populous State of New York. Toward the latter part of February, 1918, the General Assembly at Albany would decide the great question for that State, and on the capital there converged a great army of advocates and opponents. Bailey made

\* *Ibid.*

\* Editorial, *Courier-Journal*, February 4, 1918.

the trip from Washington to appear before the joint committee on February 26. In the same hearing and scheduled to follow him almost immediately was the Hon. William Jennings Bryan, now the foremost advocate in private life of national prohibition. It was the last encounter between Bryan and Bailey, their final meeting in public or private life. The Texan launched at once into his reasoning against ratification, not so much as recognizing in his address to the committee the presence of the Democratic leader to whom, privately, Bailey thought was "traceable the plight in which we find ourselves today." \*

Bailey's chief contention was still against the transfer of police powers of the States to the Federal government. He challenged even the most extreme national prohibitionist to argue seriously that the liquor traffic was as heinous as murder, theft, or arson; yet there was no demand that New York State and the other forty-seven States should surrender power over these crimes to the Federal government. Then he appealed directly to the self-interest of New Yorkers.

"Gentlemen of the Committee, I speak to you as citizens of New York, and you will permit me to say, without assuming that I know one-half as much about your duty to the State as you do, that above all the States in this Union, New York State is the last one that should consent to outside influence with her local concerns. In the minds of the American people—and mark my prediction—you all may think I am wrong, but I tell you you are not too popular in the United States. You don't like to hear that, and I don't like to say that, but it is true. You know out West your average politician makes his living denouncing New York. You know that they regard you as the enemy's country. I haven't always been free of that habit of speaking of you myself. I used to think that the devil made his rendezvous 365 days in the year down here somewhere on Man-

\* Letter, J. W. B. to W. Y. Carver, Farmersville, Texas, April 11, 1918.

hattan Island. Of course after I grew up and traveled a little and mixed with you, I found you just like other folks in the United States. I found all of you like to prosper, and I found this much difference between you and the other people, that most of you did prosper. We have been taught to believe that you prospered at our expense, nine millions of you, wealth surpassing the dreams of Oriental avarice, and yet when you come to ratify an amendment to the Constitution, the State of Arizona counts for just as much as the State of New York. I can go to the Far West—Arizona, Utah, Nevada, Wyoming, Idaho, and Colorado—six I believe I have named. The entire six States have less than one fourth of your population, and yet when it comes to ratifying an amendment to the Constitution, they have six times as many votes as you have. Do you want to invite the Amendment habit?" <sup>10</sup>

Even the *New York World* was impressed by this appeal to local self-interest. "Ex-Senator Bailey of Texas made an excellent point in the Albany hearing when he warned New York to beware of 'the Amendment habit,' " declared this journal two days later in an editorial. "With one voter in Idaho counting as heavily in electing a ratifying Legislature as twenty-eight voters in New York, the habit might become inconvenient to the larger State." <sup>11</sup>

Bryan, who spoke a few minutes later, promptly snatched up this same local appeal.

"My friends, we are told that New York State ought of all States not to act. Let me give you the other side. New York State! It is about time you were leading in something that was good. We changed that Constitution. You didn't help us. We have put in there an amendment to authorize an income tax, and because we have it we are collecting a billion dollars from

<sup>10</sup> Testimony, J. W. B. before Committee on Taxation of the Senate and Judiciary Committee of the Assembly of New York, Albany, February 26, 1918.

<sup>11</sup> Editorial, *New York World*, February 28, 1918.



the wealthy of the land that we could not have collected. Where would we be to carry on this war without the income tax? And yet, New York, you refused to ratify an income tax amendment under the leadership of a Governor of your State who told of the danger that might come if it was adopted. We have changed the method of electing Senators, and the last fight made against popular election of Senators was made by the Senator from the State of New York. New York! It is time that you got into this race!"

As chiding as this part of his appeal may read, Bryan's address was, considering that he stood "in the enemy's country," a deliberately tactful one. In opening he congratulated not only the committee for hearing both sides, but also the opposition for presenting "an array of ability and authority that could not be excelled." Samuel Gompers, for years the head of the American Federation of Labor, had the same day told the committee that organized labor opposed ratification of the amendment. The Commoner added that the argument of his opponents had been closed "by one of the greatest orators of his generation, Senator Bailey." Then he recalled that he and Senator Bailey entered Congress at the same time some twenty-seven years before, "so that I became acquainted with the melody of his voice and the charm of his manner before many of you had ever had an opportunity to hear him." But with all this array, Bryan inferred, the cause of righteousness as represented in the national prohibition movement was not to be thwarted.

"We are going to change the Constitution, and you can change it back by the very same process," he added, "and when you say it cannot be done you confess that when the saloon is driven out and the brewery closes and the distillery goes out of business, there will be no corrupting things to awe business."<sup>12</sup>

In Bryan's mind the argument of those who opposed national

<sup>12</sup> *Ibid.*

prohibition on the ground of its shifting of powers from the State to the Federal Government was largely a subterfuge. So inflamed had become his thinking over the moral and religious aspects of the problem of liquor that he had long since become impatient of political principles. "I have no time to deal with the political argument," he said, "I simply want to tell you that the times have changed and that men in the past who opposed prohibition are for it now—members of this committee, we are not asking much of you. We ask you simply to treat human beings as considerately as you treat dumb brutes. You wouldn't think of permitting a man to have a license to spread hog cholera among hogs. No, no community in New York would license a man to spread disease among hogs. All we ask is that you raise the manhood of your State at least to a hog level and not license men to deceive their fellow men!" <sup>18</sup>

But in New York State, as in all but two States, the pleas of men like Bryan prevailed over those of men who felt as Bailey did. Ten days after hostilities ceased in Europe, or November 21, 1918, the Congress of the United States, as an amendment to the Agricultural Bill, enacted a war-time national prohibition act. This went into effect in June of the following year. In the meantime, by January of 1919, the necessary three-fourths of the States had ratified the Eighteenth Amendment, to go into effect on January 16, 1920. In the summer and fall of 1919 Congress passed the so-called Volstead Act to enforce national prohibition. This not only was in anticipation of the effective date of the new amendment, but was also made immediately applicable to the existing war-time prohibition act. In October, when the Senate finally adopted the Volstead Act, Wilson vetoed it, but both houses promptly overrode the presidential veto. Bailey now enjoyed one of his rare moments of applauding a decision and an action of Woodrow Wilson. He said as

<sup>18</sup> *Ibid.*

much publicly. And he was at once accused of revising his estimate of Wilson as a statesman.

" . . . You express your surprise that I should have agreed with President Wilson's message vetoing the bill to enforce war-time prohibition," he replied to one critic. "You are mistaken in saying that the moment that the President vetoed this measure, he became in my estimation a statesman, etc. I said nothing of that kind, nor did I say anything which retracts or qualifies anything I have ever said about the President's Democracy. I said, and I only said, so far as the President is concerned, that his objection to the bill was unanswerable. You know me less than I thought you did, and you esteem me less than I hoped you do, if you think that I am afflicted with that mental infirmity which, because it disagrees with a man on many questions, refuses to agree with him on any question. I have never pursued that course toward any man. . . ." <sup>14</sup>

### §

Bailey's opposition, in fact, to the Wilson policies during the conduct of the war had stiffened rather than relaxed. The suppression of constitutional guarantees of the freedom of speech and of the press caused him to say that Postmaster-General Burleson's exclusion of certain publications from the mails was "utterly indefensible." <sup>15</sup> The brutal suppression in July, 1917, of the picketing by woman-suffrage agitators in Washington brought forth his condemnation of such tactics by the government. "I am, as you know, strongly opposed to woman suffrage," he wrote, "but I am still more strongly opposed to oppression in every form, and I know the history of the world well enough to know that when the officers of the

<sup>14</sup> Letter, J. W. B., to Rev. A. J. Harris, Whitesboro, Texas, November 15, 1919.

