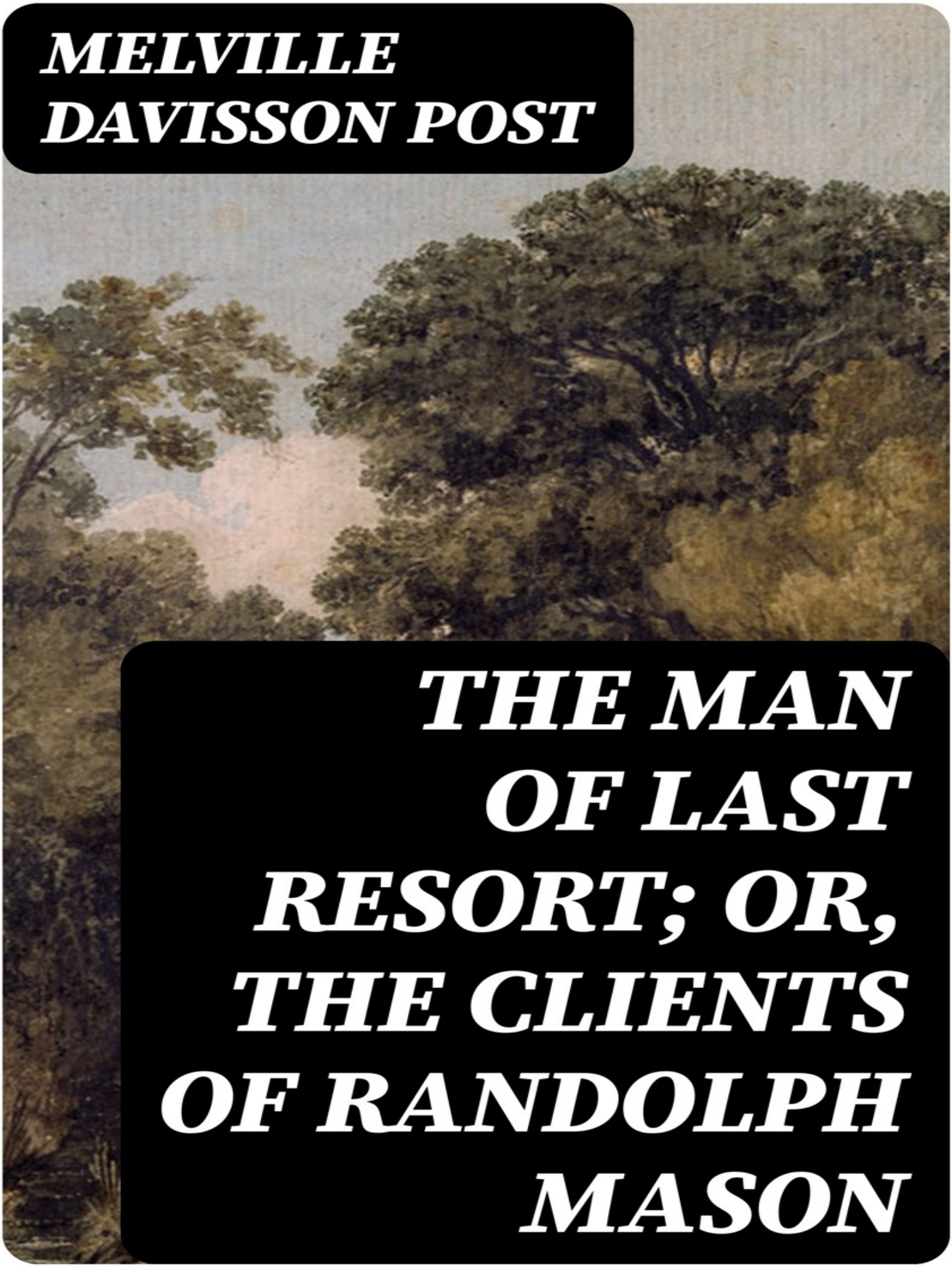

MELVILLE DAVISSON POST

THE MAN OF LAST RESORT; OR, THE CLIENTS OF RANDOLPH MASON

Melville Davisson Post

The Man of Last Resort; Or, The Clients of Randolph Mason

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PREFACE

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IN this *fin-de-sîècle* time, society has grown liberal, it is said, and yet he who thrusts a lever under sage customs, or he who points out the vice of institutions long established, may deem himself happy if he be permitted to strip against the duellist rather than the mob. Even if one come new into the courts of the *literati* with a cloak dyed a different hue from his fellows, he will scarcely have passed the doorway ere the taunting challenge, “Do you fight, my lord?”

