THE ITALIAN INFLUENCE
ON THE
AMERICAN CONSTITUTION

A Compendium of Materials Regarding the Influence of
Cesare Beccaria, Gaetano Filangieri and Filippo Mazzei
In Italian and American Law

By
Claudio Pezzi, Francesca Carraro, Giulia Serra,
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A Compendium of Materials Regarding the Influence of Cesare Beccaria, Gaetano Filangieri and Filippo Mazzei In Italian and American Law

This compendium has been assembled by Italian and American lawyers consisting of Claudio Pezzi, Francesca Carraro, Giulia Serra, Elena Spolidoro and Charles A. De Monaco. This compendium has six parts. Part One includes an imaginary dialogue between three enlightened thinkers in Italy, commenting on Italian and European news. The characters are Cesare Beccaria, Gaetano Filangieri and Filippo Mazzei. Part Two is an English translation of the imaginary dialogue and a brief introduction of the hypothetical dialogue. Part Three is a brief summary of references to Cesare Beccaria, Gaetano Filangieri and Filippo Mazzei by the United States Supreme Court. Part Four discusses a judicial decision authored by a District Judge of the United States District Court for the Western District of Pennsylvania. Part Five discusses the U.S. Sentencing Guidelines, importance of proportionality in sentencing and related issues. Part Six is an historical overview of references to Cesare Beccaria, Gaetano Filangieri and Filippo Mazzei in the Congressional record. Some of these references predate the Congressional Record and go back to when Congress's journal was called the *Annals of Congress* and then the *Congressional Globe*.

BIOGRAPHIES

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Graduated at Bologna University (1986); admitted to bar (1990) and Supreme Courts (2002). LLM from Loyola Law School, Los Angeles, in American Law and International Legal Practice (2007). Founder and managing partner of Pezzi & Associati, a Law Firm based in Bologna (Italy), skilled in International Law. Claudio is the President of ILMA – International Law Meeting Association (www.il-ma.org). Member of the International Commission of the Bologna Bar Association (Consiglio dell'Ordine degli Avvocati).

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Graduated in 2015 in Law from Bocconi University, when she joined Studio Avvocato Spolidoro. During her training, Elena worked together with her uncle, Prof. Avv. Marco S. Spolidoro (Università Cattolica, Milan) at high-level litigation proceedings in the field of Corporate law and Intellectual Property. She has also gained experience in arbitration proceedings and in counseling for small M&A transactions. Elena has authored two extensive case notes commenting decisions of Italian Courts on Banca, Borsa e Titoli di credito (Italian law journal with special emphasis on Corporate and Banking law). In 2017, she visited Heidelberg University (Germany) for research purposes.

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[1] I would like to thank Knowledge Management of Fox Rothschild LLP for the excellent research conducted for this project.

PART ONE

DIALOGO IMMAGINARIO FRA TRE ILLUMINATI PENSATORI ITALIANI, A COMMENTO DELL'ATTUALITÀ ITALIANA ED EUROPEA

Una breve introduzione.

Il lavoro presenta un ipotetico dialogo tra tre personaggi storici italiani dell'epoca illuminista, i cui lavori hanno avuto un peso rilevante sulle teorie penalistiche (e non solo) Italiane, Europee ed Americane. Lo scambio di battute ha ad oggetto alcune questioni di attualità, relativamente alle quali i tre studiosi si confrontano, ben mostrando la delicatezza delle questioni e, ciò nonostante, senza tacere critiche e perplessità.

In particolare, sono stati selezionati tre temi che – seppur non direttamente – presentano dei collegamenti con il pensiero dei tre personaggi storici. Ciò è stato possibile grazie alla sorprendente attualità delle teorie che, a suo tempo, furono da loro espresse e divulgate e che sono state oggetto di studio da parte degli autori del presente dialogo.

1. In primo luogo si è trattato il tema della tortura, questione già ampiamente discussa dagli autori dell'illuminismo. Nonostante la ratifica della Convenzione ONU contro la Tortura (1989) e la previsione della Carta Europea dei Diritti dell'Uomo (proclamata per la prima volta nel 2000) che prevede il divieto del suo utilizzo, la tortura quale reato ad hoc è stato introdotto in Italia solo recentemente, nel Luglio 2017, sotto la pressione delle organizzazioni internazionali e dopo che il legislatore italiano era già stato più volte ripreso dalla Corte Europea. Il percorso di formazione della legge è stato molto lungo e complesso, data la necessità di mettere a confronto posizioni politiche molto diverse tra loro, ciascuna baluardo di principi, anche morali, di grande

delicatezza e di portata socialmente globale. Risultato quasi inevitabile, questo processo ha dato la luce ad un testo molto criticato, che sotto più di un aspetto si discosta dalla definizione della Convenzione ONU.

Prima dell'introduzione del reato di tortura così come ora ci appare, le condotte ascrivibili a tale pratica venivano punite quali violenze o minacce, qualificazione che tuttavia non permetteva di sanzionare il reale disvalore della condotta di tortura, che è invece molto più grave.

Quanto alle informazioni eventualmente ottenute con modalità ascrivibili alla tortura, già prima dell'introduzione del reato il codice di procedura penale prevedeva il divieto di utilizzare in sede di interrogatorio, "neppure con il consenso della persona interrogata, metodi o tecniche atti ad influire sulla libertà di autodeterminazione o ad alterare la capacità di ricordare e di valutare i fatti" (art. 64 c.p.p.). Le informazioni così ottenute erano, pertanto, già inutilizzabili in sede di procedimento penale.

Per quanto riguarda la condotta attualmente punita, la formulazione della legge lascia ampi spazi di discrezionalità: la circostanza che a commettere il fatto sia un "uomo di Stato" è una aggravante del reato o integra un reato autonomo? E nel caso in cui sia considerata una aggravante, può essere bilanciata dall'esistenza di alcune concomitanti circostanze attenuanti? Perché il legislatore italiano ha introdotto il requisito che si tratti di condotte "reiterate", mentre non ritiene sufficiente un singolo atto di violenza ad integrare la condotta illecita? Per dare risposta a queste domande e per valutare l'effettiva portata della norma appena introdotta dovremo, tuttavia, attendere le prime pronunce dei giudici che si troveranno ad affrontare un problema senz'altro spinoso.

2. In secondo luogo si è trattato il tema della pena di morte. La questione, molto cara agli illuministi del tempo, ha subito negli anni una profonda evoluzione. Abolita in tutta Europa, la pena di morte permane ancora in numerosi stati del mondo, compresi alcuni stati della Federazione Americana. Il dibattito in merito alla natura, all'utilità e alla compatibilità di tale pena con i diritti umani è, pertanto, ancora attuale.

3. Da ultimo è stato affrontato il tema dell'immigrazione. Questione non solo giuridica, ma anche politica. Il fenomeno dei flussi migratori ha da sempre richiesto ai governi dei Paesi maggiormente coinvolti di coniugare l'esigenza di accogliere le popolazioni straniere e di regolare la loro integrazione all'interno del proprio Paese con la necessità di contrastare l'immigrazione irregolare, che è tale non solo in termini quantitativi, ma soprattutto qualitativi (tanto con riferimento alle modalità di trasmigrazione, quanto con riferimento alla qualità della vita degli immigrati e del Paese accogliente una volta concluso l'esodo del migrante). A ciò si aggiunge il fatto che il problema dell'immigrazione è sempre più percepito da parte dell'opinione pubblica come fattore criminogeno, a maggior ragione quando si tratta di immigrazione clandestina e non coperta dalla normativa in materia di protezione internazionale. Il tema è di forte attualità in Europa ed in particolare nei paesi Europei di confine (tra cui l'Italia, tra i paesi maggiormente esposti agli sbarchi che provengono dal mare).

Il lavoro qui presentato non pretende di essere storicamente ineccepibile, né di esaurire le tematiche che avrebbero potuto essere validamente oggetto di dialogo. Ciascuna tematica, infatti, meriterebbe un esame approfondito, che, tuttavia, andrebbe ben al di là dello spazio e del tempo concessoci in questa occasione. Ciò nonostante desideravamo offrire secondo una formula inusuale – un dialogo inventato, seppur non del tutto improbabile – qualche spunto di

riflessione per favorire il dialogo fra cultura e tradizioni giuridiche che, seppur diverse, subiscono continue e reciproche contaminazioni, che oggi siamo qui a celebrare.

Dialogo immaginario fra tre illuminati pensatori Italiani, a commento dell'attualità italiana ed europea

Personaggi: Cesare Beccaria (B), Gaetano Filangeri (F), Filippo Mazzei (M)
Parti in grassetto: citazioni originali degli autori.

[*Scena: i tre pensatori italiani dell'illuminismo sono riuniti nel caffè di una città del loro Paese e commentano la lettura dei giornali quotidiani riferendosi a tre temi giuridici in particolare: la tortura, la pena di morte e i diritti connessi alle migrazioni dei popoli. Il dialogo immaginario si svolge nei giorni nostri*]

B: Rispettabilissimi amici, avete letto recentemente qualche quotidiano nazionale? A quanto pare il Parlamento Italiano ha finalmente approvato una legge che introduce il reato di tortura.

M: Tempi italiani. Avevano sottoscritto la Convenzione ONU sulla Tortura nel 1989… Ci hanno lavorato un bel po'.

F: Suvvia, 28 anni appena. E ancora dovrebbero lavorarci. Il Consiglio d'Europa [n.d.a. *organizzazione internazionale che conta 47 membri, con sede a Strasburgo, la cui Assemblea elegge i giudici della Corte Europea dei Diritti dell'Uomo, da non confondersi con l'Unione Europea*] era intervenuto ancora prima della sua approvazione per invitare il Parlamento a modificare il testo. A quanto pare il reato introdotto, così come è stato formulato, non sarebbe applicabile nemmeno ai casi di Genova del 2001. Mi verrebbe quasi da dire, compatrioti Italiani, potevate fare meglio. Molto meglio. Non è abbastanza.

B: Amico Filangieri, non sarai un po' troppo critico? Non è comunque positivo che, quantomeno, un qualche reato sia stato introdotto? D'altronde vi sono stati più casi in Italia nei

quali i giudici hanno espressamente riconosciuto dei casi di tortura e non avevano strumenti giuridici adatti per punire i colpevoli. Mi riferisco a – purtroppo – numerosi episodi rilevati nelle carceri italiane …

F: Illustrissimo Beccaria, sai bene come la penso sulla formazione delle leggi: le leggi sono buone solo quando interpretano e sviluppano, senza alterare, il diritto naturale che è giusto ed equo per natura in tutti i casi.

M: "**Tutti sappiamo che niente può essere perfetto, ogni cosa naturalmente può essere deficiente in qualche parte e tali difetti possono essere giustamente riprovati. Ma non è questo il punto. Ogni volta che ci si oppone a qualcosa la questione principale dovrebbe essere sempre se si ha qualcosa di meglio da sostituirvi. Se l'avete dovete avanzarla e la Comunità ve ne sarà grata**[2]". Questa legge, in uno stato di *civil law* in particolare, non può che essere frutto del compromesso politico. C'è ancora chi ritiene che introdurre il reato di tortura sia una limitazione dei poteri delle forze dell'ordine. Non si può sentire. Forse di meglio non si poteva fare. Forse, in questo momento. "**Peraltro, è mia opinione che fra i diritti di cui gli uomini non possono privare o spossessare i Posteri, il più importante sia quello di approvare o disapprovare le proprie Leggi**[3]".

F: Quanto alle leggi, rispettabilissimo Mazzei, è chiaro che "**ogni legge deve essere rapportata allo stato in cui si trova una nazione, distinguendo bontà assoluta delle legge e bontà relativa. Ogni legge deve essere valutata non secondo un metro di giustizia, ma di**

[2] *Instructions of the Freeholders of Albernarle Country to their Delegates in Congress*, F. Mazzei, 1776
[3] *Instructions of the Freeholders of Albernarle Country to their Delegates in Congress*, F. Mazzei, 1776

opportunità, convenienza e appropriatezza[4]". Quanto alla tortura ne abbiamo discusso più volte. **"[…] la tortura è la prova della robustezza del corpo, non della verità**[5]". Immaginiamo che il magistrato abbia il diritto di ottenere la confessione dall'accusato. Se è vero che a ogni diritto corrisponde un dovere, ciò vuol dire che al diritto del magistrato corrisponde il dovere dell'accusato di confessare il proprio reato e quindi di porre fine alla propria esistenza. Tuttavia questo dovere è in contrasto con la prima legge della natura che è quella che obbliga ogni uomo alla conservazione della propria esistenza. Come strumento è, quindi del tutto illogico e contro natura. Del resto, e cito il caro Hobbes, "*non vi è legge che ordini al ladro, all'omicida, di venire spontaneamente a farsi impiccare*". Se il reo non ha l'obbligo di confessare il proprio delitto, il magistrato o il pubblico ufficiale di turno, non ha neppure il diritto di estorcere la verità.

B: E mi trovi d'accordo. Il giornale che stiamo consultando riporta il testo approvato. Leggiamolo insieme l'art. 613-bis del codice penale italiano, per capire bene di cosa stiamo parlando. Vi invito a mantenere la razionalità e il metodo che ci contraddistinguono. "*Chiunque, con violenze o minacce gravi, ovvero agendo con crudeltà, cagiona acute sofferenze fisiche o un verificabile trauma psichico a una persona privata della libertà personale o affidata alla sua custodia, potestà, vigilanza, controllo, cura o assistenza, ovvero che si trovi in condizioni di minorata difesa, è punito con la pena della reclusione da quattro a dieci anni se il fatto è commesso mediante più condotte ovvero se comporta un trattamento inumano e degradante per la dignità della persona*".

M: Mh… E com'era invece la definizione della Convenzione ONU del 1984, cui si richiama il Consiglio e che poteva essere migliore?

[4] *Il Pensiero politico di Getano Filangieri*, G. Pecora, Rubettino, 2007, p.133
[5] *La scienza della legislazione,* G. Filangieri, Grimaldi & C. editori, Napoli, 2003, p. 149

B: Innanzitutto prevede che si tratti di un reato proprio. La tortura non può essere commessa da "chiunque", come previsto dalla prima parte dell'articolo del codice italiano, ma solo da "*un funzionario pubblico o da qualsiasi altra persona che agisca a titolo ufficiale, o sotto sua istigazione, oppure con il suo consenso espresso o tacito*". E poi la convenzione ONU prevede una definizione di tortura comprensiva di "*qualsiasi atto*" che infligga *"dolore o sofferenze acute, fisiche o psichiche, segnatamente al fine di ottenere da questa o da una terza persona informazioni o confessioni, di punirla […] di intimidirla od esercitare pressioni su di lei [..] o su una terza persona"*. Insomma, guarda più alla finalità della condotta e alle circostanze in cui viene posta in essere che non alle sue eventuali conseguenze. Mentre quella italiana, per come è formulata, rischia di non essere applicabile a molti casi. Che poi, non ci riferiamo solo alla Convenzione ONU. Infatti, quello stesso Consiglio d'Europa si è fatto promotore della Carta Europea dei Diritti dell'Uomo che all'art. 3 prevede che "*Nessuno può essere sottoposto a tortura né a pene o trattamenti inumani o degradanti*". E siamo quindi tutti d'accordo che usando la tortura come strumento per ottenere una dichiarazione, la corrispondenza di quest'ultima a verità sarebbe senz'altro dubitabile. La tortura "**è il mezzo sicuro di assolvere i robusti scellerati e di condannare i deboli innocenti! […] Ogni azione violenta confonde e fa sparire le minime differenze degli oggetti per cui si distingue talora il vero dal falso. Queste verità sono state conosciute fin dai Romani legislatori, presso i quali non trovasi usata alcuna tortura che su i soli schiavi, ai quali era tolta ogni personalità**[6]." Erano non-persone. Ma noi qui parliamo di persone e siamo secoli e secoli dopo i romani legislatori, che già avevano colto l'inutilità di tali pratiche.

[6] *Dei Delitti e delle Pene*, Beccaria, Cap. XVI

F: Caro amico, ad esser sinceri, allorché si tratta di prove e di argomenti, "**si trova nel corpo del romano diritto una ondulazione continua tra misericordia e ferocia, tra una eccessiva delicatezza nel valutare il valore delle prove, ed un tirannico ed ingiusto metodo nel ricercarle**[7]", e questi insegnamenti sono stati religiosamente ricevuti nei nostri tribunali! Aprendo il Digesto noi troviamo, nel titolo *de Probationibus*, il criterio che determina la verità nei giudizi criminali: "**Sappiano gli accusatori che il giudice deferir non può alla loro accusa, se il fatto, che essa contiene, non è appoggiato o sulla fede di testimoni idonei o sopra pubblici documenti o sopra argomenti incontrastabili e più chiari della luce. Questa regola è giusta, è chiara, è semplice è analoga ai sacri principi della civile libertà; ma funestamente i legislatori di Roma non sempre ne seguirono lo spirito, allorché si trattava di determinare con maggior precisione le idee. […] Le romane leggi, dopo aver esclusi dalla loro confidenza i servi e gli infami, ordinarono che il giudice deferir dovesse alle loro testimonianze, quando queste erano profferite trai tormenti**[8]". È cosa scandalosa vedere che i legislatori di Roma credettero che i tormenti potessero essere gli organi della verità. Noi dobbiamo a questa fatale opinione la prima origine della tortura!

M: La verità, è che pur essendo un principio universalmente riconosciuto, quello che stabilisce che per condannare un cittadino ad una pena vi sia bisogno di una certezza morale che egli abbia violata la legge, la domanda è come si debba determinare "la certezza morale". Per molti secoli il problema è stato proprio questo, applicare il principio universale alla teoria delle prove giudiziali…

[7] *La scienza della legislazione*, G. Filangieri, Grimaldi & C. editori, Napoli, 2003, p. 139
[8] *La scienza della legislazione*, G. Filangieri, Grimaldi & C. editori, Napoli, 2003, p. 139

B: Ma vi è poi un secondo aspetto, ovvero quello della tortura come modalità di punizione, come esercizio del potere di chi si sente forte rispetto a chi si trova in un stato di debolezza, di limitazione della libertà, anche legittima. Che però, poi, sconfina nell'illegittimo... Come abbiamo appena ricordato, "**un uomo non può chiamarsi reo prima della sentenza del giudice, né la società può togliergli la pubblica protezione, se non quando sia deciso ch'egli abbia violato i patti coi quali fu accordata. Qual è dunque quel diritto, se non quello della forza, che dia la podestà ad un giudice di dare una pena ad un cittadino, mentre si dubita se sia reo o innocente?**[9]"

M: Questione a me cara quella dell'uguaglianza delle persone, anche quando si trovano in condizioni oggettivamente di debolezza. Penso a quelle persone sotto pene cautelari e preventive, in attesa di essere processate... Il presupposto dovrebbe essere la pericolosità sociale, o la possibilità di inquinare le prove o il pericolo di fuga. Oltre alla presenza di "gravi indizi di colpevolezza", allo stato dei fatti[10]. Non ancora condannate in via definitiva, appunto, ma che possono essere limitate nella libertà – che sia carcere o che siano misure interdittive - anche per molto tempo, considerando i tempi dei processi italiani. Leggete qui, rispettabilissimi: secondo l'indagine ISTAT [n.d.a. Istituto Nazionale di Statistica] al 31 dicembre 2013 risultavano detenute nelle carceri italiane 62.536 persone – numero di gran lunga superiore alla capienza regolamentare, fissata a 47.709 posti. Il 61,5% dei detenuti aveva una condanna definitiva, il 36,6% era in attesa di un giudizio definitivo e l'1,9% sottoposto a misure di sicurezza[11].

[9] *Dei Delitti e delle Pene*, Beccaria, Cap. XVI
[10] Art. 275 codice procedura penale italiano
[11] Indagine ISTAT pubblicata nel marzo 2015, riferita ai dati del 2013. Qui la fonte: https://www.istat.it/it/archivio/153369

M: E pure qualche principio superiore c'è. La Costituzione Italiana del 1948 lo ha recepito. All'art. 27, se non erro, prevede che: "*L'imputato non è considerato colpevole sino alla condanna definitiva. Le pene non possono consistere in trattamenti contrari al senso di umanità e devono tendere alla rieducazione del condannato*".

B: Ah, se non fosse storicamente impossibile, questa avrei ben potuto scriverla io!

F: Qualcosa avremo pur lasciato ai posteri, esimio amico. Lo trovo peraltro un principio più che valido, anche se purtroppo la realtà attuale di alcune carceri italiane da quanto so è ben diversa. Guarda qui, è di neanche due anni fa la notizia che la Corte Europea dei Diritti dell'Uomo ha deciso il ricorso presentato da due detenuti nelle carceri italiane. Nel dicembre 2004 erano di fatto stati torturati durante la detenzione: denudati, portati in cella di isolamento senza vetri, senza materassi, lenzuola, coperte. Con il cibo razionato, sottoposti poi a calci, percosse, pugni. Insomma, la Corte di Strasburgo che vigila sul rispetto dei diritti riconosciuti dalla Convenzione Europea dei Diritti dell'Uomo da parte degli Stati aderenti alla stessa, tra cui appunto l'Italia, si è trovata a decidere questo caso, attivata dal ricorso presentato dai due detenuti. Nel 2015 in via di composizione amichevole ha proposto il pagamento da parte dell'Italia di un risarcimento di 45.000 euro per ciascun detenuto.

M: Che dire....tempi rapidi, anche in questo caso.

B: Tempi lunghi, concordo mio rispettabile amico Mazzei. La legge e la giustizia perdono inevitabilmente di efficacia. Trattamenti non degradanti e non inumani dicevamo, sbaglio?

M: La situazione delle carceri italiane è questione nota che più volte è stata portata all'attenzione della Corte Europea di Strasburgo. Il caso Torreggiani[12] ha fatto scuola. La pronuncia risale ancora al 2013. La Corte invitava l'Italia a risolvere il problema definito come "strutturale" del sovraffollamento delle carceri in quanto incompatibile con il citato art. 3 della Convenzione.

F: [*sfogliando un giornale*] Leggete qui: la magistratura di Strasburgo condanna l'Italia per il trattamento inumano e degradante (violazione dell'articolo 3 CEDU) di 7 carcerati detenuti nell'istituto penitenziario di Busto Arsizio e in quello di Piacenza. I detenuti erano rinchiusi in gruppi di 3 in celle di 9 metri quadrati, ovvero scontavano la loro condanna in uno spazio inferiore ai 3 metri quadrati, senza acqua calda e in alcuni casi privi di illuminazione sufficiente, ha denunciato la Corte, invitando l'Italia a porre rimedio alla questione entro un anno e a pagare ai sette carcerati un ammontare totale di 100 mila euro per danni morali. La Corte ha infine osservato che nella fattispecie le due carceri, in grado di accogliere non oltre 178 detenuti, nel 2010 ne ospitarono 376, toccando un picco massimo di 415 detenuti.

B: Se pena detentiva deve essere, che lo sia nei limiti di un trattamento umano e dignitoso.

F: Per l'appunto, caro amico. Citando fonte più remota, ma sempre attuale, quale il *Corpus Iuris Civilis*: "*our justice [...] does not allow to bind tightly and tie with painful chains an unhappy prisoner. It doesn't want that the depth of the jail deprives him of light. It (the justice) orders and asks that it (the jail) isn't underground or dark; (it asks) that the wretched people kept there, when night draws near, should be guided into the hallway of the jail where breathing is easier*

[12] Corte Europea Diritti dell'Uomo, sez. II, sentenza 08/01/2013

and healthier; in the end it (the justice) wants that, at sunrise, they (the people accused) can see the sky and breath the open air, warmed by the first sunlight"[13].

M: A seguito della tirata di orecchie il legislatore italiano si è adoperato in qualche modo, sempre in forme…come dire…emergenziali, per limitare i danni più che per risolvere i problemi.

B: Caro Mazzei, certo che aveva le sue ragioni Jefferson per riferirsi a te come a un "**quotidiano mal di testa**"[14]!

M: Le voci corrono, anche nei secoli … Comunque sì, miei rispettabili colleghi. L'Italia qualcosa ha fatto nell'anno 2014. Ha introdotto una legge denominata "Disposizioni urgenti in materia di rimedi risarcitori in favore dei detenuti"[15]. Un risarcimento, quindi!

F: Suvvia, non ci sono solo esperienze negative. Saranno eccezioni e non la regola, ma abbiamo anche esperienze di percorsi di studio avviati e conclusi in carcere, apprendimento di lavori e di professioni, progetti di reinserimento sociale alla conclusione della detenzione, per ridurre il tasso di recidiva … Qui [*sfoglia il giornale*] si dice che il laboratorio di pasticceria che hanno creato all'interno di un carcere stia dando ottimi risultati, anche in termini di qualità dei prodotti.

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[13] *Gaetano Filangieri and Benjamin Franklin: between the Italian enlightment and the U.S. constitution*, pag. 68

[14] Lettera di Jefferson a James Madison, Annapolis, 16 Marzo 1784

[15] Decreto-Legge 26 giugno 2014, n. 92 "Disposizioni urgenti in materia di rimedi risarcitori in favore dei detenuti e degli internati che hanno subito un trattamento in violazione dell'articolo 3 della convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, nonché di modifiche al codice di procedura penale e alle disposizioni di attuazione, all'ordinamento del Corpo di polizia penitenziaria e all'ordinamento penitenziario, anche minorile. (14G00104)" Decreto-Legge convertito con modificazioni dalla L. 11 agosto 2014, n. 117

B: E dovrebbe essere questa la regola, per una pena che sia davvero rieducativa. Certo, questo tipo di approccio necessita di risorse, di volontà politica, di cultura della ri-socializzazione e non marginalizzazione dei detenuti. Finalità che, per ovvie ragioni, non potrà mai essere perseguita qualora fosse prevista, come pena, la morte.

F: E qui ti volevo, amico Beccaria. Sai che quanto alla finalità della pena, ritengo che il legislatore debba necessariamente occuparsi anche di educare gli uomini e di guidarli al bene[16], ma questo non toglie che anche la pena di morte possa avere tale finalità.

M: Da quanto so, avete idee leggermente diverse sul tema …

F: Dici bene, rispettabilissimo Mazzei. Sono concorde anche io per quanto riguarda i trattamenti in carcere, il limite della tortura etc. Tuttavia, ritengo anche che l'uomo abbia diritto di uccidere l'ingiusto aggressore e che questo sentimento sia naturale e comprensibile nell'uomo. Se l'aggredito muore per via dell'aggressione, il suo diritto a uccidere l'aggressore non muore con lui, ma è preso in carico dallo Stato. In altri termini, il diritto d'infliggere così la pena di morte, come qualunque altra pena dipende dalla cessione di un diritto che l'aggredito aveva sull'aggressore[17].

B: E qui mi trovi in disaccordo, colendissimo amico Filangieri. "**Quale può essere il diritto che si attribuiscono gli uomini di trucidare i loro simili? Non certamente quello da cui risulta la sovranità e le leggi. Esse non sono che una somma di minime porzioni della privata libertà di ciascuno; esse rappresentano la volontà generale, che è l'aggregato delle particolari. Chi è mai colui che abbia voluto lasciare ad altri uomini l'arbitrio di ucciderlo? Come mai nel**

[16] *Il Pensiero politico di Getano Filangieri*, G. Pecora, Rubettino, 2007, pag. 9
[17] *La scienza della legislazione*, Filangieri, Grimaldi & C. editori, Napoli, 2003, pag. 193

minimo sacrificio della libertà di ciascuno vi può essere quello del massimo tra tutti i beni, la vita?[18]". E anche in termini meno filosofici e maggiormente utilitaristici, non trovo in questa pena alcuna utilità.

F: La pena di morte è un rimedio violento, concordo, che non può essere utile "**se non quando è colla maggior economia adoperato, ma che, per poco che se ne abusi, degenera in un veleno micidiale, che può insensibilmente condurre il corpo politico alla dissoluzione ed alla morte** [19]". Come in generale tutte le sanzioni,più la si usa, più diminuisce il suo valore.

M: E come individuare le ipotesi in cui utilizzarla, quindi?

F: Ritengo sia legittimo utilizzarla a fronte dell'omicidio, del tradimento della patria o del tentativo di sovvertire la costituzione della patria stessa. Deve, in altri termini, essere una pena esemplare, pur recando il minor tormento possibile per il condannato. Il mio pensiero parte da un presupposto che individua due differenti valutazioni della pena. Vi è infatti, a mio avviso, un valore assoluto delle pene e un valore di opinione della stesse. Il valore assoluto considera l'intensità della pena e si misura in relazione al bene che si perde, che nel caso della vita, è il più alto. Mentre il valore di opinione è quanto viene percepito dall'immaginazione degli uomini e si misura in relazione all'impressione che la perdita da nell'animo degli uomini. Le impressioni più forti perdono comunque il massimo del loro vigore quando ricorrono con frequenza. Per questo ritengo che la pena di morte sia una sanzione utile, ma che debba essere utilizzata con molta moderazione.

[18] *Dei delitti e delle pene*, Beccaria, Cap. XXVIII
[19] *La scienza della legislazione*, Filangieri, Grimaldi & C. editori, Napoli, 2003, pag. 194

B: Illustrissimo Filangieri, "**la morte di un cittadino non può credersi necessaria che per due motivi. Il primo, quando anche privo di libertà egli abbia ancora tali relazioni e tal potenza che interessi la sicurezza della nazione; quando la sua esistenza possa produrre una rivoluzione pericolosa nella forma di governo stabilita. La morte di qualche cittadino divien dunque necessaria quando la nazione ricupera o perde la sua libertà, o nel tempo dell'anarchia, quando i disordini stessi tengon luogo di leggi; ma durante il tranquillo regno delle leggi, in una forma di governo per la quale i voti della nazione siano riuniti, ben munita al di fuori e al di dentro dalla forza e dalla opinione, forse più efficace della forza medesima, dove il comando non è che presso il vero sovrano, dove le ricchezze comprano piaceri e non autorità, io non veggo necessità alcuna di distruggere un cittadino, se non quando la di lui morte fosse il vero ed unico freno per distogliere gli altri dal commettere delitti, secondo motivo per cui può credersi giusta e necessaria la pena di morte. Quando la esperienza di tutt'i secoli, nei quali l'ultimo supplicio non ha mai distolti gli uomini determinati dall'offendere la società, quando l'esempio dei cittadini romani, e vent'anni di regno dell'imperatrice Elisabetta di Moscovia, nei quali diede ai padri dei popoli quest'illustre esempio, che equivale almeno a molte conquiste comprate col sangue dei figli della patria, non persuadessero gli uomini, a cui il linguaggio della ragione è sempre sospetto ed efficace quello dell'autorità, basta consultare la natura dell'uomo per sentire la verità della mia assersione. Non è l'intensione della pena che fa il maggior effetto sull'animo umano, ma l'estensione di essa; perché la nostra sensibilità è più facilmente e stabilmente mossa da minime ma replicate impressioni che da un forte ma passeggero movimento**[20]".

[20] *Dei Delitti e delle pene*, Beccaria, cap. XXVIII

M: Non posso che condividere maggiormente l'opinione di Beccaria. D'altronde il Granducato di Toscana, mia terra natia, fu il primo governo d'Europa ad abolire la pena di morte, nel 1796. Lo ricordo bene, ero appena rientrato a Pisa definitivamente. Quanto all'esemplarità della pena, richiamata da entrambi, devo però confutare e devo dare spazio, nuovamente, alla costituzione del nostro Paese. Se è vero infatti, come indicato sempre dall'art. 27 della Costituzione italiana, che "*la responsabilità penale è personale*", allora non potrà punirsi alcun uomo più di quanto non possa essere allo stesso rimproverato. Non potrà, quindi, alcun uomo, essere strumentalizzato per educare i suoi concittadini.

B: Opinioni divergenti, amico. Che permangono tutt'ora nel mondo. Ci vollero infatti oltre duecento anni perché la pena di morte scomparisse del tutto in Italia. Se è vero infatti che già fu abolita alla fine dell'ottocento, fu poi reintrodotta durante il fascismo da Mussolini. Fino alla Costituzione del 1948, che al solito art. 27 prevede che sia per i reati comuni e sia per i reati militari commessi in tempo di pace; infatti l'art.27 recita: "*non è ammessa la pena di morte se non nei casi previsti dalle leggi militari di guerra*". Solo nel 1994 fu invece abolita anche per tutti i reati coperti dal codice penale militare di guerra e dalle leggi militari di guerra.

M: E così in tutto il Vecchio continente. Anche la CEDU, al protocollo n. 6 del 1983, ha introdotto l'abolizione della pena capitale, con l'unica eccezione delle pene militari in tempo di guerra.

F: Non così per poco meno della metà del mondo. Risultano infatti essere almeno 1.032 le persone messe a morte nel 2016 in 23 paesi. La maggior parte delle esecuzioni è avvenuta in

Cina, Iran, Arabia Saudita e Pakistan, in questo ordine[21]. Della Cina invece non sappiamo nulla, seppur rimanga il maggior esecutore mondiale, perché i dati sono classificati come segreto di stato.

B: E pare inoltre che la tendenza sia quella di una riduzione delle condanne capitali e dell'abolizione della pena di morte in sé, anche solo *de facto*. Anche negli Stati Uniti, ad esempio, sono 19 gli stati che hanno abolito la pena di morte nel paese, di questi, sei l'hanno abolita dal 2007. Attualmente, la pena capitale è mantenuta in 31 stati. Di questi, 12 non eseguono condanne a morte da almeno 10 anni. Certo sarebbe auspicabile che anche questi paesi passassero a un'abolizione di diritto …

F: Ragione, peraltro, che spinge molti a fuggire dal loro paese per ragioni politiche, per non essere sottoposti a pene e sanzioni in violazione dei diritti umani. "**L'uomo infatti non vuole solo conservarsi, ma vuole conservarsi tranquillo […] per essere tranquillo bisogna che egli confidi**[22]" e per confidenza intendo "**vivere tranquilli sotto la protezione delle leggi**". Quando i cittadini non si sentono più protetti dalle leggi del loro Stato, non possono che cercare confidenza in altri Paesi …

B: Non che si tratti di fughe dalla giustizia, intendiamoci. "**Chi offende l'umanità, dovrebbe trovare nemici in tutto il genere umano, ed essere assoggettato alla giurisdizione universale**[23]". I reati devono essere perseguiti e i Paesi devono collaborare fra loro affinché

[21] Report di Amnesty International, 2016 accessibile a questo link: https://d21zrvtkxtd6ae.cloudfront.net/public/uploads/2017/04/10175642/Rapporto-sulla-pena-di-morte-nel-2016-ACT-50-5740-2017.pdf
[22] *La scienza della legislazione, piano ragionato dell'opera,* G. Filangieri, pag. 9
[23] *Dei Delitti e delle Pene*, Beccaria, Cap. XXXV

"**dentro ad un Paese non vi sia alcun luogo indipendente dalle leggi**[24]". Discutiamo piuttosto della ricerca di condizioni economiche e culturali migliori, di fuggire dalle tirannie e dal dispotismo che da sempre ha spinto l'uomo a spostarsi, a migrare verso territori in cui le libertà siano maggiormente garantite e coltivate.

M: E qui mio caro Filangieri, introduci un tema ampio e, a quanto pare, molto attuale in Italia, in Europa e anche in America: la migrazione. Io per primo fui un migrante: mi sono sentito tanto americano quanto italiano, senza distinzione, e proprio in America ho trovato un Paese in cui l'uguaglianza delle condizioni di partenza nasceva in una società libera dai vincoli e dai pesi delle feudalità e della stratificazione storica ma, anche, in una società politica originariamente formata da soli possidenti terrieri, quale ero io, e quindi ancorata a una stratificazione di tipo sociale ed economico[25].

F: E io avevo lo stesso desiderio, di poter raggiungere il nostro amico Franklin a Philadelphia, tanto mi sentivo inadatto alla Napoli in cui mi trovavo a vivere … "**chi mi avrebbe più potuto ricondurre in Europa! Dall'asilo della virtù, dalla patria degli eroi, dalla città de' fratelli, potrei io aver desiderato il ritorno in un paese corrotto dal vizio e degradato dalla servitù?**[26]". E pensare che a Roma la legge non ardiva neppure di proferire la pena dell'esilio nei confronti dei propri cittadini. "**Essa ricorreva ad una circollocuzione che ne annunziava l'effetto, senza direttamente manifestarla … Si proibiva al delinquente l'uso dell'acqua e del fuoco e si lasciava a lui la scelta tra la morte naturale o la morte civile, la perdita della**

[24] *Dei Delitti e delle Pene*, Beccaria, Cap. XXXV
[25] Ettore A. Albertoni in Introduzione a *Filippo Mazzei. Istruzioni per essere Liberi ed eguali*
[26] Lettera di Filangieri a Benjamin Franklin del 2 dicembre 1782 in Lo Sardo, Il Mondo nuovo e le virtù civili. L'epistolario di Gaetano Filangieri, 1999, pag. 236

vita o della patria[27]. Il cittadino rappresentava in Roma una parte della sovranità... Cacciarlo dalle mura della sua reggia era lo stesso che detronizzare un re!

B: Ed invero, i cittadini non sono solo sovrani ma rappresentano la forza intrinseca di una nazione. "**Se la forza della società consiste nel numero de' cittadini, col sottrarre se stesso e darsi ad una vicina nazione si fa un doppio danno di quello che lo faccia chi semplicemente colla morte si toglie alla società. La questione dunque si riduce a sapere se sia utile o dannoso alla nazione il lasciare una perpetua libertà di assentarsi a ciascun membro di essa. […]La più sicura maniera di fissare i cittadini nella patria è di aumentare il benessere relativo di ciascheduno. Come devesi fare ogni sforzo perché la bilancia del commercio sia in nostro favore, così è il massimo interesse del sovrano e della nazione che la somma della felicità, paragonata con quella delle nazioni circostanti, sia maggiore che altrove. I piaceri del lusso non sono i principali elementi di questa felicità, quantunque questo sia un rimedio necessario alla disuguaglianza, che cresce coi progressi di una nazione, senza di cui le ricchezze si addenserebbono in una sola mano. Dove i confini di un paese si aumentano in maggior ragione che non la popolazione di esso, ivi il lusso favorisce il dispotismo, sí perché quanto gli uomini sono più rari tanto è minore l'industria; e quanto è minore l'industria, è tanto più grande la dipendenza della povertà dal fasto, ed è tanto più difficile e men temuta la riunione degli oppressi contro gli oppressori […]. Ma dove la popolazione cresce in maggior proporzione che non i confini, il lusso si oppone al dispotismo, perché anima l'industria e l'attività degli uomini, e il bisogno offre troppi piaceri e comodi al ricco perché quegli d'ostentazione, che aumentano l'opinione di dipendenza, abbiano il maggior luogo. Quindi può osservarsi che negli stati vasti e deboli e spopolati, se altre cagioni non vi**

[27] *La scienza della legislazione*, G. Filangieri, Napoli, 2003, p.204

mettono ostacolo, il lusso d'ostentazione prevale a quello di comodo; ma negli stati popolati più che vasti il lusso di comodo fa sempre sminuire quello di ostentazione. […] Ma la sicurezza e la libertà limitata dalle sole leggi sono quelle che formano la base principale di questa felicità, colle quali i piaceri del lusso favoriscono la popolazione, e senza di quelle divengono lo strumento della tirannia.[…] Egli è dunque dimostrato che la legge che imprigiona i sudditi nel loro paese è inutile ed ingiusta[28]".

M: Mi trovi d'accordo, Beccaria. E come già scrissi a suo tempo, "**tutti gli uomini sono per natura liberi ed indipendenti. Quest'uguaglianza è necessaria per costituire un governo libero … un vero governo repubblicano non può sussistere se non dove gli uomini sono dal più ricco al più povero perfettamente uguali nei loro diritti di natura …**[29]".Principio raccolto anche dalla costituzione Italiana, la quale, agli articoli 2 e 3 riconosce che "*la Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo sia nelle formazioni sociali ove si svolge la sua personalità, e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale; Tutti i cittadini hanno pari dignità sociale e sono eguali davanti alla legge, senza distinzione di sesso, di razza, di lingua, di religione, di opinioni politiche, di condizioni personali e sociali. È compito della Repubblica rimuovere gli ostacoli di ordine economico e sociale, che, limitando di fatto la libertà e l'eguaglianza dei cittadini, impediscono il pieno sviluppo della persona umana e l'effettiva partecipazione di tutti i lavoratori all'organizzazione politica, economica e sociale del Paese*". E, più in particolare, all'art. 10 "*Lo straniero, al quale sia impedito nel suo paese l'effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d'asilo nel territorio della Repubblica secondo le condizioni stabilite dalla legge*".

[28] Dei delitti e delle pene, Cap. XXXII, Del suicidio
[29] *The Virginia Gazette*, Philip Mazzei, 1774, tradotto dall'amico Thomas Jefferson

F: Non posso che condividere i principi di cui mi parlate, illustrissimi. E pur tuttavia, a leggere i quotidiani la questione sta assumendo dimensioni difficilmente gestibili: [*sfogliando il giornale*] "VERTICE A 4 IL 28 AGOSTO PER AFFRONTARE IL TEMA DEGLI SBARCHI IN ITALIA E DELLA MIGRAZIONE CLANDESTINA. SÌ AL COINVOLGIMENTO E AL SUPPORTO DEI PAESI DI PROVENIENZA".

M: Il flusso di migranti che sbarcano sulle coste italiane, greche e spagnole è da tempo uno degli argomenti caldi dell'agenda politica italiana ed europea. È inevitabile che gestire numeri così elevati comporti condizioni di accoglienza e di tutela – di chi ne avrebbe pieno diritto come rifugiato – simili a quelli della detenzione. Si stimano oltre 120.000 persone sbarcate sulle coste dell'Europa nei primi 8 mesi del 2017, di cui 2.400 decedute nella traversata[30] …

F: Niente di più vero di quel che affermi, mio caro amico. La gestione dei flussi di migranti è un tema che vede contrapporsi da un lato la necessità di garantire accoglienza nel rispetto dei diritti umani, dall'altro la necessità che i paesi di approdo possano gestire la situazione senza che il proprio equilibrio interno risulti compromesso.

B: C'è da riconoscere che l'Unione Europea sta facendo passi avanti nell'organizzazione di un sistema di identificazione dei migranti finalizzato a una più efficiente gestione del flusso migratorio. Siete a conoscenza, illustrissimi, del Regolamento di Dublino III?

F: Intendi il Regolamento secondo cui i migranti devono essere identificati e registrati nel paese di primo ingresso? Ne ho sentito parlare. So che mira ad una organizzazione dei migranti interna a tutta l'Unione Europea. Resta però il fatto che è a carico del Paese che per primo accoglie i migranti farsi carico dell'identificazione e della domanda di richiesta d'asilo.

[30]Stime fornite da IOM – International Organization for Migration, UN Agency, link disponibile qui: http://www.iom.int/news/mediterranean-migrant-arrivals-reach-120975-2017

M: E' dunque questo il motivo per cui molti migranti rifiutano di farsi identificare? Per poter chiedere asilo in un paese diverso da quello di ingresso?

F: Esattamente, mio caro Mazzei. Come dicevamo, si tratta sempre di tentare di trovare un equilibro tra la necessità dei paesi di approdo di gestire il flusso migratorio e la necessità di garantire i diritti fondamentali dei migranti, ad esempio quello di recarsi in un paese diverso da quello di arrivo per ricongiungersi alla famiglia o alla propria comunità di appartenenza. Molti infatti sono solo di passaggio nei paesi di confine. Inoltre da quel che riportano alcune organizzazioni a tutela dei diritti umani, tra le quali Amnesty International, la politica europea di identificazione è alquanto severa[31]. Mi chiedo dunque: si può ancora definire accoglienza quella che inizia con una detenzione prolungata dettata dalla necessità di gestire e di verificare un numero elevato di richieste, nonché l'uso della forza fisica al fine di rilevare le impronte digitali?

M: Domanda lecita e di difficile risposta. Innegabile la delicatezza dell'argomento.

B: In tal senso mi torna in mente una recente pronuncia di dicembre 2016 della Grande Camera della Corte Europea dei Diritti dell'Uomo, Corte di cui già prima abbiamo parlato. Mi riferisco al caso *Khlaifia e a. c. Italia*: la Corte si è occupata di tre cittadini tunisini che giunti illegalmente sulle coste italiane nel 2011 sono stati trattenuti per alcuni giorni in un Centro di Primo Soccorso e Prima Accoglienza sull'isola di Lampedusa, poi in un altro presso Palermo. I tunisini hanno presentato ricorso alla Corte EDU per le condizioni di privazione della libertà personale e al trattamento subito durante la loro permanenza nei centri di accoglienza, a loro avviso disumane e degradanti.

[31] *Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights*, Amnesty International, 2016, https://www.amnesty.org/en/documents/eur30/5004/2016/en/%20/

M: Il caso non mi è nuovo, ha infatti attirato la mia attenzione il fatto che la Grande Camera abbia parzialmente ribaltato la decisione di primo grado stabilendo che non ci fosse stata violazione dell'art. 3 della Convezione, di cui già abbiamo discusso. La Grande Camera ha infatti ritenuto che il trattamento dovesse essere valutato tenendo in considerazione la situazione di emergenza migratoria in cui si trovava il Paese al tempo dei fatti. Secondo questa prospettiva l'Italia è stata ritenuta responsabile della sola violazione del diritto alla libertà personale dei migranti tutelato dall'art. 5 della Convenzione oltre alla violazione dell'art. 13 che prevede il diritto a un rimedio effettivo[32].

B: Il tempo passa ma la difficoltà di garantire i diritti fondamentali sembra permanere.

F: Esattamente così, Beccaria. Principi fondamentali che oramai compiono oltre duecento anni e che continuano ad essere messi alla prova dall'attualità.

M: Eppure il sacro principio resta: All men are created equal … All men are created equal …

[32] Case of Khlaifia and Others v. Italy: http://hudoc.echr.coe.int/eng?i=001-170054

PART TWO

ENGLISH TRANSLATION OF IMAGINARY DIALOG AND INTRODUCTORY COMMENTS

A brief introduction.

The work presents a hypothetical dialogue among three Italian historical figures of the Enlightenment era, whose works have had a significant influence on the criminal theories of Italy, Europe and America, as well as other nations. The exchange of jokes deals with some topical issues, which confronted the three scholars, clearly showing the sensitivity of the issues as well as criticisms and concerns.

In particular, three themes have been selected that indirectly present links with the thinking of the three historical figures. This was possible thanks to the surprising awareness of the theories that, in their time, were expressed and disseminated by the three thinkers and studied by the authors of this dialogue.

The first issue is that of torture. It was an issue widely discussed by those who commented during the Enlightenment era. Despite the ratification of the UN Convention against Torture (1989), and the provision of the European Charter of Human Rights, which was first proclaimed in 2000 prohibiting its use, torture was introduced in Italy as an *ad hoc* crime only recently in July 2017, under the pressure of international organizations and after the Italian legislator had been scolded several times by the European Court. The process of formation of the law has been very long and complex, given the need to compare very different political positions, as well as

positions on social morality that had global reach. The inevitable result of this process has given rise to criticism because of the deviation from the UN Convention.

Before the introduction of the crime of torture, the conduct attributable to torture were punished as crimes of violence or threats, which, were not sufficient to sanction the much more serious conduct of torture.

With regard to any information obtained by conduct that could be described as torture, even prior to the enactment of the new crime of torture, there was a prohibition provided for in the Code of Criminal Procedure. In fact, using information obtained in the interrogation, "even with the consent of the person questioned, by methods or techniques capable of influencing the freedom of self-determination or altering the ability to remember and evaluate the facts" was prohibited by Art. 64 Italian Criminal Code). The information obtained was inadmissible in criminal proceedings.

As far as the conduct subject to punishment is concerned, the wording of the law leaves rooms for argument: do the actions of the State actor constitute the offense of torture or are they merely aggravating factors for another crime? This, of course, leads to other questions. If it is considered an aggravating factor, can it be balanced against certain attenuating circumstances? Why did the legislator introduce the requirement for "repeated" conduct so that one act would not be sufficient to implement the offence? However, in order to answer these questions and to assess the actual scope of the law, we need to wait for the rulings of the court to apply and interpret the law.