<sup>15</sup> Letter, J. W. B. to John E. Milholland, Philadelphia, October 13, 1917.

law deliberately deprive people of their rights because those rights do not happen to be exercised in a way to please the officers, we are reaching the end of a free government." <sup>16</sup>

The end of fighting in Europe brought on a new disagreement with the leader of the Democratic party in the White House, rather than a close of the long dispute. In December, 1918, Wilson sailed for Paris to attend the settlement of the peace. Bailey's own views of the settlement, given publication almost a year before, had called for an armistice to be followed by each army laying down its arms and retiring to its own country, the permanent disarmament of all warring factions "to prevent a recurrence of the war and to save the money heretofore spent on military preparations," and the establishment of "an international tribunal to which all international disputes should be referred and decided before any signatory nation could indulge in war with another signatory nation." <sup>17</sup>

The international tribunal was, roughly, the sort of peace machinery which Taft and a number of other leaders in both parties were advocating. But when Wilson finally returned in the summer of 1919 with the Treaty of Versailles, in which the Covenant of the League of Nations had been incorporated, Bailey found himself aligned with those who opposed the handiwork of Woodrow Wilson. The terms of the peace itself, as well as the commitments which the Treaty would make for the United States in the armed settlement of European affairs, went far beyond, he felt, the necessity or justice of the situation. Although six years out of the Senate, Bailey was not without some influence with certain of his former colleagues on both sides of the party division who were in a position to approve or reject the work of the President at Versailles. In a purely private

<sup>16</sup> Letter, J. W. B. to John E. Milholland, Philadelphia, July 19, 1917.

<sup>17</sup> Public letter, J. W. B. to the editor, *Daily Oklahoman*, Oklahoma City, January 22, 1918.

way, Bailey now threw his influence against the ratification of the Treaty in the Senate without radical modifications. He was opposed to the League of Nations "as offered for our approval," first because it would establish a super-government, "with extensive powers over the government of the United States," and secondly because he thought the peace of the world could be better served "by a simple treaty in which all nations shall be invited to join, establishing an international court."<sup>10</sup>

Opposed by a controlling group in the Senate, who held much the same views as Bailey, the President took his appeal to the country directly in the summer of 1919. At Wichita, Kansas, September 26, he collapsed, a broken leader whose fight was now lost. In November the Senate adopted radical reservations to the Treaty as brought back by the President. The Wilson influence, in turn, was successfully used to prevent final ratification of this revised Treaty. The issue, therefore, was left hanging in the air, as both parties went into national conventions in 1920.

## §

As the Wilson Administration came to a close, Bailey was in the deepest despair over the future of the party to which he had been attached since birth. The record of his own party in carrying the Eighteenth and Nineteenth Amendments, the spirit of the Administration in carrying the country into the European War as an intervenor, and, above all, the violent disregard of constitutional guarantees in the conduct of the war and in the hysteria that prevailed throughout 1919 and 1920—all these seemed conclusive evidence that the Democratic party had strayed perhaps irrevocably beyond its ordained path. Early in 1919 he spoke before the Road Horse Association of America at Newark, and repudiated the leaders of the party who had

<sup>10</sup> Letter, J. W. B. to R. H. Swain, Mart, Texas, March 24, 1919.

emerged during the Wilson Administration, serving notice that he would no longer associate with them politically. Instantly the speech was widely interpreted as Bailey's resignation from the party by reading himself out of it. The Wilson Administration, through A. Mitchell Palmer, who by now had succeeded Thomas Watt Gregory as Attorney-General, hailed Bailey's supposed defection with delight.

"The departure of ex-Senator Bailey of Texas, a former distinguished Democrat—compliments the Democratic party," said Palmer. "There are others who ought to do the same thing . . . one of the prime duties of the party now is to clean house. There are men in the party who are Democrats in name only. They call themselves Democrats but have no sympathy with real Democratic principles. Their presence in the party is a handicap and their departure would be welcomed. Ex-Senator Bailey . . . is a striking example of this situation. He lost the vision of Democratic principles. Three times after his defeat he tried to recover his lost prestige. Each time he was repudiated by his State and his party. Now no longer recognized as a leader, hardly as a Democrat and entirely out of sympathy with the party, he departs in sorrow and newspaper statements until such time as the Democratic party shall again represent his views."<sup>19</sup>

Bailey immediately called his friends to witness the wording of his Newark speech more carefully; he underscored the fact that he did not declare his separation from the Democratic party, but only declared that he would never again vote for the candidate of any party "which constantly reduces our liberties and unnecessarily increases our taxes."<sup>20</sup> Then he turned his attention publicly to A. Mitchell Palmer. Whether intentionally or not, Palmer had "grossly misrepresented me," declared Bailey,

<sup>19</sup> The Pittsburgh *Post*, April 6, 1919.

<sup>20</sup> Letter, J. W. B. to Harry W. Walker, New York City, March 22, 1919.

in saying that he had been repudiated by Texas and his party and tried three times unsuccessfully to recover "his lost prestige."

"These statements are without any possible excuse," continued the Texan in his letter to Palmer. "From the day I first offered myself as a candidate for Congress in the State of Texas until this good hour, I have never been defeated for any office or any position. After having been five times elected to the House of Representatives and twice to the Senate of the United States, I voluntarily retired from the public service in January, 1913, and I have not been a candidate at any election, or an applicant for any appointment, since that time. How, then, can you justify your implication that I was defeated or your direct statement that I was 'repudiated' by my State and party? Nor is there any foundation for your other statement that I have 'three times tried to recover my lost prestige.' Indeed, sir, I have lost no prestige, except with the men who, conscious that they have ceased to be Democrats, as Democracy was understood for so many years, seek to divert attention from their own apostasy by assailing those who have remained steadfast in the Democratic faith. The fact that I was never defeated for the Senate, and that you were; the fact that I was never repudiated by either my State or my party, and that you were repudiated by your State; the fact that I did not 'try three times'—or one time—to recover a prestige which I had not lost, may all be very interesting to you and to me, but it does not interest the public. The people of this country are anxious to understand the differences of opinion which exist among men who call themselves Democrats, and will welcome a thoughtful discussion of these differences, without any resort to offensive personalities. It will not satisfy intelligent men to say that those who differ with you have 'lost the vision of Democratic principles.' That is 'talking in the clouds.' Sound Democrats may differ with each other

about men or about policies, and the Democratic party has always tolerated the widest latitude of individual opinion in those respects; but I fully concur with what seems to be your opinion, that when two men differ radically about Democratic principles, one or the other ought to withdraw from the Democratic party, for a party which embraces in its membership men who radically disagree about its principles is nothing more nor less than an organized appetite for office. . . .

"But while I concur in your opinion that an irreconcilable difference about principles renders impossible the political affiliation of the men who thus differ I cannot accept your cavalier statement that those who agree with you constitute the Democratic party, while those who think as I do must 'get out of it.' It seems to me that those who adhere to the party's principles have a right to retain the party name, and that if a separation must come, those who have adopted a new creed are really the ones who should form a new party. Accepting your judgment that your views and my views are so irreconcilable that we cannot longer maintain our party association—I use your name and my own, not in any personal sense, but merely as representing our different views—the question between us is whether your views or my views are more in accord with Democratic principles." <sup>21</sup>

Bailey concluded by warning Palmer and thus the Administration indirectly "against feeling too secure in your present power." He predicted that if all those who believed in the principles which Bailey thought constituted the proper basis of the party's actions were to vote, a candidate for President such as Palmer would select "would not have a single vote in the electoral college." <sup>22</sup>

<sup>21</sup> Public letter, J. W. B. to J. Mitchell Palmer, Washington, April 8, 1919.

<sup>22</sup> *Ibid.*



But the brush with Palmer, and the taunts of repudiation, combined with other circumstances in Texas, goaded Bailey to make a sudden decision. Perhaps, he felt, the "real Democrats" were not so utterly demoralized that they would not make a further contest for the principles which they were supposed to cherish. At least he resolved that the Democrats of Texas should have another chance to say whether the Democracy of the Wilson Administration or that of Joseph Weldon Bailey was the inspired gospel of political salvation. Accordingly, in the early part of 1920, Bailey announced that he would be a candidate for Governor of Texas "subject to the Democratic primary" of that summer.

## CHAPTER XXIII

### ANTICLIMAX

THE hurried and rather bewildering decision of Bailey to seek the Democratic nomination for Governor of Texas in the forepart of 1920 can be understood only by retracing rapidly the course of Texas politics since he relaxed his hold on the State party in 1911. Even then it is difficult to understand his decision which, from a personal standpoint, was an alarming and pitiful mistake; foredoomed to failure because of the overwhelming odds against him, he entered the contest, however, with few illusions, and this final personal fight must be set down as the last made charge of a political Don Quixote, an unusually selfless counter-assault on all the trends and personalities which he felt were carrying his country and his party to perdition.