The author, in a previous volume entitled *The Strange Schemes of Randolph Mason*, pointed out certain defects in the criminal law, and demonstrated how the skilful rogue could commit not a few of the higher crimes in such a manner as to render the law powerless to punish him. The suggestion was, it seems, considered startling and the volume has provoked large discussion. A few gentlemen of no inconsiderable legal learning, and certain others to be classified as moral reformers, contended that the book must

be dangerous because it explained with great detail how one could murder or steal and escape punishment. If the laws were to be improved, they said, “would it not be more wisely done by influencing a few political leaders?”

While such a criticism does not come from any considerable number of authorities, it has been honestly made and is entitled to consideration.

The vice of it lies, it seems to me, in a failure to grasp the actual nature of our institutions. It is a maxim of our system that the law making power of the state rests in the first instance with the people of the state. This power, for the purpose of convenience, is delegated to certain selected persons who meet together in order to put into effect the will of the people.

The so-called law-makers are therefore not law-makers at all, in the sense of being originators of the law; they are rather agents who come up from their respective districts under instructions. Such agents are simply temporary representatives of the citizens of their respective districts, directly responsible to them and charged with no duty other than that of putting their will into effect. The agent or delegate should therefore approach very conservatively any matter upon which the will of his constituency has not been satisfactorily determined. It is, then, apparent that the influence which makes or which alters the law is a force exerted from without. No change in the law can be properly or safely brought about except through the pressure of public sentiment. The need for the law must be first felt by the people and the demand for it made before the legislator is warranted in acting. The representative would otherwise

become a presumptive usurper, afflicting the people with statutes for which there was no public demand; and such laws, so improperly obtained, would be without the support of public sentiment and would be liable to repeal.

Hence it is entirely clear that if the existing law prove to be unjust or defective, the people must be brought to see and appreciate such injustice or inadequacy and to demand the requisite modification.

This contention can, as it seems to me, not be gainsaid. It is respectfully urged that no other method of securing wise changes in the law can be properly pursued under democratic institutions. To hold otherwise is to take issue with the wisdom of democracy itself, and with so rash a champion the writer has no spear to break. Indeed, he makes this explanation with immense unwillingness, as he feels that he should not be required to defend a truth so evident. It is like demonstrating gravely that the earth is round and that sun light is an energy.

Yet he is advised that attention should be called to this matter, lest the thoughtless condemn upon a hearing *ex-parte*. Indeed, even after the punishment of *la peine forte et dure* is gone out these many hundred years, the good citizen will hardly hold that one guiltless who stands dumb while hidden evils assail. If men about their affairs were passing to and fro across a great bridge, and one should discover that certain planks in its flooring were defective, would he do ill if he pointed them out to his fellows? If men labored in the shops and traded in the market confident in the security of their city's wall, and one should perceive that the wall was honeycombed with holes, could he stand dumb

and escape the stigma of being a traitor? The law makes little difference in the degree of moral turpitude between the *suppressio veri* and the *suggestio falsi*. Both are grievous wrongs. The duty of the individual to the state is imperative. He cannot evade it and continue to regard himself as a worthy citizen.

Is there not in all this criticism a faint suggestion of the men who “darken counsel by words without knowledge”?

Lycurgus taught the laws to the people, Solon taught the laws to the people. The Roman law provided for a final appeal from the consul to the people, and the very essence of republican institutions lies, as has been said, in a recognition of the people as the source of the law-making power. If the law offers imperfect security and is capable of revision, the people must be taught in order that they may revise it. If it offers insufficient security and is incapable of revision, then the people must be taught in order that they may protect themselves. This conclusion is irresistible. To counsel otherwise is to share in the odium of that short-sighted ambassador who urged upon Pericles the wisdom of reversing the tablet upon which the law was written in order that the people might not read the decree.

Surely, then, he who points out the vices of the law to the people cannot be said to do evil, unless the law of the land is to be made by a narrow patriciate sitting, like the Areopagus of ancient Athens, with closed doors.

That yesterday in which the enemies of society plied their craft by means of the jimmy and the dark lantern is now almost entirely past. The master rogue has discovered, with immense satisfaction, that the labor of others may be

enjoyed, and the results of their labor seized and appropriated to his uses, without thrusting himself within the control of criminal tribunals.