The second issue relates to the death penalty. This issue was very sensitive to the Enlightenment thinkers of the time and has undergone a profound evolution over the years. Even though the

death penalty has been abolished throughout Europe, it remains in many places throughout the world, including the United States. The debate on the nature, usefulness and compatibility of this punishment with human rights is, therefore, still relevant.

Finally, there is the issue of immigration. This is not only a legal issue, but also a political one as well. The phenomenon of immigration has always required the governments to balance the need to welcome foreigners with the need to challenge and enforce unlawful immigration. In addition, the public, many times, perceives the issue of immigration as being criminal in nature, especially when it comes to immigration outside of the law and not protected by international legislation. This theme is very topical in Europe and particularly in the European border countries, including Italy, which is subject to attempted unlawful entry by sea.

The work does not claim to be a true recount of historical events, nor does it claim to exhaust the issues set forth in the dialogue. Each issue deserves an in-depth examination that goes far beyond the space and time allotted to this event. However, we wanted to offer a unique vehicle for thought – an imaginary dialogue. It is food for thought to encourage dialogue among different cultures with different legal traditions. This is what we are celebrating today.

Imaginary dialogue between three enlightened Italian thinkers, commenting on current Italian and European news

Characters: Cesare Beccaria (B), Gaetano Filangieri (F), Filippo Mazzei (M)

Bold parts: original citations by the authors.

(Scena: the three Italian thinkers of Enlightenment are gathered in the café of a city in their country and comment on the reading of daily newspapers referring to three legal themes in particular: torture, the death penalty and the rights related to the migration of peoples. The imaginary dialogue takes place in the present day].

B: Have you read any national newspapers recently? Apparently, the Italian Parliament has finally approved a law introducing the crime of torture.

M: Italian times. They signed the UN Convention on Torture in 1989... It seems like they worked on it a lot before approving the law.

F: Come on, it took only 28 years. And they should work more on it. The Council of Europe [*author's note: an international organization counting 47 members, based in Strasbourg, whose Assembly elects the judges of the European Court of Human Rights, it shall not be confused with the European Union*] had intervened even before its approval to invite Parliament to amend the text. It seems that the felony, as it has been formulated, would not even apply to the cases that took place in Genoa in 2001. I would almost say, Italian compatriots, you could do better. Much better. That is not enough.

B: Friend Filangieri, aren't you a little bit too critical? At least a felony has eventually been introduced. It is a good thing. After all, there have been several cases in Italy where judges have expressly recognized cases of torture but because of the lack of appropriate legal instruments they could not punish the perpetrators. I am referring to - unfortunately - numerous episodes turned out in Italian prisons ...

F: Eminent Beccaria, you know well my opinion about the formation of laws: laws are good only when they interpret and develop, without altering, the natural law that is right and fair by nature in all cases.

M: "**We all know that nothing can be perfect, everything can by nature be deficient in some way and these defects can rightly be proven. But that is not the point. Whenever you challenge something, the main issue should always be whether you have something better to replace it. If you have, you have to propose it and the Community will be grateful to you for that**[33]". This law, in a state of *civil law* in particular, can only be the result of political compromise. There are still those who believe that introducing the crime of torture is a restriction on the powers of law enforcement agencies. You cannot hear it. Perhaps better could not be done, at least, not at this time. "**Moreover, it is my opinion that among the rights that men cannot deprive the posterity, the most important is the right of approving or disapproving their Laws**[34]".

F: As for the laws, respectable Mazzei, it is clear that "**each law should be compared with the conditions of the relevant nation, making a distinction between the absolute and relative**

[33] *Instructions of the Freeholders of Albemarle Country to their Delegates in Congress*, F. Mazzei, 1776
[34] *Instructions of the Freeholders of Albemarle Country to their Delegates in Congress*, F. Mazzei, 1776

goodness of laws. Each law should be evaluated not according to justice, but opportunity, convenience and suitability[35]". With reference to the torture issue, we have discussed about it on several occasions. **"[…]torture shows evidence of a corporeal resistence, not of the truth**[36]". Let us suppose that the magistrate has the right to obtain a confession from the accused. If it is true that every right corresponds to a duty, this means that the right of the magistrate corresponds to the duty of the accused person to confess his or her own crime and therefore to put an end to his or her existence. However, this duty is in contrast with the first law of nature, which is the law that obliges every man to preserve his own existence. As an instrument of justice, therefore, it is completely illogical and against nature. Moreover, and I quote our dear Hobbes, "*there is no law that orders the thief, the murderer, to come spontaneously to be hanged*". If the offender is not obliged to confess his crime, the magistrate or public official on duty, he is not even entitled to extort the truth.

B: Well, I agree. The newspaper we are consulting reports the approved text. Let's read together article 613-bis of the Italian penal code, to better understand what we are talking about. I exhort you to maintain the rationality and to apply the method that distinguishes us. "*Anyone who, through violence or serious threats, or by acting cruelly, causes severe physical suffering or a verifiable psychological trauma to a person deprived of his or her liberty or entrusted to his or her custody, authority, vigilance, control, care or assistance, or who is in a condition of disabled defense, shall be punished with a term of imprisonment of between four and ten years if the act is committed by more than one conduct or if it involves inhuman treatment*".

[35] *Il Pensiero politico di Getano Filangieri*, G. Pecora, Rubettino, 2007, p.133
[36] *La scienza della legislazione,* G. Filangieri, Grimaldi & C. editori, Naples, 2003, p. 149

M: Mumble … And how is the definition of the 1984 UN Convention, to which the Council refers and which could be better?

B: First of all, it provides that the offence shall be committed by a qualified person. Torture cannot be committed by 'anyone', as provided in the first part of the article in the Italian Code, but only by "*a public official or any other person acting in an official capacity, or at his instigation, or with his express or tacit consent*". More, then the UN Convention provides for a definition of torture which includes "*any act*" that inflicts "*acute, physical or mental pain or suffering, particularly in order to obtain information or confessions from this person or a third person, to punish[…] for intimidating her or exerting pressure on her[…] or on a third person*". In short, it looks more at the purpose of the conduct and the circumstances in which it is carried out than at its possible consequences. While the Italian one, as it is formulated, may not be applicable in many cases. But it is not just about the UN Convention. In fact, also the Council of Europe promoted the European Charter of Human Rights in which article 3 provides that *'No one shall be subjected to torture or to inhuman or degrading treatment or punishment*'. We therefore all agree that using torture as a means of obtaining a declaration, the truth that you could obtain would be in any case doubtful: by torture "**the robust will escape, and the feeble be condemned. […] These are the inconveniencies of this pretended test of truth, worthy only of a cannibal; and which the Romans, in many respects barbarous, and whose savage virtue has been too much admired, reserved for the slaves alone. […]Every violent action destroys those small alterations in the features, which sometimes disclose the sentiments of the hearticle These truths were known to the Roman legislators, amongst whom, as I have already observed, slaves, only, who were not considered as citizens, were tortured**" [37]. They

[37] *Dei Delitti e delle Pene*, Beccaria, Cap. XVI

were not considered as people. But here we are talking about people and we are centuries and centuries after the Roman legislators, who had already grasped the uselessness of such practices.

F: Dear friend, to be sincere, with regard to evidence and offer of proof, "**in Roman law we find a continuous swing between mercy and cruelty, between excessive delicacy in evaluating the value of proofs and a tyrannical and unjust way of searching them**[38]", and these principles have been religiously absorbed in our courts! Reading the Digest we find, in the chapter entitled *de Probationibus*, the criterion that determines the truth in criminal judgments: "**Let the accuser be well aware that the judge cannot base the judgment on his charge, if the fact that it contains is not supported by the faith of suitable witnesses, based over official documents or over incontrovertible arguments, clearer than glass. This rule is right, clear, simple; it complies with the sacred principles of civil liberty; but tragically the legislators of Rome did not follow the spirit of this principle when it came to apply their ideals more precisely. [...] The Roman laws, after having denied their confidence to servants and villains, ordered the judge to refer to their testimony, when it was offered through torments**"[39]. It is a shame to see that the legislators of Rome believed that the torments could be a means of truth. We must blame this fatal view for the origin of torture!

M: The truth is that, although it is a universally recognized principle the one that states that in order for a citizen to be sentenced there is a need for moral certainty that he or she has violated the law, the question is how the "moral certainty" should be determined. For many centuries the problem has been precisely this, applying the universal principle to the theory of judicial evidence...

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[38] *La scienza della legislazione*, G. Filangieri, Grimaldi & C. editori, Naples, 2003, p. 139
[39] *La scienza della legislazione*, G. Filangieri, Grimaldi & C. editori, Naples, 2003, p. 139

B: There is also a second aspect, namely torture as a means of punishment, as an exercise of the power of those who feel strong compared to those who are in a state of weakness, of limiting freedom, even legitimate. Until it goes beyond the lawlessness... As we have just mentioned "**No man can be judged a criminal until he has been found guilty; nor can society take from him the public protection, until it have been proved that he has violated the conditions on which it was granted. What right, then, but that of power, can authorize the punishment of a citizen, so long as there remains any of his guilt?**[40]"

M: This is an issue dear to me, I mean the equality between men. Even when they are objectively weak. I am thinking of those people who are under precautionary and preventive penalties, waiting to be tried... The precondition should be the social hazard, or the possibility of polluting evidence or the danger of escape. In addition to the presence of "serious indications of guilt", as things stand [41]. They have not yet been definitively condemned, although they may be restricted in terms of freedom - whether by imprisonment or by disqualification measures - and even for a long time, given the length of Italian trials. Read here, respectable: according to the ISTAT survey [*author's note: National Institute of Statistics*] at December 31, 2013, 62,536 people were detained in Italian prisons - a number far in excess of the regulatory capacity, set at 47,709 places. 61.5% of the detainees were definitively convicted, 36.6% were awaiting final judgment and 1.9% were subject to security measures[42].

M: And there are also some higher principles. The Italian Constitution of 1948 implemented it. In article 27, if I am not mistaken, it states that: "*The accused shall not be held guilty until final*

[40] *Dei Delitti e delle Pene*, Beccaria, Cap. XVI
[41] Italian criminal procedural code, article 275
[42] ISTAT Survey released in March 2015, referring to 2013 data. The link is available here: https://www.istat.it/it/archivio/153369

conviction. Penalties may not consist in treatment contrary to the sense of humanity and must aim at the re-education of the condemned".

B: Ah, if it were not historically impossible, I would have been the one who wrote that!

F: Well, we have left something to posterity, haven't we, esteemed friend? I find this more than a valid principle, although unfortunately the current situation in some Italian prisons is, as far as I know, quite different. Look here, it is not even two years old the news that the European Court of Human Rights has decided the case brought by two prisoners in Italian prisons. In December 2004, they had in fact been tortured during their detention: stripped, brought to an insulating cell without glass, without mattresses, sheets, blankets. With rationed food, then subjected to kicks, beatings, fists. In short, the Strasbourg Court, which monitors respect for the rights recognized by the European Convention on Human Rights by the States that are parties to it, including Italy, has decided this case, triggered by the two detainees. In 2015, on the way to amicable settlement, The Court proposed the payment of a compensation of 45,000 euros by Italy for each prisoner.

M: What can we say... quickly, even in this case.

B: Long waiting times, I agree with my respectable friend Mazzei. Law and justice inevitably lose their effectiveness. Degrading and non-humane treatments we were saying, weren't we?

M: The conditions in the Italian prisons are a well-known issue and it has been brought to the attention of the European Court in Strasbourg on several occasions. The Torreggiani case[43] offered a lesson. The decision dates back to 2013. The Court called on Italy to solve the problem

[43] European Court of Human Rights, section II, decision 08/01/2013

of overcrowding in prisons, defining it as 'structural' and incompatible with the aforementioned Article. 3 of the Convention.

F: [*flicking through the newspaper*] Read here: The Strasbourg Court condemns Italy for the inhuman and degrading treatment (violation of Article 3 ECHR) of 7 prisoners in the Busto Arsizio and Piacenza prisons. The detainees were imprisoned in groups of 3 in cells of 9 square meters, or they were served their sentence in an area of less than 3 square meters, without hot water and in some cases without sufficient lighting, the Court highlighted, inviting Italy to remedy the matter within a year and to pay the seven detainees a total amount of 100 thousand euros for moral damages. Finally, the Court noted that in the present case the two prisons, which were able to receive no more than 178 detainees, housed 376 detainees in 2010, reaching a peak of 415 detainees.

B: If it has to be imprisonment as sanction, it shall be within the limits of humane and dignified treatment.

F: Exactly, my dear friend. Quoting a more remote, but always current source, such as the *Corpus Iuris Civilis*: "*our justice [...] does not allow to bind tightly and tie with painful chains an unhappy prisoner. It doesn't want that the depth of the jail deprives him of light. It (the justice) orders and asks that it (the jail) isn't underground or dark; (it asks) that the wretched people kept there, when night draws near, should be guided into the hallway of the jail where breathing is easier and healthier; in the end it (the justice) wants that, at sunrise, they (the people accused) can see the sky and breath the open air, warmed by the first sunlight*"[44].

[44] *Gaetano Filangieri and Benjamin Franklin: between the Italian enlightment and the U.S. constitution*, pag. 68

M: As a result of the earful, the Italian legislator has done some efforts, always trough... let's say... emergency measures, in order to limit the damage more than to solve the problems.

B: Dear Mazzei, sure he had his reasons Jefferson to refer to you as a "**double quotidian headache**"[45]!

M: Voices are running, even over the centuries... However, my respectable colleagues, Italy did something in the 2014: they introduced a law entitled "*Urgent provisions on compensation for prisoners*"[46]. A compensation, therefore!

F: Come on, there are not only negative experiences. Those are exceptions and not the rule, in fact we also have experiences of study courses started and concluded in prison, learning jobs and professions, social reintegration projects at the end of detention, aimed to reduce the rate of recidivism... Here [*reading the newspaper*] it is said that the confectionery laboratory they have created inside a prison is giving excellent results, also in terms of product quality.

B: And this should be the rule, for a penalty that is truly re-educational. Of course, this kind of approach needs resources, political will, a culture of socialization rather than prisoners marginalization. A goal which, for obvious reasons, can never be pursued if death is provided for.

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[45] Letter by Jefferson to James Madison, Annapolis, March 16, 1784

[46]Decreto-Legge June 26, 2014, n. 92 "Disposizioni urgenti in materia di rimedi risarcitori in favore dei detenuti e degli internati che hanno subito un trattamento in violazione dell'articolo 3 della convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, nonché di modifiche al codice di procedura penale e alle disposizioni di attuazione, all'ordinamento del Corpo di polizia penitenziaria e all'ordinamento penitenziario, anche minorile (14G00104)." *(Urgent provisions on compensation for prisoners and detainees who have been treated in violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as amendments to the Code of Criminal Procedure and its implementing provisions, to the law of the Prison Police Corps and to the prison system, including juvenile procedures.)* Decreto-Legge converted with amendments into Law August 11, 2014, n. 117.

F: And here I wanted you, friend Beccaria. You know that, as far as the purpose of the sentence is concerned, I believe that the legislator must also take care of educating people and guiding them to good[47], but this does not mean that the death penalty may also have that purpose.

M: As far as I know, you have slightly different ideas on the subject...

F: You are right, very respectable Mazzei. I agree with him with reference to the treatment in prison, the limit of torture, etc. However, I also believe that a man has the right to kill the unjust aggressor and that this feeling is natural and understandable in man. If the aggressed person dies as a result of aggression, his right to kill the aggressor does not die with him, but is taken over by the State. In other words, the right to inflict the death penalty, like any other punishment, depends on the transfer of a right that the victim had over the aggressor[48].

B: And here I find myself in disagreement, very colendant friend Filangieri. "**What right, I ask, have men to cut the throats of their fellow-creatures? Certainly not that on which the sovereignty and laws are founded. The laws, as I have said before, are only the sum of the smallest portions of the private liberty of each individual, and represent the general will, which is the aggregate of that of each individual. Did any one ever give to others the right of taking away his life? Is it possible, that in the smallest portions of the liberty of each, sacrificed to the good of the public, can be obtained the greatest of all good, life?**[49]". And even in less philosophical and more utilitarian terms, I find no use in this penalty.

[47] *Il Pensiero politico di Getano Filangieri*, G. Pecora, Rubettino, 2007, pag. 9
[48] *La scienza della legislazione*, Filangieri, Grimaldi & C. editori, Naples, 2003, pag. 193
[49] *Dei delitti e delle pene*, Beccaria, Cap. XXVIII

F: Death penalty is a violent remedy, I agree, that cannot be useful "except when it is employed with the greater parsimony; however, as soon as it is abused, it degenerates into a deadly venom that can insensibly lead the political body to dissolution and death[50]".

M: And how to identify the hypotheses for using it, then?

F: I believe that it is legitimate to use it against murder, betrayal of the homeland or an attempt to subvert the constitution of the homeland itself. In other words, it must be an exemplary sentence, while at the same time bringing as little torment as possible to the sentenced person. My thinking is based on a premise that identifies two different assessments of the sentence. There is, in my view, an absolute value for the penalties and an opinion value for them. The absolute value considers the intensity of the punishment and is measured in relation to the good that is lost, which in the case of life, is the highest. While the value of opinion is what is perceived by the imagination of men and is measured in relation to the impression that loss gives men's mind. Stronger impressions lose the maximum of their force when they occur frequently. That is why I believe that the death penalty is a useful sanction, but that it must be used in a very moderate manner.

B: Illustrious Filangieri, "**the death of a citizen cannot be necessary but in one case. When, though deprived of his liberty, he has such power and connections as may endanger the security of the nation; when his existence may produce a dangerous revolution in the established form of government. But even in this case, it can only be necessary when a nation is on the verge of recovering or losing its liberty; or in times of absolute anarchy, when the disorders themselves hold the place of laws. But in a reign of tranquility; in a**

[50] *La scienza della legislazione*, Filangieri, Grimaldi & C. editori, Naples, 2003, pag. 194

form of government approved by the united wishes of the nation; in a state fortified from enemies without, and supported by strength within, and opinion, perhaps more efficacious; where all power is lodged in the hands of the true sovereign; where riches can purchase pleasures and not authority, there can be no necessity for taking away the life of a subject. If the experience of all ages be not sufficient to prove, that the punishment of death has never prevented determined men from injuring society; if the example of the Romans; if twenty years reign of Elizabeth, empress of Russia, in which she gave the fathers of their country an example more illustrious than many conquests bought with blood; if, I say, all this be not sufficient to persuade mankind, who always suspect the voice of reason, and who chuse rather to be led by authority, let us consult human nature in proof of my assertion. It is not the intenseness of the pain that has the greatest effect on the mind, but its continuance; for our sensibility is more easily and more powerfully affected by weak, but by repeated impressions, than by a violent but momentary impulse[51]".

M: I can only share Beccaria's opinion more. The Grand Duchy of Tuscany, my homeland, was the first government in Europe to abolish the death penalty in 1796. I remember it well, I had just returned to Pisa definitively. As for the exemplary of punishment, quoted by both, I must rebut and I must give space, once again, to the constitution of our country. If it is true, in fact, as always indicated by article 27 of the Italian Constitution, that "criminal responsibility is personal", then no man shall be punished more than he can be reproached himself. Therefore, no man can be exploited to educate his fellow citizens.

B: Divergent opinions, my friend, both still argued around the world. It took over two hundred years for the death penalty to disappear completely in Italy. It is true, in fact, that it was

[51] *Dei Delitti e delle pene*, Beccaria, cap. XXVIII

abolished at the end of the nineteenth century, but it was then reintroduced during fascism by Mussolini. Until the Constitution of 1948, in which article 27 provides that both for common crimes and for military crimes committed in peacetime; in fact, article 27 states: "*the death penalty is not allowed except in the cases provided for by military war laws*". It was only in 1994 that it was officially abolished for all crimes covered by the military war criminal code and military war laws.

M: And so throughout the whole Old Continent. The ECHR also introduced the abolition of the death penalty in Protocol No. 6 in 1983, with the sole exception of military sentences in times of war.

F: Not the same for just under half of the world. At least 1,032 people were killed in 2016 in 23 countries. Most of the executions took place in China, Iran, Saudi Arabia and Pakistan, in this order[52]. However, we do not know anything about China, even though it remains the world's largest performer, because the data are classified as state secret.

B: It also seems that the trend is towards a reduction in death sentences and the abolition of the death penalty itself, even *de facto*. In the United States, for example, 19 states have abolished the death penalty in the country, of which six have abolished it since 2007. Currently, the death penalty is maintained in 31 states. Of these, 12 have not carried out death sentences for at least 10 years. Of course, it would be desirable if these countries were to move towards legal abolition...

[52] Amnesty International Report, 2016 available here: *https://d21zrvtkxtd6ae.cloudfront.net/public/uploads/2017/04/10175642/Rapporto-sulla-pena-di-morte-nel-2016-ACT-50-5740-2017.pdf*

F: This reason, however, pushes many to flee their country for political reasons, not to be subjected to penalties and sanctions in violation of human rights. "**Men not only aim to preservation, but also want to preserve themselves tranquil […] To be tranquil they should be able to be confident**"[53] and by confidence I mean "**living peacefully under the protection of the laws**". When citizens no longer feel protection in the laws of their country, they can only seek it in other countries...

B: For the sake of clarity, we are not talking about avoiding justice. "**He who offends humanity, should have enemies in all mankind, and be the object of universal execration**[54]". Offences must be prosecuted and countries need to cooperate to ensure that "**in the whole extent of a political state, there should be no place independent of the laws**[55]". Rather, let us discuss the search for better economic and cultural conditions, to flee from the tyrannies and despotism that has always led man to move, to migrate to territories where freedoms are more guaranteed and cultivated.

M: And now, my dear Filangieri, you introduce a wide-ranging and apparently very topical theme in Italy, in Europe and also in America: migration. I was the first to be a migrant: I felt as much American as Italian, without distinction, and in America I found a country where the equality of starting conditions was born in a society free from the constraints and weights of feudality and historical stratification, but also in a political society originally formed by

[53] *La scienza della legislazione, piano ragionato dell'opera,* G. Filangieri, pag. 9
[54] *Dei Delitti e delle Pene*, Beccaria, Cap. XXXV
[55] *Dei Delitti e delle Pene*, Beccaria, Cap. XXXV

landowners alone, as I was, and therefore anchored to a stratification of social and economic type[56].

F: And I had the same desire to reach our friend Franklin in Philadelphia, so much I felt outplaced in Naples, where I was living... Once I had reached America, "**who could bring me back to Europe! Once under the shelter of virtue, the land of Heroes, the city of brothers, how could I wish to return to a country corrupted by vice and degraded by bondage?**"[57]. Just think that in Rome the law did not even dare to impose the punishment of exile to its citizens. "**It used a circumlocution to announce the effect without directly manifesting it... The criminal was forbidden to use water and fire, and he was left the choice between natural death or civil death, loss of life or homeland"**[58]. The citizen represented in Rome a part of sovereignty ... To cast him out of the walls of his palace was the same as dethroning a king!

B: Indeed, citizens are not only sovereign but also the intrinsic strength of a nation. "**As the strength of a society consists in the number of citizens, he who quits one nation to reside in another, becomes a double loss. Thus, this is the question: whether it be advantageous to society, that its members should enjoy the unlimited privilege of migration? […] The most certain method of keeping men at home, is, to make them happy; and it is the interest of every state to turn the balance, not only of commerce, but of felicity in favor of its subjects. The pleasures of luxury are not the principal sources of this happiness; though, by preventing the too great accumulation of wealth in few hands, they become a necessary**

[56] Ettore A. Albertoni in Introduction to *Filippo Mazzei. Istruzioni per essere Liberi ed eguali*
[57] Letter to Filangieri from Benjamin Franklin, dated December 2, 1782 in Lo Sardo, *Il Mondo nuovo e le virtù civili. L'epistolario di Gaetano Filangieri*, 1999, pag. 236
[58] *La scienza della legislazione*, G. Filangieri, Naples, 2003, p.204

remedy against the too great inequality of individuals, which always increases with the progress of society. When the populousness of a country does not increase in proportion to its extent, luxury favors despotism, for where men are most dispersed, there is least industry, the dependence of the poor upon the luxury of the rich is greatest, and the union of the oppressed against the oppressors is least to be feared. […] When the number of people is too great in proportion to the extent of a country, luxury is a check to despotism; because it is a spur to industry, and because the labour of the poor affords so many pleasures to the rich, that they disregard the luxury of ostentation, which would remind the people of their dependence. Hence we see that in vast and depopulated states, the luxury of ostentation prevails over that of convenience; but, in the countries more populous, the luxury of convenience tends constantly to diminish the luxury of ostentation. […] Security and liberty, restrained by the laws, are the basis of happiness, and when attended by these, the pleasures of luxury favor population, without which they become the instrument of tyranny. […] If it be demonstrated, that the laws which imprison men in their own country are vain and unjust[59]".

M: I agree, Beccaria. And as I already wrote in the past, "**All men are by nature equally free and independent. Such equality is necessary in order to create a free government. All men must be equal to each other in natural law**[60]". This principle is also enshrined in the Italian Constitution, which, in articles 2 and 3, states that "*the Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social formations where his personality takes place, and requires the fulfillment of the mandatory duties of political, economic and social solidarity; All citizens have equal social dignity and are equal before the*

[59] *Dei delitti e delle pene*, Beccaria, Cap. XXXII
[60] *The Virginia Gazette*, Philip Mazzei, 1774, translated by Thomas Jefferson

law, without distinction of sex, race, language, religion, political opinions, political opinion, and opinion. It is the duty of the Republic to remove economic and social obstacles which, by effectively limiting the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country". More specifically, in article 10 "*A foreigner, who is prevented in his country from exercising the democratic freedoms guaranteed by the Italian Constitution, has the right to asylum on the territory of the Republic in accordance with the conditions laid down by law*".

F: I can only share the principles of which you speak to me, which are highly illustrated. And yet, reading the news, the issue is becoming so relevant that is really difficult to manage: [*flicking and reading the newspaper*] "SUMMIT TO 4TH THE 28TH AUGUST TO FACE THE LANDING OF ILLEGAL IMMIGRANTS IN ITALY. YES TO THE CONNECTION AND SUPPORT IN FAVOR OF THE COUNTRIES OF PROVENIENCE"...

M: The flow of migrants landing on the Italian, Greek and Spanish coasts has long been one of the hot topics on the Italian and European political agenda. It is inevitable that the handling of such high numbers will inevitably lead to conditions of accommodation and protection - of those who would be fully entitled to do so as refugees - similar to those of detention. More than 120,000 people are estimated to have landed on the coasts of Europe in the first 8 months of 2017, of which 2,400 died on the sea crossing[61]…

F: Nothing more true than what I say, my dear friend. The treatment of migrants' flows is an issue which, on the one hand, contrasts with the need to guarantee accommodation while

[61]Estimates by IOM – International Organization for Migration, UN Agency, the link is available here: http://www.iom.int/news/mediterranean-migrant-arrivals-reach-120975-2017

respecting human rights and, on the other, with the need for landing countries to be able to manage the situation without compromising their internal balance.

B: We should acknowledge that the European Union is making progress in organizing a system of identification of migrants aimed at a more efficient management of migration flows. Have you heard about the Dublin III Regulation?

F: Do you mean the Regulation according to which migrants must be identified and registered in the country of first entry? I have heard of it. I know that it aims at an organization of migrants within the European Union as a whole. However, the fact remains that it is the responsibility of the country which first receives migrants to take charge of identifying and applying for asylum.

M: Is this therefore the reason why many migrants refuse to identify themselves? In order to apply for asylum in a country other than the one in which they landed?

F: Exactly, my dear Mazzei. As we said, it is always a question of seeking for a balance between the need for landed countries to manage migration flows and the need to guarantee the fundamental rights of migrants. As, for example, to travel to a country other than the country of arrival in order to rejoin their family or community. Many people are only crossing the border countries. Moreover, from what some human rights organizations such as Amnesty International report, the European identification policy is quite strict[62]. I therefore ask myself: can we still call it "reception" when it begins with prolonged detention dictated by the need to manage and verify a large number of applications, as well as the use of physical force to take fingerprints?

[62] *Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights*, Amnesty International Report, 2016, https://www.amnesty.org/en/documents/eur30/5004/2016/en/%20/

M: Proper and difficult question. The sensitivity of the subject is undeniable.

B: In this sense, I am reminded of a recent decision by the Grand Chamber of the European Court of Human Rights in December 2016, a Court we have mentioned several times. I am referring to the *Khlaifia and Others v. Italy* case: the Court dealt with three Tunisian citizens who landed illegally on the Italian coasts in 2011 and were detained for a few days in a First Aid and First Reception Centre on the island of Lampedusa, then in another one near Palermo. The Tunisians have appealed to the UNHRC for deprivation of liberty and treatment during their stay in reception centers, which they consider inhumane and degrading.

M: The case is not new to me, as it drawn my attention the fact that the Grand Chamber partially overturned the decision at first instance, establishing that there had been no infringement of article 3 of the Convention, which we have already discussed. The Grand Chamber of Deputies considered that the treatment should be assessed taking into account the migratory emergency situation in which the country was located at the time of the events. According to this perspective, Italy has been held responsible for the sole violation of the right to personal freedom of migrants protected by article 5 of the Convention in addition to the infringement of article 13 providing the right to an effective remedy[63].

B: Time passes but the difficulty of guaranteeing fundamental rights seems to persist.

F: Exactly so, Beccaria. Fundamental principles that are now more than two hundred years old and continue to be tested by current events.

[63] Case of Khlaifia and Others v. Italy: http://hudoc.echr.coe.int/eng?i=001-170054

M: Yet the sacred principle remains: all men are created equal… All men are created equal…

PART THREE

The following discussion relates to four Supreme Court opinions citing Cesare Beccaria (or citing a book/article about Beccaria). The earliest case found (and the one with the most extensive discussion of Beccaria) is a dissent by Justice Douglas:

1. *Ullmann v. U.S.*, 350 U.S. 422, 450-53 (1956) (Justice Douglas, dissenting)

"The Fifth Amendment was designed to protect the accused against infamy as well as against prosecution. A recent analysis by Professor Mitchell Franklin of Tulane illuminates the point. See The Encyclopediste Origin and Meaning of the Fifth Amendment, Lawyers Guild Rev. 41. He shows how the Italian jurist, Beccaria, and his French and English followers, influenced American thought in the critical years following our Revolution. The history of infamy as a punishment was notorious. Luther had inveighed against excommunication. The Massachusetts Body of Liberties of 1641 had provided in Article 60: 'No church censure shall degrad or depose any man from any Civil dignitie, office, or Authoritie he shall have in the Commonwealth.' Loss of office, loss of dignity, loss of face were feudal forms of punishment. Infamy was historically considered to be punishment as effective as fine and imprisonment."

"The Beccarian attitude toward infamy was a part of the background of the Fifth Amendment. The concept of infamy was explicitly written into it. We need not guess as to that. For the first Clause of the Fifth Amendment contains the concept in haec verba: 'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury * * *.' (Italics added.) And the third Clause, the one we are concerned with here—'No person * * * shall be compelled in any criminal case to be a witness against himself * * *'—also reflects the revulsion of society at infamy imposed by the State. Beccaria, whose works were well known here[6] and who was particularly well known to Jefferson, was the main voice against the use of infamy as punishment. The curse of infamy, he showed, results from public opinion. Oppression occurs when infamy is imposed on the citizen by the State. The French jurist, Brissot de Warville, wrote in support of Beccaria's position, 'It is in the power of the mores rather than in the hands of the legislator that this terrible weapon of infamy rests, this type of civil excommunication, which deprives the victim of all consideration, which severs all the ties which bind him to his fellow citizens, which isolates him in the midst of society. The purer and more untouched the customs are, the greater the force of infamy.' I Theorie des Loix Criminelles (1781) 188. As de Pastoret said, 'Infamy, being a result of opinion, exists independently of the legislator; but he can employ it adroitly to make of it a salutary punishment.' 8 Des Loix Penales (1970), Pt. 2, 121."

FN 6: "Beccaria seems to have been principally introduced to America by Voltaire. See Barr, Voltaire in America (1941), 23—24. Barr states, 'Beccaria's Essay on Crimes and Punishment with its famous commentary by Voltaire was known in America immediately after its first appearance in France and was the first of Voltaire's works to be published in America. It was popular in lending libraries and as a quickly sold item in bookstores, because of general interest

in the formation of a new social order. A separate monograph would be necessary to trace the influence of this epoch-making tract.' *Id*. at 119."

2. *Furman v. Georgia*, 408 U.S. 238, 343 (1972) (Justice Marshall, concurring)

"Punishment as retribution has been condemned by scholars for centuries[85], and the Eighth Amendment itself was adopted to prevent punishment from becoming synonymous with vengeance."

FN 85: "*See, e.g*., C. Beccaria, On Crimes and Punishment (tr. by H. Paolucci 1963); 1 Archhold, on the Practice, Pleading, and Evidence in Criminal Cases ss 11-17, pp. XV-XIX (T. Waterman 7th ed. 1860)."

3. *Solem v. Helm*, 463 U.S. 277, 312 (1983) (Chief Justice Burger, dissenting)

"Although historians and scholars have disagreed about the Framers' original intentions, the more common view seems to be that the Framers viewed the Cruel and Unusual Punishments Clause as prohibiting the kind of torture meted out during the reign of the Stuarts[5].

FN 5: *"Compare, e.g., Granucci, "Nor Cruel and Unusual Punishments Inflicted": The Original Meaning, 57 Calif.L.Rev. 839 (1969); Schwartz, Eighth Amendment Proportionality Analysis and the Compelling Case of William Rummel, 71 J.Crim.L. & Criminology 378, 379–382 (1980); Katkin, Habitual Offender Laws: A Reconsideration, 21 Buffalo L.Rev. 99, 115 (1971), with, e.g., Wheeler, Toward a Theory of Limited Punishment: An Examination of the Eighth Amendment, 24 Stan.L.Rev. 838, 853–855 (1972); Comment, The Eighth Amendment, Beccaria, and the Enlightenment: An Historical Justification for the Weems v. United States Excessive Punishment Doctrine, 24 Buffalo L.Rev. 783 (1975)."*

4. *Payne v. Tennessee*, 501 U.S. 808, 819-20 (1991) (Chief Justice Rehnquist delivered the opinion of the court)

"The principles which have guided criminal sentencing—as opposed to criminal liability—have varied with the times. The book of Exodus prescribes the *Lex talionis*, "An eye for an eye, a tooth for a tooth." Exodus 21:22–23. In England and on the continent of Europe, as recently as the 18th century, crimes which would be regarded as quite minor today were capital offenses. Writing in the 18th century, the Italian criminologist Cesare Beccaria advocated the idea that "the punishment should fit the crime." He said that "[w]e have seen that the true measure of crimes is the injury done to society." J. Farrer, Crimes and Punishments 199 (1880)."

PART FOUR

The United States District Court for the Western District of Pennsylvania

United States v. Nehas, 368 F. Supp. 435, 439 (W.D. Pa. 1973)

In 1973, United States District Court Judge Edward Dumbauld issued an opinion in a criminal case relating to a defendant who failed to undergo a psychiatric examination directed by the draft board in violation of 50 U.S.C. App. § 462(a). The defendant filed an affidavit of bias regarding Judge Dumbauld, which was duly certified by counsel, under 28 U.S.C. § 144. In discussing the merits of the defendant's claim of bias, Judge Dumbauld addressed the seriousness of the criminal charges and provided an historical perspective of Constitutional rights and proportionality.

In discussing proportionality, Judge Dumbauld wrote the following: "If, then, draft cases are serious, and not merely youthful peccadilloes (like Yale students stealing a street car to celebrate a football victory), the punishment should accordingly be proportioned to the crime." 368 F.Supp at 439. He then added a footnote, which read: "The principle of proportionality between crime and punishment has been recognized at least since the time of Beccaria and of Thomas Jefferson's Virginia Act on the subject, which failed of passage because of "the rage against horse-stealers." Dumas Malone, Jefferson the Virginian (1948) 269-70; James Madison to Jefferson, February 15, 1787, Papers of Thomas Jefferson (Boyd ed.) XI, 152." *Id.* n 11.

PART FIVE

SENTENCING AND PROPORTIONALITY

Cesare Beccaria and Judge Dumbauld had tremendous insight into the need for there to be proportionality between the crime and the punishment. This was made abundantly clear by state[64] and federal governments in the creation and implementation of sentencing guidelines for criminal cases.

The procedural rules for sentencing and judgment in a federal case is provided in Rule 32 of the Federal Rules of Criminal Procedure. The imposition of a sentence is set forth in 18 U.S.C. § 3553. The sentencing court is to consider the Guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. § 994(a). Although the sentencing guidelines must be considered by the court, the Supreme Court held in 2005 that the Guidelines are "effectively advisory" and requires the court to consider the Guideline ranges, but permits the court to tailor the sentence in light of other statutory concerns.[65]

Although advisory, the Sentencing Guidelines play an important role in the imposition of a sentence.[66] The Guidelines were created by the United States Sentencing Commission ("Commission"), which is an independent agency in the judicial branch composed of seven voting and two non-voting, *ex officio* members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes. The guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code.[67]

Pursuant to the Act, the sentencing court must select a sentence from within the Guideline range. If, however, a particular case presents atypical features, the Act allows the court to depart from the guidelines and sentence outside the prescribed range. In that case, the court must specify reasons for departure. 18 U.S.C. § 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to determine whether the guidelines were correctly

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[64] Pennsylvania promulgated sentencing guidelines in 1982, which have been amended over time. Computation of the sentencing guidelines are set forth in 204 Pa. Code § 303.9. Guideline sentence recommendation: general. (a)(1) Basic sentence recommendations. Guideline sentence recommendations are based on the Offense Gravity Score and Prior Record Score. In most cases, the sentence recommendations are found in the Basic Sentencing Matrix (§ 303.16(a)). The Basic Sentencing Matrix specifies a range of sentences (i.e.—standard range) that shall be considered by the court for each combination of Offense Gravity Score (OGS) and Prior Record Score (PRS). A copy of the Pennsylvania matrix is attached to this Part as Addendum A.

[65] *See United States v. Booker*, 543 U.S. 220 (2005) and F.R.Crim.P 32, Advisory Committee Note-2007.

[66] 18 U.S.C. § 3553(a)(4).

[67] United States Commission, Guidelines Manual, Part A(1). A copy of the USSG Sentencing Table is attached to this Part as Addendum B.

applied. If the court departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. § 3742. The Act also abolishes parole, and substantially reduces and restructures good behavior adjustments.[68]

To understand the guidelines and their underlying rationale, it is important to focus on the three objectives that Congress sought to achieve in enacting the Sentencing Reform Act of 1984. The Act's basic objective was to enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system. To achieve this end, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arose out of the pre-guidelines sentencing system which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison. This practice usually resulted in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence imposed by the court. Second, Congress sought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity.[69]

The statutory requirement set forth by Congress is for the court to impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.[70]

The United States Supreme Court has issued numerous opinions on the Guidelines,[71] including early decisions that upheld the Sentencing Reform Act, which, *inter alia*, established the Sentencing Commission and the placement of the Commission in the Judicial Branch.[72]

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[68] *Id. at* Part A(2).

[69] *Id.*

[70] 18 U.S.C. § 3553(a).

More recently, the Supreme Court rendered a decision regarding the authority of a district court to take into consideration the effect of imposing a mandatory sentence to run consecutively to any other term of imprisonment. In *Dean v. United States*, 581 U.S. ___, No. 15-9260 (2017), the defendant was convicted of conspiracy to commit robbery, two counts of robbery, one count of possessing a firearm as a convicted felon and two counts of possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c). Section 924(c) requires a mandatory minimum sentence of 5 years for the first conviction and 25 years for the second conviction. Those sentences must be in addition to and consecutive to the sentence for the underlying predicate offense. The question presented was whether, in calculating the sentence for the predicate offense, a judge must ignore the fact that the defendant will serve the mandatory minimums imposed under § 924(c). The government argued that the judge must ignore that fact and first calculate the sentence for the predicate offences and then impose the mandatory minimum sentence.[73] The Supreme Court disagreed with the positions of both the government and Dean.

Chief Justice Roberts delivered the unanimous opinion of the Court. He provided a concise history of the discretion a sentencing court enjoys when setting an appropriate sentence. He made reference to the requirements of 18 U.S.C. § 3553(a) and wrote the following:

> *The list of factors is preceded by what is known as the parsimony principle, a broad command that instructs courts to "impose a sentence sufficient, but not greater than necessary, to comply with" the four identified purposes of sentence: just punishment, deterrence, protection of the public, and rehabilitation. . . . The court must also consider the pertinent guidelines and polices adopted by the Sentencing Commission.*[74]

The Court observed that a court in imposing a sentence on one count of a conviction to consider sentences imposed on other counts.[75] The Court held that "[w]hether the sentence for the predicate offense is one day or one decade, a district court does not violate the terms of § 924(c) so long as it imposes the mandatory minimum 'in addition to' the sentence for the violent or drug trafficking crime."[76] The case was remanded for further proceedings consistent with this opinion.

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[71] *See* Selected Supreme Court Cases on Sentencing Issues Prepared by the Office of General Counsel U.S. Sentencing Commission, July 2015.

[72] *Id*. (referencing *Mistretta v. United States*, 488 U.S. 361 (1989)).

[73] If the Government's position is correct, the defendant would face a sentencing range of 84-105 months for the predicate offense and then a 30 year consecutive sentence for a total sentence of 444 – 465 months. Dean argued that the sentencing court should consider his lengthy mandatory minimum sentences when calculating the other counts and impose a concurrent one-day sentence. Dean committed the two robberies when he was 23 years old.

[74] *Dean supra* at 4.

[75] *Id*.

[76] *Id*. at 6.

If Beccaria were alive today, he would applaud the United States Sentencing Commission for its efforts to create a system of justice that recognizes that all crimes and all defendants are not alike and that not all sentences should be the same.[77] Proportionality is the key.[78] He would also applaud Congress for mandating that a sentence should be sufficient, but not greater than necessary and the United States Supreme Court for recognizing and applying the parsimony principle. To do otherwise, according to Beccaria, would be unjust. The teachings of this gifted 18th Century philosopher are as relevant and insightful today as they were at the time.[79] The following excepts make the point.

Excerpts from Cesare Beccaria's book *On Crimes and Punishments* regarding the proportionality of crimes and punishments and the purpose of punishment

VI. Proportionality Between Crimes and Punishment

It is in the common interest not only that crimes not be committed, but that they be rarer in proportion to the harm that they do to society. Therefore, the obstacles that deter men from committing crimes must be more formidable the more those crimes are contrary to the public good and the greater are the incentives to commit them. Thus, there must be proportion between crimes and punishments.

If pleasure and pain are the driving forces of sentient beans, and if the invisible legislator placed rewards and punishments among the motives that impel men to even the most sublime endeavors, then the correct distribution of punishments will give rise to that contradiction, as little noticed as is it is common, that punishments punish the crimes that they have caused. If the same punishment is prescribed for two crimes that injure society in different degrees, then men will face no stronger deterrent from committing the greater crime if they find it in their advantage to do so.

XII. The Purpose of Punishment

From simple consideration of the truths expounded so far, it is evident that the purpose of punishment is neither to torment and afflict a sentient being, nor to undo a crime already committed. . . . The purpose of punishment, therefore, is none other than to prevent the criminal

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[77] For an excellent and comprehensive discussion of the influence that Cesare Beccaria's work *Dei delitti delle pene* (1764), had on Europe and the United States, *see The Birth of American Law, An Italian Philosopher and the American Revolution*, by John D. Bessler, Carolina Academic Press (2014).

[78] In *Graham v. Florida*, 560 U.S. 48 (2010), dealing with a juvenile nonhomicide offender sentenced to life without parole for a series of violent felonies, Justice Kennedy traced the history of the Cruel and Unusual Punishments Clause. He discussed the concept of proportionality as being central to the Eighth Amendment. "Embodied in the Constitution's ban on cruel and unusual punishments is the 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'' [citing *Weems v. United States*, 217 U.S. 348 (1910).] 560 U.S. at 59. The Court held that "[t]he Constitution prohibits the imposition of life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." *Id.* at 82.

[79] For a full discussion of proportionality, *see* the *Birth of America Law* by Bessler, *supra* at 368-375.

from doing fresh harm to fellow citizens and to deter others from doing the same. Therefore, punishments in the method of inflicting them must be chosen such that, in keeping with proportionality, they will make the most efficacious and lasting impression on the minds of men with the least torment to the body of the condemned.

PA - Addendum A

§303.16. Basic Sentencing Matrix — PRIOR RECORD SCORE — 6th Edition (6/3/05)

Level	OGS	Example Offenses	0	1	2	3	4	5	RFEL	REVOC	AGG/MIT
LEVEL 5 State Incar	14	Murder 3 Inchoate Murder/SBI Rape (child <13 years)	72-SL	84-SL	96-SL	120-SL	168-SL	192-SL	204-SL	SL	+/- 12
	13	Inchoate Murder/no SBI Weapons (mass destr./injury) PWID Cocaine, etc. (>1,000 gms)	60-78	66-84	72-90	78-96	84-102	96-114	108-126	240	+/- 12
	12	Rape IDSI Robbery (SBI)	48-66	54-72	60-78	66-84	72-90	84-102	96-114	120	+/- 12
	11	Agg Assit (SBI) Voluntary Manslaughter Sexual Assault PWID Cocaine,etc.(100-1,000 g)	36-54 BC	42-60	48-66	54-72	60-78	72-90	84-102	120	+/- 12
	10	Kidnapping Agg. Indecent. Assit Agg Assit (att. SBI) Arson (person inside) Hom. by veh.(DUI & work zone) PWIDCocaine,etc.(50-<100 gms)	22-36 BC	30-42 BC	36-48 BC	42-54	48-60	60-72	72-84	120	+/- 12
	9	Sexual exploitation of children Robbery (F1/F2) Burglary (home/person) Arson (no person inside)	12-24 BC	18-30 BC	24-36 BC	30-42 BC	36-48 BC	48-60	60-72	120	+/- 12
LEVEL 4 State Incar/ RIP trade	8 [F1]	Agg Assit (BI w/DW) Agg Assit (att. BI w/DW) Identity theft (60 yrs., 3rd off.) Hom. by veh.(DUI or work zone) Theft (>$100,000) PWID Cocaine,etc. (10-<50 gms)	9-16 BC	12-18 BC	15-21 BC	18-24 BC	21-27 BC	27-33 BC	40-52	NA	+/- 9
LEVEL 3 State/ Cnty Incar RIP trade	7 [F2]	Robbery (inflicts/threatens BI) Burglary (home/ no person) Statutory Sexual Assault Theft (>$50,000-$100,000) Identity theft (3rd off.) PWID Cocaine,etc.(2.5-<10 gms)	6-14 BC	9-16 BC	12-18 BC	15-21 BC	18-24 BC	24-30 BC	35-45 BC	NA	+/- 6
	6	Agg. harassment by prisoner Hom. by vehicle Burglary (not home/person) Theft (>$25,000-$50,000) Arson (property) PWID Cocaine,etc.(<2.5 gms)	3-12 BC	6-14 BC	9-16 BC	12-18 BC	15-21 BC	21-27 BC	27-40 BC	NA	+/- 6
LEVEL 2 Cnty Incar RIP RS	5 [F3]	Burglary (not home/no person) Theft (>$2000-$25,000) DUI (M1) PWID (1-<10 lb of marij)	RS-9	1-12 BC	3-14 BC	6-16 BC	9-16 BC	12-18 BC	24-36 BC	NA	+/- 3
	4	Indecent assault Forgery (money, stocks) Weapon on school property Crim Trespass (breaks in)	RS-3	RS-9	RS-<12	3-14 BC	6-16 BC	9-16 BC	21-30 BC	NA	+/- 3
	3 [M1]	Simple Assault Theft ($200-$2000) DUI (M2) Drug Poss.	RS-1	RS-6	RS-9	RS-<12	3-14 BC	6-16 BC	12-18 BC	NA	+/- 3
LEVEL 1 RS	2 [M2]	Theft ($50-<$200) Retail Theft (1st ,2nd) Bad Checks	RS	RS-2	RS-3	RS-4	RS-6	1-9	6- <12	NA	+/- 3
	1 [M3]	Most Misd. 3's;Theft (<$50) DUI (M) Poss. Small Amount Marij.	RS	RS-1	RS-2	RS-3	RS-4	RS-6	3-6	NA	+/- 3

1. Yellow (Level 4) and Blue (Level 3) shaded areas of the matrix indicate restrictive intermediate punishments may be imposed as a substitute for incarceration.
2. When restrictive intermediate punishments are appropriate, the duration of the restrictive intermediate punishment program shall not exceed the guideline ranges.
3. When the range is RS through a number of months (e.g. RS-6), RIP may be appropriate.
4. All numbers in sentence recommendations suggest months of minimum confinement pursuant to 42 Pa.C.S. 9755(b) and 9756(b).
5. Statutory classification (e.g., F1, F2, etc.) in brackets reflect the omnibus OGS assignment for the given grade.