Two new personalities, one on the stage of national politics, the other in the smaller arena of State affairs, dominated in the years between 1912 and 1920. There was, of course, Woodrow Wilson, as the director of the Democratic party until the debacle of the peace treaty. The rise and fall of James E. Ferguson as the chief figure in Texas politics after Bailey is equally noteworthy. Ferguson did not at once seize the reins. For two years after the Bailey machine ceased to function the State party was practically without a head, the conflicting, contending forces being only loosely federated in the interval around the fortunes of the national party. Thomas B. Love had been elected Democratic national committeeman in the victorious Wilson State Convention at Houston, and the high honors bestowed on Wil-

son supporters at Washington had given great prestige to Burleson, Sells, Love, and their associates. But Texas politics are either too provincial or too important in their own right to be long controlled from the distance of the national Capital. Before the advantages of these same men could be consolidated the new leader would arise. In the interregnum, efforts were made to get Bailey to return to active political life. Marked dissatisfaction was voiced by hundreds of precinct or State leaders who could not accustom themselves to his self-banishment, and they were not long in insisting that he make the race for Governor in 1914. The old Chief Justice of the Supreme Court, T. J. Brown, voiced the prevailing sentiment of a majority of the former Bailey men.

"I am so disgusted with the political affairs of Texas that I really do not like to write about it. Indeed, I think as little of it as possible," he said, ". . . Texas is under the management and dictation of a class of men who were not known in public life until within the last few years. It is a strange and motley crew to the men who have been accustomed to the great men who were in the lead during former days in this State. Some of your friends here are anxious for you to be a candidate for Governor. I cannot suggest to you to take up political life in Texas again. You know what I would do if you should be a candidate. I will not tell you what I think you should do because I know that you understand that better than I do." <sup>1</sup>

Bailey's own attitude at the time was that nothing would induce him to "sacrifice the peace and contentment which I find in my present surroundings" by again seeking public office. Replying directly to one of his numerous adherents, he added: "Having said to you frankly that I would not accept any office, it is not necessary for me to explain why I would not

<sup>1</sup> Letter, T. J. Brown to Joseph Weldon Bailey, Austin, November 24, 1913.

accept the governorship of Texas. . . . I would not accept (it) if it were tendered to me with practical unanimity, because I have no experience in executive affairs, and I am not confident that I could make our great State such a Governor as she deserves to have. My studies, as well as all of my experience, so far as they qualify me for any office, qualify me for legislative rather than executive work; and you very well know that the qualifications for one are not necessarily the same for the other."<sup>a</sup>

## §

The advent of Jim Ferguson into the politics of Texas in 1914 alarmed no one more than Bailey. Although the banker-farmer of Bell County had never made a bid for public office previously, he had revealed his astuteness and political ability on two previous occasions, on both of which he was belligerently aligned with the anti-Bailey forces. It will be remembered that in the Bailey-Cone Johnson race for delegate-at-large in 1908, in what Bailey ever afterward referred to as "the crisis of my life," Bell County had been one of the four or five counties of the entire State to vote against the junior Senator. The local campaign there had been directed by the former farm-laborer and railroad bridge hand who, after studying law on the side, had climbed the economic ladder until by 1908 he was one of the most influential citizens in Central Texas. Two years later Ferguson had been a campaign manager for R. V. Davidson when that Attorney-General failed to reach the governorship. But Bailey's opposition to Ferguson's candidacy was based on more than personal grounds. The proposed farm and labor legislation which Ferguson advanced to win votes, relating chiefly to the amount of rent which landlords might extract from tenants and the number of men who must be used in the opera-

<sup>a</sup> Letter, Joseph Weldon Bailey to H. B. Terrell, West, Texas, July 21, 1913.

tion of railroad trains, appeared to Bailey, in the spring of 1914, as extreme and disturbing economic proposals. He was also influenced by many of his Old Guard who almost to a man were opposed to Ferguson. The tenor of these adverse reports from his friends and the violence of their language betrayed more than the usual fear of a new-comer. R. M. Johnston wrote Bailey just before the deciding primary election that, "facts developed in the past forty days go to show that Ferguson is unspeakable as a candidate for Governor." <sup>3</sup>

The concern of Johnston and the die-hard Bailey element was noteworthy in view of the fact that Ferguson stood with them on the great moral issue of State-wide prohibition; that is to say, he was bitterly opposed to this reform. If, as it was charged, the organized liquor interests, more particularly the brewers, were directly interested in Ferguson's success, many of the Old Guard, opposed to prohibition on principle, were not willing to go with these interests. Bailey's own preference was for Tom Ball of Houston, almost the only Bailey man who had espoused the Wilson cause in 1912, and a pronounced prohibitionist. Although he did not return to Texas, Bailey pleaded for Ball's election as against Ferguson in an extended letter campaign. But his support of Ball scarcely appealed to many of the stricter anti-prohibitionists among his own friends, and they backed Ball with faint hearts. "It is a case of Hobson's choice," commented R. M. Johnston.<sup>4</sup> The Bailey men rounded up in support of Ball were further embarrassed, toward the end of the race, by the intervention of the Wilson Administration in behalf of the same candidate. The President, on July 10, wrote Bailey's candidate:

"Some of your utterances in the present campaign in Texas have reached me, and I cannot let them go by without express-

<sup>3</sup> Letter, R. M. Johnston, Houston, to Joseph Weldon Bailey, July 14, 1914.

<sup>4</sup> *Ibid.*

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ing to you my deep appreciation of the splendid and unequivocal way in which you are now lending your support to the national administration. This is but a fresh evidence of what I have always deeply appreciated in your attitude toward me personally and toward my leadership of the party, but it gives me fresh pleasure and strengthens my feeling of gratitude and sincere friendship. The progressive forces in the country are at last gaining cohesion and irresistible force." \*

Bryan from the office of Secretary of State also sent word to Texas that "I regard Ball as a progressive Democrat, and think he would make a first-class Governor." \* But despite the two-edged support from Washington, Ball failed to make headway in the campaign. In Texas there was, as one of Bailey's friends reported from the heart of the cotton-growing area, "wonderful unrest among the people, and they seem to be looking and ready to grab at any kind of 'ism.'" † Ferguson, unlimbering a technique that equaled if it did not surpass that of Jim Hogg's in his prime, appealed directly to the submerged four-fifths, and among the economic under dogs he met with instantaneous success. His genius in arousing active resentment against the existing system of livelihood produced, as another of Bailey's correspondents noted, a "disgust (among) the better class of our voters, but has beyond question had a telling effect on our poorer class of renters and rabid anti-prohibitionists." \* The election came at the end of July, and Farmer Jim Ferguson was, without question, the new master of Texas politics.

In August, Bailey went to the State convention at El Paso where he learned more personally of the new-comer's power.

\* Letter, Woodrow Wilson to Tom Ball, Houston, July 10, 1914; published *Houston Post*, July 14, 1914.

\* *Dallas News*, July 15, 1914.

† Letter, William Bacon, Greenville, to Joseph Weldon Bailey, April 16, 1914.

\* Letter, Ed. Steger, Bonham, May 15, 1914.

Although the victorious Ferguson forces were plainly in control, Bailey insisted that the convention accept three platform proposals. Two of these, one declaring against federal woman suffrage and the other opposing federal prohibition, were acceptable in spirit to the rulers of the convention. But because they were rather arrogantly injected by the former Senator, they were unacceptable to the Ferguson men. Bailey's third plank was incurably offensive to the Ferguson men, particularly in view of the charges made in the campaign that Ferguson had been backed by a huge war chest of campaign funds.

"Knowing that the corrupt or lavish use of money in its elections will subvert any free government," read Bailey's third plank, "we demand the enactment of laws which shall so limit the expenditure of money by candidates or their supporters that the selection of our public officers shall express the deliberate and unpurchased will of the people." \*

As a result, the convention managers ruthlessly rode down all three of Bailey's proposals, and he stood, at the adjournment of the convention, as the vanquished in this first trial with the new champion of Democracy.

Throughout the two years of his first term at Austin, Ferguson continued undisputed dictator of the legislature and of the political machinery. There was, as might have been expected in the circumstances, little love lost between Ferguson and the national Administration, nor was the enmity between him and Bailey reduced in anywise in those years. But as each political success inevitably breeds its own defeat, so the course of Governor Ferguson soon began to feed the flame of opposition. The personality of the man himself, perhaps the most difficult to assay justly of any of the three who held the center of the stage in Texas between 1885 and 1930, was largely responsible for the unprecedented and furious tornado that finally broke

\* *El Paso Times*, August 13, 1914.