Wise magistrates, laboring for the welfare of the race, have been pleased to write down what should be done and what should not be done, and have called it “law.” The citizen, having no time to inquire, has gone about his trade under the impression that these rules were offering ample protection to his person and his property. But the law, being of human device, is imperfect, and in this fag end of the nineteenth century, the evil genius thrusts through and despoils the citizen, and the robbery is all the more easy because the victim sleeps in a consciousness of perfect security.

The writer has undertaken to point out a few of the more evident inadequacies of the law and a few of the simpler methods for evasion that are utilized by the skilful villain. It must be borne in mind, however, that more gigantic and more intricate methods for evading the law and for appropriating the property of the citizen are available. The unwritten records of business ventures and the reports of courts are crowded with the record of huge schemes having for their ultimate purpose the robbery of the citizen. Some of these have been successful and some have failed. Enough have brought great fortunes to their daring perpetrators to appal that one who looks on with the welfare of human society at heart.

The reader must bear in mind that the law herein dealt with is the law as it is administered in the legal forms of his country, in no degree changed and in no degree colored by

the imagination of the author. Every legal statement represents an established principle, thoroughly analyzed by the courts of last resort. There can be no question as to the probable truth of these legal conclusions. They are as certainly established as it is possible for the decisions of courts to establish any principle of law.

The reader is reminded that the schemes of skilled plotters, resorted to for the purpose of defeating the spirit of the law, are, for the most part, too elaborate and too intricate to be made the subject of popular discussion. An attempt to explain to the but half-interested layman plots of this character would be as vain as an attempt to demonstrate an abstract problem in analytical mechanics. The knaves who have been pleased to devote their energies and their capacities to problems of this nature are experts learned and capable, and against these the average man of affairs can defend himself but poorly. He may be warned, however, and the author will have accomplished his purpose if he succeeds in identifying the black flag of such pirate crafts.

In the present volume he has deemed it wise to continue to utilize as his central figure the lawyer, Randolph Mason,—a rather mysterious legal misanthrope, having no sense of moral obligation, but learned in the law, who by virtue of the strange tilt of his mind is pleased to strive with the difficulties of his clients as though they were mere problems involving no matter of right or equity or common justice.

This emotionless counsellor has already been introduced to the public. He has been described as a man in the middle forties. “Tall and reasonably broad across the shoulders;

muscular, without being either stout or lean.” His hair was thin and of a brown color, with erratic streaks of gray. His forehead was broad and high and of a faint reddish color.

His eyes were restless, inky black, and not over large. The nose was big and muscular and bowed. The eyebrows were black and heavy, almost bushy. There were heavy furrows, running from the nose downward and outward to the comers of the mouth. The mouth was straight, and the jaw was heavy and square.

“Looking at the face of Randolph Mason from above, the expression in repose was crafty and cynical; viewed from below upward, it was savage and vindictive, almost brutal; while from the front, if looked squarely in the face, the stranger was fascinated by the animation of the man. and at once concluded that his expression was at the same time sneering and fearless. He was evidently of Southern extraction and a man of unusual power.”

This counsellor, keen, powerful, and yet devoid of any sense of moral obligation, is possessed of this one idea—-that the difficulties of men are problems and that he can solve them; that the law, being of human origin, can be evaded; that its servants, being but men like the others, may be balked, and thwarted and baffled in their efforts at a proper administration of this law.

It is the age of the able rogue, and, in examining his rascally schemes, the writer has finally come to believe that the ancient maxim, which declares that the law will always find a remedy for a wrong, is, in this present time of hasty legislation, not to be accepted as trustworthy.

(See the learned opinion of Mr. Justice Matthews in the case of Irwin vs. Williar, no U. S. Reports, 499; the case of Waugh vs. Beck, 114 Pa. State, 422; also Williamson vs. Baley, 78 Mo., 636; 15 B. Monroe, Ky. Reports, 138. See also, in Virginia, the case of Machir vs. Moore, 2 Grat., 258.)