Key: Level 1 = Purple, Level 2 = White, Level 3 = Blue, Level 4 = Yellow, Level 5 = Green, AGG/MIT = Orange

BC	=	boot camp	RIP	=	restrictive intermediate punishments
CNTY	=	county	RS	=	restorative sanctions
INCAR	=	incarceration	SBI	=	serious bodily injury
PWID	=	possession with intent to deliver	SL	=	statutory limit (longest minimum sentence)
REVOC	=	repeat violent offender category	-	=	no recommendation (aggravated sentence would exceed statutory limit)
RFEL	=	repeat felony 1 and felony 2 offender category	< ; >	=	less than;greater than

SENTENCING TABLE
(in months of imprisonment)

	Offense Level	Criminal History Category (Criminal History Points) I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
	1	0–6	0–6	0–6	0–6	0–6	0–6
	2	0–6	0–6	0–6	0–6	0–6	1–7
	3	0–6	0–6	0–6	0–6	2–8	3–9
	4	0–6	0–6	0–6	2–8	4–10	6–12
Zone A	5	0–6	0–6	1–7	4–10	6–12	9–15
	6	0–6	1–7	2–8	6–12	9–15	12–18
	7	0–6	2–8	4–10	8–14	12–18	15–21
	8	0–6	4–10	6–12	10–16	15–21	18–24
	9	4–10	6–12	8–14	12–18	18–24	21–27
Zone B	10	6–12	8–14	10–16	15–21	21–27	24–30
	11	8–14	10–16	12–18	18–24	24–30	27–33
Zone C	12	10–16	12–18	15–21	21–27	27–33	30–37
	13	12–18	15–21	18–24	24–30	30–37	33–41
	14	15–21	18–24	21–27	27–33	33–41	37–46
	15	18–24	21–27	24–30	30–37	37–46	41–51
	16	21–27	24–30	27–33	33–41	41–51	46–57
	17	24–30	27–33	30–37	37–46	46–57	51–63
	18	27–33	30–37	33–41	41–51	51–63	57–71
	19	30–37	33–41	37–46	46–57	57–71	63–78
	20	33–41	37–46	41–51	51–63	63–78	70–87
	21	37–46	41–51	46–57	57–71	70–87	77–96
	22	41–51	46–57	51–63	63–78	77–96	84–105
	23	46–57	51–63	57–71	70–87	84–105	92–115
	24	51–63	57–71	63–78	77–96	92–115	100–125
	25	57–71	63–78	70–87	84–105	100–125	110–137
	26	63–78	70–87	78–97	92–115	110–137	120–150
	27	70–87	78–97	87–108	100–125	120–150	130–162
Zone D	28	78–97	87–108	97–121	110–137	130–162	140–175
	29	87–108	97–121	108–135	121–151	140–175	151–188
	30	97–121	108–135	121–151	135–168	151–188	168–210
	31	108–135	121–151	135–168	151–188	168–210	188–235
	32	121–151	135–168	151–188	168–210	188–235	210–262
	33	135–168	151–188	168–210	188–235	210–262	235–293
	34	151–188	168–210	188–235	210–262	235–293	262–327
	35	168–210	188–235	210–262	235–293	262–327	292–365
	36	188–235	210–262	235–293	262–327	292–365	324–405
	37	210–262	235–293	262–327	292–365	324–405	360–life
	38	235–293	262–327	292–365	324–405	360–life	360–life
	39	262–327	292–365	324–405	360–life	360–life	360–life
	40	292–365	324–405	360–life	360–life	360–life	360–life
	41	324–405	360–life	360–life	360–life	360–life	360–life
	42	360–life	360–life	360–life	360–life	360–life	360–life
	43	life	life	life	life	life	life

November 1, 2016

PART SIX

Attached are findings from the Congressional Record for mentions of Cesare Beccaria, Gaetano Filangieri and Filippo Mazzei. Some of these findings actually predate the Congressional Record and go back to when Congress' journal was called the "Annals of Congress" and then the "Congressional Globe."

1 Annals of Cong. 819-834, The Judiciary (1789) (see p. 6 of PDF)

3 Annals of Cong. 281-284, Post Office Bill (1791) (see p. 2 of PDF)

7 Annals of Cong. 1083-1098, Foreign Intercourse (1798) (see p. 3 of PDF)

27 Cong. Globe 611-619, Speech of Walker (1842) (see p. 9 of PDF)

39 Cong. Globe 68-69, Punishment of Treason (1866) (see p. 2 of PDF)

39 Cong. Globe 2282-2285, Trial of Jefferson Davis (1866) (see p. 3 of PDF)

40 Cong. Globe 100-102, Suffrage (1869) (see p. 2 of PDF)

23 Cong. Rec. 427-441, Speech of Gen. Newton Martin Curtis To Define the Crime of Murder, Provide Penalty Therefor, and to Abolish the Punishment of Death (1892) (see p. 8 of PDF)

31 Cong. Rec. 3667-3677, Army Reorganization Bill (1898) (see p. 8 of PDF)

70 Cong. Rec. 1355-1381, James M. Beck Contested Election Case (1929) (see p. 19 of PDF)

87 Cong. Rec. A4546-A4548, How the Court Martial Works Today (1941)

106 Cong. Rec. A6284-A6285, Capital Punishment (1960)

107 Cong. Rec. 6702-6703, Hail to Italy and Its Great People (1961) (see p. 2)

107 Cong. Rec. 7128-7129, Law Day Observance (1961) (see p. 2)

111 Cong. Rec. 5531-5534, Crime Control--Whose Responsibility Is It? (1965)

112 Cong. Rec. 7411-7417, Shortcomings in the Administration of Criminal Law (1966)

112 Cong. Rec. 12906-12907, Abolish Capital Punishment (1966)

112 Cong. Rec. A2761-A2763, Current Concepts in Corrections (1966)

112 Cong. Rec. A3489-A3491, Capital Punishment Should be Abolished (1966)

115 Cong. Rec. 5872-5886, Organized Crime (1969) (see p. 11)

117 Cong. Rec. 6120-6133, Challenge of Modern Criminal Code (1971) (see p. 2)

118 Cong. Rec. 1191-1194, Criminal Justice and Penal Systems (1972)

118 Cong. Rec. 1290-1292, Remarks of Chief Justice Burger (1972)

118 Cong. Rec. 6149-6151, Threat to Individualism (1972) (see p. 2)

119 Cong. Rec. 16228-16230, Interview with NY State Senator Marchi (1973) (see p. 2)

123 Cong. Rec. 37841-37848, Crime in America (1977) (see p. 6)

130 Cong. Rec. E33806, An Appreciation of Philip Mazzei (1984)

shall hold their commissions during good behaviour, and shall receive salaries not capable of diminution; and it further provides, that the Judicial power of the Union shall be vested in a Supreme and inferior courts; that is, in supreme and inferior courts whose Judges shall receive their commissions during good behaviour, and possess salaries not liable to diminution.

Does not, then, the Constitution, in the plainest and most unequivocal language, preclude us from allotting any part of the Judicial authority of the Union to the State judicature? The bill, it is said, is then unconstitutional, for it recognises the authority of the Federal court to overturn the decisions of the State courts, when those decisions are repugnant to the laws or Constitution of the United States. This is no recognition of any such authority; it is a necessary provision to guard the rights of the Union against the invasion of the States. If a State court should usurp the jurisdiction of Federal causes, and by its adjudications attempt to strip the Federal Government of its Constitutional rights, it is necessary that the National tribunal shall possess the power of protecting those rights from such invasion. The committee have been told that this multiplicity of courts, and of appeals, will distress the citizens; and the number of appeals in Great Britain has been alluded to. He had always heard, he said, that there was no country in the world where justice was better administered than in that country; to its excellent and impartial administration, the property, freedom, and civil rights of its citizens have been attributed. Were appeals too much restrained in this country, he questioned much whether a great clamor would not be raised against such a restriction. The citizens of a free country, when they lose their cause in one court, like to try their chance in another. This is a privilege they consider themselves justly entitled to; and if a litigious man harass his adversary by vexatious appeals, he is sufficiently punished by having the costs to pay. By limiting appeals to the Supreme Court to sums above one thousand dollars, as is proposed, the poor will be protected from being harassed by appeals to the Supreme Court.

There was one more observation that required an answer; it was said that the juries shall be so drawn as to occasion the smallest inconvenience to the citizens. After having very maturely considered the subject, and attentively examined the bill in all its modifications, and heard all that had been alleged on this occasion, he was perfectly convinced, that whatever defects might be discovered in other parts of the bill, the adoption of this motion would tend to the rejection of every system of national jurisprudence.

Mr. MADISON said, that he was inclined to amend every part of the bill, so as to remove gentlemen's jealousy, provided it could be done consistently with the Constitution.

Mr. GERRY was sorry to hear the honorable gentleman from South Carolina (Mr. BURKE) renounce his intention of opposing the system any further; he thought gentlemen ought not to be tired out like a jury.

Mr. BURKE said, he was not tired with the discussion, but was satisfied that the opposition must be unsuccessful.

The committee now rose and reported progress.—Adjourned.

MONDAY, August 31.

The engrossed bill to suspend part of an act to regulate the collection of the duties imposed by law on the tonnage of ships or vessels, on goods, wares, and merchandises imported into the United States, was read a third time, and, on motion, ordered to be committed to Messrs. GOODHUE, CARROLL, LEE, and BLAND, with instruction to the said committee to insert a clause or clauses for establishing Bath and Frenchman's Bay, in the State of Massachusetts, ports of delivery for all foreign vessels.

THE JUDICIARY.

The House then went again into a Committee of the Whole on the bill for establishing the Judicial Courts of the United States; Mr. BOUDINOT in the Chair.

The question being still on striking out the third clause—

Mr. LIVERMORE thought this law would entirely change the form of Government of the United States.

Several observations have been made on this clause; it is said to be the axis on which the whole turns; some of the objections he had thrown out have been attempted to be answered; among others, the great expense. By expense he did not mean the salaries of Judges; this would, however, be greater than the whole expense of the Judiciary throughout the United States; but he referred to the general expenses which must be borne by the people at large for jails, courthouses, &c.; borne without repining, as the people receive compensation in personal security and public justice; but if all these were doubled throughout, it would be justly considered as intolerable. Another burden, he said, was the rapidity of the course of prosecution in these courts, by which debtors would be obliged very suddenly to pay their debts at a great disadvantage. Something like this occasioned the insurrection in the Commonwealth of Massachusetts. In other States, similar modes of rapidity in the collection of debts have produced conventions. This had been the case to the northward, and, he had been informed, had been the same to the southward.

This new fangled system would eventually swallow up the State courts, as those who were in favor of this rapid mode of receiving debts, would have recourse to them. He then adverted to the clashing circumstances that must arise in the administration of justice, by these independent courts having similar powers. Gentlemen, said he, may be very facetious respecting dividing the body; but these are serious difficulties; the instances mentioned by the gentleman from South Carolina do not apply, the officer here is the same

the same sheriff has the precepts committed to him; and the execution does not clash; the same jail answers for both.

He did not think that the difficulties had been answered by any of the examples brought for the purpose.

As to the instance of the trial for piracy in the State of South Carolina, that was a particular case, that could not be otherwise provided for; but these so rarely happen, that no precedent could be drawn from them to render it necessary to establish these perpetual courts.

He then referred to the clause, and offered a substitute, and said he thought, upon the whole, that the suggestion thrown out by an honorable gentleman from South Carolina (Mr. BURKE) that there should be no district courts, is better than any substitute.

It may be proper here to refer to the Constitution; he then read the clause upon the subject. The Federal court is to have original jurisdiction only in certain specified cases; in all other it is to have only appellate jurisdiction; it is argued from this, that there are to be inferior Federal courts, from which these appeals are to be made. If the Constitution had taken from State courts all cognizance of Federal causes, something might be said; but this is not the case. The State courts are allowed jurisdiction in these cases.

It has been objected that bonds taken by the Judges of the Supreme Court cannot be sued in the State courts. He did not see why this could not be done; similar processes have been usual among us in times past, and there has been no difficulty.

Admiralty courts should have cognizance of all maritime matters, and cases of seizures should also be committed to their decision. He hoped, therefore, that the clause would be disagreed to, or struck out, and that the bill might be rejected, that a short concise system might be adopted.

Mr. VINING said he conceived that the institution of general and independent tribunals were essential to the fair and impartial administration of the laws of the United States. That the power of making laws, of executing them, and a judicial administration of such laws, is in its nature inseparable and indivisible, if not, "justice might be said to be lame as well as blind among us." The only plausible argument which has been urged against this clause is the expense. It is true that expense must in some degree be necessarily incurred, but it will chiefly consist with the organization of your courts, and the erection of such buildings as may be essential, such as court-houses, jails, and offices, as the gentleman has mentioned; and what, at all events, do such expenses amount to? They are the price that is paid for the fair and equal administration of your laws; from your amazing increasing system of government, causes must necessarily multiply in a proportionably extensive ratio; these causes must be tried somewhere, and whether it is in a State court, or Federal judicature, can, in the article of expense, make but little difference to the parties; it is only (for the sake of more impartial justice) transferring the business from one tribunal to another.

The gentleman has told us that the people do not like courts; that they have been opposed and prevented by violence; nay, by an insurrection in Massachusetts. Surely this operates as a powerful reason to prove that there should be a general, independent, and energetic jurisdiction; otherwise, if either of the State Judges should be so inclined, or a few sons of faction so assembled, they could ever frustrate the objects of justice; and, besides, from the different periods fixed by the Constitution of the United States, and the different constitutions of the several States, with respect to the continuance of the Judges in office, it is equally impossible and inconsistent to make a general, uniform establishment, so as to accommodate them to your government.

He wished, he said, to see justice so equally distributed, as that every citizen of the United States should be fairly dealt by, and so impartially administered, that every subject or citizen of the world, whether foreigner or alien, friend or foe, should be alike satisfied; by this means, the doors of justice would be thrown wide open, emigration would be encouraged from all countries into your own, and, in short, the United States of America would be made not only an asylum of liberty, but a sanctuary of justice. The faith of treaties would be preserved inviolate; our extensive funded system would have its intended operation; our navigation, impost, and revenue laws would be executed so as to insure their many advantages, whilst the combined effect would establish the public and private credit of the Union.

Mr. STONE.—I am mistaken if the whole subject has yet come before us in its full extent, and I think it ought to be thoroughly investigated before it is decided upon.

I declare myself, Mr. Chairman, much pleased with the discussion, and am gratified with the different points of view in which it has been placed; but I conceive there is a variety of considerations arising out of the subject which have not yet been touched upon. I have seriously reflected, sir, on the subject, and have endeavored to give the arguments all the weight they deserve. I think, before we enter into a view of the convenience of the system, it will be right to consider the Constitutional ground on which we stand.

Gentlemen, in their arguments, have expressly or impliedly declared that the Constitution, in this respect, is imperative—that it commands the organization of inferior courts. If this doctrine is true, let us see where it will carry us. It is conceded on all hands that the establishment of these courts is immutable. If the command of the Constitution is imperative, we must carry it through all its branches; but if it is not true, we may model it so as to suit the convenience of the present time. It appears from the words of the Constitution, that Congress may, from time to time, ordain and establish inferior courts, such as they think proper. Now, if this is a command for us to establish inferior courts, if we cannot

model or restrain their jurisdictions, the words which give us the power from time to time so to do, are vain and nugatory. Do the words "from time to time" leave any thing to our discretion? Or must we establish in our own minds a given length of time to gratify its meaning? Are we to compare it with the case of a census, and confine it to a subsequent term of ten years? If you establish inferior courts upon this principle, you have expended your whole power upon the subject for that length of time, and cannot interfere until the term arrives which you have fixed in your own mind for the power to return. But the words "ordain and establish" will not only go to the appointment of Judges of inferior courts, but they comprehend every thing which relates to them; we have good authority for this opinion, because one branch of the Legislature has expressly laid it down in the bill before us; they have modified the tribunal; they have restrained its jurisdiction; they have directed appeals only to be had in certain cases; they have connected the State courts with the district courts in some cases; this shows that, in their opinion, the articles of the Constitution gave them a latitude. It is not said in that instrument that you shall exercise the judicial power over all those cases, but that the judicial power shall extend to those cases. If it had been the idea of the convention that its Judiciary should extend so as positively to have taken in all these cases, they would have so declared it, and been explicit; but they have given you a power to extend your jurisdiction to them, but have not compelled you to that extension. Several gentlemen have mistaken this idea, and that on very different ground. The gentleman from Virginia has compared the exercise of the Judiciary to that of the Executive and Legislative powers, and seems from his arguments to infer that if you do not extend the Judiciary power, so as to take in all those cases which are specified in the Constitution, that you will leave the Judiciary defective.

The gentleman from New York seems to think it will be an abandonment of our Judicial power altogether. To what does the Legislative power of this Government extend? To a variety of cases which are not yet put in action; for instance, the Legislative power extends to excises and direct taxes. If you conceive the Judiciary incomplete, because you have not strained it to its utmost extension, cannot you see, from the same principle, that the Legislative power is not complete unless you extend it as far as you have the power? Do you divest yourself of the power by not exercising it? Certainly not. Suppose you were to lay as heavy a land tax as the people could bear, (and this is in our power by the terms of the Constitution,) and suppose the people were to ask you why you had done so, when there was no absolute necessity for it, would you answer that the Constitution has given us the power, therefore we must exercise it? Certainly not. The Constitution has given us power to admit that a suit in certain cases shall be brought for six-pence; this we may authorize to be done in an inferior court—from the District Court it is carried to the Circuit Court, and may be brought up into the Supreme Court. This power, I say, we have by the Constitution; would it be proper to exercise it? But these circumstances would certainly follow from a construction that the Constitution was imperative, and that you must establish inferior tribunals on the terms of the Constitution.

I understood it to be said by the gentleman from New York, and decided, that the establishment of inferior courts would draw the whole Judiciary power along with them. If the clause in the Constitution commands that inferior courts be established, what are their powers? They will claim all the jurisdiction to which it is declared the Judicial power shall extend—it is the right the Constitution has given them after you have established the courts; any modification, therefore, or restriction of their power, would be a nullity; hence it appears to me, if the gentleman's principle is right, that part of your bill which restricts their cognizance to a particular sum is a nullity.

I apprehend that the gentlemen who support this bill have differed widely from the body that passed it, in supposing two things; first, that whatever Continental jurisdiction is exercised, that it follows they are Continental courts, and must have Continental salaries, and hold their offices during good behaviour; if this is the case, the Senate have done one of two things, they have either relinquished all the penalties due to Government for a non-compliance of the laws under one hundred dollars, by the 9th section of the bill; or they have established the doctrine which gentlemen on this side contend for. By this section they have given to the State courts jurisdiction in cases of an inferior magnitude; now the very moment any suit is brought by the United States, under one hundred dollars, before a State court, such court becomes a Continental court. I say they must run into this absurdity, or relinquish all suits under one hundred dollars. But if this is not the case; if they do not relinquish this sum, (and the Senate did not suppose this was ever to be given up,) they did what appears, upon the gentleman's principles, very strange indeed: they leave Continental courts to be established by their bringing suits, or foreigners bringing suits into the State courts; and in this way they divest the President of his power of appointing judges of inferior courts. This appears to my mind a strange mode of reasoning.

A gentleman has said that it would be impracticable to admit the judges of the several States to take cognizance of the laws of the United States, because they are laws *de novo:* this I think is the idea. I apprehend that judges, when they have undertaken their duty, must be considered in two respects—as citizens and as judges. Now as men, they are to submit to the modification of the Constitution as it respects them as citizens; and as judges, they are to consider their relation as such to the Constitution, and are to administer justice agreeably to that Constitution; as judges they may divest themselves of this relation; they

may resign, but if they continue to act as judges, they are enjoined to obey the Constitution of the United States, and laws established under it: now judges know that it is in the power of the United States to change the State Constitutions, and they must conform in every respect. A judge binds himself not only to act upon the laws which have already passed, but to obey all that may hereafter pass. If it is admitted that the judges cannot take cognizance of the laws *de novo*, you annihilate the judicial capacity at a blow; they cannot notice the adoption of the Federal Constitution or any law passed after appointment. I can hardly bring myself seriously to consider the subject in this reverse point of view. Gentlemen will be convinced, I hope, that I take all the pains I possibly can to understand and discuss the arguments made use of; they will admit that if my principles are right, Congress may establish the courts on what terms they may think proper.

It will perhaps be well to consider what the State courts can do, and consider what they are not competent to, and the reason we should not trust them. It appears to me that there is nothing but what the State courts are competent to but certain cases which are specially designated; in cases where a State is a party they ought not to decide, because they could not execute their judgment; they would be competent to all admiralty cases, but for the fact I mentioned before, that admiralty courts are not established in all the States. I take it to be true that all the judicial powers not taken away by the Constitution from the States, remain to them, and I take them to be complete Republics, to have sovereign power, conformable to their nature; therefore, if the Constitution of the United States had not interfered in the subject, even of treason against the Union, the States, I apprehend, except in a few instances, could not have taken notice of it, because I do not know any kind of treason against the United States but is also treason against a particular State. If a man raises an army in the body of a State, unauthorized by the State, is it not rebellion against the State? Suppose it to be done in this State, and they tell you it is not the State of New York they mean to oppose, it is the General Government, pray is not this treason against the State of New York as a member of the Union? Is not a piracy committed against the United States committed against a particular State? If it had its sovereign authority unimpaired, would any gentlemen contend that they had not power to try for piracy? I apprehend they would not. If a bond is given to the United States, or a penalty accrues under the supreme law of the land, or if a debt is due to a foreigner, may it not be sued in any part of the Union? I believe there is little doubt but this might be properly done—the Senate, by this bill, have given us this construction: foreigners may sue and be sued in all the States. This has already been done; do gentlemen now contend, that these suits shall be exclusively in the Continental courts? If they do, it would be an infringement of the private contracts, it would be an *ex post facto* law. The citizen might suppose, when he contracted his debt, that he might bring his suit in a State court; if you exclude him from this privilege, you destroy the right he had; a right, notwithstanding all that may be affirmed of the wisdom, honesty, and expedition of the courts of the United States, yet to him it may appear ten to one better to be secured in his rights in State courts. I think the inconvenience which will attend these courts has been fully explained; but certainly it has not been fully considered how far the inconveniences heretofore sustained may be compared to the inconveniences which may hereafter happen; perhaps there are no instances in point. Gentlemen are mistaken, who suppose that because there are many tribunals in the State they are necessarily exposed to the same difficulties as will arise from the establishment of Federal and State courts. I will state a case: A man is taken in Maryland by a writ from the county court, to which he gives bail. If he is taken by writ from the general court, he must also give bail, or go to prison. But if he is unable on the first writ to give bail and goes to prison, then the sheriff returns to the General Court that he has taken him, and he is in jail. This is a good return, as well in civil as in criminal process; as well upon mesne process as in executions; and if either of the courts required his appearance in court, an *habeas corpus* may be granted; by which he will be brought into court, and remanded, if proper. Here is no danger of defeating rights, nor acquiring inconvenience, because the same jail will be made use of, and the same sheriff will hold, and always be liable for his prisoner. As the courts are connected, they will *ex officio* take notice of, and admit the proceedings of, each other.

But in different tribunals, not connected, mischiefs may happen. Will a sheriff be justifiable in delivering up his prisoner to the marshal, or will it be a proper return by the marshal that the prisoner is kept by the State sheriff. If the first position is true, you ought to show that the marshal is liable to the State creditor for an escape, and you ought also to show that the marshal will return his prisoner to the State jail. If the second, you ought to show that the sheriff is justifiable in detaining a man after the cause for which he was committed to his custody ceased. An execution against the property depends upon the same principles; because the priority avoids all difficulty. If all the property is taken by the prior execution, the return of that fact is a proper return. But property is bound by the time of judgment in some cases, and the time of execution is put into the sheriff's hands in others. Now there is no difference where the same sheriff receives all. But suppose there is a different time of rendering judgment, and of receiving execution, and both are levied at the same time either upon body or goods. The rules of the courts are different; there will be different determinations in each, and perhaps each justifying their own affirmation. Even they may clash as to a matter of right. Suppose goods are stolen, and a prosecution is set on foot in the Federal court as of goods belonging

to the United States, and at the same time an indictment is laid in the State court, for stealing goods, as for the goods of A: there is a conviction in each; the goods are to be returned to the owner. Now the courts in their several capacities justify their officers; and they proceed severally to seize goods or body; and failing in strength, the *posse comitatus* is raised on both sides; murder may be the consequence; and if it should, each court justifying the act of its officers, and condemning the others, all the officers in the different courts must be hanged for acting legally.

These are the inconveniences which result from a system of this kind, and why are these inconveniences to be encountered? Is it because such a system will be popular? I cannot conceive it warrantable upon this ground; it seems to me to be laid upon a principle directly opposite to that of being agreeable to the people. Will it be agreeable to the Judges? That cannot be, because it is intended to correct the vices of the State Judiciaries. Will it be considered as necessary by the State Legislature? Gentlemen have agreed that it will not be agreeable to the State Legislatures, and we find in general, the sentiments of the people expressed by the Legislatures; from these circumstances, I conceive that this system cannot, in its nature, be agreeable to the State Governments, or to the people. I do not think this, then, the proper time to establish these courts; it is a measure on which the affection and attachment of the people to the Constitution will be risked; it is best to defer the business till the necessity of these courts shall become apparent. I could therefore wish, that the power should be reserved for the occasion, and that nothing should be done the present session but what is absolutely necessary, less by extending these matters too far, we should give the people a disposition to curtail our authority; they might then not confine themselues to an alteration in the Judicial department alone, they might extend it so far as to injure the Executive and Legislative, if not to the total change or destruction of the whole system of Government. I am, sir, for this Government moving as silently as death, that the people should not perceive the least alteration for the worse in their situation; the exercise of this power will certainly be the most odious that can be exercised, for mankind do not generally view courts of justice with a favorable eye, they are intended to correct the voices of the community, and consequently are disagreeable to human nature. It was well observed, and I concur in the opinion, that of all the wheels in Government, the Judicial is the most disagreeable.

Mr. GERRY.—The gentlemen who support the motion for striking out the clause, urge that this system will interfere with the State Judiciaries, that it will occasion a double set of officers, separate prisons and court-houses, and in general that the expenses will increase to a degree heretofore unknown, and consequently render the establishment obnoxious to the community. These objections are of such weight, as to have made deep impression on my mind. But what do gentlemen propose? Do they believe that these disadvantages can be remedied by Congress? I think they cannot; they result from the Constitution itself, and therefore must be borne until the Constitution is altered, or until the several States shall modify their courts of judicature so as to comport with our system.

Gentlemen have said, that the Federal Judiciary will be disagreeable to the citizens of the United States. These it should be recollected were divided into two classes; the one was for an unconditional ratification of the present Constitution; the other was against such a measure. There appeared to be a majority of the first description, and we must suppose they understood what would be the operation of the system of Government they adopted with such avidity; if they did not, they entrusted the decisions to conventions of men whom they suppose did. We must admit that they knew their business, and saw it would be for the benefit of their constituents, or we must suppose they were weak or wicked men to adopt a Constitution without understanding it; this last supposition being inadmissible, I take it, then, their observations only refer to that part of our fellow-citizens who were against the unconditional ratification. Now I believe with them, that this part of the community, at least, will be uneasy under the operation of such a Judicial system. But how can it be remedied? The motion of the honorable gentleman from New Hampshire extends to prevent the establishment of inferior tribunals, except for the trial of admiralty causes; what, then, is to be done with all the other cases of which the Supreme Court has only appellate jurisdiction? You cannot make Federal courts of the State courts, because the Constitution is an insuperable bar; besides, the laws and constitutions of some States expressly prohibit the State Judges from administering or taking cognizance of foreign matters. New Hampshire requires all her civil officers to be appointed by the Legislature, and for what length of time they shall determine; now this is contrary to the indispensable tenure required by the Constitution of the United States. All Judicial officers in Massachusetts must be appointed by the Governor, with the advice of council, and may be removed by the same power, upon the address of both Houses of the Legislature. There is another provision in the same Constitution, incompatible with the terms of the Judicial capacity under Congress. "All writs issuing out of the clerk's office, in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts," &c. The Constitution of Maryland establishes their Judges on the tenure of good behaviour; but they may be removed for misbehaviour, on conviction in a court of law. The Judges of the Federal court are to be removed only by impeachment and conviction before Congress. I suppose the same, or similar difficulties exist in every State, and therefore the State courts would be improper tribunals to administer the laws of the United States, while the present Constitution remains, or while they are not estab-

lished by the individual States, upon the terms required in this Constitution.

We are to administer this Constitution, and therefore we are bound to establish these courts, let what will be the consequence. Gentlemen say they are willing to establish Courts of Admiralty; but what is to become of the other cases to which the Continental jurisdiction is extended by the Constitution? When we have established the courts as they propose, have fixed the salaries, and the Supreme Executive has appointed the Judges, they will be independent, and no power can remove them; they will be beyond the reach of the Executive or Legislative powers of this Government; they will be unassailable by the State Legislatures; nothing can affect them but the united voice of America, and that only by a change of Government. They will, in this elevated and independent situation, attend to their duty—their honor and every sacred tie oblige them. Will they not attend to the Constitution as well as your laws? The Constitution will undoubtedly be their first rule; and so far as your laws conform to that, they will attend to them, but no further. Would they then be confined by your laws within a less jurisdiction than they were authorized to take by the Constitution? You must admit them to be inferior courts; and the Constitution positively says, that the Judicial powers of the United States shall be so vested. They would then inquire what were the Judicial powers of the Union, and undertake the exercise thereof, notwithstanding any Legislative declaration to the contrary; consequently their system would be a nullity, at least, which attempted to restrict the jurisdiction of inferior courts.

It has been said, that much inconvenience will result from the clashing of jurisdiction. Perhaps this is but ideal; if, however, it should be found to be the case, the General Government must remove the obstacles. They are authorized to suppress any system injurious to the administration of this Constitution, by the clause granting to Congress the power of making all laws necessary and proper for carrying into execution the powers of the Constitution, or any department thereof. It is without a desire to increase the difficulties of the proposed arrangements, that I make these observations, for I am desirous of promoting the unity of the two Governments, and this, I apprehend, can be done only by drawing a line between the two Judicial powers.

Mr. Jackson.—I would not rise again, but from the great anxiety I feel to have this business well understood and determined. I am not for doing away the whole of the Judiciary power, but so ameliorating it as to make it agreeable and consistent. My heart, sir, is federal; and I would do as much as any member on this floor, on any, and on every occasion, to promote the interests and welfare of the Union. But in the present important question, I conceive the liberties of my fellow-citizens too deeply involved to suffer me to risk such a precious stake, though to secure the efficiency of a National Government.

It has been said in this debate, that the State Judges would be partial, and that there were no means of dragging them to justice. Shall I peremptorily tell the gentlemen who hold this opinion, that there is a Constitutional power in existence to call them to account. Need I add that the Supreme Federal Court will have the right to annul these partial adjudications? Thus, then, all these arguments fall to the ground, on the slightest recollection.

Will gentlemen contend that it is for the convenience and security of the people that these inferior courts should be established? I believe this sentiment may be successfully controverted. The accurate Marquis Beccaria points out a danger which it behooves us to guard against. In every society, says he, there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery. The intent of good laws is to oppose this effort, and diffuse their influence universally and equally. But men generally abandon the care of their most important concerns, to the uncertain prudence and discretion of those whose interest it is to reject the best and wisest institutions; and it is not till they have been led into a thousand mistakes in matters the most essential to their lives and liberties, and are weary of suffering, that they can be induced to apply a remedy to the evils with which they are oppressed. It is then they begin to conceive and acknowledge the most palpable truths which, from their simplicity, commonly escape vulgar minds, incapable of analyzing objects, accustomed to receive impressions without distinction, and to be determined rather by the opinions of others than by the result of their own examination.

This celebrated writer pursues the principle still further, and confirms what we urge on our side against the unnecessary establishment of inferior courts. He asserts, with the great Montesquieu, that every punishment which does not arise from absolute necessity is tyrannical; a proposition which may be made more general thus, every act of authority of one man over another for which there is not an absolute necessity is tyrannical. It is upon this, then, that the Sovereign's right to punish crimes is founded; that is, upon the necessity of defending the public liberty entrusted to his care, from the usurpation of individuals; and punishments are just, in proportion as the liberty preserved by the Sovereign is sacred and valuable.

He now wished the House to consider whether there was a necessity for the present establishment; and if it should appear, as he thought had been plainly shown, that no such necessity existed, it would be a tyranny which the people of this country would never be content to bear.

He had attended to the arguments of gentlemen who insisted upon the necessity of such establishments; but his mind was far from being satisfied that the necessity existed. In the Constitution it is declared that the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish. From hence

he presumed that there was a Constitutional necessity for the establishment of a Supreme Court, but there was a discretionary power in Congress to establish, from time to time, inferior courts; but until they are appointed, it cannot be contended that the State courts are deprived of taking cognizance of certain cases enumerated in the Constitution. If Congress do not think there is a Constitutional necessity, they ought not to appoint them, because they are burdensome and disagreeable to the people.

He presumed that there was no greater Constitutional necessity under the present Constitution than there was under the late articles of Confederation. It is there declared, that Congress may, from time to time, institute inferior courts, for the trials of piracies and felonies committed on the high seas, and establish courts for receiving and determining finally in all cases of captures; yet these powers were carried into execution under the State Judiciaries. There is not a State but has exercised the Admiralty jurisdiction in its fullest extent: they have not determined inferior cases only, they have not been confined even to the condemnation of goods and vessels, but they have condemned and executed persons for piracy. If, then, they could do this, notwithstanding a solemn contract in the Confederation, why cannot it be done in the present case? We trust the State Judiciaries with jurisdiction in some cases, why cannot we trust them in all? Will gentlemen pretend to say that the check furnished by the Supreme Courts, to revise and correct their judgments on appeal, is not sufficient to secure the due administration of justice? They cannot pretend to make such an assertion on mature deliberation.

Mr. LIVERMORE.—It has been said that this Government cannot be carried into execution, unless we establish inferior courts, because the State Judges would not be bound to carry our laws into execution. I will just read a few words in the Constitution, in order to determine this point: in the sixth article it is said, that all Executive and Judicial officers, both of the United States, and the several States, shall be bound by oath or affirmation, to support this Constitution; and in the same article it is also declared, that this Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the Judges in every State shall be bound thereby, any thing in the constitution or the laws of any State to the contrary notwithstanding. He looked upon this to be a clear answer to all the objections drawn from that source. He would ask the gentleman whether the State courts were not adequate to decide all these questions from the time the Constitution was ratified till this day. He presumed they were, and might continue to exercise jurisdiction until Congress thought proper to establish such inferior courts as they were authorized to do, but which he did not think at this time to be necessary.

Mr. LAWRENCE was willing to give the Constitution all the effect it ought to have; but he would not be willing to carry into operation any part of it unnecessarily, especially if the inconveniences and dangers so often repeated must be the consequence. He had endeavored to investigate the subject, and satisfy his own mind, with respect to the propriety of the present measure; he found, by the Constitution, that there were several powers given to the Government, but vested in different branches. He presumed that they were for beneficial purposes, and ought to be exercised when an occasion presented. The Executive power had been exercised already as occasion required, the Legislative power had been extended in the same manner. We are now about to extend the powers of the Judiciary; and it has been asked, shall we employ this power in all the cases to which it extends, or shall we employ it to certain enumerated cases alone? He was of opinion that it ought to be employed so as to embrace all the cases which necessity required; it is admitted, on all hands, that necessity requires we should establish superior, and some kind of inferior courts. The only question that then remained, was to know how far this extended; it was not, therefore, a question on principle, but a question of expediency, and in this view he considered the bill to be proper.

Mr. GERRY thought the gentleman from New Hampshire extended the sixth article of the Constitution too far; for the State Judges would not be bound by any law altering the State constitution, unless such law was necessary to carry into operation the Constitution of the Union.

Mr. SUMTER could not reconcile it to himself to sit and give a silent vote on this important question; at the same time he was loth to take up the time of the committee when they were impatient to come to a decision. He did not rise, however, to object to the Legislature possessing the power of adopting the present system, because he thought the new Constitution warranted the exercise of it; but he questioned whether it was expedient at the present moment. He knew too sensibly the situation of his constituents, to suppose that such an expensive and distrustful system could be agreeable to them. It would be cruel in their present distressed situation, to encumber them with a branch of Government, which could be as well, and perhaps better, done without. It was hostile to their liberties, and dangerous in the extreme; he could not think so ill of his fellow-citizens as to suppose that the rein of despotism was necessary to curb them. Under these impressions, he could not help expressing his dissatisfaction with the present bill; it was a system of oppression which the people neither desired, nor were prepared to receive. Gentlemen ought to recollect that the Constitution was adopted but by a small majority of the people of the United States, if any majority at all; however, this point he would not now contest; but he would be bold to say, that it was adopted under a firm confidence that it would exercise no tyrannical power. At this early period, then, it would be dangerous

to the existence of Government to assume authority for which there was not an absolute necessity.

Gentlemen urged that this was not an expensive Government; but to the eye of the people, who have not been accustomed to such a numerous set of officers, it would not appear in the same light. Will it be thought that the establishment of numerous courts are without expense, or that they will exercise their jurisdiction without oppression? Or do gentlemen believe that the circumstances of the people are able to bear the expenses of a double band of officers? If such is their opinion, they are certainly mistaken, at least so far as it respects the State of South Carolina. Will gentlemen contend that this Judicial establishment will not bring about the destruction of the State Judiciaries? And are they prepared to prove, to the satisfaction of my constituents, that such a measure would tend to preserve the liberties of America? Is the licentiousness which has been complained of in our State courts, so great as to warrant an exertion of power, little, if any thing, short of tyranny? I cannot believe it is. The people of America do not require the iron hand of power to keep them within due bounds; they are sufficiently enlightened to know and pursue their own good. How, then, will they receive a system founded upon distrust, and levelled against the free exercise of that liberty which they have secured to our common country? Cannot a more moderate and convenient mode be found out? Most certainly it can. Let us then reject the present system, and endeavor to introduce one more adapted to their convenience and expectations. I have no doubt but the abilities in this House would produce one infinitely more acceptable than that on the table, and which would secure the happiness and harmony of this country.

Mr Burke.—Although I foresee I shall have the honor to vote in the minority, yet I wish to say a few words, that the reasons of my opposition to the bill may be fully understood. The motion made by the worthy member from New Hampshire, (Mr. Livermore,) I wish to support, provided he intends by it to throw out the whole bill. For I am persuaded, if it passes, that consequences of a serious nature to the privileges of the people will flow from it. It will materially affect the trial by jury, and overturn that system of administering justice which time and long experience have recommended to our citizens. To show this, I shall only advert to the twenty-ninth section; out of this, sir, will arise constructions and consequences, of which people in general will form no conception; it requires some share of law-knowledge to comprehend it. Whoever drew that clause did it artfully, and with a view of concealing the features of it: and I give him full credit for the share his head had in it. Read the words, and you see held out to the citizen a fair and impartial trial by a jury of the vicinage, while it insidiously strips him of this happy privilege. For if a man be charged with treason, or other offence against the Government, committed as far back as Lake Ontario, instead of being brought to trial in the county, or district, where he is said to have committed the offence, as the State law directs at present, he is to be dragged down to the city of New York, to take his trial there; not by a jury taken from the country at large, as at present but this section is so subtly framed, that a jury may be picked, not merely within the city, but within any particular ward of it.

The State to which I belong is divided into seven districts or counties; and a person accused of committing a capital offence in one county, as the law is at present, must be tried in that county, and no other; the jury must also be of the same county, and to be drawn by ballot, in order to secure a fair and impartial trial to the prisoner. But of this glorious and happy privilege the citizens of South Carolina are stripped by the twenty-ninth clause of this Judiciary bill, as it now stands. If charged with committing a capital offence against the United States, at a place as far back as the Alleghany mountains, he is carried down to the city of Charleston, far from the aid of his friends, far from his witnesses; and if, in times of civil troubles, he be obnoxious to those in power, to be tried for his life in the fangs of his enemies.

Here he proposed to make some observations on a late publication, when Mr. Boudinot asked if the gentleman was in order, or if he did not wander from the point in debate? Mr. Burke said he could not resist what he thought his duty, to make every opposition in his power to the bill; if he failed, he lamented the circumstance, but should pay that deferenne to the law which every good citizen ought to do.

On putting the question on Mr. Livermore's motion for striking out the third clause of the bill, the House divided; eleven voted for, and thirty-one against it; so it passed in the negative.

The committee rose and reported progress; and then the House adjourned.

Tuesday, September 1.

A message from the Senate informed the House that they had passed a bill for the punishment of certain crimes against the United States, to which they request the concurrence of this House. Also a bill for allowing a compensation to the members of the Senate and House of Representatives of the United States, and to the officers of both Houses, with several amendments, to which they desire the concurrence of this House.

The House proceeded to consider the report from the Committee of Elections of the 18th of August last, relative to the petition of a number of citizens of the State of New Jersey, complaining of the illegality of the election of the members holding seats in this House, as elected within that State, which lie on the table; and after having made some progress therein,

Ordered, That the further consideration of the said report be put off until to-morrow.

them; if they were conclusive, he should vote to strike out the section. If nothing was offered, he should vote against the motion.

Mr. STURGES mentioned several objections to the section, which in his opinion rendered it unconstitutional; he could not find that the Speaker of the House, or President of the Senate *pro tem.* were officers of the Government in the sense contemplated by the Constitution. The compensations of the President and Vice President are settled by the House; the Speaker would have to decide on those compensations; this he said rendered him evidently improper. He further observed that the consequence would be, caballing and electioneering in the choice of Speaker.

Mr. WHITE said, the Speaker was not a permanent officer, if he could be considered as one in any point of view; but he was of opinion, that he was no more an officer of Government than every other member of the House.

The question for striking out the section was negatived.

Mr. STURGES then moved to strike out the words, "the President of the Senate *pro tempore*, and the Speaker of the House of Representatives."

Mr. GILES stated the reasons which he conceived fully proved the unconstitutionality of the clause. The characters referred to he did not think were officers. If they had been considered as such, it is probable they would have been designated in the Constitution; the Constitution refers to some permanent officer to be created pursuant to the provisions therein contained. These persons are not permanent; a permanent officer was contemplated; the subject was not to be left to any casualty, if it could possibly be prevented.

Mr. SEDGWICK said, he did not know what officer could with propriety be said to be permanent; offices are held during good behaviour in some instances, and in others during pleasure; but it will be impossible to say that any officer is a permanent officer, for the expression is very extensive. He was surprised to hear the idea controverted, that the Speaker of the House, or the President of the Senate, *pro tem.*, is not an officer. In common parlance he was sure there was no difficulty in the matter.

Mr. GERRY observed, that some gentlemen had said the Speaker is not an officer; but if he is not an officer, what is he? He then read a clause from the Constitution, which says that the House shall choose their Speaker *and other officers*. He hoped, however, that the Speaker of the House of Representatives would be struck out, in order to avoid blending the Legislative and Executive branches together. He considered this measure as a political stroke of the Senate; but he hoped that the House would never consent to making their Speaker an amphibious animal. He moved therefore that the words "Speaker of the House of Representatives" should be struck out.

Mr. HILLHOUSE objected to any officer appointed by the Executive being inserted. He said, if that should be the case, the appointments would in most cases be made with reference to that object; and hence important offices would often be filled with improper and incompetent persons. Besides, it was taking away the choice from the people, and thus violating the first principle of a free elective Government. The Senate are appointed by the people, or their Representatives, and hence, in his opinion, filling the vacancy would devolve with the greatest propriety on that body.

Mr. WILLIAMSON was in favor of the motion for striking out both the characters. He observed, that this extensive construction of the meaning of the word officer, would render it proper to point out any person in the United States, whether connected with the Government or not, as a proper person to fill the vacancy contemplated.

Before taking the question upon the amendment, the Committee rose.

FRIDAY, December 23.

On a motion made and seconded,

"That the Report of the Secretary of the Treasury, upon the petition of George Webb, be referred to a Select Committee, and that the Committee be instructed to prepare and bring in a bill allowing such of the Receivers of Continental Taxes in the several States, as continued in service after the end of the year 1782, a commission, as a compensation for their services and expenses, not exceeding the rate of —— per centum upon the amount of moneys by them respectively received for Continental services subsequently to the time aforesaid:"

Ordered, That the said motion and report be referred to Mr. LIVERMORE, Mr. GILES, Mr. CLARK, Mr. FITZSIMONS, and Mr. BOURNE, of Rhode Island; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

A memorial and petition of sundry merchants of the city of Charleston, in the State of South Carolina, engaged in commerce, previous to the late Revolution, was presented to the House and read, stating the peculiar hardships under which they labor, from the two-fold causes of the operation of the fourth article of the definitive Treaty of Peace, and of so much of the act of Congress for funding the public debt as redeems the old Continental money, at the rate of one hundred dollars thereof for one dollar specie, the former requiring them to pay their British debts in sterling money, with full interest to the present time, and the latter, depriving them of all hope of indemnity, from the effects of depreciation and tender laws to which they were exposed during the war, and praying relief.

Ordered, That the said memorial and petition do lie on the table.

The House resolved itself into a Committee of the Whole House, on the bill for carrying into effect the contract between the United States and the State of Pennsylvania; and, after some time spent therein, the Committee rose and reported the bill without amendment. It was ordered to be engrossed.

POST OFFICE BILL.

The House again resolved itself into a Committee of the Whole House, on the bill for esta-

blishing the Post Office and Post Roads within the United States.

Mr. Fitzsimons offered a sketch of rates of postage, by way of amendment, different from that reported in the bill and the rates now paid. His plan was a general reduction of the rates.

Mr. Goodhue said, he did not believe that the revenue from the Post Office, any more than that from the impost, would be increased by establishing a high rate of postage. He was pleased with the sketch offered, and wished it might be agreed to as an amendment; he had no doubt of its increasing the revenue of the Department.

Mr. Livermore was in favor of the original rates reported in the bill. He conceived that the reduced rates would be so low, as materially to injure the income of the Department. He did not conceive why the rate of postage for one hundred miles, in one part of the United States, should be greater than for one hundred miles in another part: he referred to the diminished rates for great distances.

Mr. Williamson was in favor of reducing the rates. He observed, that though our experience in this business was not great, yet it was sufficient to show that a reduction of the rates of postage tended to increase the income of the Department. And the experience of European countries was incontrovertibly in favor of the idea of a reduction.

Mr. Baldwin replied to Mr. Livermore, and observed that the amendment recognised the same principle in respect to great distances, which is contained in the bill as reported.

On motion of Mr. Williamson, the amendment was altered, so that the rate of postage for a single letter to the greatest distance, should not exceed twenty-five cents.