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in August, 1917, and uprooted Ferguson from office by impeachment. Ferguson's immediate hold had begun to weaken even before his renomination in 1916. Due chiefly to his fight with the Wilson factotums in the State, his control was shaken in the State convention which met in May of that year in San Antonio to select delegates to the Democratic National Convention. Here Bailey returned to effect a political coup that discomfited not only the Ferguson men, but humiliated the Wilson idolators as well. Raising no objection to the fulsome flatteries which the Wilsonites demanded be given to the chief of the party in the White House, Bailey insisted only that the convention adopt the resolutions against Federal woman suffrage and Federal prohibition that had been tabled two years previously at El Paso. This the convention did without hesitation. But there was to be no burying of the hatchet with Burleson, Gregory, and company, as Bailey now revealed by a lusty swing of the same instrument. On the roll-call vote for the reelection of the Hon. Thomas B. Love as National Democratic Executive Committeeman, the ballot suddenly disclosed that William Poindexter, a political shadow of the former Senator, had ousted Love from that position. A great howl went up, lasting for weeks, and threats of court action were made, but there was no reversing of the outcome. The Bailey forces had simply outwitted the Wilson men by a careful rounding up of votes in the precinct conventions preceding the State convention, and the legality of Poindexter's election was indisputable. Bailey's stock at once soared again in Texas, and beyond the borders commentators reviewed the prospect of his emergence once more into public life. Culberson was standing that summer for reelection for his fourth term in the United States Senate, but on account of failing health it was thought by some that he should be replaced. For a moment Bailey seriously considered entering the field against his old colleague but refrained. He



had lost patience with Culberson over the latter's trailing with the national Administration, particularly in the matter of Culberson's vote for the Federal Child Labor Law. But among the various reasons restraining Bailey from making the race was his inability to see eye to eye with the Democrat in the White House.<sup>10</sup>

In the meantime, Ferguson's difficulties with various groups over the State increased. Hardly had he been reëlected Governor before his zeal for the great mass of his fellow citizens led him into executive as well as verbal excesses; to his followers, particularly the tenant farmers to whom he appeared as a deliverer from heaven, his words were without guile and his actions were perfect. But the vested groups, whose rights, privileges, and feelings he was so whole-heartedly trampling, were not ineffectual minorities. There was no more powerful and well-knit body than the former students of the University of Texas, and when Ferguson picked a fight with this institution, opening fire with the most sweeping and damning charges against its management and ending with an attempt to choke it to death by a veto of its legislative appropriations, he was to find that he had met not only his equal but his conqueror as well. The contest between Ferguson and those who finally unseated him as Governor is an involved and superheated chapter in the history of the State. Bailey, however, refused to be drawn into this latest upheaval despite the most persistent tugging from both sides. The Ferguson scandal—and those who would scalp and those who would save the Governor united in terming the proceedings a scandal, although for entirely opposite reasons—came to a head on August 1, 1917, when the Senate of the legislature met as a high court of impeachment on the trial of charges brought by the House of Representatives. The minds

<sup>10</sup> Joseph Weldon Bailey to George F. Burgess, Gonzales, Texas, May 4, 1915.

of many were turned back eleven years to the scene in the same capitol when another committee heard complaints which, had they been proven, would have driven Bailey from the high office of United States Senator. The two situations were scarcely parallel, but the superficial resemblance was heightened by the fact that two of the principals in the earlier fray were once more on opposed sides of the counsel table. General M. M. Crane again was cast in the rôle of prosecuting attorney as he headed the counsel for the House board of managers. Ferguson's chief counsel of defense was the same W. A. Hanger of Fort Worth who had been one of Bailey's attorneys in the investigation of 1907.

Several months before the impeachment trial began, Bailey wrote from Washington explaining that since he had no direct knowledge of the facts concerning the charges against Ferguson, and no duty to perform with regard to the controversy, he felt that "I owe it to my friends to keep out of the discussion."<sup>11</sup> He added that while Ferguson "did not keep out of that wicked attack on me" and that he might "rejoice to see a man who had joined in unjustly accusing me become the object of violent accusation" if he were to yield to a spirit of retaliation, yet he expressed a hope that the Governor of Texas would be able to disprove completely every allegation made against him. He voiced this hope solely out of his regard for Texas, since "I cordially dislike Ferguson both personally and politically."<sup>12</sup>

In the midst of Ferguson's attack on the university, at the time when the Governor was demanding the resignation of its president and five members of the faculty, one of whom was George C. Butte of the law school, Bailey presented the law department with a valuable collection of books from his private

<sup>11</sup> Letter, Joseph Weldon Bailey to Jesse C. Murrell, Austin, Texas, March 9, 1917.

<sup>12</sup> *Ibid.*

library in Washington. He made this gift through John E. Cofer, an old personal friend, another member of the law faculty whose head Ferguson had demanded of the board of regents. This public gesture was warmly acknowledged by Robert E. Vinson, the president of the university, whose testimony in the Ferguson case shortly afterward was to prove so fatal to the Ferguson cause both within and without the State Senate.

" . . . That you should think of us, particularly at such a time as this," wrote Dr. Vinson, "when the life of the institution itself seems to be at stake, is extremely welcome and encouraging. . . . I trust that this contribution which you have made is but an indication of the fact that the citizens of Texas will not suffer any one man to destroy an institution which has been built at the cost of so much money and sacrifice." <sup>18</sup>

If dethronement of Ferguson was to be the reply of the people of Texas, expressed through the Senate, to Ferguson's attack on the university, Dr. Vinson correctly read their intention. For on September 29, 1917, the high court of impeachment adjourned after having held that Ferguson was guilty of certain of the more serious charges brought by the House. Not only was he removed from office, but the sentence also deprived the impeached Governor from holding any other offices of public trust under the commonwealth of Texas. It was an extra part of the sentence that would have an odd aftermath in Texas in another but not far distant day when several of the principals of 1917, not excluding the former junior Senator, would be reassembled and reshuffled. When the trial was over, Bailey, who had followed it in Washington in daily transcripts of the record, could not feel but that justice had been meted out to James E. Ferguson. The testimony on the crucial charges, he recorded, "makes upon my mind the irresistible impression that

<sup>18</sup> Letter, Robert E. Vinson, Austin, July 10, 1917.

the Governor" was guilty.<sup>14</sup> One of the more trying angles of the whole affair to Bailey was the necessity of turning down the plea of Hanger himself, made as the end approached, to intercede for Ferguson among a number of Bailey's friends in the State Senate.

"I know that it is not necessary for me to tell you," he replied to Hanger, "that I would rejoice in an opportunity to do you a favor, and you could not ask me to do anything that I would not gladly do, if I could do it without compromising my sense of right or sacrificing my self-respect. I am satisfied, however, that in the heat of the conflict which now engages you, you have overlooked Ferguson's attitude toward me; and I feel sure that when you consider what he has done and said against me, you would not think for one moment of asking me to help him. During that bitter and unwarranted attack on me ten years ago Ferguson was as vicious as he could be, and no man did more, according to his influence and ability, to destroy me than this same James E. Ferguson."<sup>15</sup>

### §

With Ferguson's deposal, the governorship of Texas fell to William Pettus Hobby, the president of the State Senate. A son-in-law of S. Bronson Cooper, one of Bailey's earliest friends dating back to the days both served Texas in the lower house at Washington, there were warm personal ties between the new Governor and Bailey. There were political ties as well, so that Bailey felt justified in interceding shortly afterward with Ferguson's successor on a matter of extreme importance. Early in 1918 the fate of the Eighteenth Amendment to the Federal Constitution lay with the legislatures of the individual States.

<sup>14</sup> Letter, Joseph Weldon Bailey to I. E. Clark, Austin, September 10, 1917.

<sup>15</sup> Letter, J. W. B. to W. A. Hanger, Austin, September 8, 1917.

Bailey had journeyed to Albany in an effort to persuade the General Assembly of New York to withhold ratification. No regular session of the Texas legislature was to be held that year, but reports soon reached him that Hobby, who was to seek the Democratic nomination for Governor that summer for his first elective term, would now call the legislature into extraordinary session to act on the amendment. In January, therefore, Bailey wrote Hobby "in behalf of what I believe to be your duty against certain insidious influences which I knew were striving to induce you to convene the legislature in extraordinary session so that the prohibition amendment to the federal constitution might be ratified before the people of Texas could have an opportunity to express their judgment on it."<sup>10</sup> Hobby replied that he did not know what would be done about the amendment, but that ratification or rejection was within the jurisdiction of the legislature entirely. He explained that he was calling the legislature into special session to consider the report of a special committee of that body which had been studying administrative reform, "to reach the bootlegging evil around army camps," and to put into effect the amendment to the constitution of Texas providing for the establishment of reclamation districts. Although Hobby assured Bailey that he was "personally against nation-wide prohibition,"<sup>11</sup> the latter was convinced by Hobby's responses that the approaching State campaign, including the wishes of the prohibition forces, was influencing this call of the legislature.<sup>12</sup>

"I must say that the matters upon which you think it important for the legislature to act are utterly inconsequential when compared with a proposal to transfer the police powers of these States to the general government," Bailey wrote in his final

<sup>10</sup> Letter, J. W. B. to W. P. Hobby, Austin, February 8, 1918.