THE GOVERNOR'S MACHINE

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THERE was something on the Governor's mind, and when this condition obtained, interesting events had usually followed in the far Southwest. This highly mystic mental status had preceded the efforts of

a Federal Court to compel him to act under a mandamus, and the result was history. It had preceded a memorable conflict between the legislature at large and His Excellency, the Governor, also at large, and immediately thereafter a certain statute had sprung into existence prohibiting the massing of State troops within one hundred miles of the Capitol during the sitting of the Solons of the Commonwealth; but it was a law after the fact. It had preceded also the mercurial efforts of the so-called patriotic orders to impeach the Executive for malfeasance, misfeasance, and nonfeasance,—an effort that had brought to its instigators only a lurid and inglorious rout.

The Governor was standing at the eastern window of his private office looking out at the monotonous brown tablelands stretching away to the foothills of the blue mountains that marked the outer limits of his jurisdiction. He was a young man, this Governor, with the firm, straight figure of a soldier and the gracious bearing of important ancestry. His eyes were brown, and his hair and Van Dyke beard were brown also—all indicative, say the sages, of precisely what the Governor was not. He was perfectly groomed. Every morning when he walked down to the State-house he was the marvel and the fastidious spotless idol of the far Southwest.

One would have imagined that this handsome fellow had just stepped out from a smart New York club, could he have forgotten that such an institution was almost a continent to eastward. The Governor had maintained that it was quite possible to live as a gentleman should wherever Providence had provided Chinamen and water, and that the matter was

not entirely hopeless if the Chinamen were not to be had, so the water remained.

It was true indeed that the Executive had maintained his customs with no little pain against the divers protests of gods and men, ofttimes wrought in silence, but not infrequently urged fiercely in the open. But the Governor was not one with whom meddling folk could trifle and preserve the peace. This fact certain bad men had learned to their hurt west of the Gila, and divers evil-disposed persons regretted and were buried, and regretted and remembered south of the Pecos. So that in time this matter came to be regarded as a peculiarity, and passed into common respect as is the way with the peculiarities of those expeditious spirits who shoot first and explain afterwards.

The Governor was aroused from his reverie by his private secretary who came in at this moment from the outer office.

“Governor,” said the young man, “there is a strike at the Big Injin.”

“Well,” replied the Executive, “telegraph the sheriff.”

“But,” said the Secretary, “the sheriff has just telegraphed us.”

“Then,” continued the Executive, “send a courier to Colonel Shiraf.”

“But Colonel Shiraf is out on the Ten Mile.”

“In that case,” said the Governor, “you must go up to the mines, and if the dignity of the Commonwealth needs to be maintained, you will maintain it, Dave. You should find some troops at the post, some herders at the cattle ranch, and a very large proportion of the State Guards, by this time quite

drunk, at a horse fair in Garfield County. If they are required, notify me.”

As the secretary turned to leave the room, the Governor called him back. “Dave, my boy,” he said, “peace in this Commonwealth is a sacred thing—a superlatively sacred thing, so sacred that we are going to have it if thereby the word 'census' becomes a meaningless term; and remember, my boy, that the State is very expeditious.”

The secretary went out and closed the door behind him, while His Excellency, Alfred Capland Randal, forgetting the report, turned back to the window. The air from the great brown plain came up dry and hot; above the blue mountains the sun looked like a splotch of bloody red, and over it all brooded the monotonous—the almost hopeless silence of the far Southwest.

The something on the Governor's mind was a something of grave import, for which he could evidently find no solution, and presently he began to pace the length of his private office with long strides, and with his hands thrust deep into his pockets.

Suddenly the door opened and a Chinaman entered with a telegram. The Governor looked up sharply, and taking the envelope tore it open with evident unconcern. When his eyes ran over the message he drew in a deep breath, and, seating himself at a table, spread out the paper before him. This was the advent of the unexpected, for which Mr. Randal was not quite prepared, and this his manner exhibited to such a degree that the stolid Celestial wondered vaguely what was up with the big foreign devil.

“Our train stops at El Paso,” ran the telegram, “you will come up, won't you?—M. L.”

The Governor stroked his Van Dyke beard, and the fine lines came out on his face. “Of all times,” he muttered. Then he turned to the Chinaman. “Have my overcoat at the depot at six. I am going to El Paso, and shall not return until late.”

The Chinaman vanished, and the Executive crushed the telegram in his hands, thrust it into his pocket, and resumed his march up and down the private office.