Mr. Fitzsimons's amendment was then adopted.

The section which makes it death for persons employed in the Post Office Department to rob the mail, occasioned considerable debate. The words "shall suffer death," were struck out, and it was then moved to insert imprisonment for life, or for a term which the Court may think proper. This motion occasioned further debate, on its being moved to amend it by striking out imprisonment for life.

Mr. Murray entered into a general consideration of the subject. He was clearly of opinion that if the punishment was not loss of life, it ought to be the next in point of severity. He enlarged on the enormity of the crime, and inferred that a person who was so depraved as to be guilty of it, ought to be forever deprived of the power of injuring society again. He adverted to the principles advanced by Montesquieu, Beccaria, and others, who had written so ably on crimes and punishments; but, with all their refinements, they were obliged to acknowledge that as there were grades in guilt, so there should be degrees of punishment. He adverted to the regulations of Pennsylvania; he said their jail was more properly a school of morality than a place of punishment. It may reform, but it will never deter the abandoned from the perpetration of crimes. It might answer the present state of society in the Commonwealth, but he doubted whether it would not invite to the commission of crimes, and accelerate the period when they must have recourse to a more severe system of jurisprudence. He concluded by saying, that, as imprisonment for life was the next severest punishment to loss of life, he should vote against the last amendment.

Mr. Hartley defended the system of punishment and reformation adopted by Pennsylvania. Experience was in its favor. The gentleman has carried our ideas to European countries; but he thought that examples from our own country were more in point. He objected, generally, to sanguinary punishments; and the punishment now proposed he thought would be too severe, if generally incurred for the crime under consideration.

The Committee now rose, and had leave to sit again.

Monday, December 26.

An engrossed bill for carrying into effect a contract between the United States and the State of Pennsylvania, was read the third time and passed.

POST OFFICE BILL.

The House again resolved itself into a Committee of the Whole House, on the bill for establishing the Post Office and Post Roads within the United States.

On the subject of newspapers, Mr. Williamson suggested the propriety of their being so packed that they may be easily inspected by the postmasters; that there should be separate accounts, and a separate mail or portmanteau for them; and that the rate of postage should be in proportion to the distance they are carried: those sent one hundred and not exceeding two hundred miles, one-half cent; those above two hundred and not exceeding three hundred miles, one cent; those above three hundred and fifty miles, one cent and a quarter. He moved to strike out the 23d section, and to insert the above as a substitute.

Mr. Clark proposed to amend the clause by a proviso, that the papers shall be dried.

Mr. Fitzsimons doubted whether it would be proper to agree to the amendment. He was of opinion that the consequence would be, very few papers would be sent by the mail. He inquired who is to pay the postage? The printers will not pay it; they are sufficiently out of pocket by distant subscribers. Is it to be defrayed by the subscribers, weekly? There is no coin of the description mentioned. Difficulties will result from the mode which is necessarily adopted for great part of the year, of sending the mail on horseback. Should the papers increase, as is supposed, it would be impossible to send them. There were difficulties in the way. The printers had been called on to declare what would be convenient and agreeable to them; but there was so little concert among them, that they had not given any intimation to the Department of what would please them.

Mr. Williamson replied to Mr. Fitzsimons, and obviated some of the difficulties he suggested. He observed that a certain weight ought to be

The question was then taken by yeas and nays on agreeing to the following resolution:

"*Resolved*, That the Committee of Ways and Means be instructed to report a bill to repeal the act laying a duty on stamped vellum, parchment, and paper."

And it was carried 52 to 36, as follows:

YEAS—George Baer, jun., Abraham Baldwin, David Bard, Thomas Blount, Richard Brent, Nathan Bryan, Demsey Burges, Samuel J. Cabell, Christopher G. Champlin, Thomas Claiborne, William C. C. Claiborne, Matthew Clay, John Clopton, Thomas T. Davis, John Dawson, Lucas Elmendorph, William Findley, John Fowler, Albert Gallatin, William B. Giles, James Gillespie, Andrew Gregg, William Barry Grove, Carter B. Harrison, Jonathan N. Havens, Joseph Heister, David Holmes, Walter Jones, Edward Livingston, Matthew Locke, Matthew Lyon, Nathaniel Macon, Blair McClenachan, Joseph McDowell, John Milledge, Anthony New, John Nicholas, Tompson J. Skinner, Samuel Smith, William Smith, Peleg Sprague, Richard Sprigg, jun., Richard Stanford, Thomas Sumter, Thomas Tillinghast, Abraham Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Abraham Venable, John Williams, and Robert Williams.

NAYS—John Allen, Bailey Bartlett, David Brooks, Stephen Bullock, Joshua Coit, William Craik, Samuel W. Dana, George Dent, Thomas Evans, Abiel Foster, Dwight Foster, Nathaniel Freeman, jun., Henry Glen, Chauncey Goodrich, William Gordon, Roger Griswold, Robert Goodloe Harper, William Hindman, Hezekiah L. Hosmer, Samuel Lyman, James Machir, Lewis R. Morris, Harrison G. Otis, Isaac Parker, John Reed, John Rutledge, jun., Samuel Sewall, William Shepard, Thos. Sinnickson, Samuel Sitgreaves, Nathaniel Smith, George Thatcher, Richard Thomas, Mark Thomson, John E. Van Alen, and Peleg Wadsworth.

And then the House adjourned.

TUESDAY, February 27.

Mr. HARPER, from the Committee of Ways and Means, reported a bill to repeal the stamp act, which was committed for to-morrow.

Mr. LIVINGSTON moved a postponement of the unfinished business, in order to go into a Committee of the Whole on the bill for erecting a light-house and placing buoys in several places therein mentioned; which being agreed to, the House resolved itself into a committee accordingly on the said bill, and having filled the blank intended to contain the sum appropriated with $13,250, (namely, $10,500 for the light-house on Eaton's Neck, $2,500 for buoys at New York and Newport, and $250 for Nantucket,) rose, and the bill was ordered to be engrossed for a third reading.

Mr. LIVINGSTON, from the committee to whom was referred the amendments of the Senate to the bill for the relief of refugees from Canada and Nova Scotia, reported their opinion on the same, which, together with the bill and amendments, were committed for to-morrow.

FOREIGN INTERCOURSE.

The House then resolved itself into a Committee of the Whole on the bill providing the means of foreign intercourse, when Mr. NICHOLAS's amendment for curtailing that establishment being under consideration—

Mr. HAVENS observed, that when this subject was formerly under consideration, the grounds upon which the present amendment had been supported were, the danger arising from an extension of our foreign intercourse, from considerations of economy, and to prevent undue influence; on the other hand, it was opposed on Constitutional ground. It was said, that House had no right to interfere in the business, as it was wholly an Executive concern.

On all questions of this kind, Mr. H. said, the Constitution of the United States was constantly brought into view; upon which different opinions were now entertained from what were entertained at the time of its adoption. He always understood that this Government was intended not only to have all the advantages of a republican Government, but, being elective, all the advantages which arise from a proper distribution of power. This principle of a distribution of powers was derived from the Government of Great Britain, as it was theoretically described by *Blackstone*, not from what it is in practice. His description of that Government (which he read) showed that every department of it was a check upon the other. *De Lolme*, though a panegyrist of the British Government, agreed in the same opinion; for though he describes the Kingly power as raising armies and equipping fleets, yet he allows it to be liable to be checked by the people. Here the doctrine maintained was, that the President of the United States can appoint to office, and that that House had no right to refuse an appropriation, which was wholly subversive of what he understood to be the original principles of the Government. Mr. H. said, he did not contend for any power in the House of Representatives which did not equally apply to the Senate; and, if this doctrine was not allowed, there would not be the least check upon the President by the Senate or the House of Representatives, as the concurrent power of the Senate with the Executive only went to the choice of men in the appointments to office.

The President has a right to appoint as many Ambassadors as he pleases, without check or control. This power in the President and Senate could compel that House to raise any sum of money whatever. They might make a treaty granting a subsidy to a foreign nation, and that House would be bound to pay it. They might also borrow money, and might bring the House into such a situation as to oblige it to declare war, to raise armies, support a navy, &c., contrary to their convictions of right. But when the House makes an appropriation of money, the President has the power to put his veto upon it; and, if he can do this, how is it that the two Houses cannot exercise their discretion in appropriating for Ambassadors, or for treaties? Whenever an appropriation of money is called for, they ought certainly to consider for what purpose it is wanted, and whether some more important object does not require previous attention.

It was said the House were as much bound to appropriate for the salary of Ambassadors as for the salary of the President or the Judges. When gentlemen reasoned thus, they appeared to consider the diplomatic corps as a part of the Government; whereas the Government could go on very well without them. And even with respect to the officers of Government, if the money was wanted for more important services, such as for the immediate defence of the country, they must go unpaid for a time. He, therefore, concluded that each branch of Government, namely, the President, Senate, and House of Representatives, had each a discretion in the appropriation of money.

There was another consideration which operated upon his mind, to convince him that this was the only construction which could be put upon the Constitution. A considerable degree of discretion was left to the President in the execution of laws, and it was always in his power to abuse that discretion by beginning a measure upon such a scale of expense as to oblige Congress to go further than they intended; and, except the two Houses had the power of exercising their discretion in checking any such abuse, there was no way of preventing it. There was a singular exemplication of this fact, he said, in the English Government, in the Minister's having expended vast sums of money, without the consent of Parliament. He mentioned several instances, the two last of which were during the war with this country, and in the year 1796. In the former instance, he stated that the Minister expended thirty-eight millions with the consent of Parliament, and twenty-eight millions without it; and, in the latter, fifty millions with the consent of Parliament, and forty-nine millions without it. And, excepting the Legislature had a right to refuse to appropriate in such cases, there was no way of preventing abuses.

He believed the House would recollect a conduct in some degree similar to this in our Government. He alluded to that of the frigates; since they were begun upon a plan which obliged the House to consent to much larger appropriations than they at first intended. If it were necessary, other instances might be adduced of the same kind.

Gentlemen who supported this extraordinary power in the Executive, argue in the same way with the supporters of the extravagant Executive power of Charles I. in the case of Mr. Hampden, with respect to ship money. It was at that time asserted that the King, having a right to declare war, had a right to demand the service of any man's person, and, consequently, to demand his money. But this doctrine was now everywhere acknowledged to be the most arbitrary.

He thought the British Government afforded another lesson of instruction. After their Revolution in 1688, it was well known that the Government adopted a funding system. When this took place the House of Commons ceased to have any control over the expenditure of public money. In consequence, the public debt had increased beyond what could be conceived. Mr. H. read *Sir John Sinclair's* account of this increase, and observed that the present amount of that debt, exclusive of the last loan to the Emperor, is 410 millions. If the House of Commons had had a proper check upon the Administration, there would probably have been no debt at all.

Government might be considered as forming two distinctions, viz: payers and receivers of money; and it was the perfection of all the State Governments in this country, that both had a right to judge of the expediency of the expenditure of money, and particularly the payers. If this check did not exist, no Government would long continue.

Much had been said about supporting Government. Some gentlemen called themselves *supporters* of Government, and others they termed *destroyers* of Government, *disorganizers*, &c. When gentlemen spoke of supporters of Government, they meant, he believed, supporters of the Executive branch of Government; so that a person acquiescing in every measure of the Executive was a supporter of Government; whilst those who disapproved of any Executive measure, were destroyers of Government. This doctrine alone was sufficient to destroy the idea of the Government's consisting of several branches, and to blend all the powers of the Government in the Executive. In this case, the Government of this country could not long remain a free Republic, but would become an Elective Monarchy, and the whole power of the Government would be in one man's hands. He could not conceive that the people of the United States could think this a proper ground upon which this Government ought to rest. It was self-evident to him that our Government ought to consist of three branches, the President, the Senate, and the House of Representatives; and when that House has determined not to do a thing, the Government has determined not to do it, and so of the other branches.

The same observation would apply to a phrase which they had frequently heard, and which had been introduced in the course of this debate, by a gentleman from Connecticut, of *stopping the wheels of Government*. To put a stop to any Executive measure was to stop the wheels of Government; and to keep them *properly running* was to offer no control over whatever the President recommends. If this was not the meaning of the phrase, he should be glad to know what it was. For his part, he believed the perfection of Government consisted in what these gentlemen called stopping the wheels, and when that House, or the Senate, determined they would not go into any expense, they speak the voice of the people.

It had been remarked that the House had the physical power to refuse a grant of money when called upon by the President; but that members were under a moral obligation to grant it. This was saying we can do a thing, but we ought not to do it. He believed it was proper for members to do whatever they conceived was for the public good.

When the subject of patronage was first men-

tioned by the mover of this amendment, he was persuaded he only meant to introduce the subject on general ground. The idea, as he understood him, was, that all nations and societies were liable to depart from original principles, to corrupt their Governments, and in the end to subvert them; and that, in this country, we were subject to an improper connexion of the different departments. That it was necessary to guard against this, if an appearance of such a connexion should at any time appear. He thought this was so obvious that it would be acknowledged by every one that we were equally liable with other nations to this corruption. With respect to what had been said respecting appointments to office being confined to men of particular sentiments, it had been acknowledged by some gentlemen to have been observed in the choice of men in the diplomatic corps; but others had acknowledged that the regulation was a general one.

Was it not evident, Mr. H. asked, that in other countries, original principles of Government were departed from? That there was an incessant desire after wealth, honor, and power? He never heard of a Monarchy which did not suppose itself under the necessity of creating a sort of Government party, who had the disposal of large sums of money, which they could distribute among persons who were subservient to their purposes. He believed this disposition had prevailed in all ages of the world, and had been the cause of most of the wars and calamities which had ravaged the earth. It must be evident to every one that peace, independence, and equality, must constitute the happiness of every country; but it was notorious that the leading men in most countries had been opposed to these, for their own ends. *Beccaria*, he said, in his Essay on Crimes and Punishments, had laid it down as a certain principle, that there were in every society such a class of men. In England, perhaps, this was more evident than in any other nation. A set of men appeared early in that country to render the Executive power a Government of despotism. The doctrines of passive obedience and the divine right of Kings, continued to be asserted for one whole reign. After the Revolution, the funding system was set on foot, which bound men to the Executive by interest; in fact, persons were hired to support a certain system of measures. It must appear evident that the great cause of keeping that country continually engaged in war, had been the host of placemen and pensioners contained in the two Houses of Parliament, who were always inclined to support measures in which they found the greatest interest. The Treasury must be considered as the head of the body politic; and whatever party got into power, they pursued the same course—a course which had now brought that nation to the verge of bankruptcy and ruin.

If this was the constant course in other countries, was not this country, he asked, equally liable to the same evils? He believed it was. He did not say that the evil had gone far; but he thought it was proper that we should be on our guard against any doctrine which may have a tendency to make one branch of the Government depend on the other.

This spirit of grasping at wealth and power had been so great, that it had even attached itself to religious opinions. When the Christian religion was first preached, it was of a democratic spirit; and afterwards it became aristocratic, and then monarchic. When, therefore, this lust after power had been so general, it could not be said that this country was not liable to the same vices and errors.

This consideration was also worthy of attention. Men of the best private character had been supporters of these corrupt systems. It seemed, therefore, as if there should be some line of distinction between private character and political conduct. Though a man may possess the greatest private integrity, he may still support such principles as may lead to arbitrary power. There could be no doubt that those persons who maintained the divine right of Kings were many of them men of the greatest integrity; but their doctrines were not the less mischievous on that account. In the same way it might be reasoned with respect to the United States. Men may be induced to support opinions which have a tendency to subvert the Government, by placing all power in the hands of the Executive, and make the Government a sort of four years' monarchy. Yet, these men may be men of the greatest integrity, and even patriotic, according to their views of patriotism; but if others believe their opinions have this tendency, it is their duty to represent them to the people of the United States, leaving them to decide the point.

Mr. H. concluded by observing, he had heard no reason suggested for a Minister at Berlin; nor could he see any use for one at the Hague. He was of opinion that Vienna would be a more fit place for the residence of a Minister than Berlin. We have no commerce with that country; and if we had any wish to intermeddle in the subject of the balance of power in Europe, we might as well send embassies to the Emperors of Germany and Russia. But he believed we had no business with this balance or power. He thought it was possible so to manage our affairs as to have nothing to do with any of them. Nor did he think we had anything to fear on the subject of invasion; if there was any danger, it must be from England, by way of Canada. Besides, if we were to have any serious difference with France, he knew of no use our Ambassadors could be of. It might, perhaps, be necessary to have Ambassadors at London, Paris, and perhaps Spain and Portugal; if others were necessary at any time, special agents could be sent. He hoped, therefore, the amendment would be agreed to, as he thought it was a proper time to make a retrenchment in the expenses of this department of Government; and, however small the saving might seem, it was of consequence to make every saving possible, which he wished to be applied to the discharge of the public debt.

Mr. WILLIAMS, of New York, said, that though the present subject had already taken up much

time, as he considered the question of importance; and, as its decision was connected with a Constitutional question, he must be permitted to make a few observations upon it. When the amendment was first introduced, he did not see the object to which it led so distinctly as he now saw it. If the object of the gentleman from Virginia had been to bring back the foreign intercourse to the same situation in which it stood in 1796, he would have passed over the first section of the bill and gone on to the third, because the first is the same as that of the bill passed in 1790. But his object had since appeared to be a total annihilation of our foreign intercourse. He wished to do this, he said, to save expense; but the only Constitutional ground upon which the House could interfere in this business, was as it related to salaries; if these had been found too high, he should have no objection to lower them. If the gentleman had thought that two years was too long a time to enact this law, he might have moved an alteration in that respect; but he could not consent to doing away the intercourse altogether, as it would not only be rendering our affairs abroad totally inactive, but be arrogating to ourselves a power which the Constitution had placed in another department.

This was the same Constitutional question, in a different garb, that was agitated six or seven weeks on the British Treaty, and which had also occupied three weeks of the last session; so that, instead of saving any expense, this debate alone would cost more than the foreign Ministers that gentlemen wished to dispense with. Besides, the present situation of things was ill calculated for the introduction of such a question, which served only to produce a warmth which tended to obstruct the business of the House.

He complained that the gentleman from Georgia had, in his warmth, drawn conclusions from the President's Speech in the year 1790, which could not be maintained. [Mr. W. read the extract alluded to.] The same gentleman had remarked, that he was for doing away the hostility which existed between the different departments of Government; but, Mr. W. asked, what harmony could exist if the President appointed an officer, the Senate concurred in the choice, and that House refused to appropriate for his salary? If this check was to be exercised, it would also be acted upon in the Senate, and might give them the power, by lowering the pay of members, to prevent any but men of property from accepting of seats in that House. Six shillings a day were only allowed to the members of the House of Commons in England, and, he asked, if the Senate should reduce, by their check, the pay of members to that sum, whether any man of moderate circumstances could attend the duty of that House? This, then, said he, would prevent the mediocrity from sending the members of their choice, as no one could attend except those whose private fortunes would admit of it, and this would cause our Representatives to be the same as the House of Commons, and an aristocracy would be produced.

When the Executive informed the House, seven or eight months ago, that he was about to renew treaties with Sweden and Prussia, money was appropriated for a Minister for that purpose without opposition; but it was said he was now to be recalled. He would suppose that one of the gentlemen who advocated this amendment had been chosen on this embassy, and he had arranged his business at home, and taken his station abroad, would he have liked to have been thus recalled? No; he would have said Government was unstable, and not to be depended upon.

But it was said by the proposer of the amendment that he was devoted to a republican Government; but, to use the language of the good book, "by their works ye shall know them." If gentlemen can produce proofs of their attachment to the republican cause, they will be credited. But the gentleman from Virginia had talked of "feeble minorities" governing, which was not consonant to a republican system. The minority he considered as a spark of fire, which, if not put out, might consume the whole fabric. But the yeomanry of the country, who were the most virtuous and stable men in the community, had been the only check on this subject; it was they who had, by their adherence to the support of good order, saved the Government from ruin. They are not like the inhabitants of large cities, who are as changeable as the wind.

Much had been said about the political sentiments of the Executive, and of his choosing officers of the same opinion with himself. He was perfectly justified in doing this to a certain degree, and that he did not attend to these circumstances in all these appointments was evident from one which had taken place in a department of considerable trust during the present session; but that all the heads of departments and the diplomatic corps should agree in political opinion with him is certainly proper, in order to carry on the business of Government with harmony; otherwise, said he, there would be a continual jarring, and the good book says, "a house divided against itself cannot stand."

His colleague (Mr. HAVENS) had just now said, if the opinion, which the opposers of this amendment held, prevailed, everything must be done according to the will of the Executive. If he had interfered with their Legislative business, said Mr. W., this observation might have been just. If the Executive wanted a person to regulate our commerce in foreign countries, would he choose one who had always been opposed to commerce of every kind? Such a choice would be wholly inconsistent. The conduct of the President, in this respect, was similar to what was adopted every day in that House in the appointment of committees, who were always chosen from men who were supposed to be acquainted with the business on which they were to act. Mr. W. denied that an appointment to office produced any influence, as he knew from what had taken place in his own State, the Governor of which was similarly circumstanced in that respect with the President of the United States.

Where one person was served, twenty were disappointed, and he knew that the Governor of his State had nearly lost his election from the offence he had given in the election of a sheriff in the year 1789.

But gentlemen had said that we had no occasion for Ministers to foreign Courts; that we ought to be considered merely as buyers and venders of European manufactures. If this were true, no Minister would be wanted. Were we, then, to do nothing with our surplus agricultural produce, with our fish, &c.? When he thought on this subject, he was surprised at the conduct of some of the representatives of large cities. As he was a representative of farmers, he might say that no foreign Minister was necessary; but when he reflected that by giving encouragement to commerce, a competition was produced in the market which enhanced the price of produce, he saw the propriety of that encouragement; because, when the farmers brought their produce to market for sale, the greater the competition between our merchants and foreign merchants, the greater chance of obtaining a ready sale and a higher price.

But it was said the President might abuse the power that was placed in him; but this was to suppose the people had been so foolish as to elect a man to this office who was unfit to be trusted. Indeed, all the observations of gentlemen on this head were founded on a supposition that the President and Senate had views and interests different from those of their constituents. If the President did act contrary to his duty, he was liable to impeachment; and if the Constitution wanted amending, it might be amended. Indeed, amendments had been proposed in the Legislature of Virginia and negatived, but he saw the proposition was again renewed, proposing to alter the Constitution with respect to the treaty-making power, agreeably to the sentiments of the representatives from that quarter; which was a tacit acknowledgment that the Constitution does not support those opinions at present. Let us, said he, be contented with the powers given us by the people—the will of the people should be his guide; and when the people thought proper to alter the Constitution, he would be satisfied; but he would not take power from the people which they thought proper to withhold.

But it was said, our commerce produced a partiality for Great Britain. If this were so, what then? If our merchants choose to go to Great Britain in preference to other countries, ought the Legislature to prevent them? If they were partial to Great Britain, he supposed it was because they found it their interest to go there. The Virginians, two years ago, sold their horses to Great Britain, because they gave them a good price for them, and the members in that House were dressed from top to toe in English manufactures, because they believed them better than any other; and as the Virginians were permitted to sell their horses at the best market, he hoped that he, as a farmer, might be permitted to sell the produce of his farm where he could get the most for it, and in the way he thought best. With respect to the appointment to office, when the General Convention met for settling the Constitution, they had considerable difficulty in this respect; but as it had been agreed that the small States should be represented in the Senate by as many members as the large States, and retain their sovereignty, it was thought the power of appointing to office, and the power to make treaties, would be best lodged there. The small States having had this indulgence, could never agree to concede the doctrine now contended for, as to the power of the House of Representatives, because it would be doing away that solemn compact entered into between the large and small States at the forming the present Constitution. Besides, if this doctrine was adopted, the Government could not operate at all. Suppose the foreign intercourse was done away, and after the rising of the present session, the Directory of France should so far come to their senses as to be willing to do us justice, by making restitution for the spoliations committed on our commerce, and paying our citizens what they had promised them, a new treaty would be necessary—for our present treaty is done away if we choose that it should be so, as they have broken it; as, by the law of nations, if a treaty is entered into between two nations, and one breaks any part thereof, the other is not bound unless it chooses. But the President would be unable to appoint a Minister until an appropriation was made, and Congress must be called together for the purpose of making it; and if a majority of that House were opposed to such a treaty, the President could not negotiate it. Thus the principles of the Constitution would be changed, and rendered inactive.

The objection which he now made had been realized in the State of New York. The year after the Constitution was adopted, two members were to be sent to the Senate of the United States, when, from a difference of opinion between the two branches of the Legislature of that State, as to the men to be elected, no choice was made until a new election of the Legislature took place, when both branches being of the same political opinion, the Senators were appointed. Besides, this mode would create an enormous expense, because, in every case where a Minister was wanted, the whole Congress must be called together, and when so called, a majority of the House of Representatives might not agree that a treaty was necessary, and refuse an appropriation, or they might withhold an appropriation, unless the President would nominate such a person as the majority thought proper. Besides, four States would rule the other twelve, because the States of Virginia, North Carolina, Pennsylvania, and Massachusetts, had a majority of members. Again, said Mr. W., from the observations of the gentlemen in favor of the amendment, they themselves would not agree to any one object, for one wanted a Minister, and of such a grade, to this, and the other to that Court, and another quite different.

Though much had been said relative to our late Minister at Paris, he should not have touched

upon it, but from what had fallen from the gentleman from Virginia, who had said that peace might have been secured to this country, but that it had been cast from us by sacrificing that Minister. If he were sacrificed, he sacrificed himself. If he could not have done the business in which he was to be employed in an acceptable way to Government, he ought to have refused the mission, as it was said another gentleman had done. He believed that the Executive, in the whole of the business with France, had acted in the most determined manner to preserve our neutrality, and at the same time our friendship with the French nation. But if they took a view of the conduct of the agents of the French Government which had been sent here, it would be matter of surprise that we had been able to keep out of war. The Government and people of the United States had assisted France in every way they could, though they were frequently charged with ingratitude to that country. Mr. W. asked when gentlemen spoke of the party which supported the Executive, whether they did not think the party raised against him by means of these French agents and their friends had not been fifty times stronger than that occasioned by the funding system and the return of disaffected persons during our Revolution? He believed they did. Let gentlemen attend to what the sacrificed Minister had done whilst in Paris, or rather to what he had not done. Had any compensation been obtained for injuries done to our commerce long before the British Treaty was formed; or, for the mischiefs done at Bourdeaux in 1793 and 1794? What had been done to redress the singular and forced sales of cargoes for non-performance of contracts, &c.? He had heard nothing that he had done to redress these grievances. But the gentleman from Virginia had said, that he was sorry his friend had published the communications which had passed between him and their Government. Mr. W. believed that the gentleman alluded to, and his friends, would have reason to be sorry that this book had been published. That publication evidently showed that he had gone farther than he was empowered to do. However, the book and the remarks made and to be made thereon were before the people; they are the tribunal; with them he would leave it, as they were the proper judges, and would judge rightly.

The gentleman from Virginia had determined to preach to the people, but the people ought to hear both sides of the question, and if he preached on one side, the other ought not to be withheld from them. This preaching was commenced two years ago, and gentlemen had preached themselves from a majority of 62 to 37 (which they had in calling for papers from the President in respect to the British Treaty) to a majority of 53 to 45 against them, which was the division at the commencement of the last session, on a vote in answer to the President's Speech, approving of his conduct. This change had been produced by the election which had taken place in the meantime.

Having touched upon the conduct of our Minister at Paris, he would contrast with it the conduct of our Minister at London. This gentleman, he said, had been of the greatest possible advantage to this country. When any of the commercial agents applied to him, instead of writing to the Judge Advocate General a diplomatic letter, he waited himself upon the Judge; and, in one decision alone, he had obtained for damages and freight, for one house in this city, £2,750 sterling. He had also obtained the passing of a law to indemnify neutral claims of spoliation, and upwards of $3,500,000 were appropriated for that purpose. And seeing that the Court of Admiralty there was inclined to procrastinate our business, he had obtained by his perseverance a promise that the Court would sit again in November last. So that it may be fairly said, that our Minister in London has been the means of saving to the citizens of this country more than all the diplomatic expense to which it had been put; and though this money does not immediately go into the Treasury, yet it is the means of enriching our country.

Mr. W. denied that Consuls do the business of Ministers, as nothing was paid them for their services. He also took a view of the large sums paid to British Consuls at their factories in foreign countries; one Consul, said he, at Elsinore, had more income than all our foreign Ministers. Besides, Consuls must dance attendance at foreign Courts, and they cannot do this unless they are paid; and at some Courts they would not be permitted to do business—and, if they were, Ministers would do more at one visit than fifty visits of Consuls; therefore, there could be no saving of expense, but greater delays occasioned, and, in the end, the business would not be done.

But it had been said that the Executive had greatly raised his influence by the law funding the domestic debt of the United States. This act passed the 4th of August, 1790, when nine-tenths of the paper allowed to be funded was out of the hands of original owners; so that, if it occasioned any speculation, it was a speculation upon speculators. If the Executive had meant to have increased his influence by this measure, he would have recommended the measure when this species of property was in the hands of a number, rather than when engrossed by a few. Besides, those called speculators are about equally divided for and against the Executive. He knew that much had been said about this and other subjects in Congress about that time, which the people called "manœuvering." Much was said about the "Penobscot expedition," the "South Carolina frigate," the temporary and permanent "seat of Government," &c. The effect of which, to the State of New York, had been a loss of the seat of Government, and a supposed heavy debt. With all which, however, he knew nothing that the Executive had to do in the business; but he knew the debt was an unjust charge against the State of New York, and he hoped would never again be called for. The next class which had been spoken of as increasing the influence of the Executive was the disaffected in the cause of the Revolution—those who were attached to the Government under which they lived, and refused to

join in opposing it. This was a high trait in their character, and they yet preserved it; and they are now firmly attached to the present Government.

These, then, were the supporters of Government—he wished to know who were its opposers? When the Government first went into execution, the people were nearly divided for and against it. Persons, however, crowded from every quarter to be appointed to office under it; so that ten applications were made for one office, and those persons who had been disappointed had ever since remained the opposers of Government, and he doubted not the present amendment was produced by the same cause.

Soon after this, followed the French Revolution, when our citizens employed in the carrying trade brought the rich produce of the island of St. Domingo into this country; but as the French would not admit of this in time of peace, the English now disputed that right, and because our Executive had refused to interfere, but was determined to preserve our neutrality, it had raised up a powerful party against him. At the commencement of the Government, three-fourths of the inhabitants of the large cities were in favor of the new Government; and those of the country, nearly in the same proportion against it. But after the revolution which he had mentioned had taken place, the inhabitants of the large commercial cities became opposed to the Executive; and when the yeomanry saw this, and that it was the object of the Executive to preserve the peace of the country, they became united in its support. Their love for order and liberty, religious as well as civil, made them the firm supporters of it, under the protecting hand of Providence.

But the gentleman from Pennsylvania (Mr. GALLATIN) had declared, "The people are with us." This and the "feeble minorities" was the source, he believed, from whence sprung all our difficulties. Who told the Freneh nation in 1793 that the people of this country were "with them?" Who encouraged the Ministers of France in this country to make their appeals to the 'people? Were these the friends and supporters of Government? If the Ministers of this country had acted in France as those of that country had acted here, would they not have been long since guillotined, and that without the shadow of a trial? And would those Ministers ever have acted as they did, if they had not known there was a party in this country who approved of their measures?

The British, observing this favorable disposition of the people of this country towards France, determined to take time by the forelock, and issued the order which had been so much complained of for capturing our vessels; so that this country had lost five or six millions of dollars from the cry of "feeble minorities," and "the people are with us." But when the English saw that the Executive was firm, and could not be driven from its neutrality, but would go to war with them unless they desisted, they forebore, and made overtures for compensating the injuries they had done us, and are now making payments therefor.

It had been said that the Executive was driving Spain into a war, by its firmness of conduct; but this had not been the case, the Executive had spoken a firm American language, and they had heard it; and, if the same tone had been observed toward France, that country must long since have heard it. But the cry of "the people are with us" had done the mischief.

Mr. W. said, he was informed, and believed it to be true, that a company of persons had fitted out four privateers, which had captured sixty-one of our vessels, and only three of the English. By these means, the honest merchant, who would not be seen in carrying contraband goods, had been ruined, and innumerable failures had been the consequence. The farmers had credited the merchants with their produce, until the return cargo arrived; but, alas! it had been captured; so that in numerous instances the farmer had lost all, which by the sweat of the brow had been raised, in order to fulfil his contracts. These failures had filled the courts of law with suits for breaches of contracts, and been the ruin of numbers, so that our prisons are filled with debtors, and the money gone out of the country. The "feeble minorities," and "the people are with us," have been the reason why the resources of our country were not called for seven or eight years ago; and, if called for then, our debt might have been paid, and luxury and dissipation prevented, which have outrun our population.

The yeomanry of this country, Mr. W. said wished the French nation success in the establishment of their Government; they wished to be at peace with them and all the world, and they would be heavily drawn into a war with any country.

The gentleman who brought forward this amendment had concluded his observations with what he was glad to hear—that, if there was a necessity, he would turn out in defence of his country. He hoped every true American would do so. But he did not believe any nation would have the hardihood to attack us. We had a million of men, who, possessed of the spirit of 1776, would come down like a torrent against any attack which might be made upon the country.

The retrenchment of our expenses was certainly a desirable object; but the support of our Government, and the maintenance of its rights and privileges, were of still higher importance. Let us reason together, and act as guardians of the people ought to do. Let us coolly and deliberately reflect on our situation as a nation, and forget any misunderstanding which we have allowed to harbor in our breast. When party distractions are wrought to an extreme height, when jealousies and suspicions universally pervade not only ourselves but the community, however interesting the subject, however necessary the duty, it will be a difficult task to arrest either our own or the public attention by an impartial inquiry into the true interests of the country; for, when the mind is heated, it is not in a state to listen to the dictates of reason. And when we shall have traced the wisdom which directed, the firmness which effected, the Revolution, and seen that we

have been preserved hitherto from being drawn into a war, we must acknowledge that gratitude is due to Providence for his kind interposition in behalf of this happy country.

The committee now rose, and had leave to sit again.

WEDNESDAY, February 28.

The bill for erecting a light-house, and placing certain buoys in places therein mentioned, was read the third time and passed.

Mr. LIVINGSTON, from the Committee of Commerce and Manufactures, reported a bill for the relief of sick and disabled seamen, and a bill declaring the consent of Congress to an act of the State of Massachusetts, in respect to certain piers; which were committed to Committees of the Whole.

Mr. VAN ALEN, from the committee appointed to inquire whether any, and what, alterations are necessary in the law providing for the payment of the public debt, made a report, which was committed for to-morrow.

REPEAL OF STAMP ACT.

Mr. HARPER moved that the unfinished business might be postponed for the purpose of taking up the bill for repealing the Stamp Act, as, if it were to be repealed, the sooner it was known the better, that the expensive preparations which were going on for carrying it into effect might be stopped; and, if it were to go into effect, the sooner it was so determined the better.

The question was carried, and the House accordingly went into a Committee of the Whole on this bill, and reported it without debate or amendment. The House took it up, and on the question's being put for passing the bill to a third reading,

Mr. I. PARKER called for the yeas and nays; but, upon its being suggested by Mr. HARPER and Mr. SITGREAVES that it would be best to take them on the passing of the bill, the motion was withdrawn.

Mr. LYON renewed it.

The question was put for taking the question by yeas and nays, but 16 members only appearing in favor of it, (which were not one-fifth of the number present, which is necessary,) it was not carried.

Mr. HARPER moved that the bill be read a third time to-day, for the reasons he had mentioned. Had gentlemen who were in favor of the repeal permitted a discussion of the subject before the principle was settled, he should have been glad to have delivered his sentiments upon it. For this purpose he had desired a delay of twenty-four hours; but the request was refused. This having been the case, he should not now, since the principle had been decided, go into any observations against the measure. He hoped, therefore, the bill would be read a third time immediately.

Mr. BALDWIN proposed that this bill should be read the third time to-morrow.

The question was taken on the most distant day, and negatived—51 to 40.

The question for reading the bill a third time to-day was carried.

It was accordingly read the third time, and the question on its passage was taken by yeas and nays, and stood yeas 51, nays 42, as follows:

YEAS—George Baer, jun., Abraham Baldwin, David Bard, Thomas Blount, Nathan Bryan, Demsey Burges, Samuel J. Cabell, Christopher G. Champlin, John Chapman, Thomas Claiborne, William Charles Cole Claiborne, Matthew Clay, John Clopton, Thomas T. Davis, John Dawson, Lucas Elmendorph, William Findley, John Fowler, Albert Gallatin, Wm. B. Giles, James Gillespie, Andrew Gregg, William Barry Grove, John A. Hanna, Carter B. Harrison, Jonathan N. Havens, Joseph Heister, David Holmes, Edward Livingston, Matthew Locke, Matthew Lyon, Nathaniel Macon, Blair McClenachan, Joseph McDowell, John Milledge, Anthony New, John Nicholas, Tompson J. Skinner, Samuel Smith, William Smith, Peleg Sprague, Richard Sprigg, jr., Richard Stanford, Thomas Sumter, Thomas Tillinghast, Abraham Trigg, John Trigg, Jos. B. Varnum, Abraham Venable, John Williams, and Robert Williams.

NAYS—John Allen, Bailey Bartlett, James A. Bayard, David Brooks, Stephen Bullock, James Cochran, Joshua Coit, William Craik, Samuel W. Dana, George Dent, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Nathaniel Freeman, jun., Henry Glen, Chauncey Goodrich, William Gordon, Roger Griswold, Robert Goodloe Harper, William Hindman, Hezekiah L. Hosmer, James H. Imlay, James Machir, William Matthews, Daniel Morgan, Lewis R. Morris, Harrison G. Otis, Isaac Parker, John Reed, John Rutledge, jun., James Schureman, Samuel Sewall, William Shepard, Thomas Sinnickson, Samuel Sitgreaves, Nathaniel Smith, Geo. Thatcher, Richard Thomas, Mark Thomson, John E. Van Alen, and Peleg Wadsworth.

Mr. LYMAN came in after his name was called, and wished to have his name inserted against the repeal, but, not being in the House to answer to his name, this was not allowed.

Before the House rose, a message was received from the Senate, informing them that the Senate had resolved that the bill for repealing the Stamp Act *should not pass.*

FOREIGN INTERCOURSE.

The House then again resolved itself into a Committee of the Whole on the bill providing the means of intercourse with foreign nations.

Mr. COIT said, that he had been surprised at the length of the present discussion: but his surprise abated, when he recollected that it had been customary for gentlemen at every session to go into a philippic against the Executive and Executive measures. The usual occasion had been the Answer to the President's Speech; but as this session had gone off smoothly, without anything of this kind, it seemed as if the present motion had been intended for the purpose.

In the course of the present debate, both the bill and the amendment had almost been lost sight of. Indeed, so foreign had the debate been from the subject, that he had thought of moving to have the speech of the gentleman from Virginia printed and laid upon the table, as that seemed to have been the subject of discussion.

If these expectations are realized, the cross of St. George will be seen waving in every lake harbor. The productions of the Old World will be brought, without transhipment, to the very door of the Western agriculturist for exchange; that great, lucrative, and rapidly increasing domestic trade will be transformed into a foreign trade, carried on in foreign vessels; and we shall then have no alternative left but to pass back to a state of colonial vassalage, or to *demand* the free navigation of the river St. Lawrence. And it will not be a feeble solitary voice from the frontier; but the united commercial influence of the Atlantic cities will resound, in tones of thunder through this hall, requiring a free and fair competition for this trade through the St. Lawrence, or that it shall be prohibited entirely by legislative enactment.

Under the existing arrangement, we have nothing to fear. We can, and do, compete successfully for the lake trade. We do all our own, and what should be considered a satisfactory proportion of the foreign, under the reciprocal agreement. We can build and navigate as cheap as they can; nor do we admit that we are inferior in commercial enterprise, energy, or perseverance. The foregoing statistics, relative to the colonial trade, abundantly prove the truth of this proposition. But suppose they are too sanguine; that their hope and expectation of turning the Western trade through the St. Lawrence should prove fallacious: what would be our condition in case of war? With a free and safe access from the sea into the very heart of our national granary, they would not find a gun afloat on the lakes to protect our commerce or defend our honor. They would encounter stout hearts and willing hands; but the precautions usually manifested by civilized nations, in preparations for adversity, would nowhere be found. In a national point of view, aside from commercial policy, an effort should be made to protect, secure, and retain this great trade. How, in the event of a war, with the British in possession of the ocean and the lakes, are we going to procure the flour and pork of Ohio and Indiana to feed our armies and our navy? True political wisdom would dictate that we should prepare for such an emergency before the contingency happens, and it is too late. Look where you will, there is some great public interest requiring the expenditure of money. The Government must have an adequate revenue: whether the bill upon your table will accomplish that object, remains to be seen. I have no confidence that any considerable revival of business will result from its adoption; and though some particular branches of industry may be benefited, yet, as regards the great mass of the community, it will be a bill of burdens. All taxation is necessarily onerous; perhaps indirect is least so, as it is voluntary, except as it regards articles of prime necessity. I confess that it is paradoxical to me that high duties should cause great national prosperity, or that restrictive laws should promote the interests of commerce. If, therefore, the amendment proposed will ameliorate the evil, and aid agriculture, commerce, and manufactures, even to the local and limited extent indicated, without injuriously affecting the revenue, or any other interest, there would be no good objection to its adoption.

One of the annexed tables shows the difference between the colonial and foreign duty; and the other, the colonial trade for a long series of years.

Scale of duties on grain and flour, when entered for consumption, by the act passed 29th April, 1842.

Wheat, per imperial quarter.				Flour per barrel.			
Average price.		Duty on foreign.	Duty on colonial.	Duty on foreign.	Duty on colonial.
s.	s.	s. d.	s. d.	s. d.	s. d.
	under 51	22 0	5 0	12 0 3-8	3 0
51 and under	52	19 0	5 0	11 5 1-8	3 0
52	do 53	18 0	5 0	10 10	3 0
53	do 56	17 0	4 0	10 2 3-4	2 4 7-8
56	do 57	16 0	3 0	9 7 1-2	1 9 5-8
57	do 58	15 0	2 0	9 0 1 4	1 2 1-2
58	do 59	14 0	1 0	8 5	0 7 7-32
59	do 60	13 0	1 0	7 9 7-8	0 7 7-32
60	do 61	12 0	1 0	7 2 5-8	0 7 7-32
61	do 62	11 0	1 0	6 7 3-8	0 7 7-32
62	do 63	10 0	1 0	6 0 1-8	0 7 7-32
63	do 64	9 0	1 0	5 5	0 7 7-32
64	do 65	8 0	1 0	4 9 3-4	0 7 7-32
65	do 66	7 0	1 0	4 2 1-2	0 7 7-32
66	do 69	6 0	1 0	3 7 1-3	0 7 7-32
69	do 70	5 0	1 0	3 0	0 7 7-32
70	do 71	4 0	1 0	2 4 7-8	0 7 7-32
71	do 72	3 0	1 0	1 9 5-8	0 7 7-32
72	do 73	2 0	1 0	1 2 1-2	0 7 7-32
73 and upwards.		1 0	1 0	0 7 7-32	0 7 7-32

Barley, Indian corn, and buckwheat, per imperial quarter.

Average prices.		Duty on foreign.
s.	s.	s. d.
	under 26	11 0
26 and under	27	10 0
27	do 30	9 0
30	do 31	8 0
31	do 32	7 0
32	do 33	6 0
33	do 34	5 0
34	do 35	4 0
35	do 36	3 0
36	do 37	2 0
37 and upwards.		1 0
On colonial.		On colonial.
	under 28	2 6
28 and under	29	2 0
29	do 30	1 6
30	do 31	1 0
31 and upwards.		0 6

Rye, beans, and peas, per imperial quarter.

Average price.		Duty on foreign.
s.	s.	s. d.
	under 30	11 6
30 and under	33	10 6
33	do 34	9 6
34	do 35	8 6
35	do 36	7 6
36	do 37	6 6
37	do 38	5 6
38	do 39	4 6
39	do 40	3 6
40	do 41	2 6
41	do 42	1 6
42 and upwards.		1 0
On colonial.		On co'o.
	under 30	3 0
30 and under	31	2 6
31	do 32	2 0
32	do 33	1 6
33	do 34	1 0
34 and upwards.		0 6

Oats, per imperial quarter.

Average price.		Duty on foreign.
s.	s.	s. d.
	under 19	8 0
19	and under 20	7 0
20	do 23	6 0
23	do 24	5 0
24	do 25	4 0
25	do 26	3 0
26	do 27	2 0
27	and upwards.	1 0
	On colonial.	On colonial.
	under 22	2 0
22	and under 23	1 6
23	and upwards.	0 6

For every barrel of 196lbs. of wheat flour, a duty equal to that on 8½ gallons of wheat.

For every 181lbs. of oatmeal, a duty equal to the duty on one quarter of oats.

RIDYARD & LEICESTER, Liverpool.

IMPORTS AND EXPORTS.

	British West Indies.		British North American colonies.	
Year.	Imp. from.	Exports to.	Imp. from.	Exports to.
1795	$6,426,091	$2,634,664	$303,831	$259,810
1796	6,301,634	5,446,559	287,166	422,496
1797	3,045,045	2,147,025	341,012	404,896
1798	2,925,739	4,253,616	257,310	623,572
1799	6,083,372	6 285,254	225,627	612,193
1800	5,774,411	6,404 765	3'7,211	694,446
1801	6,968,032	9,699 722	513 337	941,027
1802	4,486,890	6,659,490	437,949	684,874
1803	4,492,861	5.716,620	401,786	1,005 946
1804	4,739,186	7,647,658	791,720	1,127 225
1805	-	5,991,407	-	1,144 001
1806	-	5,507,928	-	1,423,289
1807	-	5,952,637	-	1,563,024
1808	-	1,561,063	-	379,453
1809	-	1,665 999	-	761,431
1810	-	2 304,163	-	1,432,836
1811	-	4 749 799	-	1,847,644
1812	-	1,797,240	-	660,832
1813	-	war.]	-	2,422
1814	-	do.	-	10,050
1815	-	1,702,973	-	1,397,680
1816	-	3,162,944	-	3,337,680
1817	-	3,971,567	-	3,722,910
1818*				
1819*				
1820*				
1821	927,346	264,632	490 701	2,009 336
1822	335,537	462 141	526,817	1,897,550
1823	1,844 931	1,627,967	463.374	1,821,460
1824	2,768,057	1,771,006	705,931	1,776,724
1825	2,437,122	1 647,046	610,788	2,519 964
1826	2,204,412	2,110,802	630,315	2,558,549
1827	123,291	690,575	447.669	2,830,674
1828	895,207	28,855	445,118	1,674,674
1829	240,241	6,521	577,542	2,764,909
1830	169,579	1,910	650,303	3 786,373
1831	1 309,301	1 441,253	864,909	4 061,838
1832	1,422,237	1,685,206	1,229,526	3 614,385
1833	1,358,239	1,754,305	1,793,397	4,390,081
1834	1,163,609	1,595,639	1,549,733	3,535,676
1835	1,162 247	1,838,327	1,435,168	4 047 883
1836	1,285,237	1,846,486	2,427,671	2,650,266
1837	1,451,302	2,118,664	2,359,263	3,288 986
1838	1,635,843	2,200,852	1,535 670	2,722,491
1839	941,669	2,563,476	2,156 146	3,563 454
1840	1,048,165	2,965,594	2,007,767	6,100,001

*The returns for these years, and of the imports for several previous years, are not within our reach. The trade, however, must have been small, owing to the prohibitory act, passed in April, 1818, by the American Congress.

TONNAGE.