<sup>11</sup> W. P. Hobby to Joseph Weldon Bailey, February 1, 1918.

<sup>12</sup> W. P. Hobby to Joseph Weldon Bailey, February 13, 1918.

argument. "Texas became a State of this Union sixty-two years ago, and through all of these years we have not provided for the establishment of reclamation districts. That may be an important matter, but having waited for more than half a century, it could well wait six months longer without injury to the public interest. I do not doubt that the legislative investigating committee's report will contain valuable information and make wise suggestions; but at most they are merely administrative in their nature, and it will count for little in the future of Texas whether they are disposed of immediately, or postponed until after the July primary.

"No graver question ever confronted the legislature of Texas than this Federal Amendment which strikes at the very heart of our dual system of sovereignty; and no real Democrat should consent to have such a question disposed of until it has been thoroughly debated before the people, and their representatives have been elected with a full understanding of their position in respect to it. To me the matter stands thus: if the present legislature, which was elected without reference to the question, is permitted to decide, it will ratify the amendment; but if the people of Texas are permitted to elect a legislature with that question as an issue, a majority so chosen will vote against the amendment. If I am right in thinking what I have just said, then by calling the legislature together in extraordinary session you will simply aid in defeating the people's will upon a question that goes to the very foundation of the Republic."<sup>10</sup>

The legislature met in extraordinary session and promptly ratified the national prohibition amendment. Bailey was now convinced in his own mind that Hobby had played to the prohibitionists for his own advantage, and he set about to encourage his defeat in the July primary election. Ben F. Looney, having served as Attorney-General after his departure from the

<sup>10</sup> Joseph Weldon Bailey to Hobby, February 8, 1918.

State Senate, had been one of the first of Bailey's "Swiss Guard" to espouse the prohibition cause. He was considered as a candidate for Governor, but the report reached Bailey in Washington that Looney had agreed to remain out of the race, "if Hobby would do certain things." Bailey now wrote Looney, retailing this report and urging him at all costs to make the race against Hobby.

"If you, yourself, believe that Mr. Hobby has made a trade with certain pro leaders, you not only ought to make the race, but you ought to denounce that trade from one end of the State to the other," Bailey advised Looney. "And if the prohibitionists of Texas are the kind of men I have always thought them to be, they will respond with practical unanimity to your call. How can we preach political honesty to our children if we either trade, or sanction a trade, in public offices? Ferguson's campaign in which he gained our gubernatorial nomination was one of the most disgraceful episodes in our history; what is the difference, in the moral quality of the act, between trading for an office and buying an office? As for my part I think the one as bad as the other, and I also think the one will demoralize the public conscience as certainly as the other." <sup>20</sup>

But the primary of 1919 was held and Hobby was elected by the largest plurality in the history of Texas. More than ever Bailey felt that "the old-fashioned Democracy which I cherish has been completely discarded by those who now control the Democratic party." <sup>21</sup> Throughout the remainder of the year and during 1919 Bailey sat by in helpless rage, feeling that the fight was going against his ideals for the party in Texas as well as on the national stage. At this time he wrote that "I am not now a candidate for office and never expect to be again," but he felt more impelled than ever to "act as (one of) the sentinels on the watchtower (to) warn the people of approaching

<sup>20</sup> J. W. B. to Ben F. Looney, March 13, 1918.

<sup>21</sup> *Ibid.*

danger," especially since he felt that the elected guardians of true Democracy had failed to render this necessary service."<sup>22</sup>

In the meantime, the trend of national politics and the course of the national Administration, notably in the conduct of the peace negotiations by Wilson, brought him into the depths of despair. It was in this period that he voiced, at the Road Horse Association meeting in Newark, those sentiments of despair which the Wilson leaders promptly interpreted as his desertion of the Democratic party. It was the reaction to this public address, as much as anything else, that determined him shortly afterward to make a fight for the revival of Democratic party principles as he saw them. Perhaps the time was fast approaching when "the men who believe in the real principles of Democracy should make a determined effort to rescue our party from the fanatics and 'ismatics' who are now so shamefully betraying its principles." Perhaps it is wise to attempt "to rescue our party from the men who are no longer devoted to its principles . . . to contest their right to the organization as well as to the name."<sup>23</sup> The logical place, he felt, to begin this campaign of redemption was Texas. "Without Texas," he believed, "Mr. Wilson could never have been nominated for the presidency,"<sup>24</sup> thus setting the party adrift in its present disastrous path. Why should not Texas, therefore, begin the return to the true faith. Early in 1920 he acted, announcing that he was a candidate for the governorship of Texas.

### §

In view of all that had transpired in that State since 1911, it was difficult to believe that Bailey would have much chance of winning. While there was undoubtedly a reaction over the

<sup>22</sup> J. W. B. to E. C. Harrell, Brownwood, Texas, April 16, 1916.

<sup>23</sup> J. W. B. to W. D. Cowan, San Saba, Texas, May 2, 1919.

<sup>24</sup> J. W. B. to John W. Craig, Marshall, Texas, February 19, 1919.



country at large, even then in full swing, against the Wilson Administration, in Texas the name and person of Woodrow Wilson were still the greatest to conjure with. Bailey himself was not over-sanguine; he had little of his old-time confidence. "I may be defeated," he wrote in May, "but that signifies nothing to me. If I lose, my country, according to my judgment, will lose also, and I shall have the satisfaction of knowing that I have done everything in my power to save my country without thinking of myself." <sup>22</sup> But he set out with a will to win, and a campaign organization was hastily assembled. Luther Nickels, an assistant attorney-general under Looney and a Ferguson supporter, took charge of the campaign. Many of the Old Guard rallied to his side, and numerous leaders who twelve years before had been his most unrelenting opponents now came out for him. Among these was E. G. Senter, the leader in the State Senate in 1907, in seeking Bailey's political annihilation. The field was large, though, and in two other candidates, R. E. Thomasson of El Paso and Pat M. Neff of Waco, there was seen from the outset to be great strength. Bailey's own judgment was that his candidacy should be determined first of all in the precinct conventions of the party to be held in May when the first step would be taken to determine the complexion of the Texas delegation to the Democratic national convention. It was his idea "to publicly declare that I would accept the result of the precinct conventions," and if these went in favor of the national Administration, he would withdraw his candidacy for Governor. In this he was dissuaded, however, and with no effective campaign to win the precinct conventions by the Bailey forces, the presidential State convention of May was almost wholly in the hands of his enemies. There were personal complications also to a vigorous and easy fight; Mrs. Bailey, in poor health for several years, was now stricken dangerously. But

<sup>22</sup> J. W. B. to Richard Burgess, El Paso, Texas, May 19, 1920.

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Bailey hastily set his personal affairs in Washington in order and with the critical state of his wife's health weighing heavily upon him, started on his last personal campaign of Texas. The excitement of the actual fight raised his spirits somewhat; there was much of the old-time thrill in this face-to-face contact with the electorate, and the enormous crowds that gathered to hear him speak, larger by far than he had ever known in the old senatorial days, greatly heartened him.

When the primary election was held in July, much to the consternation of the new bosses of Texas politics, the old contender led the field. When the news was flashed out of election bureau headquarters that Bailey had received the highest number of votes, even party leaders outside of Texas sat up and took notice. Immediately there was much speculation over the country as to what this might mean in the fortunes of all those Democrats who had cast their lots with the Wilson Administration. But Bailey's plurality was not a majority, and according to the State primary law which had been amended since the day when Campbell had been selected in a similar result, the leader must run it off in a second primary with his closest rival, Pat M. Neff. And then was staged the brief but intense contest between Neff and the man whom he had termed "the brainy Bailey."