This Governor was the crowning achievement of a machine. He was the elder son of an ancient family in Massachusetts, and had been reared and educated in an atmosphere of culture. It had been the intention of his family to have him succeed his father with the practice of the law, but the plans of men are subject to innumerable perils, and it soon developed that young Mr. Randal was not at all adapted to the duties of a barrister. Indeed it was very early apparent that nature had intended this man for the precarious vagaries of a public life. He was magnetic, generous, with a splendid presence, and the careless, speculative spirit of a gambler. In truth, Alfred Capland Randal was a politician *per se*. While in college he had been a restless element, injecting the principles of practical policy into everything he touched, from the Greek-letter fraternities to the examinations in Tacitus, and all with such reckless, jovial abandon that divers sage members of the faculty speculated with much wonder as to which particular penal institution would be his ultimate domicile.

At times the elder Randal had been summoned to attend these grave sittings of the faculty, and straightway

thereafter the rigid New England lawyer had lectured his son at great length and with bitter invective, to which the young man attended in a fashion that was amiable, and immediately disregarded in a fashion that was equally amiable. Thus in the Puritanic bosom of the father the conclusion grew and fattened and matured that the eldest scion of his house was an entirely worthless scapegrace, while the son was quite as certain that his father was a very sincere, but an entirely misguided old gentleman.

The result of these divergent opinions was that on a certain June evening young Randal sat down upon a bench in the park of his father's country place with the express purpose of planning his career. Out of the confidence of youth he determined upon two ultimate results. One was, of course, wealth, and the other was an elaborate and entirely proper wedding ceremony with a certain Miss Marion Lanmar. This young lady, Randal had met at a football game at Harvard, and afterward in New York, where she resided with her aunt, Mrs. Hester Beaufort.

The gigantic confidence of youth is certainly a matter of sublime wonder to the gods. One at all familiar with the ways of things would have at once pronounced both results quite impossible to the improvident young man. But from the standpoint of exuberant youth there seemed to be no important obstacles except the possible delay, and this was not very material, as the world was young and these were things to be had in the farther future.

For the present, Randal determined to organize a political machine and transport it into one of the remote Western States. The East offered no theatre for his talents; it was

closely organized; its political machinery was too strong for him to hope to oppose it. He would be crushed out in the first skirmish.

Nor could he hope for early recognition by allying himself to any one of the established organizations. These were crowded with deserving men, and besides, he had no intention of serving as a political apprentice. He had ability, he believed, as a political strategist, and he proposed to operate free and untrammelled in a big, breezy arena.

Having determined upon a course, young Randal at once proceeded to put it into operation. He held a council of war at the Plaza on Fifth Avenue with two of his college associates, a stranded gambler, called for convenience “Billy the Plunger,” and an old Virginia gentleman named Major Culverson. The council sat in secret session for three days, and the result was that the machine moved out into the Commonwealth of Idaho, and began to operate. But the manners and customs of the West were varied and mystic, and with the following summer the machine, badly shaken, moved over into Nevada. Here, at Tulasco, on the Central Pacific Railroad, the first college man deserted and, helped by his father, returned with great penitence to the civilized East.

The machine passed on across the Humbolt River and proceeded to attempt to shape the political destinies of Nevada. But disaster was following in its wake, and, after an active and turbulent but quite unprofitable career of a few months, it moved southward, battered and beaten, but unconquered.

On the night of the third of October, the machine tramped into Hackberry, on the Southern Pacific, and while men slept, the second college man, concealing himself in a freight car, set out for the Atlantic coast, cursing with lurid language all that part of the continent lying west of the Mississippi.

On the following morning the machine held its second great council, but this time it sat in desperate conclave above the Cow-Punchers' Saloon in the town of Hackberry, facing a condition and not a theory. But three members remained—Randal, the dauntiess Culver-son, and Billy the Plunger.

The gambler was for organizing a faro bank, and working the towns down the Gila, but as the bank had no funds, and the death rate usually attendant upon such ventures in this primitive country was enormous, his plan was held impracticable, and at four o'clock in the afternoon he ceased to urge the wisdom of his scheme, and after having announced with great solemnity that he was game to any limit the gang wanted, he lapsed into the capacity of a spectator.

The Major advised moving south into Mexico, but as he seemed to have no definite idea of what should be done when Mexico was reached, and it finally appearing that moving south was simply a fad with Culverson, the plan was likewise abandoned.

Young Randal, fired by his unabated purpose, urged the wisdom of trying a round with the political fortunes of Arizona, but it was demonstrated that he was considering a major venture, having for its object huge honor, while at