	From Brit. West Indies.		To British West Indies.	
Year.	American.	Foreign.	American.	Foreign.
1816	26,321	75,704		
1821	32,631	None.	22,033	None.
1822	33,719	925	28,7.0	101
1823	71,346	9,520	69,320	8,745
1824	93,933	6,597	91,637	7,667
1825	101,604	6,907	93,967	6,807
1826	97,231	7,927	99,732	8,120
1827	43,657	9,083	26,796	7,753
1828	25,149	313	7 974	None.
1829	32,777	317	5,418	None.
1830	22,428	275	2,395	None.
1831	38,046	23,760	40,922	17,903
1832	61,403	27,328	66,769	19,357
1833	53,537	26,638	74,659	21,775
1834	37,031	18,278	51,329	18,283
1835	43,601	24 399	59,544	15,134
1836	48,531	21 823	56,295	16,276
1837	52,181	26,315	63,697	16,033
1838	30,522	23 359	56,769	11,215
1839	43,145	23,614	76,749	11,283
1840	51,899	29,294	78,221	13,364
Total	1,043,827	365,410	1,066,019	199,690

TONNAGE.

	From Br. Am. colonies.		To Br. Am. colonies.	
Year.	American.	Foreign.	American.	Foreign.
1816	75,807	18,378		
1821	110,821	405	112,223	3,169
1822	92,025	4,056	90,977	11,816
1823	42,178	4,818	52 776	12,023
1824	48,725	3,983	53,951	9,130
1825	60,295	6,179	61,520	10,139
1826	74,395	8,429	76,191	10,103
1827	69,452	7,793	69,378	11,115
1828	59,296	2,186	63,801	10,653
1829	88,492	4,409	93,645	10,569
1830	130,527	4,002	117,171	14,267
1831	92,672	82,557	79,364	94,776
1832	74,001	103,671	65,056	146,292
1833	209,953	208,054	219 403	215 779
1834	173,278	259,934	195 959	323,120
1835	363 852	387,350	383 532	415,405
1836	278,850	377,523	291 930	428,191
1837	286,669	338,996	283 234	440,002
1838	286 220	370,397	261,286	3'3,166
1839	334,121	332,097	338,506	373,772
1840	300,939	337,949	295,901	401,805
Total	3,282,563	2,993,246	3,222,634	3,355,332

SPEECH OF MR. WALKER,
OF MISSISSIPPI.

In Senate, June 21, 1842—On the bill to provide further remedial justice in the courts of the United States.

Mr. WALKER rose and said:

Mr. PRESIDENT: This bill embraces all offences against a State, and demands the final discharge of the accused: 1st. Under the Constitution, laws, or treaties of the Union; 2d. Under the law of nations; 3d. Under the commission, order, or sanction of any foreign State. By its very classification, the bill extends to cases other than those arising under the Constitution, laws, and treaties of the Union. In the first class, it extends to all persons; and, in both the others, to aliens only. The Senator from Massachusetts [Mr. CHOATE] supports the bill, in his very able speech, first, under that clause of the Constitution which extends the Federal judicial power to "*controversies* between a State, or the citizens thereof, and foreign States, citizens, or subjects." This, he contends, embraces crimes against a State, and cites a remark of Mr. Hamilton; but that such was not his opinion, is proved by his subsequent speech in the convention of New York, when he said:

"The acts of the United States, therefore, will be absolutely obligatory, as to all the proper objects and powers of the General Government. The States, as well as individuals, are bound by these laws. But the laws of Congress are restricted to a certain sphere; and when they depart from this sphere, they are no longer supreme or binding. In the same manner, the States have certain *independent* powers, in which their laws are *supreme;*—for example, in making and *executing* laws concerning the punishment of certain crimes—such as murder, theft, &c—the *State, cannot be controlled.* With respect to certain *other* objects, the powers of the two Governments are *concurrent.*" (1 Elliot, 321.)

In civil cases, aliens, or citizens of other States, may sue a citizen of the State in the Federal courts for debt, trespass, assault, or libel; but they cannot

indict a citizen of a State in those courts for this same assault or libel, but only in the State courts; and yet even this case would be brought within the range of the Federal power, by extending it to all cases in which an alien, or a citizen of another State, was aggrieved. And if every foreigner, or citizen of another State, who committed a crime only against the laws of a State, and within its limits, could demand to be tried only in the Federal tribunals, where the witnesses to be confronted with the accused must be carried many hundred miles from the county where the crime was committed; and every offence, great or small, prosecuted, not by the attorney of the State, but of the United States; it would render convictions almost impossible, and give an impunity to crime, incompatible with the peace and welfare of the States. Such was not the intention of the Constitution; Congress have never claimed such power; no Federal judge has ever pretended that it could be granted. The States, whoever may be the offender, it is conceded, can alone pass laws and affix the punishment for all offences against a State; and yet it is pretended that they cannot execute their own laws, or that they may be controlled and superseded in their exercise by the Federal tribunals. An exclusive power in one government to pass the law, define the crime, and affix the punishment, and yet an exclusive or concurrent superseding power in another government to execute the law and inflict the punishment, is a solecism not to be found in the Constitution.

In civil suits, the Federal courts, it is said, apply the law of the State. They apply the law of the place of the contract, whether that be a State, France, England, or any foreign kingdom. But do these courts therefore execute the penal laws of a State, or of France, or England? They do not; because crimes are offences against sovereignty, and only against the sovereignty whose laws are violated; and it is settled that one Government never punishes an offence against the laws of another. Crimes are local, and to be punished by the local tribunals. But contracts are not local; they are transitory; they follow the person of the debtor wherever he may go, and may be enforced by the tribunals of any and all Governments. The laws of France or Spain, as well as of a State, may be enforced as to contracts in the Federal courts. But it does not therefore follow that the laws of France or Spain, or of a State, as to crimes, may be executed in these tribunals. Fugitive criminals from one State (embracing every "person," whether alien or citizen) are not to be tried in the State to which they have fled; but are to be delivered up "to the *State* having *jurisdiction of the crime.*"

A State, then, can alone pass laws defining these crimes, and prescribing the punishment, and can alone demand the offender; and yet it is urged that another Government, having none of these powers, may try and punish, or acquit and discharge him. If the Federal Government may try and punish offences against a State, why may not a State try and punish offences against the United States? Yet it has been settled otherwise. (17, John. 4.) The Supreme Court, in 1st Wheat., 337, say: "No part of the criminal jurisdiction of the United States can be delegated to a State tribunal." If, then, to try and punish, or acquit and discharge, all aliens or citizens of other States, charged with any offence, be a "part of the criminal jurisdiction of the United States," these crimes cannot be tried by "a State tribunal;" and all such trials have been flagrant violations of the Constitution. Chief Justice Spencer, in the case cited from Johnson, declares that "the jurisdiction of the State courts is *excluded* in cases of crimes and offences *cognizable under the authority of the United States*;" and as to crimes he says: "The Government of the United States stands in the *same relation* to the State Governments, as any foreign Government; and it is a fundamental maxim, that the courts of one sovereignty will not take cognizance of, nor enforce, the penal code of another." Judge Platt added: "This court, in its judicial functions, represents the sovereignty of the State of New York." "Every criminal prosecution must charge the offence to have been committed against the State or sovereign whose court sits in judgment on the offender. In the administration of criminal justice, every sovereign acts as judge in his own case, as the offended party." On this subject, the opinion of Chief Justice Marshall, in Burr's trial for a misdemeanor, page 185, is still more emphatic. He says: "In *criminal* cases, the laws of the United States constitute the *sole* rule of decision; and *no man* can be *condemned* or PROSECUTED in the *Federal* courts on a *State law*;" but in "civil suits," he says the law is otherwise. The *exclusive* jurisdiction of the State courts over *all* offences by *all* persons against their laws, is here most distinctly declared, and is a decisive authority against extending the term *controversies* so as to embrace crimes; for when did this great judge ever give a construction *too narrow* to the Constitution of the Union? Are these crimes "offences against the United States?" Then the President alone can pardon, and the Federal courts alone can try or punish them. Are they offences only against a State? Then their Executive alone can pardon, and their courts alone can try the offender. Or can there be a divided jurisdiction and which is supreme? and is the criminal, for the same offence, amenable to the courts of two sovereignties?

Now, by the Constitution and laws of the States, these offences against a State are all to be tried only in their courts, and in the time, place, and manner prescribed by their laws. Let us take an example: "By the common law, the trial of *all* crimes is required to be in the county where they are committed."—3d Story, 655. Adopting this principle, the constitution of Georgia declares: "The superior court shall have *exclusive* and *final* jurisdiction in all criminal cases, which shall be tried in the *county* wherein the crime was committed." This embraces all crimes committed within a State, and against its laws, by aliens or citizens of other States. Now, can the State law be used in the Federal courts to try and punish the offender, and yet disregarded as to the tribunal and county in which the offence is to be tried? The constitution of Mississippi declares: "That in all criminal prosecutions, the accused shall have a speedy and public trial, by an impartial jury of *the county* where the offence was committed." "All prosecutions shall be carried on in the *name* and *by the authority* of the State of Mississippi, and shall conclude against the peace and dignity of the same." The indictments must be signed, and prosecutions conducted, by an officer of the State, usually vested with power to enter a *nolle prosequi*. The time, manner, character, degree, and place of punishment, and forms of indictment and trial, are all specially provided by State laws. Now, are these laws and constitutions unconstitutional? Can all these offenders against a State be tried in the Federal courts, in the form prescribed by the State? Can they have a "speedy trial" "in *the county* where the offence was committed," and by a *jury of that county*? Will the prosecution be conducted "in the *name* and *by the authority* of the State?" Will the indictment conclude "against the peace and dignity of the State?" Will it be signed, and the prosecution conducted, by the officer of the State, or of the United States; and which officer may enter a *nolle prosequi*? May a Federal judge fine or imprison, at his discretion, for these crimes, where the law which creates them and prescribes the punishment vests that discretion exclusively in State judges? Where the punishment is expulsion and exclusion from office, (which, in several States, may be held by aliens,) can the sentence be pronounced and executed by the Federal courts? and does the judgment of a Federal court, for an infamous offence against a State, render the convict incompetent as a witness in the State tribunals? Who is to pardon after a conviction—the Executive of the State or of the Union? And who is to remit fines imposed as a part of the sentence? and do these fines go into the treasury of the State or of the Union? If the punishment is imprisonment in a State penitentiary, can the criminal be placed in any other; or can the keepers of the State prisons be compelled to receive him? If the punishment be working on the streets of a town, under city officers, can you, who have no control over these officers, carry out this sentence? If the punishment be solitary confinement, or at hard labor, can this be changed in any particular, or the punishment varied in any respect? Again: if the prisoner be confined in a Federal jail, or a sentence of death is to be executed by a Federal marshal, can the State authorities, by a pardon or reprieve, take him out of the hands of the Federal officers, and supersede the authorities of the Union? Can you change the place of trial and jury from the *county* to a distant section of the State? and may the accused, in the midst of the trial, be taken out of the hands of the State courts? may he be seized in open court, in the presence of the judge on the bench, or of the jury in the box, or when they have retired to deliberate upon his fate, or have returned a verdict of guilt or innocence? If the examining magistrate confine him for trial, may he be taken to a distant county, before a Federal judge, there to be discharged from the necessary non-attendance of the witnesses? Again: in riots, requiring at least three, or conspiracies, where two or at least must conspire, and both must be guilty, or neither: if one be an alien, and the other a citizen of the State, are they to be tried separately—the one in the Federal, and the other in a State court, in defiance of some State law requiring them, as joint offenders, to be tried together, and both to be convicted or acquitted? It being the essence of the offence that both must be innocent or guilty, may they be tried, one in the Federal, and the other in the State courts; and the one be punished, and the other acquitted?

Again: in States where the law requires, in cases of accessory and principal, that the principal shall first be tried; and the principal be an alien, and the accessory a citizen; must the trial of the accessory await that of the principal in the Federal tribunals? or, if this be not so, may the principal be acquitted by the courts of the Union, and the accessory condemned by the courts of the State, when the guilt of the accessory depended on that of the principal? In 1st Wheat. 377, Justice Johnson says: "The *uncontrollable* exercise of criminal jurisdiction is most securely confided to the State tribunals." "The courts of the United States are vested with no authority to scrutinize into the proceedings of the State courts in criminal cases." And in 5th Wheat. 69, Justice Story says: "It is a general principle, too, in the policy, if not the customary law of nations, that no nation is bound to enforce the penal laws of another, within its own dominions. The authority naturally belongs, and is confided to, the tribunals of the nation *creating the offences*. In a Government like ours, where there is a division of sovereignty—and, of course, where there is danger of *collision*, from the near approach of powers to a conflict with each other—it would seem a peculiarly safe and salutary rule, that *each* Government should be left to enforce its *own* penal laws *in its own tribunals*."

In the case of Rutter, Judge Bland, in considering this question, declared: "The General Government being in its nature a limited one, it can exercise no powers but such as are expressly granted, or are essentially necessary to some given power." "In addition to these axioms, growing out of the peculiar structure of our political institutions, it may be assumed as a settled principle, applicable alike to *all* Governments, that the *expounding* and *enforcing* of the penal laws of a sovereign State belong *exclusively* to the courts of such State."—12 Niles's Register 118, 377. Judge Hanson concurred.—12 Niles, 231; see also 12 Niles, 264, 265; Sergeant and Rawle, 545; 1 Virginia cases 319; 2d do. 34; Tappan's Reports, 29.

In the recent case of Miln, 11, Peters, 102, the Supreme Court say:

"A State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any *foreign nation*, where that jurisdiction is not surrendered or restrained by the Constitution of the United States." "That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called *internal police*, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a State is complete, unqualified, and *exclusive*." "To illustrate: no one will deny that a State has a right to punish *any* individual found within its jurisdiction, who shall have committed an offence within its jurisdiction, against its criminal laws." "The right to punish or to prevent crime does, in *no degree*, depend on the citizenship of the party who is obnoxious to the law. The *alien* who shall just have set foot upon the soil of the State, is just as subject to the operation of the law, as one who is a native citizen."

But what becomes of this reserved and "exclusive" right of each State, if all aliens, or citizens of other States, may, in all cases of crimes committed by them, transfer the case to the Federal tribunals? The term controversies was never synonymous with crimes. Larceny and murder are never designated in law or common parlance as controversies. The term in the Constitution, as applied to States, is used in the following cases:

"Controversies between two or more States—between a State and citizens of another State—between citizens of different States—between citizens of the same State, claiming lands under grants of different States—and between a State, or the citizens thereof, and foreign States, citizens, or subjects."

Now, "controversies between two or more States" do not embrace crimes; for one State cannot indict and punish another State. The meaning, then, of the term, as first used as to States, being exclusive of crimes, by what rule is its meaning extended in the next clause to include crimes? Does the same word (continued, too, without repetition, throughout the sentence) exclude "crimes" in the first clause,

and include it in the next clause of the same sentence? Or, if the sense was intended to be changed, would not the word be changed?

Again: in the two next clauses, it is avowedly confined to civil cases. And, here, does it change its meaning again, and exclude crimes? Then, in the last clause, does the word become more extensive again, as applied to that clause? No, that is impossible; for that clause embraces several cases: 1st. Between a State and a foreign State. 2d. Between a State and an alien. 3d. Between a citizen of a State and a foreign State. 4th. Between a citizen of a State and an alien. The 1st, 3d, and 4th of these are avowedly exclusive of crimes. And can the term include crimes in the 2d case? thus changing its meaning several times in the same connected clause of the same sentence? The term *cases*, used in the first part of the section, and construed to include civil and criminal cases, is dropped when this jurisdiction is given as regards the States, and the term controversies substituted. Why this change of the word, if no change in the sense was intended? In the articles of confederation, the term controversy and controversies is used, and embraces only civil cases. The term, then, had received this settled American meaning, corresponding with its true English meaning, when it was copied from these articles into the Constitution, by the very same men, so many of whom united in framing both instruments; and when they used the same word at both periods, and for the same purpose of vesting judicial power, they could not have designed to change its meaning, when transferring the word from the one instrument to the other.

In 2 Dallas, 419, Judge Iredell declared:

"It cannot be presumed that the general word 'controversies' was intended to include any proceedings that relate to criminal cases, which, in *all* instances that respect the same government *only*, are uniformly considered of a local nature, and to be decided by its particular laws."

Judge Tucker (1 Black, 420) says: "The word 'controversies,' as here used, must be understood merely as relating to such as are of a civil nature. It is probably unknown in any other sense, as I do not recollect ever to have heard the expression *'criminal controversy.'* As here applied, it seems peculiarly appropriated to such disputes as might arise between the United States and any one or more States respecting territorial or fiscal matters; or between the United States and their debtors, contractors, and agents." It never (he says) "was meant to deprive the States of the power of punishing murder or theft, if committed by a foreigner, or a citizen of another State."

Judge Story quotes the above opinion, and expresses no dissent—which, in fact, was to assent; for, when did that able judge ever quote any opinion imposing *restrictions* on Federal power not warranted by his views of the Constitution, and fail to express his dissent? (3 Story, 536.) This very question arose in the supreme court of Pennsylvania in the case of the Commonwealth *vs.* Cobbett. (3 Dallas, 467; 2 Yates, 352.) It was a criminal proceeding in the State court against an alien; and his effort was to remove the case into the Federal court, on the ground that it was a *controversy* between the State and an alien.

The court say:

"Upon the whole, our opinion is, that where a *State* has a controversy with an *alien* about a contract or other matter of a *civil nature*, the Supreme Court of the *United States* has original jurisdiction of it, and the circuit court or district courts have nothing to do with such a case. The reason seems to be founded in a respect for the dignity of a State, that the action may be brought in the first instance before the highest tribunal; and, also, that this tribunal would be most likely to guard against the power and influence of a State over a foreigner; but that neither the Constitution nor the Congress ever contemplated that any court under the *United States* should take cognizance of any thing savoring of *criminality against a State*; that the action before the court is of a *criminal nature*, and for the punishment of a crime against the State; that yielding to the prayer of the petitioner would be highly inconvenient in itself, and injurious in the precedent; and that cognizance of it would not be accepted by the circuit court, if sent to them; for even consent cannot confer jurisdiction."

If this jurisdiction exists, the Senator admits it may, at the "discretion" of Congress, be vested exclusively in the Federal courts; and Judge Story states the law as so definitively settled. (3 Story, 621.)

Blackstone says that penal laws, without the power to inflict the punishment, are useless; yet Congress, it is said, may prevent the punishment in any State court of any alien or citizen of another State, for any offence against the laws of the State. A citizen of another State, or an alien, unites, by overt acts, to overthrow the government of a State; yet the State cannot punish him. A Northern or foreign Abolitionist comes into a State, and excites insurrection among the slaves; yet the State can neither arrest, try, nor punish him;—a doctrine utterly subversive of the existence of a State, and of its inherent right of self-protection.

It was settled, at the adoption of the Constitution, that, over the subject of slavery, all power, legislative, executive, and *judicial*, was reserved to the States, and withheld from the Union; but, by the principles on which this bill is maintained, any alien, a citizen of another State, may excite a Southampton massacre, a servile insurrection every year, and the State possesses no power to punish, or even to arrest him; but the whole is surrendered to the Government of the Union. And, in addition to all this, royal and imperial mandates to their subjects are made passports to the commission of any crime against a State. In maintenance of these views and this bill, the Senator cites the speech of Luther Martin, in which he says: "The Federal courts, also, have the *sole* right to *inquire concerning* and to *try every* offence, from the lowest to the highest, committed by the citizens of any other State, or of a foreign nation, against the laws of this State, within its territory." This is the *only authority* in favor of this position; and thus it is, that violent assaults upon the Constitution by its bitterest foes, contained in fervent efforts to prevent its adoption, and disregarded and discredited by the convention of Maryland, to which they were addressed, are now interpolated as grants of power into that instrument. If Luther Martin be correct, every inquiry by a State justice, or trial by a State judge, of any offence by any alien, or citizen of another State, has been, for more than fifty years, a flagrant usurpation, and every execution, in such cases, a judicial murder. In the same speech, Luther Martin says the Constitution contains "a provision expressly looking to, and no doubt *designed* for, the utter abolition and extinction of all State Governments." He says it abolishes the trial by jury; and he concludes by imploring the convention of Maryland "to reject those *chains* which are forged for it" by the Constitution. (4 Elliot, 22, 46.) If the supporters of this bill concur in these opinions of Luther Martin, they may rely upon this authority; but not otherwise. Mr. Madison is cited, in remarks clearly confined to civil cases; for, in his report against the alien and sedition laws, he distinctly denies the jurisdiction of the Federal courts in all these cases. He says, as to this very clause in regard to all cases "in which a State shall be a party," that "it clearly excludes criminal cases." 4 Elliot, 368. Such, then, were the views of Mr. Madison, the father and founder of the Constitution—views never recalled, and deliberately recorded in that celebrated Virginia report, written by him, and sanctioned by Mr. Jefferson, and constituting part of the creed of the Republican party of the Union.

In the debates in the Virginia convention, Mr. Madison said: "Its jurisdiction in controversies between a State and citizens of another State, is much objected to." "The *only* operation it can have is, that if a State should wish to *bring suit* against a citizen, it must be brought before the Federal court; this will prevent citizens on whom a State *may have a claim* being dissatisfied with the State courts." "If a State should *condescend to be a party*, this court may take cognizance." (2 Ell., 390.) Here Mr. Madison plainly confines the term "controversies" to civil cases. In the same debate, John Marshall, afterwards Chief Justice, says: "With respect to disputes between a State and the citizens of another State, I hope no gentleman will think that *a State will be called at the bar of the Federal court.*" "It is not natural to suppose that the *sovereign power* shall be *dragged before a court.*" The intent is, to enable States "to *recover claims* of individuals residing in other States." (2 Ell., 405.)

The Senator relies much on the following quotation, not from the Constitution, but from the inchoate proceedings of the convention which framed it: "The jurisdiction of the national judiciary shall extend to cases arising under the laws passed by the General Legislature, and to such other questions as involve the national peace and harmony." This is the resolution, which is silent as to criminal jurisdiction; but it was not incorporated into the Constitution; it was therefore rejected, and makes the case stronger than if no such jurisdiction ever was proposed. This resolution, the Senator says, was referred to the committee of detail, to "cast it into technical expression," and therefore we must construe the Constitution so "as to embrace *all* judicial cases and questions involving national peace and harmony." If this be so, the limitations and enumerations of power in the Constitution are worse than useless; for here is a general power embracing all cases and questions "involving national peace and harmony." Now, what question may be said not to be one "involving national peace and harmony?" The question of slavery involves, more than all others, the peace and harmony of the Union; that question, then, would be surrendered to the Federal Government. That to secure peace and harmony was one of the objects of the Constitution, no one will deny; but its framers did not believe that peace and harmony would be preserved by consolidating all power in the General Government. This resolution was transferred, in substance, to the preamble, which granted no power, but designated the general object of the enumerated powers; yet to confound the preamble and the Constitution—the *objects* with the *grants* of power—is the great error of the party of centralizers, from the time of Alex. Hamilton down to the present period. This resolution in regard to peace and harmony was the 16th of 23 resolutions, which were all "unanimously referred" to the committee of detail, *together* with the propositions of Mr. Pinkney and Mr. Patterson,—2 Madison, 1220 to 1226. Now, these propositions of Mr. Pinkney and Mr. Patterson were directly contradictory, not only to each other, in a great variety of cases, but also of these very resolutions; and therefore it is obvious the convention intended to reopen the whole subject, and refer the whole—not for adoption, for that was impracticable, but—for the consideration of this committee, and a report, subject to the future action of the convention. In fact, of all these 23 resolutions, but a small portion was ever adopted as a part of the Constitution, as the following contrast will demonstrate:

By the resolutions.	*By the Constitution.*
1st. Judicial power to embrace questions of peace and harmony.	1st. Confined to a few enumerated cases and controversies.
2d. Bills to appropriate money, or to fix a salary, to originate only in the House.	2d. To originate in either House.
3d. No amendments permitted by the Senate.	3d. All amendments permitted.
4th. The President chosen by *Congress*, for *seven* years, and *not* re-eligible.	4th. By electors of the *people*, for *four* years, and *re-eligible.*
5th. President alone to appoint most officers.	5th. Only with the consent of the Senate.
6th. Senate to appoint Supreme Court.	6th. President and Senate.
7th. Property qualifications for President, Judges, Senate, and House.	7th. No property qualifications whatever.

Such are some of the discrepancies between the resolutions and the Constitution—demonstrating how fallacious is the opinion expressed by the Senator, that these resolutions were merely to be "cast into technical expression" by the committee. The truth is, as demonstrated by the Madison papers, that the State-rights party in the convention gained—partly by the accession of new States, or members, and partly by the power of truth and argument—from the opening almost to the close of the convention; and much that was consolidating in its tendency, that seemed to receive the partial sanction of a majority of the convention at the early stages of its proceedings, was expunged or abandoned before it closed; until, finally, but little was left to the centralizers, except the general words of the preamble, announcing *objects*, but not conferring *powers;* and all doubt was removed by the subsequent amendments, restrictive and declaratory, of the confederate character of the Government. Instead of extending the judicial power to all "questions involving national peace and harmony"—which the Senator finds in an abandoned resolution, and not in the Constitution—that instrument extended that power to *no questions whatever*, but only to certain enumerated cases and controversies. Thus, John Marshall—afterwards Chief Justice—says:

"By the Constitution, the judicial power of the United States is extended to all *cases in law and equity* arising under the Constitution, laws, and treaties of the United States. The difference between the Constitution and the resolutions was material and apparent. A 'case in law and equity' was a term well understood, and of limited signification."

And he adds:

"If the judicial power extended to every question under the Constitution, it would involve almost every subject proper for legislative discussion and decision;" and "the other departments would be swallowed up by the Judiciary."—5th Wheat., app. 16.

When, therefore, it is said that this is a *question* under the law of nations—a *question* of peace and

harmony—and therefore proper to be submitted to the Federal courts, it is a radical error as it regards those tribunals. They possess no political power; and their authority extends to no *questions*, as such, whatever. To the great authority conferred upon the Federal courts to expound the Constitution, in the enumerated cases and controversies arising under that instrument, I make no objection, and retract no opinion heretofore expressed. But to travel out of the Constitution, as is proposed by this bill, to abolish the criminal jurisdiction of the States, and usurp their rights; to enter upon the boundless range of power arising under the law of nations, undefined and undefinable; to become the arbiter of the peace of nations, and receive and execute the mandates of foreign kings,—is an unexplored continent—a *terra incognita*—of power never assigned to the Federal courts by the Constitution; and to permit the exercise of which, instead of promoting peace and harmony, would engender only most dangerous collisions.

But there is another reason conclusive against such a construction of this term "controversies" as would embrace crimes. The Constitution declares that, *in all cases* "in which a *State* shall be a party, the Supreme Court *shall* have original jurisdiction;" and that in "all *other* cases the Supreme Court shall have appellate jurisdiction." This is admitted to be a case in which a State is a party; and being so, the language of the Constitution is imperative, that the Supreme Court *shall have* original jurisdiction. Then, if controversies embrace criminal cases, all crimes or petty offences committed by an alien, or citizen of another State against a State, *must*, (as I shall show hereafter,) but it will be conceded may be tried by the Supreme Court of the Union. Now, were there time, (which there is not,) for the Supreme Court to be engaged in this most extraordinary business of trying all these great as well as petty offenders against all the laws of all the States of the Union, to drag all these criminals from every county and State, and all the witnesses with them, for or against the prisoner, to the seat of Government of the Union, is a power so despotic, absurd, and impracticable, that the framers of the Constitution never could have designed to confer it upon Congress. But as the Constitution requires that "the trial of *all* crimes *shall* be by jury," and "such trial shall be held in the State where the said crimes shall have been committed," could these trials take place at the seat of Government, under the jurisdiction of the Supreme Court, consistently with these provisions of the Constitution? As, then, all cases in which a State is a party, must (or at least may) be tried before the Supreme Court of the Union, it is clear that the term "controversies," in which a State is a party, must be confined to civil cases. But the Constitution, if it confers this jurisdiction as to crimes against a State, commands that "the Supreme Court *shall have* original jurisdiction in all cases in which a State shall be a party." It is not "may have," but *"shall have;"* thereby clearly excluding the jurisdiction of all inferior Federal tribunals.

The language of the Constitution is, "In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court *shall have* original jurisdiction. In all the *other* cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make." Now, in the preceding clause, the Constitution designated all the cases to which the judicial power could extend, including those of ambassadors and States; and then, in those special cases, it declares the Supreme Court shall have original jurisdiction, and appellate in all the *other* cases. But the clause is still stronger; for, whilst it gives no discretion to Congress to make any "exceptions" to this original jurisdiction, it does grant such discretion as to the appellate power.

1st. The *Constitution* creates the Supreme Court, and authorizes *Congress* to make inferior tribunals.

2d. It designates all the cases (including States and ambassadors) to which the judicial power shall extend.

3d. It declares that in all cases of States and ambassadors, the Supreme Court shall have original jurisdiction.

4th. That in all the *other cases*, (thereby excluding those of States and ambassadors,) the Supreme Court shall have appellate jurisdiction.

5th. It reserves a discretion to Congress to make such exceptions as it may think proper to the appellate, but not to the original jurisdiction of the Supreme Court.

Then, if this term "controversy" embraces criminal cases "in which a State is a party," the bill now before us is clearly unconstitutional—1st. Because it withholds from the Supreme Court the original jurisdiction vested in that tribunal by the Constitution; 2d. Because it vests appellate jurisdiction in the Supreme Court, in a case in which the Constitution says its jurisdiction shall be original; 3d. Because it vests that jurisdiction in the inferior courts, which the Constitution declares shall be vested, in the first instance, in the Supreme Court; and Congress cannot disregard the distribution, any more than the enumeration of power in the Constitution. In favor of this position, that the original jurisdiction of the Supreme Court is exclusive, is the plain language of the Constitution; and so are all the authorities, except a divided circuit court in a single case in 2 Dall., 297. That was a criminal prosecution by the United States in their circuit court, against a foreign consul, in which Judge Iredell held that it was a case for the jurisdiction of the Supreme Court, which was *original and exclusive*. Judge Wilson held that the jurisdiction of the Supreme Court was original, but not exclusive; but no one decided that the Supreme Court could take appellate jurisdiction in that case; for that would produce the anomaly that the same court might have original and appellate jurisdiction in the same class of cases.

The next case is that heretofore quoted by me from 3d Dallas, 467, 474, in which, upon the fullest argument, the supreme court of Pennsylvania decided unanimously, that, in the case of a criminal proceeding by a State against an alien, the jurisdiction of the Supreme Court of the Union, if it had any, was original and exclusive; and that the circuit court of the United States could not, under the Constitution, take cognizance of such a case.

In 1st Cranch, 137, Chief Justice Marshall, after quoting this very clause of the Constitution, says it proceeded "to define the jurisdiction of the Supreme Court, by declaring the cases in which it shall take original jurisdiction; and that, in *others*, it shall take appellate jurisdiction;—the plain import of the words seems to be, that, in one class of cases, its jurisdiction is original, and *not* appellate; and, in the other, it is appellate, and *not* original." In the case of the State of Pennsylvania *vs.* Roscoff, consul of Russia, on an indictment in the State court, the court declared "that, as soon as the Supreme Court was organized by law, it became immediately vested with original jurisdiction in every case by which a consul might be affected;" and "that, where the Constitution had given *original* jurisdiction, it was *not in the power of Congress to give appellate jurisdiction.*" Now, the Senator avows, that "certainly all the jurisdiction which the Supreme Court attains by this bill is *appellate* in the strictest sense." If so, then this bill is clearly unconstitutional, if "controversies" includes crimes, by giving to the Supreme Court appellate, in a case where its only jurisdiction is original. And here let it be observed, that the supreme court of Pennsylvania declare that the "original jurisdiction" of the Supreme Court was "immediately vested" by the *Constitution;* and, if so, how can a law divest it? In 1st Wheaton, 332, the court say: "It is declared that, in all cases affecting ambassadors, &c., the Supreme Court *shall have* original jurisdiction. Could Congress *withhold* original jurisdiction in these cases from the Supreme Court?" And the court answer, no; "that the framers of the Constitution used the words in an imperative sense;" and they say that this is rendered still more obvious by the fact, that Congress was authorized to make "exceptions" from the appellate, but not from the original jurisdiction of the Supreme Court. But this bill withholds that original jurisdiction, vested by *imperative* words, *immediately* by the Constitution; and makes "exceptions" where Congress could make none; and crowns the usurpation by granting appellate, when the Constitution vested only original jurisdiction. At page 337 of the same case, the court say that the appellate jurisdiction of the Supreme Court extends only to "cases where it has not original jurisdiction;" and at page 338 they say, "it may be exercised in all *other* cases than those of which it has original cognizance." In the great case of Cohens vs. Virginia, (6 Wheaton, 265,) a penal case between that State and one of *her own citizens*, the Supreme Court did take appellate jurisdiction on a case arising under the Constitution, but expressly on the ground that it was a case in which they had no original jurisdiction. At page 391, Chief Justice Marshall says the object of the clause "which extends the judicial power to all cases arising under the Constitution and laws," "is to give jurisdiction *where the character of the parties would not give it.*" When, then, (as contended in this case by the Senator,) *"the character of the parties"* gives jurisdiction, it is not a case coming under the other clause, of "cases arising under the Constitution and laws." And at page 399 he expressly confines the appellate jurisdiction to cases "in which original jurisdiction cannot be exercised." If any doubt remains as to the views of Chief Justice Marshall, it is removed in 9th Wheaton, 820, 821, in which he says: "The *Constitution* establishes the Supreme Court, and *defines* its jurisdiction. It enumerates cases in which its jurisdiction is *original* and EXCLUSIVE." "In the cases in which original jurisdiction is given to the Supreme Court, the judicial power of the United States *cannot be exercised in its appellate form.*" "With the exception of those cases in which original jurisdiction is given to this court, there is none to which the judicial power extends, from which the original jurisdiction of the *inferior* courts is excluded by the Constitution." But this bill (if controversy includes crimes) gives appellate, when the Supreme Court could only take original jurisdiction—a jurisdiction which they have *never taken;* and gives to the inferior courts jurisdiction when that of the Supreme Court "is original and exclusive"—a jurisdiction which they have *never sustained.*

In 7 Cranch, 33, the Supreme Court say: that, of all the Federal courts, "one only, the Supreme Court, possesses jurisdiction derived *immediately from the Constitution*, and of which the legislative power cannot deprive it." What, then, is this jurisdiction of which Congress cannot deprive that court? Not the appellate—for that is made subject to "such exceptions" as "Congress shall make;" (3 Dal. 327; 1 Cranch, 212; 3 do. 159; 6 do. 307; 7 Wheat. 38; 7 Peters, 568.) It is, then, its *original jurisdiction*, of no part of which can Congress deprive it. In the 82d number of the Federalist, page 355, Mr. Hamilton claims that the appellate power of the Supreme Court extends, in certain cases, to the "State courts;" but expressly excludes all those in which the Supreme Court has "original jurisdiction." In the 81st number, page 350, he says: "The Supreme Court is to be intrusted with original jurisdiction only in cases affecting ambassadors, and those in which a State shall be a party. Public ministers are the immediate representatives of their sovereigns: all questions in which they are concerned should be submitted, *in the first instance*, to the highest judicatory of the nation. In cases in which a *State* might happen to be a party, it would ill suit its dignity to be turned over to an *inferior* tribunal." "In all *other* cases of Federal cognizance, the original jurisdiction would appertain to the inferior tribunals." Even Alexander Hamilton then had more regard for the dignity of sovereign States, than to suppose that they could "be turned over to an inferior tribunal," as is done by this bill.

The supreme court of Massachusetts, in their unanimous opinion, pronounced by Chief Justice Parker, say:

"None but the Supreme Court of the United States could entertain jurisdiction by way of appeal, from the judgments of the State courts, in cases originally cognizable, and commenced in those courts; and that any act of Congress giving such jurisdiction to any *inferior court* of the United States would have been unconstitutional and void. Indeed, such a power was never supposed to exist; for the consequence would have been universally seen to be a *prostration of the dignity*, and, with that, the usefulness of the State tribunals. The Constitution would never have been adopted by any one State, under such a construction."

I commend this case from the highest court, and most able judge of his own State, to the serious consideration of the Senator from Massachusetts; for surely he will not deny that this bill may bring the case, by appeal, from the lowest or highest court of a State, into the Federal circuit court; and establishes the principle by which, in all these cases, the decision of the highest court of any State may be overruled and reversed *finally* by the most inferior Federal court, and in cases vitally affecting the reserved rights of the States. It is true, this bill authorizes an appeal from the circuit court to the Supreme Court of the Union; but this is an appeal withheld in other criminal prosecutions in our inferior Federal courts, and may be withheld in this; it being within the discre-

tion of Congress to withhold, at their pleasure, the *appellate* power of their supreme tribunal; and thus, also, by construction, (if this bill and its principles can be maintained,) abolishing the jurisdiction of the Supreme Court, in any form, in those very cases in which the Constitution says it "*shall* have original jurisdiction."

And here, if in this case Congress can confer original jurisdiction on some inferior Federal court, and also withhold the appeal to the Supreme Court, it may also, in cases between contending sovereignties; between State and State; and between a State and a foreign State; for, as a question of power, they stand on the same ground in the Constitution. If, in all these cases the original jurisdiction may be withheld, so may the appellate; and, indeed, all jurisdiction defeated; for the jurisdiction of the inferior tribunals may be limited at the discretion of Congress: and thus this whole clause, as to States, may be expunged from the Constitution. It is said appellate jurisdiction may be taken, because this is a question "under the Constitution;" but i the jurisdiction exists, as our opponents contend, on account of the *character of the parties*, the court say: "The nature of the controversy is not contemplated by the Constitution. The character of the *parties* is *everything*, the nature of the case nothing."—6 Wheat. 393. If, then, this original jurisdiction extends, because a State is a party, it continues; although on the trial some question may arise under the Constitution; and therefore excludes, in that case, between those parties, the appellate power. The supreme judges say: "The Constitution gives the Supreme Court original jurisdiction in *only two cases*, but in all the *others* vests it with appellate jurisdiction." "To the natural as well as legal *incompatibility* of ultimate appellate jurisdiction with original jurisdiction, we ascribe the exclusion of this Supreme Court from the latter, except in two cases."—3 Story, 439. Then, if appellate and original jurisdiction in the same case and court are incompatible, how can the Supreme Court take original cognizance of a case in which a State is a party, whatever might be the question involved, and yet appellate power embrace that case also?

Having shown that the Federal courts cannot claim this jurisdiction on account of the character of the parties, we come to the last ground assumed—that "the judicial power shall extend to all cases in law and equity arising under *this* Constitution, the laws of the *United States*, and treaties made, or which shall be made, under *their* authority." Now, the first class of cases in the bill is confined to exemptions under the Constitution, laws, and treaties. But the bill does not stop there; but proceeds to provide for another class of cases, not named in the Constitution—namely, exemptions claimed by aliens, "under the law of nations, or under the the commission, or order, or sanction of any foreign State, or sovereignty." Now, if these cases arose under the Constitution, laws, or treaties, they would be embraced in the first part of the bill; but this subsequent separate enumeration admits that such is not the fact. Then the bill, upon its very face, travels out of and beyond the Constitution. But the jurisdiction is claimed from the mere fact that we are a nation. This claims powers not enumerated in the Constitution; and is directly in conflict with that clause which declares that "the powers not delegated to the United States *by the Constitution*, nor prohibited by it to the States, are reserved to the States respectively, or to the people." If, then, the power is not delegated *by the Constitution*, it does not exist.

Yet the Senator says we had this power "from the first national breath we drew"—from the mere fact that "the Constitution makes you a nation." If we can assert the mighty powers assumed by this bill, not from specific grants in the Constitution, but from the mere fact that we are a nation—who can impose limits upon such an authority? The doctrine is, that the Federal Government has all powers conferred by the Constitution; and, in addition, by the mere fact that we are a nation, all powers usually belonging to a single nation; forgetting that we are a confederate republic, *made by*, and *composed of*, sovereign States. The Senator says we had this power "from the first national breath we drew." Then we had this power from the old articles of confederation; and it is not a little remarkable that the authority cited (1 Kent, 1) refers to a period anterior to the Constitution, saying that, "during the war of the American Revolution, Congress claimed cognizance of all matters arising under the law of nations," (citing ordinance of 4th December, 1781.) Now, this ordinance claims power not in all, but in many matters, "*during the war*," and as arising from the power granted to the Confederation, and withheld from the States, to declare war and conduct its operations, and especially that of "making rules for deciding in all cases what captures on land or water shall be legal," and of deciding and appropriating prizes. This ordinance was called "An ordinance ascertaining what captures on water shall be lawful, in *pursuance* of the powers delegated by the Confederation, in cases of capture on water." The ordinance designates what captures are lawful, and closes by declaring that the rules of decision shall be according to the ordinances of Congress, public treaties, and "the law of nations." Now, that Congress, "*during the war*," in exercising a granted power, applied the law of nations to cases of captures and prizes, is certain. But they never designed, in war or peace, to take cognizance in their courts of all cases arising under the law of nations; for *that* Congress never granted, and their courts never claimed any such power; and yet, as to foreign intercourse, we were as much a nation under the Confederation as we now are. That Government, like this, was called "The United States of America," with "judges," a "Congress," and a "President," with powers legislative, executive, and judicial; and, Mr. Madison says, possessing *nearly all the powers* granted by the Constitution, (2 Elliot, 205.) Chancellor Kent also says that, by "the articles of Confederation," "the exclusive cognizance of our *foreign relations*, the rights of war and peace, and the right to make unlimited requisitions of men and money, were confided to Congress; and the exercise of them was binding on the States."—1 Kent, 212, 213.

I ask, then—on a trial, during the Confederacy, of crimes by aliens within a State, and against its laws, could the case be removed to any Federal tribunal, because it involved some question under the law of nations?

[The Senator from Massachusetts, from his seat, responded, No; because, under those articles, the Federal courts had next to nothing of judicial power—a defect remedied by the Constitution.]

They had, then, no such power; yet we were then a nation as much as we now are, and, Mr. Madison and Mr. Kent say, possessing nearly the same powers. But the Senator says they had next to nothing of judicial power. That is, the power was not granted them by these articles; and it is not granted now by the Constitution; and both instruments declare that the rights not granted are reserved. The judicial power of the confederacy extended to "appointing *courts* for the trial of piracies and felonies commited on the high seas, and establishing *courts* for receiving and determining finally appeals in all cases of captures;" "establishing rules for deciding, in all cases, what captures on land and water shall be legal, and in what manner prizes taken by land and naval forces in the service of the United States shall be divided or appropriated." The judicial power was also extended to certain disputes as to boundary, &c., between the States, and conflicting land titles under two or more States. Now, whether this judicial power be, or not, next to nothing, it was precisely that granted by those articles; and the judicial power now, is that directly granted by the Constitution, and no more: and in neither case could judicial power not delegated be exercised, merely because we are a nation. But, it is asked, Are we not, as a nation, bound by the law of nations? Were this admitted, the question then, as now, would recur—In what courts are cases involving questions under this law to be determined? And then, as now, the answer would be—In the Federal courts, so far as the power is directly granted, and in such cases only; and in all others, that law must be administered and expounded in the State courts. I have shown that the ordinance cited by Mr. Kent extends the law of nations not to all cases, but to captures under a specific authority then granted, and referred to in the ordinance.

But, were it otherwise—are all the powers exercised by the old Congress, under the emergency of a terrible and doubtful war, to be cited as precedents? We know that the Congress of the confederacy repeatedly transcended its constitutional powers; and Mr. Madison, in referring to this well-known fact, in the 38th number of the Federalist, speaking of what he calls this "usurpation" of the old Congress, says: "The public interest—the necessity of the case—imposed upon them the task of overleaping their constitutional limits." But when, I ask, did Congress, either before or after the Constitution, grant any Federal court the powers conferred by this bill? or when did any court declare that it could be granted? To infer, then, this power, from the mere fact that we are a nation, and that therefore the Federal judicial power extends to all cases arising under the law of nations, is to prove that this power existed before, as well as after the adoption of the Constitution; it is to prove that the nation has, from its mere existence as such, powers not derived from the States which made the Constitution, which instrument was the only charter of its existence, and the sole evidence of all its power. The State courts, it is conceded, alone possessed this power, before as well as after the Confederation, which made us a nation, if we are so now; and the State courts must still continue alone to possess this power, unless it is transferred to the Federal courts by some of the enumerated grants of the Constitution.

The judicial power of the States is just as sacred as their legislative or executive power; and no portion of any of these powers has been surrendered, except by direct grants in the Constitution. The judicial power of the Union is carved by the States out of their own judicial authority, by a surrender of a portion of it only, by special grants, leaving with the States exclusive power in all the cases not enumerated; and to say that we are not a nation without the authority conferred by this bill, is to say that we were not a nation under the confederacy, and are not now; for we have never exercised this power. In the 83d number of the Federalist, Mr. Hamilton says:

"The authority of the Federal courts is declared by the Constitution to comprehend certain cases *particularly specified*. The expression of those cases marks the *precise limits* beyond which the Federal courts cannot extend their jurisdiction; because the objects of their cognizance being *enumerated*, the *specification would be nugatory*, if it did not exclude all ideas of a more extensive authority."

But this bill far transcends Mr. Hamilton; for it looks not to the Constitution for these powers, but to our mere existence as a nation. What a boundless source of power! And what is the first stream that flows from this unfathomable fountain, in which the Constitution disappears? Why, it is cognizance of all matters arising under the law of nations—not the laws of the United States, made by Congress in pursuance of the Constitution; but the law of all nations—the law of the world. How vast the power! how utterly incapable of all limitation, restraint, or definition! And must our citizens find their form of Government and its powers, affecting their life, liberty, and property, not in the Constitution made by the States, but in the books of Grotius, Vattel, Puffendorf, and the thousand ponderous tomes—many not yet translated into English—that fill the libraries of Europe?

The law of nations, in all time past, has been chiefly the laws, treaties, ceremonies, and customs of courts and kings. Their subjects chiefly have compiled its code, and monarchs have sustained its power. Look at the maxims of many European writers on the law of nations, and our Declaration of Independence would be in violation of that law. Nay, according to English construction, our very Constitution was a violation of the law of nations; for England maintains the doctrine of perpetual allegiance, and assails, as contrary to the law of nations, that portion of our Constitution which authorizes the naturalization of foreigners. (1 Black. Com. 369, 370.) The law of nations is said to embrace the laws of nature; and these laws, many of these writers tell us, are against slavery. Can, then, the Federal courts take cognizance of all cases arising under the law of nature? and if so, of slavery, as said to be condemned by that law? This law is said to be founded on good morals. Can the Federal courts become judges of all cases under the moral code, and administer its precepts? This code is said by many to be founded on Christianity. Can the Federal courts take charge of all cases arising under the old or new Testament, as the basis of the modern law of nations? Take the single chapter of the law called the comity of nations, or the conflict of laws, embracing the vast range of questions arising out of the law of nations concerning foreign wills, or deeds, or contracts—foreign judgments, authentications, and proofs—foreign marriages or divorces—foreign domicil, succession, administration, guardianship, or distribution. Can the Federal tribunals take from the State courts their cognizance

of all these questions, invading even the ordinary jurisdiction of their county and probate courts? In 16 Peters, 19, the court say that "the law respecting negotiable instruments is *part of the law of nations*, and not the law of a single country"—"*Non erit alia lex Romæ, alia Athenis, sed et apud omnes gentes.*" Can, then, every question arising on a promissory note or bill of exchange be transferred from the State to the Federal tribunals? Again: a case may turn on the construction of a treaty—not of the United States, but of France and England—involving a question of international law: can this be transferred to the Federal tribunals? Not without violating the plain language of the Constitution, which confines the Federal judiciary to our *own treaties*. The language is, cases "arising under this Constitution, the laws of the UNITED STATES, and treaties made, or which shall be made, under THEIR authority."