Now riding the crest of renewed confidence, Bailey plunged eagerly into this final phase. For almost a month the fight continued, recalling in strenuousness the great precedents of the Hogg-Clark and Bailey-Johnson campaigns. But when the votes were counted in August, Neff, representing the forces brought into effective political consciousness by the New Democracy, notably the enfranchised women and the great moral forces of prohibition as marshalled by divines in their pulpits, had won. The blow fell heavily on Bailey. Even Gainesville, the whole of Cooke County, had gone against him in this final contest. At

fifty-seven years of age, still a comparatively young man, this first and complete repudiation at the hands of his own people aged him twenty years at one stroke. But "even in defeat," he was able to console himself with the thought that "I subjected myself to the arduous labors of a campaign, to the infamous libels of my enemies, and to a painful separation from many of my friends in an honest effort to rescue the Democratic party from the control of those who are destroying it." "Such satisfaction," he added, he would not exchange "for all the wealth and all the offices in this world." \*\*

\*\* J. W. B. to Richard Burgess, May 19, 1920.

## CHAPTER XXIV

### BOOTS ON

So far from being embittered by his defeat in the August primary of 1920, Bailey chose to identify himself even more closely with the everyday affairs of Texas. Moving his law office from Washington to Dallas, he bought a home in the same Texas city and turned in earnest to that old objective, scarcely nearer of realization than ever before, of creating a competence for his old age. By no means a poor man, he was not at this time, as erroneously believed by many, a very wealthy one. A steady and profitable law practice gravitated to him in the next few years. Some of the cases he handled were memorable in both State and national jurisprudence. Although he adhered strictly to his old rule of emphasizing civil practice, he consented to defend Dr. Frederick A. Cook when a Federal grand jury at Fort Worth indicted him during the drive which the Department of Justice, at the instance of Attorney-General Dougherty, initiated in 1923 against supposedly fraudulent oil-stock selling schemes in Texas. In view of the infinitely more nauseous oil scandals which exploded under the Harding Administration itself shortly afterward, the whole series of Federal prosecutions in Texas evoked some curious questioning later. It is significant that not ten days before his death, Bailey discussed the possibility of attempting to reopen the Cook case, at least to the extent of seeking a pardon for the old Arctic explorer.<sup>1</sup> Many of the law cases which he accepted, though,

<sup>1</sup> Conversation with the author, April, 1929.

were smaller than a lawyer of his prestige would ordinarily have accepted. To a friend he explained that he took them largely because they enabled him to spend a large part of his leisure time among old friends and supporters. As he traveled over the State, pausing for a day at this courthouse and at that, his presence would attract many of his old-time intimates and associates. Like him, they, too, were growing old, and as they sat around waiting for court to convene there was always time enough to reminisce over the past, to recall the triumphs and defeats of an age that seemed already to be remote and slightly fabulous.<sup>a</sup>

## §

But not all of the talk was given over to the past. A new and cyclonic force was stirring in Texas politics as the third decade of the century got under way. Born in Georgia several years earlier as merely another fraternal order, the latter-day Ku Klux Klan had been transported to Texas; somewhere and somehow the originally mild organism had undergone a virulent mutation, so that by 1922 the Klan in Texas was spreading with the force of an epidemic of influenza. Transformed into a secret, political order, it fed and multiplied prosperously on a strict diet of religious and racial intolerance. By a process of boring from within it had gained, almost without notice, almost complete control of the Democratic party of Texas. Its first and greatest advance to political power was accomplished that year when Culberson, standing for his fifth term as United States Senator, had been defeated by Earle B. Mayfield.

Mayfield's victory in the Democratic primary sent shudders through a large part of the electorate, especially as it was believed that his sudden emergence to this highest office had been made possible almost wholly by this new factor of the Klan.

<sup>a</sup> Conversation with Paul D. Page, Jr., 1926.

In the shock of Culberson's elimination many of the old line leaders turned to Bailey. Would he run as an independent candidate for the Senate? Aroused now to the objectives of the Klan, many of these same leaders, almost half of whom had formerly been his opponents, assured Bailey that by a vigorous campaign they could elect him over Mayfield. "These letters and telegrams mean much to me," said Bailey. "They have come from sincere patriots . . . but they have come too late; I have finished my public career." Furthermore, he announced, he would under no circumstances endorse any move to defeat a regularly nominated candidate of the Democratic party, no matter how displeasing that nomination might be to him. And he also took advantage of the spotlight that had been turned on him momentarily to open war on the Ku Klux Klan. It was the first clear voice raised in opposition in Texas at an hour when the overwhelming majority of politicians, particularly those not identified with the oath-bound organization, were panic-stricken.

"There is no place in the politics of this country for any secret or oath-bound organization," said Bailey. "Some of the best men in this State belong to the Ku Klux Klan, but notwithstanding that fact, the organization cannot endure. There are two fundamental objections to it, either of which would render its continued existence impossible. No group or society or political party can prosper in this country if it inculcates religious prejudice. Every man's religion is a matter between him and his God and should be left there by every free government. Religious intolerance makes for nothing but mischief; it has killed more bodies and damned more souls than all other heresies combined. . . ."

Then he retraced the history of American political parties that were founded on "proscribing Catholics and the foreign-

\* Statement, *Dallas News*, August 12, 1922.

born," recalling how the Democratic party of Texas and of the nation had invariably and continually opposed such movements. He recalled how Mr. Jefferson had most rigidly set his face against politico-religious bigotry, insisting that his authorship of the statute for religious freedom in Virginia should be considered one of the three most important achievements of his life.

". . . And when the Democrats of Texas have passed from the heat and bitterness of this campaign," said Bailey, "they will again revere the memory of Mr. Jefferson and praise that particular work in which he cherished such a just pride." \*

### §

But the Klan issue in Texas politics had grown too big to be scotched by a single denunciation. By 1924, when Neff was rounding out his four years as Governor, the oath-bound organization seemed stronger than ever. Felix D. Robertson of Dallas, one of Bailey's most devoted followers, now asked for the governorship. It was generally believed that he was backed by the Klan. The field of candidates was large, and Jim Ferguson sought to be one of them. The verdict of the impeachment court hung over him, however, and a court decision held that his name could not be placed on the ballot. At this point, Ferguson announced that his wife would make the race for Governor in his stead. A titter of amused and scornful laughter passed over the State. But when the ballots of the first primary were counted, it was seen that the name of Miriam A. Ferguson stood second to that of Felix Robertson; the hard cyst of some 150,000 Ferguson voters, most of whom lived in the rural districts, had put Jim's wife in the final contest with the Klan candidate. Immediately the electorate was faced by an unexpected and fateful choice. Bailey did not hesitate; as between

\* *Ibid.*

elevating the Klan to control of State offices and voting for Mrs. Ferguson he chose the latter course: "it was the only way I could register my protest against the Klan effectively." \* A number of other leaders of the older generation made the same choice, and Texans were treated to the spectacle of Bailey, General Crane, and the *Dallas News* pulling together in one final, almost filial agreement over the election of the wife of James E. Ferguson. Through such extraordinary coalescence of old antagonisms, combined with the opposition to the Klan that had normally accrued during the past two years, Robertson was defeated in the run-off primary election.

The victory was won by a narrow margin, however, and Republican forces believed that at last their hour had come to break the solid Democratic phalanx in Texas. Two years before, the Republican candidate, George B. Peddy, had polled a frightening number of votes in the general election in an effort to defeat Earle B. Mayfield for Senator. Perhaps now enough of the Democrats chagrined by Mrs. Ferguson's capture of the Democratic nomination would desert their party in the general election to carry a Republican into office at Austin; the only problem confronting the Republicans seemed to be the selection of a proper candidate.

George Butte, professor of law in the University of Texas, sat in a restaurant in London one night early in September dining with a group of fellow Texans on the eve of their return to America. As vacationists the members of the party had been traveling hard and far and were completely out of touch with developments back home. A letter from Texas was opened and an excerpt from it fell on dumfounded hearts: "No doubt you have heard by now that Ma Ferguson is to be our next governor." All present were former students of the university, some of whom had marched with banners in 1917 to defy Jim

\* Sherman speech, *Dallas News*, October 10, 1924.



Ferguson's assault on their institution, and the news became blacker with comprehension; neither flippancies nor the rounds of farewell toasts could dispel the gloom which word of the Ferguson victory brought. At last as the tearful session broke up one patriot, more disturbed than even Dr. Butte, proposed "To the end of the Republic and the State of Texas, for after this tragic mistake we have nothing left to do but give Texas back to Mexico." A few days later in mid-Atlantic Dr. Butte received a wireless message: Would he accept the Republican nomination for Governor? There was a hurried consultation on shipboard; the decision would mean surrendering his place on the faculty, and the chance for political victory was far from certain; never active to any degree in politics before, Dr. Butte, like an even more famous Republican, did not at the time know to which party his deeper loyalties were fixed. But the few and innocent advisers he had on the water were united in one belief: he must accept the leadership of this final fight on Fergusonism. And the answer went back to Republican caciques in Texas that he would accept.

Then began a campaign in Texas that saw the supremacy of the Democratic party shaken to its foundations. The disgruntled Klan vote in alarming volume would burst the bounds of the Democratic primary pledge in the November general election and mingle with that of the Republicans. There would be, however, a compensating disaffection in Republican ranks, for much of that party's strength lay in the foreign-born communities where an alliance with the Klan was unholy and unthinkable. Bailey took the field in support of the Democratic candidate. Dr. Butte had opened his campaign in Sherman, and Bailey chose the same city in which to launch his anathemas against those holding "this strange doctrine of violating party pledges." He was especially wrought up over the fact that such violations of conscience were "being taught by ministers of the

Gospel and heads of our educational institutions." And he concluded with a final word to the Klansmen.

"I want to say to the Klan in all candor," he declared, "that if you have made up your mind to destroy the Democratic party, you had just as well ally yourself permanently with the Republican party. For I warn you that the Democratic party is not going to allow you to control it or the State." \*

### §

The Republican candidate for Governor was defeated by a close vote, and the Klan, denied control of the State government, began to pass into history as a State-wide political factor. But the victory of the Fergusons, scarcely personal, was short-lived and ill-fated. Scarcely had the defeat of Butte been accomplished when internal dissensions broke out in the new administration at Austin; the young, red-headed Attorney-General, Dan Moody, who had been elected on the same ticket by a much larger majority than the Governor herself, soon broke with the man who now exercised great power by virtue of his wife's office and title. By custom, Mrs. Ferguson was entitled to reelection in 1926, but the Attorney-General, heading another and more successful fight on Fergusonism, won the governorship from her in that year. The issue of the Klan had been rather effectively settled two years before, and the errors, real and imagined, of the first woman Governor of Texas were now used to sweep her family out of office by a conclusive majority. Almost alone of those old leaders who had rallied to her side in 1924, Bailey remained a Ferguson supporter in 1926.

The same year was a peculiarly sad one for Bailey, and he more or less stood aside from the rush of politics. Mrs. Bailey's health grew more desperate; in the late fall she died. It was

\* Speech, Sherman, Texas, October 9, 1924; *Dallas News*, October 10.

decided to return to Gainesville for the funeral. In the genuine and widespread sympathy which his former fellow citizens of Cooke County now revealed toward him in his bereavement, all resentment and misunderstandings growing out of the 1920 campaign were dissolved.

There were other ties that formed, almost as if by design, to draw his attention back to the old Fifth Texas District. He now became attorney for the various private toll-bridge companies which had built crossings of the Red River between Texas and Oklahoma many years previously; when these investments began to be threatened by plans of the State Highway Departments of Texas and Oklahoma to substitute free public river crossings, a series of law cases arose which took Bailey to Gainesville, Denison, Sherman, and other centers in the area where he had first settled in Texas and where he had won his first triumphs. This litigation would drag out for several years, and in the midst of a legal battle over one bridge, that owned by a group of Denison citizens, his voice would be stilled forever.

§

As the presidential year of 1928 came into place, Texans were again bestirring themselves in national politics. Federal prohibition was now eight years old, and throughout large sections of the North and East, the effort to abolish the liquor traffic on a nation-wide scale had raised the most serious doubts of its effectiveness. In the Eastern wing of the party there was a pronounced reaction against the Eighteenth Amendment; sentiment was again swinging back to the views of men like Bailey, Reed of Missouri, Ritchie of Maryland, and the highly popular and perennial Governor of New York, Alfred E. Smith. Texas, however, and the South in general, still stood valiantly behind the opinion that the law worked with reason-

able satisfaction. The young Governor at Austin assumed the leadership of the dry forces in the State, and with the backing of Tom Love and others who were thought to speak for a majority of Democrats, prepared to hold the State in line for righteousness and God as represented by the Federal amendment. That year Texas in general and the city of Houston in particular would be host to a Democratic national convention. The pre-convention talk over the country at first heartened Bailey; after years of exhorting, almost alone in Texas, he saw his views on the historic position of his party gaining renewed credence among many of the younger leaders of Democracy. Although he was now sixty-five years old, his spirits and his strength returned with the approach of the political battle. Late in 1927 he had been married to Mrs. Prudence Rosengren of Austin, the widow of one of his oldest and most trusted friends of former years. His home life once more established, basking in this later happiness, he began to take an even greater part in the affairs of his fellow citizens. It was noted that his growing public appearances drew larger crowds and more enthusiastic responses than in many years; the prophet once more was being accorded much honor in his own country. There seemed to be a weakening of the ardor of the extreme dries; certain of their leaders were admitting, if only to themselves, that the 1928 standard bearer of the party might at least have wet inclinations. But an old and less amenable dragon was suddenly revived in Texas and throughout the South as the convention year opened: religious intolerance. It so happened that Al Smith, the most able as well as the most available candidate, was a member of the Roman Catholic Church. By devious means this fact was used widely against his candidacy in the months preceding the Houston Convention. Early in February, Bailey was roused by this kind of fight on Smith. So violently

did he react to the whispering campaign, in which an underground tunnel from the Vatican and the possibility of the Pope taking up residence in the White House figured, that Bailey declared it "to be the duty of the Democratic party to nominate Alfred E. Smith"; perhaps that was the only way to stamp out such bigotry and nonsense forever.'

"Earlier in the year I favored the nomination of Governor Ritchie of Maryland or Senator Reed of Missouri," he said, "but because of the recent attack on Smith I feel his nomination is now necessary."

The Republicans met first, holding their convention in Kansas City where Herbert Hoover was named to head the ticket. Bailey journeyed to Houston to witness, as a bystander, his last national convention. Moody, Love, and others spoke officially for Texas, although just what no one knew very clearly. The former junior Senator from Texas had no direct part in the deliberations; the man who had been undisputed dictator of the State party, and one of the most determining personalities in the affairs of the national party for many years, now looked on much as a shade out of the dead past. Absent were most of his generation, gone were many of his more powerful allies and antagonists: Bryan, Watterson, Clark, Wilson. It was largely among the spectators, more especially those with an historical sense, that the figure from another age, still impressive in the Prince Albert coat and the large statesman's hat, caught and held attention. Bailey's personal preference was for Senator Reed; but when the convention ended, he felt it had done its duty in nominating Smith. The platform was a botched job, to be sure, notably in its confused surrender to Republican tariff doctrines, but maybe it would hold together through the campaign around the strength of the candidate.

' Statement, *Dallas News*, February 4, 1928.

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The outcome in Texas in the general election was taken for granted in the early part of the summer; the Democratic nominee would carry the State as usual. But as the hot months wore on it was noted by the shrewder observers that Texas was veering, at long last, toward the column of doubtful States. The Republican leaders were playing a shrewd and quiet game. Already there was talk of repeating the party pledge violations that had been urged in 1924, although it was Democrats and not Republicans who were urging this attack on conscience. As in the Butte campaign, many Democratic leaders were openly advocating support of a Republican nominee, Herbert Hoover. Ministers left their pulpits, presiding elders widened their circuits, and certain denominational college heads took to the political stump. By August, Bailey became convinced that the drift had assumed serious proportions; he went, therefore, into the field in an attempt to counteract the influence and appeals of the brethren in broadcloth. Already the prospective Democratic bolters were glorying in the title of Hoover Democrats, and the term made Bailey liken them to white blackbirds.

"If you don't like the Democratic party you can join the Republican party," he exclaimed in final desperation, "since this is a free country. But don't call yourselves Hoover Democrats. . . . If the Republican party can elect Hoover this time, I recommend that they nominate the Prince of Wales next time, for Hoover has lived in England longer than the heir to the British throne." \*

The result, however, was more disastrous than even Bailey, in his heart of hearts, could have imagined. For even in his most depressed moments he never actually believed it possible for Texas to go Republican as it did in the November general election. And with Texas also went North Carolina, Tennessee,

\* Speech, Plano, Texas, August 16, 1928; *Dallas News*, August 17.

and Virginia itself. Small wonder that undergraduates at Charlottesville draped the statue of Mr. Jefferson on their campus in darkest mourning the day after, nor was their action deprecated in the slightest by a former student in Texas.