How, too, as to international questions arising under *foreign laws*, and not "the laws of the *United States*," but of France or England; or cases also, not under "*this* Constitution," but that of England, France, or Mexico: can all these questions in all these cases be brought within the grasp of the Federal courts? I have unsealed but a single chapter in the mighty volumes of the law of nations; and if all that is written and unwritten in that law be cognizable in the Federal courts, there is no limit to their jurisdiction. It is said the *law* of nations is "the *laws* of the United States." If this be so, the courts of the Union are bound to administer, and the President is bound to execute them. Again: if this *law* be "the *laws* of the United States," then, at least in penal and criminal cases, the State courts can try no case arising under it; and if the case of McLeod was one arising under the law of nations, the courts of New York could not try him at all, even with the consent of the Federal tribunals. The law of nations, it is conceded, after the Declaration of Independence, and before the Confederacy, was part of the law of the several States, and to be administered only in the State courts. So, after the Confederacy, the law of nations, except as to the enumerated cases of captures, &c., was to be administered only in the State courts. So, also, under the Constitution, (there being no general grant of judicial power in all cases under the law of nations, and all power not granted being reserved,) this law remained the law of the States, and to be administered only in their courts, except in the special cases, but numerous and important, arising under that law, in which power was conferred on the Federal courts. The clause relied on is, "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." Does this embrace all cases under the law of nations? It includes, 1st, all cases "arising under *this* Constitution." Is the law of nations the Constitution? or does it embrace all questions under the law of nations? or is that law a part of the Constitution? and, if so, can it only be changed as therein prescribed? and would an act of Congress, violating the law of nations in the opinion of a court, be pronounced by it unconstitutional? and how many treaties and laws have we made, changing some of the principles of the law of nations, as it existed at the adoption of the Constitution? The next class is, all cases under "the laws of the United States." Is the law of nations "the *laws* of the United States?" If so, they are already made, not by Congress, but by the world; and are to be enforced in all cases, as acts of Congress, by the Federal judiciary and Executive. But what is the meaning of this term, "laws of the United States?" The Constitution, in article 6, declares it as follows: "This Constitution, and the laws of the United States *made in pursuance thereof*, and all treaties made, or which shall be made, under the authority of the United States," &c. It is, then, the laws made in pursuance of the Constitution. By whom made? The Constitution answers: "The Congress shall have power" to make these laws. Congress are to make "the laws of the United States." But what laws made by them "shall be the supreme law of the land?" Those only "made in pursuance" of the Constitution, and all others are void.—1 Cranch, 137. In the 80th No. of the Federalist, Mr. Hamilton asks, "What is meant by cases arising under the Constitution, in contradistinction from those arising under the laws of the United States?" And he answers: "All the restrictions upon the authority of the State Legislatures."

Thus he says, "as a sample of the whole," the "interdiction to emit paper-money results from the Constitution, and will have no connexion with any law of the United States. Should paper-money be emitted, the controversies concerning it would be cases arising under the Constitution, and not under the *laws* of the United States." Such were Mr. Hamilton's views; and it never was even imagined by him that these terms—"all cases under the Constitution and laws of the United States"—embraced all cases under the law of nations, but simply the carrying out the precise provisions of the Constitution and the constitutional acts of Congress. As, then, neither *the words*, "all cases under the Constitution, laws, or treaties of the United States," would include all cases arising under the law of nations, if the framers of the Constitution intended to embrace all cases under the law of nations, they would have so declared, and not left it to inference or conjecture, in a matter of such vital import; and to introduce these words now, would be to make a constitution, and not to interpret it.

But the judicial power was not extended to *all cases* under the law of nations; for it was extended to special specified cases arising under the law of nations, which would have been superfluous and nugatory had it been previously extended to all cases. Thus it is extended to "all cases affecting ambassadors," &c.—a most important class of cases under the law of nations. So, also, to all cases of admiralty and maritime jurisdiction—cases arising, also, under the law of nations. So, also, to piracies and felonies on the high seas, and offences against the law of nations. Why these special and enumerated grants of power in certain cases arising under the law of nations, if the previous words of the Constitution had embraced "all cases arising under the law of nations?" If the general power was thus given in all cases, the special grant in some of those cases would have been absurd and nugatory. In the language of Chief Justice Marshall, in 1 Cranch, 174, they would be "mere surplusage," "entirely without meaning." And he says this cannot be, because "it cannot be presumed that any clause in the Constitution is intended to be without effect." But these words granting jurisdiction in certain cases specified in the Constitution, are unmeaning and superfluous, if there had been a grant of power in *all cases* under the law of nations. *Expressio unius est exclusio alterius*, is not only a legal maxim, but one which common sense applies in the construction of laws; and is emphatically made here the rule, by the 10th amendment of the Constitution. Certain specified cases; and well considered, arising under the law of nations, were submitted by the Constitution to the Federal courts. All others, therefore, are *withheld*; and especially would it be preposterous to say that all others were granted.

The Senator says: "*Undoubtedly*, not every case arising under the laws of nations is within your jurisdiction;" and he admits that to add to the judicial power after the words "all cases under the Constitution, treaties, and laws," these words, "*and the law of nations*," "would indeed be to change the Constitution." Then it is admitted that the law of nations, as such, is not a part of the Constitution; nor is it *proprio vigore* "the *laws* of the United States," which are those only enacted by Congress. In some—indeed, in many cases under the law of nations, the Senator admits the exclusive power of the States. What are these? All that are not prohibited to the States, or granted to the Union. What cases, then, under the law of nations, belong to the General Government? Those only that are enumerated, named, and which have been shown not to embrace this case. It being then conceded that the terms "all cases under the Constitution, laws, and treaties," do not embrace all cases under the law of nations, but only those under "some power conferred," I have a right to ask, what power? Come down from the general doctrine of peace and harmony; descend from the preamble; leave behind you rejected resolutions; and show me on which one of the enumerated powers of the Constitution you repose this bill. The Senator specifies that of "*making war*" a legislative power. Is this bill a declaration of war, or an exercise of that power, or to operate only in war? No. It is a bill, we are told, to preserve peace, and to operate only, or chiefly, in peace. It does not contemplate a state of war; nor is it to operate from the commencement, or during the continuance, of a war; or if in peace, *in cases arising during the war*; but it is to remain in force in all time to come, although the nation shall never be engaged in war.

The honorable Senator says "that Congress may pass a law declaring that prisoners taken during an actual war, within a State, shall be deemed subject to the law of nations; shall be placed in the custody of the executive officers of the United States; and that the President may provide for their safe-keeping, support, and exchange." These are acts passed in time of war, applicable only to prisoners of war, and conferring power, not upon the courts, but upon the President. Is this bill confined to prisoners of war, or to alien enemies, or to acts done during a period of war?—or will the honorable Senators so amend it? I pause for a reply. No, they will not; for they intend it to operate in peace, and to acts done in peace; and to embrace, as the bill itself declares, "*all* cases of any prisoners in jail or confinement"—whether in peace or in war. Indeed, the bill should exclude the case of a prisoner of war; for is it designed by this bill to require the courts of the Union forthwith to discharge all prisoners of war, upon the ground that their act was an act of war, in obedience to the command of their sovereign? Is it designed to require the courts to liberate prisoners of war? Was McLeod a prisoner of war? And, if he was, what right had England to demand his restoration? And if he was a prisoner of war, and England had a right to demand his restoration as one of her citizens, why had we not a reciprocal right to demand from England the immediate deliverance of every American citizen captured by England during that war? But were it conceded that the case of McLeod was an act of war, and subject to the law of war: still this bill could not be maintained, for it operates in time of peace, and is so intended to operate. Speaking of the alien law, in his celebrated Virginia report, Mr. Madison said:

"It is said, further, that by the law and practice of nations, aliens may be removed at discretion, for offences against the law of nations; that Congress are authorized to define and punish such offences; and that to be dangerous to the peace of society, is, in aliens, one of those offences. The distinction between alien enemies and alien friends, is a clear and conclusive answer to this argument. Alien enemies are, under the law of nations, liable to be punished for offences against it. Alien friends, except in the *single case of public ministers*, are under the *municipal* law, and must be tried and punished according to *that law only*."—4 *Elliot*, 364.

Alien enemies must not be confounded with those whose acts or opinions are unfriendly to the United States; but they are only the citizens or subjects of a country with which we are at war. Alien friends are not those merely whose acts or opinions are friendly to this country, but embrace all, whether friendly or unfriendly, who are subjects or citizens of a country with which we are at peace. Alien friends, then, being all the subjects of a country with which we are not at war, "are under the *municipal* law, and must be tried and punished according to that *law only*." The municipal law is the law of the State, defining and punishing offences within its limits, and in violation of its penal enactments. Yet these very cases—cases occurring in profound peace, and subject to the exclusive power of the courts of a State—are to be taken from those tribunals, and the prisoners are all to be forever discharged at the will of the courts of the Union.

In the Virginia convention, Mr. Madison said: "The powers in the General Government are those which will be exercised *chiefly* in time of war, while those of the State Governments will be exercised in time of peace." (2 Ell. 205.) Now, this bill reverses this rule, and expounds the powers of the Constitution as if our condition were one of perpetual war; and applies that power, with all its stern necessity and iron rules, to a state of peace. If this could be done, vast indeed would be the power of this Government; for, when war occurs, the law of force, the *jus belli*, is so nearly omnipotent, that it is said "*inter arma silent leges.*" It is asked by the Senator from Connecticut, [Mr HUNTINGTON,] in his able speech in favor of this bill, "if a foreigner, after *a treaty of peace* is concluded, is prosecuted criminally in a State court for an act done by him in *open war*," may not Congress authorize his release. It is a strange imputation upon the courts of the States to suppose that such a prosecution would there be countenanced against the soldier of another realm, *merely* for fighting, "*in open war*," the battles of his country; and we should legislate for real, and not for imaginary cases. But, if Congress could act, it would be because the deed was done "*in open war*;" it was the act of an *alien enemy*, over whom Mr. Madison, in the Virginia report, extends the war power

of Congress. But will you confine this bill to alien enemies?—will you confine it to acts done by them during the war, and in prosecution of that war? This *you refuse;* thereby demonstrating, as the bill itself proves, that it is not confined to a state of war, or to acts done in open war; but does embrace all other cases, and operates, and is designed to operate, in peace, and, as you declare, to preserve peace. (In proof of this, whilst the bill was pending, I offered the following amendment: "In line 21, after the word 'act,' add '*during a period of war with such foreign State, and in prosecution of such war;*'" but the amendment was voted down by the *friends* of the bill by a strict party vote —ayes 17, noes 25. This would have embraced the case put by the Senator from Connecticut, and all similar cases of exemptions claimed for acts done in war. But it was rejected: thus adhering to the bill, which provides the exemption, whether the act be done in peace or war, and terminating the effort to place this bill on the power of Congress to *declare war.* Indeed, the bill extends to females; its words are, "he, *she,* or they;" thus rendering somewhat ludicrous the attempt to base this bill on the war power of Congress, unless an Amazonian war was had in view.)

The next power to which the Senator refers, is to make treaties. But we have made no treaty embracing this case; and it is well settled by the Supreme Court, that it is only when this "power is executed by a treaty," that it binds the State; "but that, while such power remains dormant or contingent, the obligation does not exist, and that *Congress* have no power to impose it."—14 Peters, 614. The treaty must first be "made under the authority of the *United States,*" before any case can arise under it; for Congress, or the judiciary, are not the *treaty-making power;* and the jurisdiction given to the courts is under treaties *made,* and not under treaties not made, or under the "dormant and contingent power to make treaties." If, then, it were most clearly proved that the treaty-making power could embrace this case, it would not, in the absence of such a treaty, advance us one step in support of this bill. But I deny that any treaty could embrace this case. The treaty-making power is not omnipotent; it is not paramount to the Constitution, but exists under its "authority." It cannot overthrow the Constitution; it cannot amend, enlarge, or destroy its powers; for that can only be done by an amendment, in the mode prescribed by that instrument. It can add no one power to the Constitution, or it may add any number. It can withdraw or control no one *reserved power of a State,* or it may all; and thus change altogether our form of government, and establish a Government without limitation of power, or substitute, by treaty, a monarchy for a Republic. It cannot strike out any one *reserved power of a State,* or prevent or control its exercise; for, if it may do this as to one of these powers, it may as to all, and thus abrogate the State Governments altogether.

The Constitution says that the *President* "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators *present* concur;" and requires only a *majority* of the Senate to "constitute a quorum." Twenty-seven Senators being a majority, constitute a quorum—eighteen of whom are two-thirds; and they, with the President, (being in all nineteen persons,) constitute the sole treaty-making power. Now, can nineteen men, by a treaty with any foreign Government, subvert the Constitution, amend or change, limit or enlarge it? Can they add to, or subtract from, the Federal power? Can they usurp any, or all, the reserved powers of the States? If so, this is a Government of unlimited power; and slight indeed is the tenure by which we hold our liberties, if they may be sold at any time, by treaty, by nineteen men acting in secret conclave, to any foreign power. The treaty-making power is the executive power, restrained in our Constitution by the advisory consent of the Senate. And can this executive power break down or absorb all other powers? May it enlarge its own powers by treaty, or curtail or enlarge the legislative or judicial power? The Constitution says, "the trial of all crimes shall be by jury." Can this be abrogated by a treaty? The Constitution extends the judicial power of the Union only to certain enumerated cases. Can a treaty extend it beyond these cases to others, not only not granted, but reserved exclusively to the States?

In fine, the Constitution says: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are *reserved to the States* respectively, or to the people." Can these powers, "reserved to the States," and never granted to any or all of the departments of the Federal Government, be sold by treaty to a foreign power, or limited or restrained, impaired or abrogated? No; the reserved powers of a State are not within the authority of any or all the functionaries of the Federal Government; and, were it otherwise, there would be no reserved rights. It being, then, one of the reserved powers of a State to try, condemn, and punish any offender against her criminal laws, no treaty can deprive the State of this power in any one case; and if a State can, by treaty, be deprived of the power of enforcing her criminal laws—a police power, vital to her very existence—there is no one reserved power of which she may not be deprived by a treaty. If this be so, then nineteen men, by the treaty-making power, may surrender all the reserved rights of the States, and reduce them into mere departments, or provinces, of one consolidated empire. Am I told, they will commit no such enormities? I answer, Was the authority to do so surrendered by the Constitution? And if so, this is a Government vesting unlimited powers in the President and Senate. Is it a Senator that claims this power? and, if claimed and admitted, why will it not be exercised? If this be so, let no man sleep secure whilst the Senate, in secret session, deliberates on treaties; for the States may awake, and find themselves States no longer; but all or any portion of their penal code expunged, and all or any portion of their clearly reserved power surrendered by treaty. The question then recurs, Has a State the exclusive power, reserved by the Constitution, of creating and punishing crimes against the State? And, if so, no treaty can abrogate, limit, impair, or control that power. If it be urged in favor of the unlimited character of the treaty-making power, that it affects all the States, and therefore will be injurious to none; let us take the recent case of Maine. Maine claims, with perfect justice, what is called the disputed territory; and that no portion of it can be alienated by treaty without her assent. She claims, also, that if she takes exclusive possession of this territory, and an effort is made to expel her citizens from it by any foreign power, it is an invasion of a State; and that Maine, in that case, has a right to demand, under the 8th article of the Constitution, that the United States "shall protect each State against invasion."

In March, 1839, the Senate affirmed this great principle by a solemn vote, on motion of Mr. Webster; and that Senator, and his then colleague, [Mr. Davis,] not only united with me in the vote, but we all three affirmed this sacred right of the States in recorded arguments. Such, too, are the doctrines of Maine and Massachusetts. On the 9th of February, 1830, the Legislature of Massachusetts adopted the following resolution, declaring the treaty with Great Britain, as to the Maine boundary, *null and void:*

"*Resolved,* That the Government of the United States has no constitutional right to cede *any portion* of the territory of the States composing the Union to any foreign power; or to deprive any State of any *land* or *other property,* without the consent of such State previously obtained—— of the States of Massachusetts and Maine, would be a violation of the rights of jurisdiction and property belonging respectively to the said States, and secured to them by the Federal Constitution; and that any act purporting to have such effect, would be WHOLLY NULL and VOID."

On the 28th February, 1831, and 18th January, 1832, the Legislature of Maine adopted resolutions, declaring a treaty ceding any portion of the State as one that would "violate the Constitution of the United States, impair the *sovereign rights and powers* of the State of Maine, and that Maine is *not bound* by the Constitution to submit:"

"*Resolved,* That the Constitution of the United States does not invest the General Government with *unlimited* and *absolute* powers; but confers only a *special* and *modified* sovereignty, without authority to cede to a foreign power *any portion* of territory belonging to a State, without its consent."

Such were the solemn decisions of these States, maintained by all their Senators—in fact, affirmed by the vote of the Senate—and now acknowledged by the mere presence, at this moment, of the commissioners of those States to carry out these views. Let it be observed, too, that the resolutions of Massachusetts assert that, although the land is not within her limits or jurisdiction, yet, as she has a right of "property" in a portion of it, even this "property" cannot be ceded by treaty, without her consent.

How idle, then, is the argument, that, because a State, in the exercise of one of her reserved rights, may endanger the peace of the country, therefore the Federal Government, by treaty or law, may abrogate that right. To assume this ground, (and it is substantially assumed, in defence of this bill,) every State holds each one of its reserved rights subject to the will—and, what is worse, to the menace—of any and every foreign nation that chooses to threaten us with a war, and that reserved right of the State, and all of them, must be surrendered, and all power centred in this Government, in order to prevent war with foreign powers. Yield but this point in one case—give but this inch of ground; and when you shall have centralized the Government, and surrendered, under royal mandates, the sovereignty of the States, the next demand will be: Give up your Republic; it is a machine too complex; it mars your intercourse with kingly powers; commit your Constitution to the flames, tear the stars representing the sovereign States from the banner of the Union, and place them upon the brow of your President as glittering jewels on a monarch's crown; and then—then, there will be neither wars, nor threats, nor fear, nor rumors of war, and all will be calm and peaceful. And so it might be; but it would be the calm of despotism, or that ominous and soundless calm portending revolution, which precedes the tornado of the tropics, when it seems in conflict with gravity itself, and appears to swing the reeling earth from its orbit.

Of some—nay, of "many"—cases under the law of nations, the Senator admits the Federal courts cannot take cognizance; but he says they can in all such as affect our *foreign relations.* Now, I have shown that the Confederacy had, as Chancellor Kent says, "the *exclusive* cognizance of our foreign relations;" and yet the Senator admits that their courts could not take cognizance of the cases embraced in this bill. Why? Because it was not *then,* nor is it *now,* one of the powers conferred on the Federal courts; but it remained then, as it does now, where it had before existed—in the State tribunals. The case of Holmes (14 Peters, 540) is much relied on; but in this case, the court was equally divided; and the opinion in that case of all the judges condemns this bill. The question was, whether, there being no treaty of the United States, a State could surrender to the British authorities, on their request, made of the State, a fugitive criminal from Canada. Now Chief Justice Taney—who was one of the four who thought the State could not make the surrender—placed their opinion on these clauses of the Constitution: "No State shall enter into any treaty," nor "enter into any *agreement* or compact with another State, or with a foreign power." He thought such a request, made by a foreign State, and assented to by a State, and attempted to be executed by the joint authorities of the State and the foreign State, constituted such an agreement as was prohibited by the foregoing clauses of the Constitution—especially as such a treaty could be made, and made only, by the Federal Government. The opinion, then, of Chief Justice Taney was on this point alone; and, in that view, the general remarks made by him had no application to this case: and I cannot but feel it a duty to rescue him from the charge that he ever believed that a State could be deprived by treaty of one of its reserved and exclusive powers; much less that it could be deprived of such a power without a treaty.

Holmes had offended no law of a State, and thus brought himself within the range of its *reserved power* to try and punish him; and, to prevent the possibility of any implication from his opinion that the Federal Government could invade the reserved rights of a State, Judge Taney says:

"The question is in no degree connected with the power of the States to remove from their territory any person whose presence they may think dangerous to their peace, or in any way injurious to their interest. The power of the States in that respect was fully considered by this court, and decided, in the case of Mitn, (11 Peters, 102.) Undoubtedly, they may remove from among them any person guilty of, or charged with, crimes; and may arrest and imprison them, in order to effect this object. This is a part of the ordinary *police powers* of the States, which are necessary to their very existence, and which they have *never surrendered to the General Government.* They may, if they think proper, in order to deter offenders in other countries from coming among them, make crimes committed *elsewhere* punishable in their courts, if the guilty party shall be found within their jurisdiction."

The Chief Justice then thought, even in the case of Holmes, *an alien,* that the State might not only pass a law to punish him for an offence committed *in the State;* but that they might, with a view to deter foreign offenders from coming into their limits, pass a law to punish all such as should thereafter come within the State, for crimes com-

mitted by them in a foreign State—a power most unusual and extraordinary; but still a power, he says, which a State possessed as one of her reserved rights; and that these powers to punish foreign offenders were "never surrendered to the General Government." They were *police powers*, which, in the case of Miln, were declared to be vested exclusively in the States; which case the Chief Justice here quotes and reaffirms; and in the opinion delivered in which case, at the time, the Chief Justice concurred; and which opinion I have quoted in a former part of this argument, showing that it was in direct conflict with this bill. The opinion, then, of the present very able and learned Chief Justice, is decidedly with us; and so, also, are all the other opinions delivered in this case of Holmes. Justice Barbour says: "The whole power of foreign intercourse granted to the Federal Government *consists in this:* that, while it is authorized, through the President and Senate, to make treaties, the States are prohibited from entering into any treaty, agreement, or compact with a foreign State." "The President and Senate can make treaties which are not themselves *repugnant to the Constitution.*" Justice Baldwin, in his most able opinion in this case, denied all power in the Federal Government, even by *treaty*, "to prevent the expulsion of a fugitive from justice from the territory of a State, pursuant to its laws, or the general authority vested in its executive, or other appropriate officers, to administer and enforce its regulations of *internal police.*"—614. He denies that you can "bring *internal police* within the treaty-making power."—618. And he declares, emphatically, that whether the case be one "affecting our foreign relations" or not—*"be this as it may*, we have no warrant from the Constitution, and Congress can give us none, to authorize us to interfere with the exercise of a power which comes within every definition which this court has given of the regulation of the *internal police* of a State."—620. It being, then, decided in the case of Miln, (11 Peters, 102,) and reaffirmed in this case, that the police power of a State is an exclusive and reserved right of each State, which can neither be withdrawn nor controlled by a law or a treaty; and that this power embraces the punishment of all crimes against a State, committed as well by "the alien who shall just have put his foot on the soil of the State, as by one who is a native citizen," (11 Peters, 140,) this question must be regarded as conclusively settled by the Supreme Court of the Union against this bill.

And here let me correct a radical error, in speaking of the common law, or the law of nations, or any other law, as the law of the United States. There is no such thing known to the Constitution as the law of the United States, other than the laws made by Congress, in pursuance of the powers vested in them, and in the mode prescribed by the Constitution. On an indictment for bribing a Federal officer, the court said: "The Constitution of the Union is the source of all the jurisdiction of the National Government; so that the departments of the Government can never assume any power that is not *expressly* granted by that instrument." "The United States, as a Federal Government, have no common law; and, consequently, no indictment can be maintained in their courts for offences merely at common law." "With respect to the individual States, the difficulty does not occur;" they have "so much of the common law as was applicable to their local situation."—2d Dal., 384. The next case was an indictment for a libel on the President and Congress, in 1806, in which the Supreme Court held that the Federal courts had no jurisdiction.—7th Cranch, 32. The court say: "The only question is," whether the Federal courts "can exercise a common-law jurisdiction in criminal cases." "The powers of the General Government are made up of concessions from the several States; whatever is not *expressly* given the former, the latter expressly reserve. The judicial power is a constituent part of these concessions;" and they directly deny the position now, and then, assumed, "that, upon the formation of any political body, an implied power to preserve its own existence, and promote the end and object of its creation, necessarily results to it," as a principle that can be applied to expand the powers of the Federal Government. We have seen the court declaring, in the case cited from Dallas, that the common law was part of the law of each State, but not of the United States. In his chapter on offences against the law of nations, (vol. 4, page 66,) Blackstone says: "The law of nations is held to be a part of the common law."

The common law, then, (and the law of nations, as a part of that law, both in civil and criminal cases,) is a part of the law of each State; and as to that common law, modified by statute or usage in each State, Chancellor Kent says: "It has been assumed, by the courts of justice," "as the law of the land in every State."—(1st Kent, 473.) In 1st Dal. 71, the court say: "The common law of England has always been in force in Pennsylvania." And in 1st Dal., 121, in the case of an *indictment* for a "violation of the law of nations," by an assault on a foreign secretary of legation, the case, the court say, "must be determined on the principle of the *laws of nations*, which form a *part of the municipal law* of Pennsylvania." "The court never doubted that the law of nations formed a part of the law of England." Then if, as is clear, the Federal courts have no common-law jurisdiction in criminal cases; and if, as is shown, in civil as well as in criminal cases, the law of nations constitutes a part of the common law, and, as such, a part of the municipal law of each State—how can there be a doubt that this law is to be administered in the courts of the States, in all but the special cases in which it has been surrendered by the Constitution to the courts of the Union?

The last power cited is that "to define and punish piracies and felonies committed on the high seas, and offences against the law of nations," a legislative power. Is this a bill defining and punishing offences upon the high seas, or against the law of nations? Who is the offender? What offence does this bill define, and what is the punishment inflicted? This clause gives you power to define and punish certain crimes against *the United States*, (not against a State,) under the designation of offences on the high seas, and against the law of nations. These crimes you are to punish, and only in your courts; for they are not offences against a State, nor cognizable under its laws. Are you now executing that power? Is this a bill to try and punish any of these offences, or the offender? No. It is a bill not to try or punish any one, for any offence against the United States, or for any offence whatever; but it is a bill authorizing your courts to release all offenders against a State law. It is a power, not to punish in your own courts, but a power to arrest or prevent the trial in the courts of the States; and a power in your courts only to acquit and discharge; but that discharge, by your bill, is made "final;" and any subsequent proceedings in any State court are made *"null and void"*—a nullification by the United States of the reserved rights of a State. Now, if this were a bill to execute this power, you must first define the crime; for this is required in *all cases* except piracy. This, then, being a legislative, and not a judicial power, you must not only define the crime, but also (even in cases of piracies) designate the punishment. You have exercised this power, by the act of 30th April, 1790, and other laws. This act is entitled "An act for the punishment of certain crimes against *the United States*," (not against a State;) and the trial must be by jury. Now, is this a bill to try any of these crimes? If so, the Constitution declares that "the trial of all crimes shall be by jury;" yet you have no jury for the trial under this bill! If you can take jurisdiction *under this clause*, you can and must take the sole and exclusive jurisdiction to try and punish the offender; and you can exercise this power only through the intervention of a jury. It is true that, in civil cases, it is only the *right* of trial by jury that is preserved; and this may be waived by consent of the parties. But this is not so in criminal cases. Consent, then, will not give jurisdiction; for the language of the Constitution is imperative: "the trial of all crimes *shall* be by jury." And an act of Congress, authorizing a judge to try a crime without a jury, even by the consent of the accused, would be unconstitutional. Now, by this bill, you say the Federal judge "shall proceed to *hear* the said cause; and if, upon hearing the same, it shall appear that the prisoner is entitled to be discharged from such confinement for, or by reason of, such alleged right, &c.; and that the same exists *in fact*, and has been *duly proved* to the said judge, then it shall be the duty of the said judge forthwith to discharge such prisoner accordingly." "And, after *final judgment* of discharge in the same, any proceeding against said prisoner in any State court, for any matter or thing so *heard and determined*, shall be deemed *null and void.*"

Here is a cause to be *heard and determined*, a *fact* to be *proved* upon the *hearing*, and a *final discharge* granted; and all this without the intervention of a jury. Now, if you can thus hear and determine a cause for acquittal, you can do it for condemnation and punishment; or, otherwise, you are not exercising the power under this clause of the Constitution to define and punish these offences. This bill proceeds much further than the case of McLeod; but, test it by that case, under this clause of the Constitution. McLeod is charged with an offence against the laws of a State—the murder of one of its citizens within its limits—an offence cognizable only by the laws of that State. Does he, then, come within that clause of the Constitution which authorizes you to define and punish offences against the law of nations? If so, why do you not try and punish him under this bill?—and why grant a jurisdiction, not for conviction, but only for final discharge and acquittal? If McLeod has committed an offence against the law of nations, you can take cognizance of that case for the full purpose of trial and punishment; but if he has committed no such offence, then he is not within *this clause* of the Constitution, and you have no jurisdiction. You begin by asserting that McLeod committed no offence against the law of nations, and you end by claiming a power to discharge him, under authority only to try and punish offences against the law of nations. But you say that he has committed no offence whatever; and, therefore, you will discharge him from the alleged crime against the laws of New York, because the law of nations would justify the murder. But do you not perceive that this does not bring the case within this clause of the Constitution, which enables you to try and punish offences against the law of nations? for you say he has committed no such offence; but you claim to discharge him from trial for the alleged crime, not against your laws, but those of a State, because you say the law of nations justifies the act. You claim, then, cognizance of the case, not because it is an offence against the law of nations—for you concede it is not; but because the trial in the State court for an offence *only against its laws* involves a question depending upon the law of nations.

Then this case cannot depend on this clause of the Constitution; but you are brought back to a power which I have shown you do not possess, namely: that you may take cognizance of a crime against a State, merely because it involves a question arising under the law of nations—a question, in cases over which a State has the sole and exclusive power to try and punish the offender, fully cognizable in the State courts. Does the law of New York authorize the sentence and execution of any one for an alleged murder, when, by the law of nations, he commits no murder, and was fully justified in the act? No. The law of New York does not authorize judicial murder. It does not trample upon, but maintains, the law of nations as a part of the common law, and of the law of the State. The law of nations was the law of New York at least as early as the 4th July, 1776, in all cases whatsoever, when she proclaimed herself a free, sovereign, and independent State. It remained the law of New York, under the articles of Confederation, as well as under the Constitution; and to be executed by her alone, as a reserved right, except in the special cases delegated to the Union, or prohibited to the States, by the Constitution. Does any man suppose if, upon the trial of McLeod in the State courts, he had shown that he was not guilty, because the law of nations justified the act, that their courts and their juries would have stained their souls with guilt, and their hands with innocent blood, by ordering him to execution? No; the supposition is too monstrous even for argument. And here I cite a very high authority—the unanimous opinion of the supreme court of New York, in this very case of McLeod—an opinion which stands out self-vindicated. This is a judicial decision—one directly on this question; and in defiance of which you rush onward into certain and fearful conflict with the States, expunging the judgments of their highest courts, and scatter in contempt around you the broken fragments of their sovereignty.

You may "define and punish piracies and felonies committed on the *high seas*, and offences against the law of nations;" but, because you can punish crimes "committed on the high seas," in the words of the act of 1790, "out of the jurisdiction of any particular State," may you therefore take cognizance, directly or indirectly, of crimes committed against the laws, and within the limits, of a State?

You may try "offences against the law of nations," having first defined them by law. These offences are all described in 4th Blackstone, 66; and all embraced by him under the following heads: "1st. Violation of safeconduct; 2d. Infringement of the rights of ambassadors; 3d. Piracy." Was McLeod a pirate, or an ambassador? or did he hold a safeconduct? or had he violated a safeconduct, or the rights of an ambassador? and, if not, how can you take charge of his case as an offence against the law of nations? Blackstone here defines safeconducts as "passports, expressly granted by the *King, or his ambassador*, to the subjects of a *foreign power*, in time of *mutual war*." Now, all these cases of offences against the law of nations—namely, piracies, violations of safeconduct, or of the rights of ambassadors—are all provided for, defined, and punished, by the before-mentioned act of Congress, of 30th April, 1790. I have given Blackstone's definition of a safeconduct; and in conformity is the 27th section of the above act, punishing any person who "shall violate any safeconduct or passport duly obtained, and issued under the *authority of the United States*."

Now, McLeod's safeconduct, if he had any, was from his own Government, to come into the State of New York in time of peace, and murder an American citizen. The safeconduct, to violate which is an offence against the law of nations, would be one issued by this Government "to the subject of a *foreign* power in time of MUTUAL *war*;" but, under this bill, it is the "commission, order, or sanction of a *foreign State*" to one of its own subjects, in time of war or peace—a safeconduct utterly unknown to the law of nations, and which, if produced by any American criminal, would be scouted indignantly out of any British court. No; England never has passed, and never will pass, such an act as this in regard to American citizens. We have seen how she disposes of them in Canada, where is now said to have been, at the date of McLeod's capture, a war between England and America. Did England so regard it? Go to the graves (if they have received the rites of sepulture) of American citizens in Canada, condemned by British courts during the recent convulsion;—go to the isles of the Pacific, where, torn from his wife and children, from his country and his home, the wretched American suffers, amid convicts and felons, the torments of a living death; and they will tell you what mercy they received from British juries, and what pardons from the British Crown. Such was the fate of our countrymen during the war (as it is now called) in Canada between England and America; and *as a war* requiring from us the release of McLeod, justifying the violation of our soil, the capture there and burning of our vessels, and midnight murder of our citizens. What Senator can efface from his memory the recollection of that wanton insult on the dreadful night at Schlosser, when one of our own vessels, anchored upon our own shore, was stolen upon at midnight, a citizen murdered upon our soil, the boat swung out from its mooring, and committed to the flames, which lighted the last voyage of the American fire-ship as she tossed along the whirling rapids of Niagara, and down the foaming cataract; whilst, even above its roar, rose the exulting shouts of the victors, proclaiming that this was the war which England waged upon America; and which, whilst it raised those who commanded the deed to knighthood at home, demanded from us the immediate release of all the guilty offenders. And is this the outrage, never atoned for, but sanctioned and applauded by England, in regard to which we are asked to pass this bill—justifying, by its retrospective energy, all that is past in this transaction, and, by the impunity which it offers to foreign offenders in all time to come, inviting similar aggressions? Is it for the re-enactment of scenes like this, that, upon our whole frontier, and throughout this Union, in peace and in war, the breasts of our citizens are to be laid bare to the assassin's steel, and their ships and houses opened to the robber's midnight plunder? Are these the cases in which no judge or court of a State may try and punish the offender? Are these the cases, and such as these, in which the criminal may claim an exemption under the law of nations, or the commission, order, or sanction of any foreign power? Has he only to appeal to the Federal judge, and unfold, as his defence, the red cross of St. George, or display the waxen seal of the British lion, or the signet of any foreign prince;—and must Justice be struck dead in her holiest temples. Must the criminal code of the States be expunged, and every star that represents their sovereignty torn from the banner of the Union? Must the midnight assassin, whose hand, red as the cross that floats over him, is dripping with the warm life-blood of an American citizen, step out of court, in exulting triumph, acquitted and discharged, because a foreign King was an accessary to his crime, before or after the fact—by a previous order, or a subsequent sanction? No; much as peace may be desired, it is not to be purchased at the expense of honor; and to pass this bill, under existing circumstances, even were it constitutional, would sacrifice the honor and tarnish the character of the country. Nor is there any necessity for the passage of this bill; for no case of any unjust conviction stains the records of the courts of the States. Is the blood of McLeod crying from the ground for vengeance? No; with his false boast of midnight murder, he was tried and acquitted by the courts and juries of a State; and not a single instance of the punishment of an alien for political offences marks their criminal jurisprudence. It is not here that a Jeffries or a Norbury ever rode his circuit of blood, followed by perjured informers, and demanding from bribed and terrified juries the sacrifice of innocent victims. And is it England demands from us to withhold from the courts of the States the trial of political offenders? Where is Napoleon? Where is Ney? Where are Orr and Emmett? Where are Hampden, Sidney, and Russell? And where are the thousand martyred patriots that expiated upon British scaffolds their love of liberty and of their country. When did the courts or juries of a State blot out the rules of law and evidence in the blood of innocent victims? When did a court of star-chamber raise its Bastile walls and gloomy scaffolds on American soil? There, political offences mark more than a hundred penal enactments. Here, such offences are almost unknown. There, the number of crimes punished with death is almost countless. (Blackstone names 160, 4th volume 4.) Here, in most of the States, but a single crime (wilful and deliberate murder) forfeits the life of the prisoner; and the onward march of our mild institutions is hastening under the lead of an illustrious Democrat (O'Sullivan) to adopt the principles of Beccaria and Livingston—to abolish the punishment of death, and to sweep the hangman's scaffold from American soil. In England, the punishment ceases not with death, but mutilates the lifeless corpse, when the spirit has fled to God who gave it. Blackstone mentions the English punishment of treason, (of which there are several kinds, counterfeiting the coin being one of them,) namely:

"That he be hanged by the neck, cut down alive, his entrails taken out and burnt while he is yet living, his head cut off, his body divided into four parts, and his head and quarters put at the king's disposal; or if a female, that she be burnt alive."—4 *Blackstone*, 92.

Nor is the vengeance of the law yet satisfied; but, having mutilated the body of the dead, attaints with forfeiture and corruption of blood the descendants of the wretched criminal. Here, all these enormities are unknown, and the innocent alien has nothing to fear from the courts of the States. Do we treat aliens as criminals? Let the glad voices of the ransomed thousands that are landing hourly on our happy soil answer the question. It is not we who exclaim:

"*Nos patriam fugimus, et dulcia linquimus arva;*"

for what American leaves the States of this Union to seek a land more free and happy, or a higher protection, in a new allegiance to some foreign crown?

The Senator has indulged in many conjectures as to the dangers resulting from the want of the power claimed by this bill. If the Senator had stood—where he would have deserved to stand—among the great men in the convention who framed the Constitution, these arguments would then have been well addressed, with a view to obtain a grant of this power. Even then, they should have failed; for the experience of more than half a century proves these dangers to be wholly imaginary; whilst the evils which would flow from the experiment of the grant and exercise of such a power, appear to me certain and overwhelming. But were it shown that the Constitution is defective in this particular, this would never justify us in writing a new power in that instrument; but the remedy would be that prescribed by the Constitution—by an appeal to the States to amend it, as they always will, by the grant of any new power which experience might demonstrate to be indispensable to the peace and harmony of the Union.

The Senator says this bill is a "law of the United States;" and therefore you have this jurisdiction under it. Then you may pass any law authorizing the Federal courts to take charge of all cases whatsoever; but surely the act must be passed "in pursuance" of the granted powers of the Constitution, or it is null and void; and so the Supreme Court declared an act of Congress conferring jurisdiction on them not warranted by the Constitution—1 Cranch, 137. It is said this act adopts the law of nations; then it is not adopted by the Constitution in these cases; and, if so, Congress cannot adopt it. The Senator says it is within the twenty-fifth section of the act of 1789. Then, why not use the language of that section—namely, "cases arising under the *Constitution, laws, and treaties*?" and why use that language in the first part of this bill, as to all persons; and then extend it to *other* cases arising under the law of nations, and the commission, order, or sanction of a foreign power—as if the order of a foreign King were the Constitution, or a law or treaty of the Union. That this case does not arise under this twenty-fifth section, is proved by the fact that, in the lapse of more than half a century since its adoption, it has never been applied to such cases; and in Pagan *vs.* Hooper—not reported, but to be found among the files of the office of the Attorney General—he says, in his opinion of the 15th March, 1793, the appeal was "unanimously rejected" by the Supreme Court, although that case involved the rights of foreigners, our foreign intercourse, and important questions of international law. But, if this jurisdiction already exists under this section, why pass this bill? Why change the settled law of half a century? Why suppose that the State courts must err, and, before they have erred, transfer the question, not to the Supreme Court, but to an inferior Federal tribunal? Why this useless conflict before any error by a State court—thus, without any pretext, seeking an interference, and inviting a collision? McLeod was tried and acquitted by the State courts, and there was no necessity for any Federal intervention. But, had this bill been in force, and McLeod taken out of the hands of the court and jury of the State before trial, and discharged by the order of a Federal judge—not because he did not participate in the murder, but on the ground of its sanction by a foreign power—who can predict the consequences? or who can say that they might not have precipitated a war? Does not the Senator perceive that, whilst he is thus aiming to prevent collision abroad, he is producing it at home? I desire no collision abroad, and no foreign war; but much less do I desire any civil war, or any collision at home; and if war must come, I had rather meet a million of foreign mercenaries, than shed, in fraternal strife, the blood of one American citizen. But no foreign power has any right to demand that their offenders against the laws of a State should be tried only in the courts of the Union—this being a matter of purely internal regulation. If an American offender should be fairly condemned in the courts of England or Wales, Ireland or Scotland, Canada, or any other British colony, would we have a right to demand that he should be tried only in the court of the United Kingdom? and if an alien is unjustly condemned, what difference does it make by what court the cruel sentence was pronounced?

But the bill of the Senator distrusts the courts of the States, although they have never inflicted an unjust sentence. His hope is in the strong arm of Federal power, which gathered, he says, "from the great primal source—the people—light and fire for a central sun." When I look at the origin of the Constitution, and behold *then* there, *as States*, those who *then* framed, and *now*, represented here, administer the powers of this Government; when, in rejoicing thankfulness, I view the glorious banner of the Union given to the breeze,—I see there the dazzling splendor of no central sun. I see there those radiant stars, representing confederate and sovereign States, forming one great constellation. I behold there all the light and all the power which we possess to carry out the objects of the American Union.

And let me warn the Senator that, when his central sun shall rise above the horizon, the stars, representing these States, will fade before the solar effulgence. It will be the last hour of the Constitution; and that sacred charter of sovereign and United States will vanish with them, like the apocalyptic scroll in the day of the last conflagration.

not to force action this morning under the operation of the previous question, but to allow the bill to be printed and its consideration set down for an early day, so as to give us all a reasonable opportunity for examination and discussion. If that is done I will not say that I shall be found in opposition to the bill. I may be found supporting it. But I am to-day unprepared—and I say it with all sincerity and honesty—to record my vote upon so important a measure as this. If the gentleman will allow me, I will make a motion to print the bill and make it the special order for an early day.

Mr. WILSON, of Iowa. What day?

Mr. HALE. Say to-morrow week.

Mr. WILSON, of Iowa. Mr. Speaker, I am not disposed to press this bill on an unwilling body, and if it can be set down as the special order for to-morrow, and in the mean time printed, I have no objection to that order being made. I stated at the commencement of my remarks that if the House desired it I would not object to a postponement. I will move, therefore, that it be postponed and printed and made the special order for Thursday next, after the morning hour.

Mr. ELDRIDGE. I desire to inquire of the gentleman if he contemplates any debate upon this bill when it comes up on that day, or whether he intends to call the previous question, as he did on this day.

Mr. WILSON, of Iowa. The gentleman shall have an opportunity to discuss it if he desires it. I shall be governed somewhat by the circumstances. I do not intend to press the bill unreasonably.

Mr. ELDRIDGE. I do not inquire on account of myself alone, but there are gentlemen around me who wish to know whether general discussion is to be allowed on the bill or not.

Mr. WILSON, of Iowa. I certainly will allow reasonable discussion upon the bill.

The motion of Mr. WILSON, of Iowa, was agreed to; and the bill was accordingly postponed, ordered to be printed, and made the special order for Thursday next after the morning hour.

NEUTRALITY LAWS.

Mr. WILSON, of Iowa, from the same committee, reported back House bill No. 858, to repeal the neutrality laws, and moved that the Committee on the Judiciary be discharged from the further consideration of the same, and that it be referred to the Committee on Foreign Affairs.

The motion was agreed to.

PUNISHMENT OF TREASON.

Mr. LAWRENCE, of Ohio, from the Committee on the Judiciary, reported back House bill No. 634, to repeal certain parts of the act approved April 30, 1790, entitled "An act for the punishment of certain crimes against the United States," with a recommendation that it do pass.

The bill repeals so much of section thirty-two of an act for the punishment of certain crimes against the United States, approved April 30, 1790, as provides that no person or persons shall be prosecuted, tried, and punished for treason or other capital offense unless indictment for the same shall be found by a grand jury within three years next after the treason or capital offense shall be done or committed; and provides that all persons who have been or may be guilty of treason or other capital offense may at any time be indicted, tried, and punished therefor.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time.

The question recurred on the passage of the bill.

Mr. ELDRIDGE. I demand the yeas and nays on the passage of the bill.

Mr. LAWRENCE, of Ohio. I will explain this bill briefly to the House, and I think there will be no objection to its passage.

The act of April 30, 1790, providing for the punishment of treason, limits prosecutions to three years. If that act, or its limitation, shall remain in force, it will in a very short time be equivalent to a general pardon or amnesty for every act of treason during the late rebellion. This bill proposes to repeal so much of that act as limits prosecutions to three years; and it provides that all persons who have been or may be guilty of treason or other capital offense may at any time be indicted, tried, and punished therefor.

Mr. HALE. Does the bill affect any other crime than treason?

Mr. LAWRENCE, of Ohio. Treason or other capital offenses. There is in the States as a general rule no limitation at all upon the prosecution of capital offenses. There ought not to be in relation to the crime of treason; and the only questions, I suppose, which will arise on the passage of this bill will be as to the expediency of passing it, and our power to pass it.

As to the expediency, I have only to say I suppose this House have determined for themselves that they are not in favor of a general amnesty or pardon of all those who were guilty of treason during the rebellion. On the first day of this session we passed a bill to repeal so much of existing laws as authorize the President to grant general amnesty or pardon, yet the limitation contained in the law of 1790, if it shall continue in force, will very soon be equivalent to general amnesty and pardon.

As to the other branch of the question, our right to pass this bill, I have this to say: the right of a nation to prosecute for a violation of its laws is analogous to the right of a citizen to sue for a wrong to his person or property, or for the violation of a contract. In all these cases the courts administering the law distinguish between the right and the remedy.

The "right" growing out of the "obligation" of a contract cannot be divested, for it is protected by the Constitution. The right of redress for a wrong to the person or property is equally a vested right which cannot be impaired. But the remedy is a very different affair. The Legislature may not only prescribe a limitation for future contracts and rights of action, but in the language of the Note to section twenty-two of Angel on Limitations—

"A statute of limitations may well apply to contracts in existence at the time of its passage, provided a reasonable time be allowed before the statute takes effect, or the debt barred, within which creditors may institute their actions."

And again the same note says:

"But a statute extending the time of limitation will not revive causes of action already barred under pre-existing statutes." * * * * "If, however, the cause of action be not already barred, the statute extending the time will apply."

These principles apply as well to criminal prosecutions as to civil actions, for in either case the law which regulates the time of prosecuting or sueing affects only the remedy and not the right, whether the time for prosecuting or sueing is enlarged or abridged.

This bill is not objectionable upon the ground that it will be *ex post facto*. An *ex post facto* law is—

"One which renders an act punishable in a manner in which it was not punishable when it was committed."—*6 Cranch*, 138.

If an act is not punishable when committed, it cannot by subsequent law be made so. The test of an *ex post facto* law is the criminality or innocence of an act at the time of its commission. The mode of prosecution, the time when or within which it shall be prosecuted, or the tribunals which shall try it are all subject to regulation by law.

Mr. SHELLABARGER. I wish to inquire of my colleague whether the committee looked into the question of our power to revive the right of prosecution for treason where the act of 1790 has already barred prosecution, and whether this bill undertakes to do that? I may say that I trust the law may be in that way. I would be very glad to have it so.

Mr. LAWRENCE, of Ohio. The committee did examine that question. The authority to which I have referred in the Note to Angel on Limitations I suppose settles that question. Where a crime is already barred no act, I suppose, can revive the right of prosecution.

Mr. SHELLABARGER. Your bill then does not do that?

Mr. LAWRENCE, of Ohio. No, sir; the bill cannot effect an impossibility.

Mr. SHELLABARGER. My inquiry was whether the bill undertakes to revive the right of prosecution where the limitation is already completed?

Mr. LAWRENCE, of Ohio. The clause in the bill to which my colleague desires to call attention I suppose is this: "And all persons who have been or may be guilty of treason or other capital offense may at any time be indicted, tried, and punished therefor." That clause is, of course, only to be applicable to those cases where by law it is possible to prosecute. The general design of the bill is simply to repeal that limitation of three years, so that the general pardon and amnesty which it will soon effect may be avoided.

Mr. SPALDING. I wish to inquire of my colleague if he designs to impose any limitation whatever?

Mr. LAWRENCE, of Ohio. No, sir.