## §

Bailey had begun his political career back in Mississippi by taking part in a local election; in retrospect it would seem fitting that his last campaign was also a local one. One of his old Swiss Guard, J. Waddy Tate, asked his fellow citizens in the early spring of 1929 to elect him Mayor of Dallas. Bailey promptly joined in furthering the ambition of Tate. Although the candidate used methods designed more to amuse than to edify the electorate, a conviction grew that beneath the clowning and buffoonery there were sound common sense and honesty; no one contributed more to this impression than Bailey, who spoke to the voters in behalf of Tate. He assured them that so long as competency and honesty remain the cardinal requisites of a good officer of government, so long would Tate make them a good mayor. Bailey spoke at the final rally for Tate at the city hall auditorium toward the end of March; here he received such a demonstration of approval and applause as must have brought back memories of the days when he was the candidate and when his own election was the objective; as indeed, it seemed even then, for the crowd forgot the central figure of the meeting for a time, insisting that Bailey continue speaking well beyond the allotted time. When he sat down, however, it was noted by a few that the former Senator looked old and very tired; perhaps it was the light on the stage, but the animation in the face and eyes seemed to be gone. Then the meeting concluded in a blare of noise, the audience began piling onto the stage, and at close hand the vague warning in Bailey's face had disappeared. A few days later Tate was elected at the

polls, gaining an office which, as Bailey declared, "means more to him than the Presidency would to me."

§

Early in April, the legal dispute involving the toll bridge near Denison reached one of those numerous climaxes which mark the course of most litigation. Several months before the Secretary of War at Washington had ordered the bridge company to make a substantial reduction of its tolls on all traffic passing between Texas and Oklahoma. Bailey had secured a temporary injunction in the Supreme Court of the District of Columbia restraining the War Department head from enforcing his order. The two State Highway Departments had become determined in the meantime, however, to bring the bridge company to terms, and a representative of the Attorney-General of Texas started a new line of action. Appearing in the Fifteenth District Court at Sherman in the week of April 10, this assistant attorney-general asked for an injunction to restrain the bridge company, a Texas corporation, from collecting a higher toll than ordered by the Secretary of War. The former Senator and his son, J. W. Bailey, Jr., were engaged all week in the trial of a case at Tulsa, but Rice Maxey of Sherman, associated in the case, persuaded the Texas judge to delay the hearing on the application for the injunction until Saturday, April 13; that was the first day on which Bailey could possibly reach the Grayson County courthouse. It was a taxing overnight trip that brought him to Sherman early Saturday morning. His son was delayed a few hours in Oklahoma, but would reach there by early afternoon.

The presence of the former Senator in town attracted a large crowd to the courthouse. It was market day and many of his old supporters from the country were able therefore to take advantage of this opportunity to see and hear their old idol. When Bailey rose to advance his motion that, in view of all the



circumstances, including the action of the Federal court at Washington, the case should be transferred to Federal jurisdiction, "he appeared animated and addressed the court in forceful manner." \* Before he got into the middle of his argument, however, the court ordered a brief recess. Now at ease and surrounded by a large crowd, Bailey fell into a discussion of national politics, repeating his views on a number of public questions. Some one referred to the speech which he had made in February to the Jefferson League at Fort Worth; it had been, he thought, a perfect summary of the creed and rôle of the Democratic party in the life of the country; it had also been a call to the younger generation of Texans and Americans to enlist under the banner of the Democratic party.

Yes, Bailey responded, there was no better time in which to start rebuilding the Democratic party than in the present hour of defeat in State and nation. As he had said to the State Senate only a month or so earlier, the party should prepare at once to win in 1932, provided the party was determined to stand not upon expediency but upon the principles that had given it its strength and victories since Mr. Jefferson founded it. And no triumph or defeat, he thought, could change the "immutable principles" of free government; there were, he added, thousands of young and capable men who, if they could be brought to understand that the basic principles of the Democratic party were identical with those of free government, would enlist under the party banner, because "as surely as God lives and rules this universe, to abandon the basic principles of the Democratic party is to forsake the cause of free government in this land.

"And it is a war for redemption of principles in which we all must enlist. I have been enlisted in the war for forty years, and I have never faltered, although I have been defeated. I am enlisted not only for this immediate war, but I am enlisted to

\* *Dallas News*, April 14, 1929.

the very edge of the grave. . . . I am trying to do what little there is left in me to do for my country, and for the party which honored me in my youth and made me all I ever was among my people. A lifetime of sacrificing labor will not be able to pay that debt, but I intend to keep on trying so long as I have strength to speak." <sup>10</sup>

The recess concluded as the court once more took the bench. Bailey resumed his argument; although he was trying a legal case, there was no perceptible break in the line of his thought; the immediate decision of the court should, he felt, be based on that same bedrock doctrine of the Democratic party, that of the dual sovereignty of the American system of government. He reminded that in creating the Federal compact of the Constitution each contracting State, while reserving complete authority to arbitrate and control its own affairs, had at the same time conferred specific powers upon the central government, and among these conferred powers were those to regulate interstate commerce. The matter now before the court, he believed, lay not within the province of a court of either Texas or Oklahoma, but within the jurisdiction of a court of the United States. As he concluded his elaboration of this thesis, digressing somewhat to give a well-rounded view of all the corollaries of the doctrine of States' Rights, the court interrupted to remark, "Senator, your remarks have a familiar sound to those of us in Grayson County who recall that forty years ago you voiced those same views among us."

"Yes, your honor," replied Bailey. "Those were my views then, and they are my views today."

### §

They were also his last words. As he took his seat, counsel for the State of Texas prepared to speak. Some one noticed that

<sup>10</sup> Repeated from Forth Worth speech, February 26, 1929.

a sheaf of notes had slipped from Bailey's hand to the floor; then his body slumped to one side of the chair. A physician was sent for, and a few minutes after the collapse Dr. A. M. McElhannon arrived in the courtroom. The prostrate form had been laid on a counsel table where first aid had been attempted. Death had come, however, "virtually instantaneously," for the physician found that the heart had suddenly ceased to beat even before medical attention could be given.

Two days later a funeral train, bearing the body and accompanied by as distinguished representatives of private and official life as Texas could muster, moved from Dallas to Gainesville; short halts were made at various stations along the route in the old Fifth Texas District, and hundreds stood on station platforms with bared heads. The services at the grave were classically simple: a brief eulogy by former Chief Justice Nelson Phillips of the Texas Supreme Court, a song, a prayer, and then the friends and the family turned away, facing once more the land of the living.



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A VERITABLE forest of literature has sprung up covering the last half century of American politics. The listing below is of course just a path through that forest, the blazings of one personal journey which include, perhaps, some false leads. I have chosen, however, to let stand the markings to some of these bootless but often curious bypaths, along with the indications of the main routes.

One of the more rewarding sources has been a storehouse of information not yet generally available to the public. This is the collection of Senator Bailey's private papers, unedited, which fills seven or eight strong boxes and includes 30,000 or more items ranging from receipted bills to certain autograph letters of great historical value. His vast correspondence, particularly during the latter half of his life, is amply represented in this collection. Such a day by day record is the most revealing autobiography which a public man can leave. These papers alone, all-inclusive as they are, were assembled apparently with a complete and almost detached candor, and they prompt the confident assertion that Senator Bailey would have wished the story of his life to rest upon the whole truth and nothing but the truth.

A casual glance at the bibliography—and at the footnotes in the text—will indicate the heavy use which has been made of the files of contemporary newspapers, more especially of the *Dallas News*. For almost half a century the *News* has maintained authoritative bureaus of its own both at Washington and at Austin. Its staff correspondents have always been men of the highest probity and often have taken distinguished rank as

journalists. It has seemed best to identify the writers of the more significant reports and, therefore, references are made to such individuals in the footnotes. Particularly must acknowledgement be made of the copious extracts from the staff correspondence of the late Colonel William Sterett. Typical newspaper veteran though he was, Colonel Sterett had yet the natural inclinations of an eighteenth-century diarist, and he managed even in his dispatches to a modern newspaper to give free rein to his penchant for racy and often salty anecdote and description. Where his and other reports cover matters of accepted history I have not felt it necessary to supplement with citations from standard historical writings. The critical student does not need to be directed to such familiar sources, while the general reader, perhaps, will get a better picture of the relationship of the central figure to the events and temper of his times by accounts of eye-witnesses who were Senator Bailey's contemporaries and fellow Texans.

The reader may be inclined to raise an eyebrow or two at the frequency with which it has been thought worth while to refer to the Congressional Record. It is all too true that the Record has the reputation of being dull and humorless reading. This, surely, is one of the most undeserved of reputations. To one investigator at least it has proved to be a Permian bed richly veined with the artifacts of yesterday. Even after making allowance for the stupid custom of printing many speeches in it that were never delivered, still it seems to me that the joke is on its critics, for only those lacking in imagination or humor could be utterly bored by its pages.

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