Mr. SPALDING. Would it not be better to extend the time?

Mr. LAWRENCE, of Ohio. No, sir; I think not. There is no limitation in murder cases in Ohio, a State whose jurisprudence has been illustrated by my distinguished colleague as a member of its supreme court, and I think it is not usual in the States to affix any limitation. But if a limitation shall be desirable hereafter it will be competent for Congress to prescribe a limitation. It is certainly not desirable now, and we cannot tell now, under this Administration, when it may be desirable to affix a limitation.

Mr. CONKLING. Gentlemen seem to agree that if a crime or offense is outlawed or barred it cannot be revived by subsequent enactment. Now, I ask the gentleman from Ohio whether his whole purpose would not be accomplished by repealing the statute of limitation as it stands, and whether it is worth while, not only to repeal the statute, but to put in the bill an attempt to do what we know we cannot constitutionally do, namely, revive an offense which is in truth outlawed. I understand this bill in the commencement to repeal and brush away that statute by virtue of which alone this crime is outlawed, and it then proceeds to enact that all persons who have heretofore at any time (that is the legal construction of the language) committed treason shall be punishable hereafter.

And yet we know that if in truth the statute has run the offense is dead, and any law which seeks to revive it is an *ex post facto* law. Now, I submit to the gentleman from Ohio [Mr. LAWRENCE] that we will accomplish his whole purpose by a simple repeal of the statute of which he desires to get rid.

Mr. LAWRENCE, of Ohio. I think it better to leave the question to the courts to determine how much of this bill may be operative. If this bill shall not pass then all the early treason of Jeff. Davis and those who coöperated with him will be entirely exempt from punishment. I am willing to go to the very verge of the Constitution for the purpose of reaching the early treasonable acts which inaugurated the late rebellion. I do not know what the courts will hold upon this question, and for that reason the bill has been introduced in this shape.

Mr. STEVENS. Mr. Speaker, I approach with great distrust all bills of this kind, which are evidently brought forward for the purpose of ascertaining how we can convict men whom we cannot convict under laws existing when the crimes were committed. I do not believe that it becomes this nation, I do not believe it is safe for us to undertake to pass laws by which we can or may be able to punish men however guilty who could not be punished under the law existing when the crimes were committed.

Could we now change our Constitution so as to change the place of trial of traitors, to say

that the venue might be changed, and that they should be tried by jurors summoned from another bailiwick? The Constitution and our laws provide very carefully that, especially in the case of treason, the party charged with that crime must be tried at the place where the overt act was committed, in a district previously ascertained by law, and by a jury from that bailiwick. Now, any law which professes to change that in any respect looks to me so much like an attempt to commit judicial murder that I have always been afraid to attempt it.

I am aware that the traitors in the South, if tried under our existing Constitution and laws, will not one of them be convicted. I should never attempt to try them for treason; I would try them as belligerents, under the law of nations and the laws of war.

Mr. LAWRENCE, of Ohio. We have no reason to expect of the Administration any such trials.

Mr. STEVENS. I am stating what I would do if I were the Administration. Now, although I would not discourage trials for treason, I mention this to show that I am convinced that none of these traitors can ever be convicted of treason under our present Constitution and laws. And yet I would rather let every man of them run unpunished forever than to make a law now by which they could be punished. I think our Government would be endangered in its future existence, in its sense of justice, in its character before the world by conduct of that kind, more than it would by enduring the evil. I think the British Government suffered more from its murder of Lord Russell, although it was done by means of a court condemning him, than it would have done had he been suffered to escape. It was by just such contrivances as this that that judicial murder was effected, and by which the British Government suffered more than it would have done by the escape of forty traitors.

I think our Government better be careful how it tampers with the crime or the remedy. It better treat them as guilty partly of a political offense and partly of offenses *malum in re* than now to attempt to pass laws, because otherwise the malefactors may escape.

This professes to be a bill to make indefinite the prosecution of one of those offenses which of all others should be quieted by lapse of time. Although treason is as high a crime as can possibly be committed, yet there are generally so many engaged in the crime of treason and in rebellion that there must be some quieting law, and in my judgment there ought to be.

Now, it does not follow that every traitor will escape who is not prosecuted within three years of the time of the commission of the offense. The statute of limitations never runs in any case unless it is possible to enforce the remedy; it only runs from the time when it was possible to enforce it. For instance, I will refer to the men now in Europe, Benjamin, Slidell, and others; I do not suppose that anybody will say that while they were absent beyond seas the statute of limitation would run. The statute would begin to run when the time arrived that he could be prosecuted. But whether that be so or not, still, during the time of war, during the prosecution of the war, the crime continued; it was a continuing offense, and the offense continued up to the time when peace shall be proclaimed, which it never yet has been. I know that a gentleman in this city has made public a statement which he desired to have considered as equal to the decrees of James and Charles, as overruling the law. But it is of no more importance than so much waste paper.

The question of peace or war is yet to be decided by this body. I say there is no peace. This nation is still in a belligerent condition; and the conquered belligerents are within the power of the conqueror, to be dealt with as captives, not as criminals.

Therefore, sir, I can see no necessity for a measure of this sort; but if there were a necessity, I should certainly object to any alteration of the law as it now exists in regard to treason which would enable the Government to convict where it is confessed a conviction could not be obtained under the law as it stood at the time of the commission of the offense. I should be very glad to see condign punishment inflicted upon many of these men, not capital punishment; for in my youth I read Beccaria, and adopted to a great extent the principles which he maintains. I never realized the sufficiency of the atonement made by the execution of that magnificent leader of the rebellion, the miserable Wirz—a Dutchman, I believe, with a humpback—who was obeying the orders of his superiors, and who, in ordinary times when men were tried according to law, would never have been convicted, because his Government was answerable, not he. I do not believe that the starvation of thousands of Union prisoners is to be atoned for by the execution of one of the keepers——

The SPEAKER. The morning hour has expired. This bill goes over until to-morrow, when the gentleman from Pennsylvania will be again entitled to the floor.

G. E. PICKETT.

The SPEAKER, by unanimous consent, laid before the House the following message from the President of the United States;

To the House of Representatives:

I transmit herewith reports from the Secretary of War and the Attorney General in compliance with a resolution of the 3d instant requesting the President to communicate to the House, "if not in his opinion incompatible with the public interests, the information asked for in a resolution of this House dated the 23d June last, and which resolution he has up to this time failed to answer, as to whether any application has been made to him for the pardon of G. E. Pickett, who acted as a major general of the rebel forces in the late war for the suppression of insurrection, and if so, what has been the action thereon; and also to communicate copies of all papers, entries, indorsements, and other documentary evidence in relation to any proceeding in connection with such application; and that he also inform this House whether, since the adjournment at Raleigh, North Carolina, on the 30th of March last, of the last board or court of inquiry convened to investigate the facts attending the hanging of a number of United States soldiers for alleged desertion from the rebel army, any further measures have been taken to bring the said Pickett or other perpetrators of that crime to punishment."

In transmitting the accompanying papers containing the information requested by the House of Representatives, it is proper to state that, instead of bearing date the 23d of June last, the first resolution was dated the 23d of July, and was received by the Executive only four days before the termination of the session.

ANDREW JOHNSON.

WASHINGTON, D. C., *December* 11, 1866.

The message, with the accompanying documents, was laid on the table, and ordered to be printed.

REPORT OF REGISTER OF TREASURY.

The SPEAKER, by unanimous consent, laid before the House a communication from the Secretary of the Treasury, transmitting pursuant to the act of August 26, 1842, the report of the Register of the Treasury of receipts and expenditures for the year ending June 30, 1865; which was laid on the table, and ordered to be printed.

SOLDIERS' AND SAILORS' ORPHANS' HOME.

Mr. INGERSOLL, by unanimous consent, reported back from the Committee for the District of Columbia, with an amendment in the form of a substitute, a bill (H. R. No. 848) to amend an act entitled "An act to incorporate the National Soldiers' and Sailors' Orphans' Home," approved July 25, 1866, and whereby certain corporate rights are granted to Mrs. Julia B. Grant and others.

The amendment reported by the committee was read and agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time and passed.

On motion of Mr. INGERSOLL, the title of the bill was amended so as to read, "An act to amend an act entitled 'An act to incorporate the National Soldiers' and Sailors' Orphans' Home,' approved July 25, 1866."

Mr. INGERSOLL moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid upon the table.

The latter motion was agreed to.

REMOVALS FROM OFFICE.

The SPEAKER stated the next business in order to be House bill No. 664, for the regulation of appointments to and removals from office, on which the gentleman from Pennsylvania [Mr. WILLIAMS] was entitled to the floor.

Mr. WILLIAMS. I wish to suggest some modifications to the bill as originally reported. As soon as I have done that I will yield the floor to the gentleman from New York, [Mr. HALE.] I move the following to come in at the end of section two:

Provided, however, That so much of this section as makes the office vacant beyond the time of the refusal of the Senate to advise and consent to a renomination shall not be held to apply to cases of commissions to fill vacancies happening during the recess, and which, under the Constitution, are made determinable at the end of their next session.

Also strike out these words in section three:

And in case of the nomination of any other person or persons than the one so commissioned, and the refusal of the Senate to advise and consent thereto, the office shall not be considered as vacant upon the adjournment of the Senate, but the person so commissioned shall continue to hold and enjoy the same and exercise the functions thereof during the recess of Senate, and until he shall be either nominated and rejected or duly superseded by a new appointment, by and with the advice and consent of that body.

I now yield the floor to the gentleman from New York.

Mr. HALE. Mr. Speaker, I have been instructed by the joint select committee on retrenchment, to which this subject was referred by concurrent resolution of the two Houses, to report a bill to this House, and under those instructions I now move the bill which they instructed me to report as a substitute for the bill proposed by the gentleman from Pennsylvania. It is printed, but the copies for the House are not yet in. They are expected in, and undoubtedly will be here before they will be needed.

The SPEAKER. The vote on the substitute will be reserved till the vote has been taken on the pending amendments for the perfection of the bill.

Mr. GARFIELD. I ask that the substitute be read.

The Clerk read as follows:

Strike out all after the enacting clause, and insert the following:

That every person (excepting the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General) holding any civil office to which he has been appointed, by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided.

SEC. 2. *And be it further enacted*, That when any officer appointed as aforesaid, excepting judges of the United States courts and excepting those specially excepted in section one of this act, shall, during the recess of the Senate, be shown, by evidence satisfactory to the President, to be guilty of misconduct in office or crime, or for any reason shall become incapable or legally disqualified to perform its duties, in such case, and in no other, the President may suspend such officer and designate some suitable person to perform temporarily the duties of such office until the next meeting of the Senate and until the case shall be acted upon by the Senate; and in such case it shall be the duty of the President, within twenty days after the first day of such next meeting of the Senate, to report to the Senate such suspension, with the evidence and reasons for his action in the case and the name of the person so designated to perform the duties of such office. And if the Senate shall concur in such suspension and advise and consent to the removal of such officer they shall so certify to the

Mr. HOWARD. I only wish to send to the Chair a portion of the speech of the Senator from Kentucky as reported by the official reporter in order that the Senator may know exactly what he did say on that occasion.

Mr. CONNESS. I hope that will be read.

Mr. DAVIS. I was about to say a word in relation to the practice of publishing speeches some time after they are delivered. I understand that the whole Appendix of the Globe is made up of speeches that are published some considerable time, more or less, after the time of their delivery. I have met with speeches that were published weeks and months after the day of their delivery, in the Appendix to the Globe. It was only in conformity to that practice that I was acting. The report of my speech was sent to me and I answered in reply that at my leisure I would revise it and would have it published in the Appendix to the Globe. That is all I have to say in relation to the practice of other members of the Senate and in relation to what I did as to that particular speech.

Mr. ANTHONY. There have been some speeches—I do not mean to say speeches of the Senator from Kentucky—but there have been speeches delivered here that have never been printed in the Globe at all; that have been suppressed entirely. That is a practice to which I wish to call the attention of the Senate.

Mr. HOWARD. I now send to the Clerk to be read a portion of the speech made by the honorable Senator from Kentucky on the occasion to which he has referred. I wish that it may go into the report of our proceedings.

The PRESIDING OFFICER. It will be read if there be no objection.

Mr. DOOLITTLE. Now that we have got through with the personal explanation, I renew the motion to adjourn.

Several SENATORS. Oh, no; let us have that read.

Mr. DOOLITTLE. Very well; but I give notice that I shall renew the motion after the paper has been read.

The PRESIDING OFFICER. The report will be read, if there be no objection. The Chair hears no objection.

The Secretary read as follows:

"Here, sir, is a provision in the Constitution which requires the President to communicate to the two Houses of Congress information as to the state of the Union, and to recommend to them such measures as he shall deem proper and expedient. What does this require him to do? He has to ascertain who compose the two Houses of Congress. It is his right, it is his constitutional function to ascertain who constitute the two Houses of Congress. The members of the Senate who are in favor of the admission of the southern Senators could get into a conclave with those southern Senators any day, and they would constitute a majority of the Senate. The President of the United States has the constitutional option, it is his function, it is his power, it is his right, and I would advise him to exercise it at any day, to ascertain, where there are different bodies, members of the Senate contending, which is the true Senate. If the southern members and those who are for admitting them to their seats, constitute a majority of the whole Senate, the President has a right—and by the Eternal he ought to exercise that right—forthwith, to-morrow, or any day, to recognize the Opposition here and the southern members of the Senate as a majority of the whole body."

Mr. DAVIS. That is my principle still. I maintain that that is the true principle of the Constitution.

Mr. HOWARD. The honorable Senator from Kentucky says that that is his principle still. I confess I regret very much to hear him make such an announcement. I pronounce that principle to be revolutionary, unconstitutional, and treasonable. I now move that we adjourn.

Mr. DAVIS. I wholly dissent from the position of the honorable Senator. It is neither revolutionary, nor unconstitutional, nor treasonable.

The PRESIDING OFFICER. It is moved that the Senate do now adjourn.

The motion was agreed to; and the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *April* 30, 1866.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. C. B. BOYNTON.

The Journal of Saturday was read and approved.

The SPEAKER stated as the first business in order the calling of the States and Territories for bills and joint resolutions on leave, to be referred to the appropriate committees and not to be brought back on a motion to reconsider, commencing with the State of Maine.

STATE AND NATIONAL BANKS.

Mr. RICE, of Maine, introduced a bill granting further time and facilities for the conversion of State banks into national banks; which was read a first and second time, and referred to the Committee on Banking and Currency.

SKAMANIA COUNTY, WASHINGTON TERRITORY.

Mr. RICE, of Maine, also introduced a bill to disapprove of the act of the Legislative Assembly of the Territory of Washington, entitled "An act in relation to Skamania county," approved January 14, 1865; which was read a first and second time, and referred to the Committee on Territories.

HORACE I. HODGES.

Mr. DAWES introduced a bill for the relief of the heirs of Horace I. Hodges; which was read a first and second time, and referred to the Committee of Claims.

WILLIAM JONES.

Mr. COFFROTH introduced a bill granting a pension to William Jones; which was read a first and second time, and referred to the Committee on Invalid Pensions.

RAILROAD CONNECTIONS WITH WASHINGTON.

Mr. GARFIELD introduced a bill to promote the construction of a line of railroads between the city of Washington and the Northwest for national purposes; which was read a first and second time, referred to the select committee on a military and postal railroad from Washington to New York, and ordered to be printed.

BRIDGE ACROSS THE CUYAHOGA.

Mr. SPALDING introduced a joint resolution for the construction of a railroad bridge across the Cuyahoga river over and upon the Government piers at Cleveland, Ohio; which was read a first and second time, and referred to the Committee on Commerce.

WILLIAM WATKINS.

Mr. GRIDER introduced a bill for the benefit of William Watkins; which was read a first and second time, and referred to the Committee on Revolutionary Claims.

JOHN MUNN.

Mr. NEWELL introduced a bill for the relief of John Munn; which was read a first and second time, and referred to the Committee of Claims.

WAGON ROAD IN MONTANA.

Mr. SMITH introduced a bill to aid in the construction of a wagon road in the Territory of Montana; which was read a first and second time, and referred to the Committee on Territories.

TENNESSEE.

Mr. KUYKENDALL introduced a joint resolution declaring the constitutional relations of the State of Tennessee restored to practical relations with the United States; which was read a first and second time, and referred to the Committee on the Judiciary.

JOHN A. WHITALL.

Mr. BEAMAN introduced a bill for the relief of the legal representatives of Major John A. Whitall, late paymaster in the United States Army, on account of loss of stolen vouchers; which was read a first and second time, and referred to the Committee of Claims.

RAILROAD IN IOWA.

Mr. HUBBARD, of Iowa, introduced a bill to amend an act entitled "An act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State," approved May 12, 1864; which was read a first and second time, and referred to the Committee on Public Lands.

REV. F. A. CONWELL.

Mr. WINDOM introduced a bill for the relief of Rev. F. A. Conwell, of Minnesota; which was read a first and second time, and referred to the Committee of Claims.

SIOUX RESERVATION, MINNESOTA.

Mr. WINDOM also introduced a joint resolution for the relief of certain settlers on the Sioux reservation, in the State of Minnesota; which was read a first and second time, and referred to the Committee on Indian Affairs.

SAMUEL DONNICA.

Mr. HENDERSON introduced a bill for the relief of Samuel Donnica; which was read a first and second time, and referred to the Committee on Invalid Pensions.

KANSAS AND NEOSHO VALLEY RAILROAD.

Mr. CLARKE, of Kansas, introduced a bill granting lands to the State of Kansas to aid in the construction of the Kansas and Neosho Valley railroad and its extension to the Red river; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

INTERNAL REVENUE.

Mr. ANCONA introduced a bill to amend an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864, and the act amendatory thereof, approved March 3, 1865; which was read a first and second time, and referred to the Committee of Ways and Means.

RAILROAD FROM PITTSBURG TO CLEVELAND.

Mr. GARFIELD introduced a bill to promote the construction of a line of railroad from Pittsburg, Pennsylvania, to Cleveland, Ohio; which was read a first and second time, referred to the select committee on a military and postal railroad, and ordered to be printed.

TRIAL OF JEFFERSON DAVIS.

The SPEAKER. The next business in order is the call of States and Territories for resolutions, and under this call the first question is upon a resolution of the gentleman from Indiana, [Mr. JULIAN.] On last Monday morning the House refused to second the demand for the previous question, and debate arising, the resolution went over until to-day. The resolution is now debatable under the rules.

The resolution was read, as follows:

Resolved, As the deliberate judgment of this House, that the speedy trial of Jefferson Davis, either by a civil or military tribunal, for the crime of treason or the other crimes of which he stands charged, and his prompt execution, if found guilty, are imperatively demanded by the people of the United States in order that treason may be adequately branded by the nation, traitors made infamous, and the repetition of their crimes, as far as possible, be prevented.

Mr. WILSON, of Iowa. I hope that the gentleman from Indiana will consent to have this resolution referred to the Committee on the Judiciary, as the committee now have this subject under consideration.

Mr. JULIAN. I desire an opportunity to discuss briefly the question presented by the resolution. I will agree to make the motion for reference at the conclusion of my remarks.

Mr. WILSON, of Iowa. Very well; I yield to the gentleman for that purpose.

Mr. JULIAN. Mr. Speaker, in demanding the punishment of the chief rebel conspirators, I beg not to be misunderstood. I do not ask for vengeance. I feel sure there is no man in the country, however intense his loyalty, who would inflict the slightest unnecessary suffering, or any form of cruelty, upon even the most

flagitious of the confederate leaders. What the nation desires, and all it asks, is the ordinary administration of justice against the most extraordinary national criminals. The treason spun from their brains, and deliberately fashioned into the bloody warp and woof of a four years' war, involving the sacrifice of hundreds of thousands of lives, and thousands of millions of treasure, ought to be branded by the nation as a crime. It ought to be made "odious" and "infamous." The punishment of that crime, prescribed by the Constitution, is death; and I am just as unwilling to see the Constitution set aside and made void in this respect, in the interest of vanquished rebel leaders, as I was to see it trampled under foot by their armed legions while the war continued. Indeed, the punishment of these leaders is a necessary part of the logic of their infernal enterprise, and without it the rebellion itself, instead of being effectually crushed, must find a fresh incentive to renew its life in its impunity from the just consequences of its guilt. It will not do to say these leaders have been sufficiently punished already, by the failure of their treason, the loss of their coveted power, and their humiliation, poverty, and disgrace. Kindred arguments would empty our jails and penitentiaries, and make the administration of criminal justice everywhere a farce. The way of all transgressors is hard; but this hardship cannot justify society in failing to protect itself by fitly chastising its enemies. Justice to the nation whose life has been attempted, and to the assassins who made the attempt, is the great demand of the hour.

And here, again, Mr. Speaker, I hope I shall be understood. In pleading for justice I mean of course public justice, which seeks the prevention of crime by making an example of the criminal. Human laws do not pretend to fathom the real moral guilt of offenders. They have no power to do this. Their sole aim is the prevention of crime. They have nothing to do with that retributive justice which graduates the punishment of each transgressor by the exact measure of his guilt. To the great Searcher of all hearts belongs this prerogative, while society, acting through government as its agent, and having an eye single to its own protection, must deal with its criminals. This, sir, is my reply to the plea often urged that we should not hang the rebel leaders, because we cannot also hang the leading sympathizers of the northern States who are perhaps more guilty. The Government has nothing to do with the question of degrees of moral guilt or blameworthiness, either in the North or the South. Its concern is with the nation's enemies, whose overt acts of treason have made them amenable to the laws, and whose punishment should be made a terror to evil doers hereafter. The fact that our power of punishment cannot reach all who are guilty, including many men in the loyal States who richly deserve the halter, is no reason whatever for allowing those to go unwhipped who are properly within the reach of public justice.

And the same reasoning applies to the argument sometimes urged against all punishment founded on the numbers who would fairly be liable to suffer. The question is frequently asked, would you build a gallows in every village and neighborhood of the South? Would you shock the Christian world by the spectacle of ten thousand gibbets, and the hanging of all who have been guilty of treason, or even a respectable fraction of their number? I answer, I would do no such thing. Public justice and the highest good of the State do not require it. I would simply apply the ordinary rules of criminal jurisprudence to the question, and as in other conspiracies, so in this grand one, I would mete out the severest punishment to the ringleaders. Most undoubtedly I would give them a constitutional entertainment on the gallows; or should the number of ringleaders be too great, or the guilt of some of them be less flagrant than others, perpetual exile might be substituted. The rebel masses, both on the score of their numbers and their qualified guilt, should have a general amnesty; but by no possible means would I spare the unmatched villains who conceived the bloody project of national dismemberment, and by their devilish arts lured into their horrid service the ignorant and misguided people of their section. Whoever may escape justice, either North or South, or whatever embarrassments may belong to the problem of punishment at the end of this stupendous conflict, nothing remains so perfectly clear and unquestionable as the duty of the nation to execute the great malefactors who fashioned to their uses all the genius and resources of the South, and throughout the entire struggle invoked all the powers of hell in their work of national destruction.

Mr. Speaker, the adequate punishment of the rebel leaders involves the whole question of the rebellion itself. It is not a matter which the Government may dispose of indifferently, but is vital to the nation's peace, if not to its very existence. To trifle with it is to trifle with public justice and the holy cause for which the country has been made to bleed and suffer. It is to mock our dead heroes, and confess our own pusillanimity or guilt. It is to make treason respectable, and put loyalty under the ban. It is to call evil good and good evil; and since God is not to be mocked, it must in some form bring down upon our own heads the retribution which we may only escape by enforcing the penal laws of the nation against the magnificent felons who have sought its life.

Sir, I shall take it for granted that treason is a crime, and not a mere accident or mistake. In this most frightful and desolating struggle there is transcendent and unutterable guilt; and I take it for granted that that guilt is on the side of those who wantonly and causelessly took up arms against the nation, and not on the side of those who fought to save it from destruction. Treason is a crime, and therefore not a mere difference of opinion; a crime, and therefore not an honest mistake of judgment about the right of a State to secede; a crime, and therefore not a mere struggle of the South for independence while the North contended for empire; a crime, and therefore not a mere "misapprehension of misguided men," as some of our copperhead journals affirm; a crime, and the highest of all crimes, including all lesser villainies, and eclipsing them all, in its heaven-daring leap at the nation's throat; and therefore those who withstood it by arms were patriots and heroes, fighting for nationality and freedom, against rebels whose sure and swift punishment should be made a warning against the repetition of their deeds.

Mr. Speaker, if a man were to come into our midst and persuade us that treason and loyalty are about the same thing; that right and wrong, good and evil, virtue and vice, are convertible terms; that God and Satan are in fact the same personage, under different names, and that it matters little under whose banner we fight; and if he could thus enlist us in the work of uprooting the foundations of Government, of morals, of society, of everything held sacred among men, would he not be the most execrable creature in the universe? If he could indoctrinate mankind with his theory of "reconstruction," would not this beautiful earth of ours be converted into a first-class hell, with the devil as its king? Sir, you dare not trifle with this question of the punishment of traitors. Theory goes before practice. Right believing, on moral or political issues, precedes right acting; and you touch the very marrow of the rebellion when you approach the question of the punishment of the rebels. Sir, there is not a State in this Union, nor a civilized country on earth, which in the treatment of its criminals sanctions the sickly magnanimity and misapplied humanity of this nation in dealing with its leading traitors. No civilized Government, in my judgment, could possibly be maintained on any such loose and confounded principles. Crime would have unchecked license, and public justice would not even be a decent sham. No man will dispute this, or fail to be amazed that, in dealing with our red-handed traitors, whose crimes are certainly unsurpassed in history, and have filled the land with sorrow and blood, we utterly decline to execute against them the very Constitution which they sought to overturn by years of wholesale rapine and murder.

Sir, this fact is at once monstrous and startling. We seize the murderer who only takes the life of one man, indict him, convict him, and then hang him. Undoubtedly some murderers escape punishment through pardons and otherwise, but certainly the penalty of death is inflicted in most countries. The pirate, who boards a vessel on the sea, and murders a few sailors, is "chased by the civilized world to the gallows." The plea in his behalf of magnanimity to a vanquished criminal would not save him, and his friends would scarcely urge it. Public justice demands the sacrifice of his life, and no one expects him to be spared if fairly convicted. But Jefferson Davis is no ordinary assassin or pirate. He did not murder a single citizen, but hundreds of thousands of men. He did not board a ship on the sea and murder a few sailors, but he boarded the great ship of state, and tried, by all the power of his evil genius, to sink her, cargo and crew, with the hopes of the world forever, into the abyss of eternal night. And is not his guilt as much greater than that of an ordinary assassin or pirate as the life of a great republic is greater than the life of one man? Was not each one of these leaders a national assassin, aiming his bloody dagger at the country's vitals, and is not his guilt multiplied by the millions whose interests were imperiled? And shall justice only be defied by the world's grandest villains and outlaws, and mercy defile herself by taking them into her embrace?

Mr. Speaker, Jefferson Davis was a favored child of the Republic. He had been educated at the nation's expense, and upon him had been lavished the honors and emoluments of office. He owed his country nothing but gratitude and fidelity, and no man understood these obligations better than himself. Again and again he had asked his Maker to witness that he would be faithful to the Constitution, which at the time he was plotting to destroy. Long years before the rebellion he had been inoculating the public opinion of the South with the poison of his heresies, and secretly hatching his treason in the foul atmosphere which he helped to create. His perfidy was most cold-blooded, deliberate, and premeditated. In order to blast the Government of his fathers, and establish upon its ruins a confederacy with slavery as its corner-stone, he has ruthlessly wrapped his country in fire and blood. He has wantonly destroyed the lives of more than two hundred and fifty thousand soldiers, who gloriously perished in resisting his treason in arms. He has maimed and crippled for life more than two hundred and fifty thousand more. He has duplicated these atrocities in his own section of the Union. He has organized grand conspiracies in the North and Northwest to lay in rapine and blood the towns and cities and plantations of the whole loyal portion of the land. He has put to death, by the slow torture of starvation in rebel prisons, sixty thousand brave men who went forth to peril their lives in saving the country from his devilish crusade against it. He has deliberately sought to introduce into the United States and to nationalize among us pestilence, in the form of yellow fever; an enterprise which, had it succeeded, would have startled the very heavens above us with the agony and sorrow it would have lavished upon the land. He stands charged by the Government with the murder of the President of the United States, and that charge, as I am well assured, is amply verified by proofs which will very soon be given to the public, and awaken a stronger and sterner demand for his punishment. He has instigated the burning of our hotels. He has planted infernal machines in the tracks of his armies. He has poisoned our wells. He has murdered our wounded soldiers. He has made drinking cups of their skulls and jewelry of their bones. He has spawned upon the

world atrocities so monstrous as to defy all definition, and which nothing but the hot incubation of the slave power, as the ripe fruit of its two hundred years of diabolism, could have warmed into life. Sir, he has done everything, by the help of his confederates, that an incarnate demon could do to let loose "the whole contagion of hell," and convert his native land into one grand refuge of devils.

Mr. Speaker, the pardon of a criminal so transcendently guilty would be an act in itself strongly partaking of treason against the nation. It would be at once a monstrous denial and a frightful mockery of justice. Do you plead for mercy to the great confederate assassin? I refer that plea to the Father of Mercies, who, I believe, only pardons on condition of repentance; and as yet I have heard of no rebel leader who even professes penitence for his crimes. Sir, I repudiate, as counterfeit, the mercy which can only be exercised by trampling justice under our feet, while it forgets both justice and mercy to the millions who have been made to mourn through stricken lives by the human monsters who plunged our peaceful country into war. The loyal people of the nation demand that they be dealt with as criminals. For myself, I would not have a civil trial for the leader of a belligerent power, which has maintained a public war against us for years. The nation cannot afford to submit the question of the right of a State to secede to a jury of twelve men in one of the rebel States, and a majority of them traitors, under an implied alternative that if they fail to convict, the Government itself would stand convicted of half a million murders. After the nation has established its right to exist by a four years' war, it cannot put that right on trial by a jury of its conquered enemies, or any earthly tribunal. Sir, let Jefferson Davis be tried by a military court, as he should have been, promptly, at the time other and smaller offenders were dealt with a year ago. Let him have the compliment of a formal inquiry to determine what the whole world already knows, that he is immeasurably guilty. And when that guilt is pronounced let the Government erect a gallows, and hang him in the name of the Most High. I put aside mercy on the one hand, and vengeance on the other, and the simple claim I assert, in the nation's behalf, is justice. In the name of half a million soldiers who have gone before their Maker as witnesses against "the deep damnation of their taking off;" in the name of our living soldiers, who have waded through seas of fire in deadly conflict with rebels in arms; in the name of the Republic, whose life has only been saved by the precious offering of multitudes of her most idolized children; in the name of the great future, with its procession of countless generations of men, whose fate to-day swings in the balance, awaiting the example you are to make of treason, I demand the execution of Jefferson Davis. The gallows is the symbol of infamy throughout the civilized world, and no criminal ever earned a clearer right to be crowned with its honors.

Sir, I ask why the Constitution should be mocked when it demands his life? What right have the authorities of the Government to cheat the halter out of his neck? Not for all the honors and offices of this nation, not for all the gold and glory of the world, would I spare him if in my power; for I would expect the ghosts of three hundred thousand murdered soldiers to haunt my poor, cowardly life to the grave. As I have said already, the punishment of the rebel conspirators is a necessary part of the work of suppressing the rebellion. Their treason was deliberately aimed at the cause of free government on earth, and they are justly to be classed among the guiltiest wretches whose crimes ever drenched the earth in blood. Every one of them should have a felon's death. The grave of every one of them should be made a grave of infamy, and the cause they served should be pilloried by all the ages to come. Sir, if you discharge the confederate chiefs because of the very magnitude of their work of carnage, you offer a public license to treason hereafter. You say to turbulent and seditious spirits everywhere that they have full liberty, when it may suit their convenience, to levy war against the nation, and that while it may lead their deluded followers to wholesale slaughter, *they* shall be allowed to escape. You say that although the nation participated in the hanging of John Brown as a traitor, for the crime of loving liberty "not wisely, but too well," that same nation, which has copied John Brown's example in emancipating slaves by military power, shall turn loose upon society the hideous monster who waged war to establish and eternize a mighty slave empire on the ruins of our free institutions. And you speak it in the ear of the nations as your deliberate estimate of the value of free government, whose very life is the breath of the people, that the bloody conspirator who seeks to destroy it by the hand of war is undeserving of punishment, and consequently innocent of crime.

Mr. Speaker, can we, dare we, hope for the favor of God in thus confounding the distinction between right and wrong, between treason and loyalty, and forgetting that government is a divine ordinance, whose authority can only be maintained by enforcing obedience to its mandates? I speak earnestly, because I feel deeply, on this question of the punishment of leading traitors. The grand peril of the hour comes from the mistake of the Government on this point. During the war our deserters and bounty jumpers were executed. Our brave boys, overcome by weariness, who fell asleep at their posts as sentinels, were shot. A year ago the miserable tools of Davis and Lee, selected for their infernal deeds because of their known fitness to perform them, were summarily tried and hung. But in no solitary instance has treason yet been dealt with as a crime. Pardon, pardon, pardon, has been the order of the day, as if the Government desired to make haste to apologize for its mistake in fighting traitors, and wished to reinstate itself in their good opinion. Beccaria, in his celebrated Essay on Crimes and Punishments, says that "clemency is a virtue which belongs to the legislator, and not to the executor of the laws; a virtue which ought to shine in the code, and not in private judgment. To show mankind that crimes are sometimes pardoned, and that punishment is not the necessary consequence, is to nourish the flattering hope of impunity, and is the cause of their considering every punishment inflicted as an act of injustice and oppression. The prince, in pardoning, gives up the public security in favor of an individual, and by ill-judged benevolence proclaims a public act of impunity."

Dr. Lieber says that "every pardon granted upon insufficient grounds becomes a serious offense against society, and he that grants it is, in justice, answerable for the offenses which the offender may commit, and the general injury done to political morality by undue interference with the law." With these wise and just sentiments the President of the United States, on accepting his high office, perfectly agreed. He declared that mercy to the individual is often cruelty to the State. He said that "robbery is a crime, murder is a crime, treason is a crime, and crime must be punished." He said that "treason must be made odious, and traitors impoverished," and he reiterated and multiplied these declarations on very many occasions which were offered him for weeks and months following his inauguration. He repeatedly referred, approvingly, to his past record, covering declarations in favor of hanging the leading traitors, in favor of dividing up their great plantations into small farms for honest and industrious men, without regard to color, and in favor of breaking up the great aristocracy of the South, and compelling the rebels to "take the back seats in the work of reconstruction." For a season the whole loyal country was electrified by the clear ring of his words, while rebels were as completely palsied and dumb. They understood the new President quite as little as his loyal friends. They expected no quarter, and studiously sought their pleasure in the will of the Executive. They would have assented gladly to any terms or conditions of reconstruction dictated by him, including even negro suffrage. Having staked all on the issues of war and lost, they felt that they were entitled only to such rights as the conqueror might see fit to impose.

Sir, this golden season was sinned away by the President, and that systematic recreancy to his pledges and record which has marked his subsequent career, has brought the country into the most fearful peril. The responsibility is upon him, and it must be measured by the magnificent opportunity which the situation afforded him for an easy solution of our national difficulties, and at the same time a solid and permanent reconstruction of the South. "No important political movement," says a famous English writer, "was ever obtained in a period of tranquillity. If the effervescence of the public mind is suffered to pass away without effect, it would be absurd to expect from languor what enthusiasm has not obtained. If radical reform is not, at such a moment, procured, all partial changes are evaded and defeated in the tranquillity which succeeds." These are suggestive and solemn words, and the reflection is a very sad one that the nation to-day would have been saved and blest, if the President had heeded them. He disobeyed the divine command to "execute justice in the morning," and did not even remember the heathen maxim, that "the gods themselves cannot save those who neglect opportunities."

Sir, while I dislike the occupation of an alarmist, I must say that I have seen few darker seasons than the present since the first battle of Bull Run. The President has not kept the faith. He has not favored the hanging of a single rebel leader. He has not made treason infamous, nor impoverished traitors. He has not favored the confiscation of rebel estates, and their distribution among the poor. He has not required traitors to take the back seats in the work of reconstruction. He has not coöperated with Congress in placing the governing power of the South and of the nation in the hands of loyal men. He has not shown himself the "Moses" of our loyal colored millions in leading them out of their grievous bondage. He has done the opposite of all these. The Richmond Times, the leading organ of treason in Virginia, says that "in his course toward the mass of those who supported the southern confederacy the President has been singularly magnanimous and wisely lenient. Nine tenths of those who for four years, with unparalleled gallantry upheld the confederacy, have long since been unconditionally pardoned. The cabinet officers who counseled the president of the confederacy, the congressmen who enacted those stringent conscript and imprisonment laws which kept up our armies, and many distinguished generals of the confederate armies, have either been formally pardoned, or been released upon parole, and no one dreams that they will ever be molested in person or estate. The military bastiles of the country, with one exception, have long since been thrown open, and the distinguished confederate officers who were confined in them have been restored to their friends and families." And these Virginia traitors who thus damn our President by their encomiums openly demand the unconditional release of Jefferson Davis from prison. Judging the President by the logic of his policy thus far, the demand will be complied with. When he decided, nearly a year ago, against the trial of Davis by a military court, he virtually decided that his treason should go unpunished; for no jury of southern rebels would ever find a verdict of guilty, and the trial itself would only be an insult to the nation. Jefferson Davis, I doubt not, is to be restored to his family and friends, and the argument of consistency demands it at the hands of the President.

Robert E. Lee, whose spared life has outraged the honest claims of the gallows ever since his surrender, is running at large, perfectly unmolested and safe from all harm. Black with treason, perjury, and murder, guilt-

ier by far than the Christless wretch who obeyed his orders in starving our soldiers at Andersonville, he goes his way in peace, while the Government, in this monstrous and appalling fact, confesses to the world that treason is unworthy of its notice. He is president of a Virginia college, and teacher of her youth. He visits Washington, and tenders his advice to our public men about the work of restoring the Union. He goes before the reconstruction committee and gives his testimony, as if an oath could take any possible hold upon his seared conscience; and all that can be said is, that his unpunished crimes are doing precisely as much to make the Government infamous, as the Government itself has done to make those crimes respectable. The Legislature of Virginia indorses him as a fit man for Governor, and the champions of this proposition visit our Republican President, laud his principles and policy, and take the *front* seats in the house of his friends.

The vice president of the southern confederacy is likewise at large, and has been elected a Senator in Congress from his State. He also visits Washington, and gives his testimony before the joint committee of fifteen. Like the other leading traitors, he very naturally "accepts the situation," because he could not do otherwise, but he shows not the smallest token of penitence, says the rebels were in the right, and seems wholly unconscious of his real character as simply an unhung traitor, whose advice and opinions we shall only accept at their value. Leading traitors are not only pardoned by wholesale, but they hold nearly all the places of power and profit in the South. They are made Governors, judges, postmasters, revenue officers, and are likewise frequently chosen to represent their cause in Congress; and the President, our distinguished Secretary of the Treasury, and the Postmaster General, have all openly trampled under their feet the law of Congress requiring a test oath, in order that rebels might fill these offices, and on the false pretense that loyal men could not be found qualified to fill them in a country which furnished more than forty thousand loyal white soldiers during the war. As might naturally be expected under this system of reconstruction, loyal men are more unsafe in the revolted districts now than they were before the war, while the condition of the negroes in very many localities is more pitiably deplorable than that of their former slavery. So intense and wide spread is the feeling of hostility to the Union in these regions that loyalty is branded as both a crime and a disgrace, while even Wilkes Booth is regarded as a martyr, and his pictures hang in the parlors of "southern gentlemen" whose children are called by his name.

Nor am I surprised at the audacity of the rebel leaders. Neither do I complain, or blame them. They do not disguise their real character and opinions, because they have been made sure of the executive favor. With the President resolutely on the side of Congress in this crisis, a very different exhibition of feeling and policy would have been developed in the South. The danger now at our doors would never have appeared. The prospect of another bloody war to complete the work which we supposed already accomplished would never have alarmed the country. The President has deserted the loyal millions who crushed the rebel cause at the end of a conflict of four years and joined himself to that very cause which is now borrowing new life from the fertilizing sunshine of his favor, reasserting its old heresies, and renewing its treasonable demands. This is at once the root and source of our present national troubles, the prophecy and parent of whatever calamity may come. The President not only opposes the will of the nation, the *policy* of the nation, as expressed through Congress, but he brands as traitors before a rebel mob leading and representative men in both Houses, who are as guiltless of treason as the great majority with whom they act. Not content with the good fellowship of the men who began the war and fought us with matchless desperation to the end, he unites with them in branding loyalty itself as treason, while he employs the power and patronage of his high office in rewarding his minions, and opposing the very men who made him their standard-bearer along with Abraham Lincoln, in the faith that his loyalty was unselfish and sincere. In fact, every phase of the presidential policy, as latterly displayed, confounds the difference between loyal and disloyal men, and gives aid and comfort to the rebels by mitigating or removing the just consequences of their crimes.

Mr. Speaker, this policy, utterly fatal to the nation's peace, as I have shown, must be abandoned. The Government cannot wholly undo the mistakes of the past, but it can do much for the future, and save the loyal cause, if the people, who see the threatened danger, will set themselves to work so resolutely as to compel a change. In God's name, let this be done. Let the people speak, for the power is in their hands, and if faithful now, as they proved themselves during the war, justice will prevail. Let them thunder it in the ears of the President that the nation cannot be saved, nor the fruits of our victory gathered, if in the settlement of this bloody conflict with treason right and wrong are confounded, and public justice trampled down. This is the duty of the loyal millions; and here lies the danger of the hour. It is just as impossible for the country to prosper if it shall sanction the present policy of the Executive, as it is for a man to violate a law of his physical being and escape the consequences. The demands of justice are as inexorable as the demands of natural law in the material world; and the moral distinctions which God himself has established cannot be slighted with the least possible impunity by individuals or nations. There is a difference, heaven-wide, between fighting for a slave empire and fighting for freedom and the universal rights of man. The cause of treason and the cause of loyalty are not the same. Perjury is not as honorable as keeping a man's oath. The black flag of slavery and treason was not as noble a standard to follow as that of the stars and stripes. The leading traitors of the South should not have the same honorable treatment and recognition as the patriot heroes of the Union. The grandest assassins and cut-throats of history should not defraud the gallows, while ordinary murderers are hung. Jefferson Davis should not have the same honorable place in history as George Washington. Benedict Arnold was not the *beau ideal* of a patriot, nor was Judas Iscariot "a high-souled gentleman and a man of honor," nor even "a misguided citizen of his country who engaged in a mistaken cause." The green mounds under which sleep our slaughtered heroes are not to have any moral comparison with the graves of traitors. The "throng of dead, led by Stonewall Jackson," are not to "contribute equally with the noble spirits of the North to the renown of our great Republic." Truth and falsehood, right and wrong, heaven and hell, are not mere names which signify nothing, but they pertain to the great veracities of the universe; and the throne of God itself is immovable, only because its foundations are justice.

Mr. Speaker, I now move that this resolution be referred to the Committee on the Judiciary.

Mr. WILSON, of Iowa. On that motion I call for the previous question.

The previous question was seconded and the main question ordered.

Mr. HARRIS. I would like to make some remarks in reply to the gentleman from Indiana, [Mr. JULIAN.]

The SPEAKER. The House is acting at present under the operation of the previous question.

Mr. HARRIS. I ask the gentleman from Iowa [Mr. WILSON] to withdraw the call for the previous question.

Mr. WILSON, of Iowa. I cannot do that.

The motion to refer the resolution to the Committee on the Judiciary was agreed to.

Mr. WILSON, of Iowa, moved to reconsider the vote by which the resolution was referred; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The SPEAKER. The next business in order is the call of States and Territories in inverted order, commencing with the Territory of Montana, for the introduction of resolutions.

MONTANA TERRITORIAL LIBRARY.

Mr. McLAIN presented a joint memorial of the Territorial Legislature of Montana, asking Congress for an appropriation for a territorial library, and for other purposes; which was referred to the Committee on Territories, and ordered to be printed.

ANNEXATION TO IDAHO.

Mr. McLAIN also presented a joint memorial of the Territorial Legislature of Montana, protesting against a joint resolution asking for the annexation of a certain portion of said Territory to the Territory of Idaho; which was referred to the Committee on Territories, and ordered to be printed.

PUBLIC BUILDINGS IN NEBRASKA.

Mr. HITCHCOCK introduced a bill appropriating certain proceeds of internal revenue in the Territory of Nebraska, for the purpose of erecting a penitentiary and completing the capitol in said Territory; which was read a first and second time, referred to the Committee on Territories, and ordered to be printed.

CONSTRUCTION OF WAGON ROAD.

Mr. HITCHCOCK also introduced a bill to provide for the construction of a wagon road from Columbus, Nebraska, to Virginia City, in Montana Territory; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

MAIL ROUTES IN NEVADA.

Mr. ASHLEY, of Nevada, presented resolutions of the Legislature of the State of Nevada in favor of the establishment of a daily mail between the city of Austin, in the county of Lander, and Silver Peak, in Esmeralda county, in that State; which were referred to the Committee on the Post Office and Post Roads, and ordered to be printed.

Mr. ASHLEY, of Nevada, also presented resolutions of the Legislature of Nevada in favor of a weekly mail from Ione to Crystal Springs, in said State; which were referred to the Committee on the Post Office and Post Roads, and ordered to be printed.

BRANCH MINT IN NEVADA.

Mr. ASHLEY, of Nevada, also presented resolutions of the Legislature of Nevada in relation to the building of a United States mint in Carson City in said State; which were referred to the Committee of Ways and Means, and ordered to be printed.

JEFFERSON DAVIS.

Mr. ASHLEY, of Nevada, also presented resolutions of the Legislature of Nevada in relation to the trial of Jefferson Davis; which were referred to the Committee on the Judiciary, and ordered to be printed.

SALE OF MINERAL LANDS.

Mr. ASHLEY, of Nevada, also presented resolutions of the Legislature of Nevada on the subject of the sale of mineral lands; which were referred to the Committee on Public Lands, and ordered to be printed.

CLAIMS FOR HORSES.

Mr. WHALEY introduced a bill in relation to claims for horses turned over to the United States; which was read a first and second time, and referred to the Committee on Military Affairs.

JUDGMENTS OF COURTS-MARTIAL.

Mr. BIDWELL submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on Military Affairs be requested to inquire into the propriety of providing

the arena of human affairs, and who challenges the wonder and admiration of mankind, is incomprehensible, delphic, unknown, silent. Sir, the patriot whose life has been on his country's side is ever comprehended by the people. The incoming President is not, perhaps, an orator "as Brutus is;" but he is to his countrymen not "The silent." He hath spoken to them in speech which they comprehend right well; speech where the sentences are wars, the words campaigns, the syllables battles, and the very letters victories; deeds which as they have fallen one by one from that strange hand of iron and of destiny have dropped into the story of his country, epochs, and of the world—history. It is these utterances of General Grant's life, all unambigous, patriotic, illustrious, that make him not only not uncomprehended by his countrymen, but the most comprehended of his country, of his age, and, indeed, of his century. And it is these which have given to him that place in the confidence, the gratitude, and love of his people which will give to his administration moral forces with the people like those possessed by his first and most illustrious predecessor. These forces will be exercised, as I have said, in no other way than that expressly provided for by the Constitution, as recommendations for the consideration of Congress and the people who make the Congress, or else by those silent but sublime persuasions which the wishes and example and opinions of a good and wise ruler ever exert upon a people who regard him with admiration, confidence, and gratitude.

General Grant's earnest, cordial, and anxious support of an amendment which shall secure to all the virtuous citizens of the Republic equality in all the benefits of their Government, including the elective franchise, is open, avowed, and unambiguous; and the constitutional amendment will have the moral sanction and support of his administration in so far as such support would be proper.

Mr. Speaker, the success of the amendment is not therefore in doubt. Once submitted this word of a great people, uttered in accord with the attributes of God, will be like His word—one that cannot return unto us void, but "will accomplish that whereunto it was sent." Because the measure is in itself intrinsically and evidently just, all the attributes and energies of good men throughout the world will fight on its side; because it is just the very elements and forces of our common Christianity and civilization will fight on its side; because it is just all that is true and good in the science and the literature of our age will fight for it. And, sir, if I be not mistaken in deeming the measure just, then I am not irreverent in saying that the attributes of God will fight on its side.

Here, sir, I leave the debate, confident that by the sublime fiat of the people it shall soon be enacted into unchangeable and organic law of the Republic that all her children who are equal in their virtue and fealty shall be equals also in their country's protection and care, and equals in their powers for its government and preservation."

Suffrage.

SPEECH OF HON. C. M. HAMILTON,

OF FLORIDA,

IN THE HOUSE OF REPRESENTATIVES,

January 29, 1869,

On the joint resolution (H. R. No. 402) proposing an amendment to the Constitution of the United States.

Mr. HAMILTON. Mr. Speaker, in the performance of a pleasing duty it was my fortune to present to this House, in July last, a memorial from the constitutional convention of Florida, praying Congress to propose an amendment to the Constitution of the United States establishing equal and uniform suffrage in all the States of the Union. That memorial was referred to the Committee on the Judiciary, and I shall be more than gratified if it was at all instrumental in urging, less encouraging, that distinguished committee to report the amendment, having for its aim the accomplishment of that high object which was so powerfully sustained by its distinguished chairman, the honorable gentleman from Massachusetts, [Mr. BOUTWELL,] in a speech as remarkable for its convincing argument, comprehension, and ability, as for its eloquent breathings of devotion to the rights of man.

I have listened with peculiar gratification and attention to the many able, earnest speeches in support of and against this great measure, and although enough has been said already to convince the most opposite mind of its justice, wisdom, and necessity, and impel the most obdurate heart to its cordial support, I beg leave to add my feeble voice in furtherance of this noble movement in the cause, not only of humanity, but also of human administration and republican government. The law, the authority under the Constitution, the duty and expediency upon which this suffrage amendment finds its solid support, has been so thoroughly and ably presented—and I gladly leave that phase of the question to wiser heads—that it will be my endeavor, briefly and imperfectly as I shall, to present the justice, right, necessity, and obligation upon which it finds no less substantial foundation.

Mr. Speaker, it is the fortune of the American people to live under a government exclusively, entirely, resting upon and administered by their own free will. To execute that will, to secure its free expression by the citizen, to insure the personal security of the individual and the safety of his possessions and to protect his rights and immunities is the great object of this Government; and because of these, its grand purposes, it is happily denominated a "republican form of government." And to perpetuate this form of government, "we, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity," do make it solemnly obligatory upon the United States, the General Government, the Congress, "to guaranty to every State in this Union a republican form of government," and to "the citizens of each State all privileges and immunities of citizens of the several States."

It is unnecessary to ask if all the requirements of the Government have been observed, all the obligations of the nation adhered to, all the demands of the people answered, all their rights respected, and all their liberties, privileges, and immunities guarantied to them. Has the nation been just to itself; has the Government been true to the principles of its creation; have the States conformed their legislation to the expressed will of "we, the people of the United States," in securing the personal rights and liberties of all "citizens of the United States" and of every integral portion of our population? We are astounded by the answer that there are upward of two hundred thousand of our fellow-American citizens whose right of suffrage has been not only ignored, but denied them. No, not denied—for that would suppose an option of a gift on the part of the Legislature, State or national—but deprived them; an indication of something unjustly, illegally withheld, which I mean to convey by the assertion that the right of suffrage is inherent, inalienable, as far as human government is concerned, and by easy inference is so declared to be by the Declaration of Independence.

The fathers of our Republic, speaking through that sacred oracle of our liberty, assert, and none are so bold to deny it, that "we hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." Life, liberty, and the pursuit of happiness are here made the three grand divisions of inalienable human rights or the purposes of man's temporal existence. The object of civil government being to secure and maintain these inalienable endowments of the Creator to man, is it not apparent that the right of suffrage, the right to a voice in the government by which almost every human act is regulated, closely underlies these great objects of our creation? Without the elective franchise; without a voice in the making of laws by which he is controlled and to which he is amenable; without an option as to who shall administer them or how they shall be administered, what insurance has a man of his life, what security for his liberties, what protection in his pursuit of happiness? If this seems strongly drawn it is only because we live in an enlightened Christian age and country, and are a moral, generous people.

But that does not alter the facts or the argument. And here, may I ask, what is the best policy in political affairs as well as in all others? Honesty all would answer. Yet when it comes to the rub and evil looks threatening we are often ready to doubt the universal application of the maxim that "honesty is the best policy;" and many who admit its correctness in theory do not always have the courage to practice it in trying circumstances. Such was the case with the men who nominated General Grant and our distinguished Speaker. The men of that convention, unless they would not see, could not fail to see an attempted mixture of truth and error in the second resolution of their platform. They could not say that "the guarantee by Congress of equal suffrage to all men is demanded by every consideration of" right and duty as well as of "public safety, of gratitude, and of justice." They could not admit Congress had the same right to regulate suffrage in one State as it had in another. It is true that in reconstructing the rebel States Congress was bound to see to it that it was done according to the principles of republican government, and done at the time they were being organized and not afterward. And further, Congress could do no more or less than to act according to its own convictions of what was essential to republican government. When the question is raised as to the anti-republican character of any State government Congress is bound to take up the question and decide it according to its own judgment.

According to a rigid interpretation of our present Constitution—the clause which enjoins the guarantee of a republican form of government—members could not be admitted to seats here from some of the States, States in which a large class of citizens are deprived of the elective franchise, because I hold it to be an essential principle of republican government that representative officers "shall be freely chosen by the people from among themselves." And where numerous citizens are disfranchised, as in Maryland, Kentucky, Ohio, and Pennsylvania, it is not the people but a class who chooses, an aristocracy, or anything you may choose to call it. The rebellion has stirred up reflection; it has led to an examination of the old landmarks and opened a road to reformation. The Convention of 1787, alarmed by threatened evil, abandoned the old maxim that "honesty is the best policy" and continued the African slave trade for twenty years, when they could have made it piracy then as well as at the end of that time. So now, while we are advancing in reformation and undergoing reconstruction, while the public mind is in a condition to receive new thoughts, may be, and wholesome impressions and changes, in this age of gigantic advancement, which it may not be in when the public pulse becomes settled after the "peaceful" incoming administration, let us

examine with caution and candor the ground we build on; let us violate no feature of republicanism, no principle of equal justice to all men. This is the only safe foundation for human governments.

Equality of the States, their "equal footing" in their relations to the General Government, must also be maintained. The republican character of each State ought now to pass under the scrutiny of the people of the United States. By their Constitution they have bound themselves to guaranty to the people of each State a republican form of government; and I doubt not, Mr. Speaker, that when this amendment is presented to them for their ratification they will, in passing upon it, accept it as coming from the hands of those who went forth from them, (but to return no more,) to vindicate the cause of freedom; accept it as something in return for their unutterable, patriotic sacrifices. And they will tell the honorable gentleman from Wisconsin [Mr. ELDRIDGE] that "the argument that the Federal Government, the people, and all the States have acquiesced so long in the exercise of this power by the several States" (of depriving a portion of their fellow-citizens of their immunities) "is not conclusive." They will tell him that because past generations have done wrong it is no excuse for them to do so; or that because their fathers powdered their hair, wore queues, and ruffled bosoms it is not a "conclusive argument" that the fourth generation should do so. The great national question which presents itself for settlement is, What is a republican form of government? This has been so ably answered by eminent gentlemen who have preceded me that it will be tedious to hear the few observations I may make. The antecedents of the Democratic party, extending back for years, are such as to unfit it as a party to come to a proper judgment. The accumulated voice of the whole people must decide. Their sentiments in the present condition of things must be developed through the Republican party.

The gentleman from Massachusetts says that the Republican party has a vast deal yet to accomplish, and is responsible for what this Congress and the next administration do. I was glad to hear so influential a member of the party touch upon this point, for it seems to me it has not yet settled itself upon a solid, determined basis, notwithstanding the rapid advances it has made in brushing away the old cobwebs of aristocracy, and in securing to a great extent the civil and political rights of the humblest of our people. If I may be allowed to say it, and I do not utter it in a spirit of criticism either specially or generally, had that great party, I mean as a mass, stood firmly up to that exalted position in which it found itself at the close of the war, without wavering, halting, or undue leniency to the enemies of the country which its valor and patriotism alone saved, and turned half as deaf an ear or hard a heart to those who croaked about tyranny and oppression were dumb to reason and flint to magnanimity, reconstruction would have been an easy task compared with the herculean labor it has been, though so nobly performed, and the Republican party would have increased by thousands.

But to my question. Is the theory of human rights well understood even at the present day? Not many years since the editor of the New York Herald traveled over bog and quagmire, sea and flood, and into the dark caverns and caves of our ocean of literature, and into the myths and depths of ancient history, to discover what our fathers meant when they declared that all men were equal, free, and independent, and endowed by their Creator—mark, endowed by their Creator—with certain inalienable rights, &c. That editor held and taught, and was followed by a great majority of his party, that common men who had not the ability and opportunity to dive into the wells of knowledge and reach back into the mysteries of the history of the race were not competent to form a correct sense as to the meaning of the proposition, or to whom it applied, to all men or to only a part. The proposition is self-evident, and so say our fathers. It was just as true before it saw the light of liberty blazing through the fires of successful revolution on independence day as it was then, or is now, and is just as intelligible to the humblest individual as it is to the most exalted, and perhaps more so. Admit the equality of men in natural rights, and you confess their equality in all other rights. If all men have equal rights without regard to classification, or equal natural rights, as they are called, does it not follow that they must have the equal right to the means of protecting these rights, which is termed a political right—the ballot, which is the "palladium of our rights and liberties," as is universally conceded?

The gentleman from Wisconsin, [Mr. ELDRIDGE,] with fervent eloquence, says, and I agree with him in the main:

"Sir, the powers and rights and liberties of the States and people do not come down from Congress or the Federal Government. There are some powers with which Congress has not been intrusted. Congress cannot determine just how much of liberty the people shall enjoy, just how they shall speak and move and breathe. All the powers of the Federal Government come up from the States and people, and it never had and it never can have the rightful authority to exercise any power not granted in and by the Constitution. The exercise of any other is rank usurpation."

Here in this country, thank Heaven, the people are sovereign, and "*vox populi*" is the law of the land. Government is the creature of the people. Constitutions, powers, limitations, and rights "do not come down from Congress, the General Government," or the States, but come down from the people. Therefore, neither Legislatures, nor States, nor Congress, nor the United States can "determine just how much of liberty the people shall enjoy," nor discriminate as to the equal possession of equal rights by men. "The servant is not above his master," nor the creature greater than the creator. Can men, equal men, "endowed by their Creator with equal inalienable rights," say one to another, "thus far shalt thou go and no further," and go beyond himself; or, "This only thou shalt possess," and claim more for himself?

Here the unreasonable reasoning of some gentlemen makes itself apparent. As if I should say to my neighbor citizen, "Our rights are equal and stand upon the same foundation, but you have not the same right to the means of protecting yours." Here, I take it, is also shown the unsoundness of the theory that would make suffrage a privilege instead of a right. John Bright, of England, makes it a right, not merely a privilege. "If a privilege," asks John Hamilton, of Pennsylvania, "by whom granted or conferred? By one of superior to one of inferior rights? If a right, who would venture to withhold it but He that conferred, even the Creator, who has 'endowed all men' equally 'with certain inalienable rights?' To speak of it as a privilege supposes at once inequality of rights." Again he says, and he has bestowed upon the subject of human rights an abundance of thought:

"The right to vote is included in and growing out of equality of other rights; equality of one class of rights supposes equality of all others; otherwise, at what point will inequality begin? The Creator, who has the only right to make a difference, has not made it. For one class to assume superiority of rights leads to endless confusion of ideas. Human constitutions are not the fountain-head of law. The harmony, the truth of things, as it comes from the Divine head, the only sovereign law-giver, is law."

Mr. Hamilton says, and I ask to quote him a little further:

"Government is an ordinance of God. The church, the family, and the State organizations are instruments in the hands of the Divine head for governing the world and building up the kingdom of Christ. No authority in church or State or family, can of right assume powers not delegated by the Creator and head of all things. The people are to 'submit to the powers that be,' to honor the king, and to be in subjection to governors and magistrates as unto those who are sent by Him 'for the punishment of them that do evil and a praise to them that do well;' as to ministers of God assuming no powers but such as are delegated—dealing out justice to all without partiality, as to children of one common parent. Now, if we have established the doctrine of equal rights and equal protection for all men, what are the obligations of Governments to secure these rights and this protection to all citizens or subjects; and what the advantages of a faithful guarantee of the blessings of liberty to all men? Both are greater than we are apt to believe. While it remains a law of Divine economy, 'that righteousness exalteth a nation and sin is a reproach to any people,' both the advantages and the obligations will be very great; and blessed is that people whose God is the Lord."

Grotius assures us that "God approved and ratified the salutary constitutions of government made by men;" and Demosthenes declares that—

"The design and object of laws is to ascertain what is just, honorable, and expedient; and when that is discovered it is proclaimed as a general ordinance, equal and impartial to all."

Algernon Sidney maintains that—

"The Israelites, Spartans, and Romans"—

And, of course, Americans also—

"who framed their Governments according to their own will, did not do it by any peculiar privilege, but by a universal right conferred upon them by God and nature. They were made of no better clay than others; they had no right that does not as well belong to other nations. That is to say, the constitution of every Government is referred to those who are concerned in it, and no other has anything to do with it. 'The welfare of the people is the supreme law.'"

Allow me one other reference. The celebrated Beccaria writes that—

"In every human society there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery. The intent of good laws is to oppose this effort, and to diffuse their influence universally and equally. In a free State every man, who is supposed a free agent, ought to be concerned in his own Government; therefore the legislative power should reside in the whole body of the people. The political liberty of the citizen is a tranquillity of mind, arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the Government be so constituted as that one man need not be afraid of another. The enjoyment of liberty, and even its support and preservation, consists in every man's being allowed to speak his thoughts and lay open his sentiments."

And I may add, in every citizen's possessing the highest, most sacred right of manhood-suffrage, which by this amendment to the Constitution we hope to secure to him. Mr. Speaker, do I make too broad an assertion in saying that the very fundamental basis of this Government is suffrage, the ballot, the means by which the people manifest and execute their will? Laws are a dead letter without the means to execute them; the will of the people would be worthless without the means to express it. The will of the people recently expressed through their great charter, fourteenth article, first paragraph, is as follows:

"All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States in which they reside."

Congress is the guardian of the Constitution; it is sworn to see that its provisions are observed both by the States and by the United States; that no State encroaches upon the rights of that portion of the people residing within the borders of a State; it is the guardian of the rights and liberties of the entire people of the United States. Mr. Speaker, I am not one of those who esteem the Constitution as above the nation. I was not one of those who, from fear of violating the Constitution to prevent it, would have permitted treason to stamp it under rebellion's foot while traitors and rebels held their bloody carnival all over the land. I speak with all deference of that sacred and inspired instrument; but I ask, in all seriousness, what would the Constitution be worth without this Government? Not the parchment on which it is written. I think we have heard Thaddeus Stevens, whose venerable presence in this chamber imparted a sol-

emnity to its atmosphere, say that "The Constitution was made for the Government, not the Government for the Constitution."

Did the generation made illustrious by the possession of Washington, Madison, Hamilton and Jefferson, intend by this emanation of their wisdom to bind succeeding generations hand and foot? They well knew that the ever-changing necessities of a great people could not be anticipated, and therefore we find in our Magna Charta the following thoughtful provision, upon which I so confidently rely for this necessary amendment:

"Article V.—The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution."

Deeming it to be demanded by that inexorable master, necessity, we propose it to the people, and our work is done. To those who claim that this is an encroachment on the States, I would say that the States are independent only to such extent as the Union is independent; and I trust that such evidences will be made to appear upon State and Federal Constitutions, "in proof as clear as holy writ," as do the million untimely graves which furrow all the South, of the dangerous dogma of State's rights, and the atonement for the deprivation of the rights by Himself endowed of any of God's children.

The theory of centralization, or the polity advocated by Alexander Hamilton at the formation of the Government, and which subjected him to the unjust criticisms of the statesmen of that age, of establishing a strong central government as the best means to secure the liberties, the safety, and the unity of the people, the States, and the country, is seen no longer to be, if ever, a dangerous one. The theory of arbitrary States rights in a national government, of which those States constitute not a distinct but an integral party, so long and so warmly advocated by the Democratic party, especially in the South, has indeed proved a dangerous one—almost fatal to our national existence, upon which hinges the future freedom, glory, strength, and prosperity of all the States, and the high destiny of the Union.

Let us heed the lessons taught by the recent past, and recognize the equal manhood of all "created in the image of God." All men were brought into existence by the same common Creator, all placed upon the same common footing, and all are alike responsible to divine laws and to human government, and all should possess the same mutual advantages to meet the same common obligations. And must we even go to the Constitution of the United States or to those of the States for the authority to incorporate the just provisions of this amendment into the fundamental law of the land? May we not, should we not, rather, go to that source whence constitutions come and who create States—the people? The successful accomplishment of that gigantic end, the establishment of universal suffrage in the reconstructed States, and the triumphant vindication of its justice and wisdom by the freedmen whom it raised to full citizenship from a condition worse than vassalage, should be a most powerful incentive to the spreading of this benign blessing over all the land.

Our ears are still ringing with the cry from the North and from the South, from that party which has opposed, still opposes, every step of progress taken by the Republican party toward the high destiny of the Union, that "univeral suffrage was forced upon the South." I acknowledge the fact, and I shall never rest, God helping me, until it is forced upon the North in the same way! Yes, sir, universal suffrage was forced upon the South; forced by justice, right, necessity, duty; forced by justice to that generous, loyal, noble, patriotic people, black though they be, who during the darkest days of the rebellion never faltered in their devotion to the Union—two hundred thousand of whom followed the flag of our country, though it was to them an emblem of wrong and oppression, through the fires of a hundred battles to protect it; who, with cautious care, led thousands of the nation's soldiers from the deathpens of rebel captivity to freedom and gladness beyond, themselves remaining in bondage and sorrow until the fulfillment of their Christian hope of God's blessing of liberty to them; forced by right to the national freedmen, Americans born upon our soil, citizens of a country they helped to save, brothers in the family of mankind, equals in the brotherhood of men; forced by necessity to save the nation from a second rebellion more wanton than the first, to secure and garner up the results of the victory of the sword, to restore and heal the shattered fabric of the Union, to protect the loyal whites of the South, to erect on the ruins of slavery the institutions of freedom; forced by duty to God. I dared to hope, though still distrustful, that while all around is new we would here begin anew for the future, guided by the lessons taught by the experience of the past, securely garnering the priceless harvest of the war, "with charity for all, with malice toward none," sacredly recognizing the equality of men, the manhood of the negro, their citizenship, and consequent right of suffrage. A celebrated poet has written, that—

"Man can no more exclude war than he can
Exclude sorrow; for both are conditions of man
And agents of God. Truth's supreme revelations
Come in sorrow to men, and in war come to nations.
Then blow, blow the clarion, and let the war roll,
Strike steel upon steel and strike soul upon soul,
If in striking we kindle keen flash and bright
From the manhood in man, stricken thus into light."

If, as a chastisement of our too self reliant people, and to purge this nation of the foul stain of slavery, the Almighty snatched from every home in the land the pride of each individual household, man's sorrow, and caused to flow through all our borders the desolating river of war, the nation's woe, it were rebellion still not to accept the stern sequel of events and turn ourselves to the atonement of our sins of omission as men and of commission as a nation. If, as the logical result of the war—a nation's judiciary—the manhood of a whole race has been stricken thus into light, how dare we appeal from this decision of the god of battles, the judgment of Heaven? If the manhood of the slave is a result of the war, is not his citizenship the result of his manhood and his franchisement the natural sequence of his citizenship? All these successive conditions are as naturally the corollary of the first-manhood, as that an ocean-emptying stream flows from some higher fountain. Gentlemen complain of this ordering of events, and hope against the hopelessness of a change. As well attempt to dam the swelling flood, "the higher the dam the higher the tide; it will overflow or break through." It is done, inexorably accomplished, and it were unwise, nay criminal, to permit our passions and prejudices to sweep away the senses of our reason, or hesitate to conform ourselves to the uncompromising condition of things.

Is it not just and consistent that universal suffrage and equal rights in a republican government should march hand in hand with universal manhood and equal existence? Dare we appeal longer from the will of the nation? Republicanism is in the ascendancy; it has regenerated and recreated the South; it has raised aloft from the decrepid carcass of slavery and darkness to the high Olympus of a full citizenship of the proudest country on the face of the globe a race whom oppression and superstition bound down for ages under the ægis of the Democratic party, and it will spread its benign, enlightening, Christianizing influence to the furthest ends of the globe, until all men shall freely and fully possess and as freely and fully enjoy the inalienable endowments of Heaven.

Constitutional Amendment.

REMARKS OF HON. J. M. BROOMALL,

OF PENNSYLVANIA,

In the House of Representatives,

January 30, 1869,

On the joint resolution (H. R. No. 402) proposing an amendment to the Constitution of the United States.

Mr. BROOMALL. Mr. Speaker, in the debate upon a bill introduced by myself at the last session of Congress, providing for universal suffrage, I gave my views at length upon that subject. Those views may be stated in short thus: every person owing allegiance to the Government and not under the legal control of another should have an equal voice in making and administering the laws, unless debarred for violating those laws; and in this I make no distinction of wealth, intelligence, race, family, or sex. If just government is founded upon the consent of the governed, and if the established mode of consent is through the ballot-box, then those who are denied the right of suffrage can in no sense be held as consenting, and the Government which withholds that right is as to those from whom it is withheld no just Government.

The proposition before the House is so to change the Constitution of the United States that no State shall hereafter discriminate among citizens of the United States with respect to the right of suffrage on account of family or race. This, though not going to the extent which I desire, is a great stride in the right direction, and therefore it commands my most hearty support.

It is no argument against inserting this provision in the Constitution that we have already the power to effect the same thing by legislation. Laws may be repealed, and it is not advisable that so important a principle of republican government should be left to the caprices of party. Its proper place is in the organic law.

A bill providing for impartial suffrage in the same particulars has been reported from the same committee and is now pending before the House. It is alleged that there is inconsistency in the same Congress proposing the amendment and passing the bill, both having the same object. This is a mistake, because, first, the bill is intended to produce immediately the same result which it may require the amendment several years to accomplish; and second, it is eminently right and proper that all those who are intended to be affected by the amendment should have an equal voice in its adoption or rejection. I shall therefore support the bill, as well as the proposed amendment.

It is interesting and instructive to trace the progress of the great party which is carrying into practical operation the cherished dreams of our fathers, step by step, toward the consummation of its holy purposes. It began less than fifteen years ago, by denying the right of slaveholders to carry their human chattels into the Territories against the will of a majority of the occupants. In 1860 it declared not that slavery was illegal, but that it could only exist by virtue of State laws and within the States whose laws recognized it.

Then came the rebellion; and it is humiliating to remember that in its early stages black men who had deserted their rebel masters in order not to be compelled to abet treason, and had sought the Federal camps to tender their feeble aid to the Government to which they owed so little, were arrested by men wearing the uniform of the nation and sent back to their masters to be scourged. But this could not long continue; and the next step, treating these poor fugitives still as chattels, confiscated them as contraband of war and employed them in menial services about the camps.

OWNERSHIP OF UNITED STATES BONDS.

I hold in my hand a book published in 1887 by a distinguished professor of the University of Michigan and Cornell University who has given special attention to these subjects. I have not been able to get the figures of the census reports of the year 1890, but I take from this book an analysis of territorial distribution of registered bonds held by private individuals. These bonds amounted in 1880 to $1,173,749,250.

Of this sum $319,937,800 was held by the national banks as security for their circulation.

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The census authorities further excluded from their final analysis the sum of $180,926,700 of 6 per cents. As a result of these various deductions, there remains the sum of $644,990,400.

These amounts are distributed as follows:

The number of male holders was 42,262 and the amount held by them $327,185,500; the number of female holders was 29,325, holding $90,353,350; the number of corporations holding was 1,527, and the amount held by them was $227,451,550. The total number of holders in all in the United States was 73,114.

Now, let us look at the Territorial distribution of these bonds. The New England States, exclusive of corporations, at that date held $70,972,050, or 17 per cent of the total amount held. Their percentage of the total population was 8. The amount of bonds which would be properly assigned to them under the percentage of population would have been $33,403,108, instead of $70,972,050. The Middle States held $279,008,250, or 67 per cent, with a percentage of 21 per cent of the total population. The Southern States held $13,139,800, or 3 per cent of the total amount held, and the percentage of population was 37. The Western States held $54,418,750, or 13 per cent of the total amount held, and their percentage of total population was 34.

ITS EFFECT ON THE MASS OF THE PEOPLE.

Thus you perceive that under the system of multiplied taxation, through the national debt and through railroad and municipal bonds, these Southern States, with 34 per cent of population, are paying to the holders of these bonds in other States not only the taxes which they should pay to the Government, but are paying to them principal and interest upon these bonds out of their own separate and distinctive share of the property of the United States.

You will see, therefore, Mr. President, that there is reason for the judgment which these distinguished prelates and ministers and the great body of religious and political opinion have formed in regard to the present condition of the people, and for the solicitude which they feel. If we are to permit political power to be exercised by this great organized wealth of the country, then, indeed, Mr. President, may we anticipate greater evils in the future than any of us have seen in the past.

When you add together the national taxation for bonds, of which only 3 per cent is owned in the Southern States, and all of which passes immediately from the Treasury of the United States to the corporations of the Eastern and Middle States, and the State and local and municipal debt aggregating by the last census $6,803,437,771, and consider that all this vast amount has to be paid out of nineteen parts of sixty-two parts, and that a power of compulsory payment in the form of State, municipal, and corporate taxation is conferred upon 180,000 families in the United States, and further that the power of making money scarce is also by our laws vested in these 180,000 families, we begin to realize the condition in which 61,000,000 of American people are placed if we shall also permit them to exercise political power.

To Define the Crime of Murder, Provide Penalty Therefor, and to Abolish the Punishment of Death.

SPEECH

OF

GEN. NEWTON MARTIN CURTIS,

OF NEW YORK,

IN THE HOUSE OF REPRESENTATIVES,

Thursday, June 9, 1892.

ORDER OF BUSINESS.

The SPEAKER. The Clerk will report the order made yesterday.

The Clerk read as follows:

Resolved, That Thursday, the 9th day of June, instant, after the reading of the Journal, be set apart for the consideration of bills reported from the Committee on the Judiciary, in such order as they may be called up by the chairman of the committee, not to interfere with appropriation bills.

The SPEAKER. The gentleman from Texas, chairman of the Judiciary Committee [Mr. CULBERSON], is recognized.

MURDER AND MANSLAUGHTER.

Mr. CULBERSON. I call up the bill (H. R. 6791) to define the crimes of murder in the first and second degree and manslaughter, and providing punishment therefor.

The bill was read, as follows:

Be it enacted, etc., That whoever purposely and with premeditated malice, or in the perpetration of, or in the attempt to perpetrate, any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, within any fort, arsenal, dockyard, magazine, or in any other place or district of country under the exclusive jurisdiction of the United States, or upon the high seas, or any arm of the sea, or in any river, haven, creek, basin, or bay within the admiralty jurisdiction of the United States and out of the jurisdiction of any particular State, kills any human being, is guilty of murder in the first degree, and upon conviction thereof shall suffer death, or imprisonment at hard labor during life, in the discretion of the jury, such discretion to be expressed in their verdict.

SEC. 2. That whoever within any of the places named, or upon or in any of the waters mentioned in the preceding section, purposely and maliciously, but without premeditation, kills any human being, is guilty of murder in the second degree, and upon conviction thereof shall be imprisoned at hard labor during life, or for any period not less than ten years.

SEC. 3. That whoever within any of the places or upon or in any of the waters mentioned in the first section unlawfully kills any human being without malice, express or implied, either voluntarily upon sudden heat, or involuntarily, but in the commission of an unlawful act, is guilty of manslaughter, and upon conviction thereof shall be imprisoned at hard labor not less than one nor more than twenty years.

SEC. 4. That section 5339 and section 5341 be, and the same are hereby, repealed.

Mr. CULBERSON. I yield such time to the gentleman from Ohio [Mr. EZRA B. TAYLOR] as he may desire; and I respectfully ask the House to preserve order, as this is an important measure.

Mr. EZRA B. TAYLOR. Mr. Speaker, I presume some members of this House will be surprised when I say to them that hitherto there has been no definition of the crime of murder under United States statutes, and no distinction between murder in the first and murder in the second degree. So that if a man is put upon trial for what is murder at common law, he must either be acquitted altogether or must suffer the extreme penalty of death. The result of this condition of the law has been that in many cases convictions have been extremely hard to obtain, the punishment of death appearing to be unjust under the peculiar circumstances. The Attorney-General has frequently called attention to this subject, especially in his report for 1891. A bill defining murder in the first and second degrees was introduced into this House early in the session, and referred to the Judiciary Committee. After a full and most careful consideration of the whole matter the bill just read was reported favorably as a substitute for the original bill.

In the consideration of this matter and the preparation of this bill by the committee the statutes of all the States have been carefully examined. No word of importance is used in the bill that has not received a well-known and well-fixed construction from the highest courts. The bill declares that if murder by premeditated malice is committed in certain ways defined it shall be murder in the first degree; but where murder is committed without premeditation, though maliciously and purposely, it is defined as murder in the second degree. It is also provided, and in this respect there is a difference from the law of some of the States on this subject, that in the discretion of the jury murder even in the first degree may be punished by imprisonment at hard labor for life, instead of exacting in all cases the severest penalty—the death punishment.

Mr. LANHAM. What is the punishment for murder in the second degree as defined in this bill?

Mr. EZRA B. TAYLOR. I will read the provision:

That whoever within any of the places named, or upon or in any of the waters mentioned in the preceding section, purposely and maliciously, but without premeditation, kills any human being, is guilty of murder in the second degree, and upon conviction thereof shall be imprisoned at hard labor during life, or for any period not less than ten years.

Then in regard to manslaughter there is this provision:

That whoever within any of the places or upon or in any of the waters mentioned in the first section unlawfully kills any human being without malice, express or implied, either voluntarily upon sudden heat, or involuntarily, but in the commission of an unlawful act, is guilty of manslaughter, and upon conviction thereof shall be imprisoned at hard labor not less than one nor more than twenty years.

The greatest departure in the bill from the law as it exists in some of the States is in the provision that at the discretion of the jury murder even in the first degree may be punished by imprisonment for life. A provision of this kind, although not universal throughout the Union, has existed in many of the States for a long time; and the report comes to me from such communities that it has worked satisfactorily to the people, and that they would not change it on any consideration.

Mr. Speaker, I do not desire to occupy further time. This is an important bill, and I trust it will be favorably regarded by the House. My friend from New York [Mr. CURTIS] desires to offer an amendment. I yield to him for that purpose, and for such brief remarks as he may see fit to make in support of his amendment.

Mr. CULBERSON. How much time does the gentleman from New York want?

Mr. CURTIS. I ask that I may be allowed to proceed without limit.

Mr. CULBERSON. I can not agree to give the gentleman unlimited time.

Mr. CURTIS. If I be allowed to go on without limit, I will speak briefly, and not being under pressure will not be obliged to speak rapidly, and thereby exhaust my voice.

Mr. CULBERSON. How much time does the gentleman want?

Mr. CURTIS. I want to go over as briefly as possible the salient points of the argument. I would rather not have my time limited. I will be governed by the sense of the House. If I find any unwillingness to listen to what I wish to adduce in support of the principle which I ask the House to sanction, I will desist.

Mr. CULBERSON. The gentleman from New York will understand that I am besieged on all sides with reference to bills here, and I do trust that he will not upon a question of this sort—a mere question of ethics—take up the time of the House unreasonably.

Mr. CURTIS. I will not.

Mr. EZRA B. TAYLOR. I desire to say to my colleague on the committee [Mr. CULBERSON] that I had an understanding with the gentleman from New York that he should be brief, although he does not desire to be limited.

The SPEAKER. The amendment in the nature of a substitute proposed by the gentleman from New York will be read.

The Clerk read as follows:

A bill (H. R. 7197) to define the crimes of murder in the first and second degree, and manslaughter, and providing punishment thereof, and to abolish the punishment of death.

Be it enacted, etc., That whoever purposely and with premeditated malice, or in the perpetration of, or in the attempt to perpetrate, any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, within any fort, arsenal, dockyard, magazine, or in any other place or district of country under the exclusive jurisdiction of the United States, or upon the high seas, or any arm of the sea, or in any river, haven, creek, basin, or bay within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, kills any human being, is guilty of murder in the first degree, and upon conviction thereof shall suffer imprisonment at hard labor during life.

SEC. 2. That whoever within any of the places named, or upon or in any of the waters mentioned in the preceding section, purposely and maliciously, but without premeditation, kills any human being, is guilty of murder in the second degree, and upon conviction thereof shall be imprisoned at hard labor for a period of not more than twenty years.

SEC. 3. That whoever within any of the places, or upon or in any of the waters mentioned in the first section, unlawfully kills any human being without malice, express or implied, either voluntarily upon sudden heat, or involuntarily, but in the commission of an unlawful act, is guilty of manslaughter, and upon conviction thereof shall be imprisoned at hard labor for a period of not more than ten years.

SEC. 4. That any person convicted of an offense to which the punishment of death is now specifically affixed by the laws of the United States shall be sentenced to imprisonment at hard labor for the term of his or her natural life, and any person convicted of an offense to which the punishment of death or such other punishment as the court in its discretion may direct, is affixed, the maximum punishment shall be imprisonment at hard labor for the term of his or her natural life.

SEC. 5. That the punishment of death prescribed for the violation of any provision of the United States statutes is hereby abolished, and all laws and parts of laws inconsistent with this act are hereby repealed.

Mr. CURTIS. Mr. Speaker, I desire first to acknowledge the courtesy of the Judiciary Committee, and particularly that of my friend from Ohio [Mr. EZRA B. TAYLOR], for consenting to have my bill offered as a substitute for the one reported by the committee.

I agree with my friend, the chairman of the Judiciary Committee [Mr. CULBERSON], that House bill 6791 is an important measure. I also agree, in the main, with the views expressed by my friend from Ohio, who has so clearly explained the provisions of this bill, and the pressing need of enacting a measure to define the crime of murder in the first and second degree, and manslaughter.

I call the special attention of the House to his language, that—

Hitherto there has been no definition of the crime of murder under United States statutes, and no distinction between murder in the first and murder in the second degree. So that if a man is put upon trial for what is murder at common law, he must either be acquitted altogether or must suffer the extreme penalty of death. The result of this condition of the law has been that in many cases convictions have been extremely hard to obtain, the punishment of death appearing to be unjust under the peculiar circumstances.

The simple statement of the fact that the criminal code of the United States has stood for more than an hundred years without revision or amendment should be enough to convince this House of the necessity for proceeding promptly to discharge a duty which all preceding Congresses have neglected, that of remodeling the criminal code to make it conform to the spirit of the age in which we live.

Sir William Blackstone, in his treatise on crimes and punishments, stated that the criminal codes of England and continental countries were crude and imperfect in comparison with their civil codes; and this criticism is doubtless as true to-day as when it was made, and will apply with peculiar force to the relative condition of the civil and criminal laws of the United States. While many countries in Europe have made successful efforts to remedy some of these defects, Congress has done nothing in that direction. Many States of the Union more than a century ago adopted wholesome provisions, which Congress now for the first time is taking into serious consideration.

Fully approving those provisions of House bill 6791, defining the crime of murder in the first and second degree, and manslaughter, I do, nevertheless, most earnestly protest against that pernicious principle now for the first time sought to be introduced into the Federal statutes—that of authorizing juries, in their discretion, to affix the punishment of death or imprisonment for life as a penalty for murder in the first degree. And I oppose the retention of the death penalty as a punishment for any crime.

OBJECTIONS TO JURIES AFFIXING PUNISHMENTS.

I will first state my objections to that provision of the bill which confers upon juries the power to affix in their discretion one of two penalties as a punishment for the crime of murder in the first degree.

I am not one who would willingly take from juries any of the rights and powers derived from the common law, nor such as have, in the progress of human affairs, been conferred by wise statutes; but I am opposed to conferring additional powers which are inconsistent with the fundamental principles constituting trials by jury whereby the juror takes upon himself the duties of legislator and judge. The conferring on juries the powers contemplated by this bill will be detrimental to the public safety, and imperil the personal rights and liberties of every citizen charged with violating the laws. The rights and duties of legislators, judges and juries are distinct, and should be kept separate and independent. If allowed to mingle or overlap each other the great objects of civil government, which are to secure to every man his natural rights and the blessings of life to be enjoyed in safety and tranquility, will be endangered.

Among the earliest prohibitions in the Constitution is that against the enactment of *ex post facto* laws, following next after the declaration that "the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it," which, with that subsequent provision that the trial of all crimes, except in cases of impeachment, shall be by jury, specifies the Constitutional provisions which secure to every citizen protection to life, liberty, and property.

"*Ex post facto* laws" are defined to be "such as create or aggravate crime, or increase the punishment, or change the rules of evidence for the purpose of conviction." Their chief element is that of uncertainty. Therefore, any statute which creates or defines a crime, and which may in the future be subject to different interpretations, or its violators be punished by different penalties, possesses the very essence of uncertainty, and is in violation of the spirit of the article of the Constitution referred to.

The long controversy growing out of cases of libel, which led to the Fox act, in 1792, "to remove doubts respecting the functions of juries in cases of libel," settled a disputed question, since which intent, in cases of libel, like premeditation and malice in cases of homicide, is held to constitute an element to be considered in determining guilt and the degree of crime, and comes within the jurisdiction of juries; since that time there has been little, if any, alteration in their jurisdiction in England.

Burke correctly states the principle which should govern legislatures and juries, that "juries ought to take the law from the bench only, but it is our business that they should hear nothing from the bench but what is agreeable to the principles of the constitution. The jury are to hear the judge, the judge is to hear the law, where it speaks plain, and where it does not he is to hear the legislature," which should "fix the law in such a manner as to resemble, as it ought, the great author of all law, in whom there is no variableness nor shadow of turning."

Lord Bacon says:

Certainty is so essential to a law as without it a law can not be just. It is a good rule, that is the best law which gives least liberty to the arbitrage of the judge.

And Burke condemns the principle of discretionary power in juries:

A large and liberal construction in ascertaining offenses, and a discretionary power in punishing them, is the idea of criminal equity, which is, in truth, a monster in jurisprudence. It signifies nothing whether a court for this purpose be a committee of council or a House of Commons or a House of Lords, the liberty of the subject will be equally subverted by it.

My friend from Ohio [Mr. EZRA B. TAYLOR] says that—

A provision of this kind, although not universal throughout the Union, has existed in many of the States for a long time, and the report comes to me from such communities that it is satisfactory to the people, and that they would not change it on any consideration.

An examination of the records as to the operations of this principle in the States where adopted will satisfy my friend, and the House, I doubt not, that the principle is a vicious one. That it has worked satisfactorily is maintained on the ground that verdicts, with findings for life imprisoment have been found

against persons tried for atrocious crimes, where verdicts of guilt could not have been obtained under provisions requiring the infliction of the death penalty. This argument condems the severity of the law, the extreme penalty of which cannot be enforced, except under circumstances of unusual excitement. Juries have been led to render verdicts reflecting the passions of the community, and in cases where they have not awarded the severest penalty the mob have frequently resorted to violence, and inflicted it, whereas, had a milder penalty been the maximum of the law, the sentence inflicting it would have been acquiesced in. The miscarriage of justice and the failure to convict in capital cases, grow out of conditions similar to those stated by Sir William Blackstone, which condemn the severity of the law rather than the conduct of those selected to vindicate it.

The mercy of juries will often make them strain a point and bring in a larceny to be under the value of 12*d*, when it is really of much greater value; but this is a kind of pious perjury, and does not at all excuse our common law in this respect from the imputation of severity, but rather strongly confesses the charge.

The tendency of this innovation is in the direction of mob law, and if adopted will direct verdicts on the same principles which rule in Judge Lynch's court, organized on the assumption that vigilance committees possess all the functions of government, legislative, judicial, and executive.

The criminal records of the States in which this principle is established show the greatest number of lynchings. In fact, the jurisdiction of Judge Lynch is confined almost entirely to States in which juries are authorized to determine guilt and fix the penalty. The workings of this principle have not been satisfactory in the State of Minnesota at least, for in 1883 she repealed the statute authorizing it.

If the jurisdiction of juries in criminal cases tried in United States courts is to be increased, as provided by this bill, to empower them to affix punishment in their discretion, the next step, I conceive, in perfecting this system in the direction it tends, will be that of selecting jurors by ballot at popular elections.

THE DEATH PENALTY UNDESIRABLE, AND NOT SUSTAINED BY DIVINE AUTHORITY.

Mr. Speaker, the principle I wish to have introduced into the Federal Statutes by House bill 7197, the total abolition of the punishment of death, is something more than a mere question of ethics, as stated by my friend from Texas [Mr. CULBERSON]. It is a practical question, and is entitled to be considered on its merits. If the introduction of this principle will tend to promote good order in society, improve the administration of justice, and lessen crime we should give it our assent. We should hesitate if it tends to demoralize society, to lessen restraints upon the vicious, weaken administration, or relinquishes any great or actual deterrent from crime. It has its ethical side, but I will not in this discussion use the arguments of the moralists who oppose capital punishment on the ground that it is unauthorized, unjust, and unchristian.

The individual has the natural right to protect himself from assault and death, and all codes protect him in the proper exercise of the right of self-defense. So has the state the right to employ its forces in protecting the individual from violence, and society from the acts of the unbridled and vicious. The individual, at the moment of attack, may employ all means at hand to save his life until rescued; and the state, in defense of the individual, its peace and tranquillity, can go as far in maintaining its authority as civilized nations, in the exercise of just and equal laws, have ever gone. While an individual may use every means for his protection when menaced and in imminent peril, he can not, under the fiction of self-defense, carry it to the destruction of his assailant when the assailant is disarmed and in keeping of the police. Nor can a state find judicious warrant for going beyond the disarming and confining of a disorderly person. A single step beyond the line of safety is one step in the direction of that condition of society where brute force, not reason, rules.

In advocating this principle we are early warned not to legislate against the laws of God and the criminal codes of civilized states, perfected by the wisdom of ages. We are treated to an enumeration of penalties prescribed in codes established in the infancy of the human race as worthy of perpetual observance by enlightened nations, and commanded to hold as binding upon us and all future generations of men, the laws enacted for a rude and barbarous people. This warning would be sufficient to deter if justified by truth. So respectable are the chief advocates of the theory that the instructions given to Noah, or at least such as it suits their convenience to observe, are binding on mankind, and that no state can be well governed unless her laws are enacted in conformity with those instructions, that I prefer to oppose their opinions by the views of men whose learning will command respectful consideration wherever their names are spoken.

Many learned men have disputed the correctness of the translation of the sixth verse of the ninth chapter of Genesis, as it appears in the St. James version. Calmet, Osterwald, Wycliffe, and Scio have each rejected the words "by man" in the sixth verse. These words do not appear in the Septaugint. They do not appear in the Vulgate, which is considered by many to be the best translation. It is important to know that this difference of opinion exists among learned men respecting the meaning of the verse, which has been quoted as divine authority for the taking of human life for the shedding of man's blood.

The antediluvians subsisted on an exclusively vegetable diet. To Noah God said:

And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea; into your hands are they delivered.

Every moving thing that liveth shall be meat for you; even as the green herb have I given you all things.

But flesh with the life thereof, which is the blood thereof, shall ye not eat.

In authorizing Noah and his descendants to partake of meat, God coupled with it the declaration of the sacredness of life, that blood, its symbol, they should not eat. Some learned men have construed the sixth verse as a prohibition against cannibalism, and not a punishment for homicidal crime.

With the references already made to the different opinions entertained by learned men as to the meaning of the Noahic law, I conclude all reference to the warning of those who declare that the abolition of the death penalty is contrary to the law of God, by quoting the language of theologians whose learning and piety will, I trust, protect them from the assaults which the partially learned are ever ready to make on those not of their sect, training, or convictions.

Richard Hooker's Ecclesiastical Polity, book 3, chapter 10:

Finally, that albeit the end continue, as in that law of theft specified, and in a great part of those ancient judicials it doth; yet forasmuch as there is not in all respects the same subject or matter remaining for which they were first instituted, even this is sufficient cause of change: and therefore laws, though both ordained of God himself, and the end for which they were ordained continuing, may notwithstanding cease, if by alterations of persons or times they be found insufficient to attain unto that end. In which respect why may we not presume that God doeth even call for such change or alteration as the very condition of things themselves doth make necessary?

John Calvin, Institutes of the Christian Religion, book 4, chapter 20, sections 14, 15, 16:

From the magistracy we next proceed to the laws, which are the strong nerves of civil polity, or, according to an appellation which Cicero has borrowed from Plato, the souls of states, without which magistracy can not subsist, as on the other hand without magistrates laws are of no force. No observation therefore can be more correct than this, that the law is a silent magistrate, and the magistrate a speaking law. Though I have promised to show by what laws a Christian State ought to be regulated, it will not be reasonable for any person to expect a long discussion respecting the best kind of laws; which is a subject of immense extent, and foreign from our present object.

I will briefly remark however, by the way, what laws it may piously use before God and be rightly governed by among men. And even this I would have preferred passing over in silence if I did not know that it is a point on which many persons run into dangerous errors. For some deny that a State is well constituted which neglects the polity of Moses and is governed by the common laws of nations. The dangerous and seditious nature of this opinion I leave to the examination of others; it will be sufficient for me to have evinced it to be false and foolish. Now, it is necessary to observe that common distinction which distributes all the laws of God promulgated by Moses into moral, ceremonial, and judicial: and these different kinds of laws are to be distinctly examined, that we may ascertain what belongs to us and what does not. Nor let any one be embarrassed by this scruple, that even the ceremonial and judicial precepts are included in the moral.

The moral law, therefore, with which I shall begin, being comprised in two leading articles, of which one simply commands us to worship God with pure faith and piety, and the other enjoins us to embrace men with sincere love; this law, I say, is the true and eternal rule of righteousness, prescribed to men of all ages and nations who wish to conform their lives to the will of God. For this is his eternal and immutable will, that he himself be worshiped by us all, and that we mutually love one another. The ceremonial law was the pupilage of the Jews with which it pleased the Lord to exercise that people during a state resembling childhood till that "fullness of the time" should come when he would fully manifest his wisdom to the world, and would exhibit the reality of those things which were then adumbrated in figures. The judicial law, given to them as a political constitution, taught them certain rules of equity and justice by which they might conduct themselves in a harmless and peaceable manner towards each other.

As the ceremonies therefore might be violated without any abrogation or injury of piety, so the precepts and duties of love remained of perpetual obligation, notwithstanding the abolition of all these judicial ordinances. If this be true, certainly all nations are left at liberty to enact such laws as they shall find to be respectively expedient for them; provided they be framed according to that perpetual rule of love, so that, though they vary in form, they may have the same end. For those barbarous and savage laws, which rewarded theft and permitted promiscuous concubinage, with others still more vile, execrable, and absurd, I am very far from thinking ought to be considered as laws: since they are not only violations of all righteousness, but outrages against humanity itself. Now, as it is certain that the law of God, which we call the moral law, is no other than a declaration of natural law, and of that conscience which has been engraven by God on the minds of men, the whole rule of this equity of which we now speak is prescribed in it. This equity therefore must alone be the scope and rule and end of all laws. Whatever laws shall be framed according to that rule, directed to that object, and limited to that end, there is no reason why we should censure them, however they may differ from the Jewish law, or from each other.

They who defend this law and regard it of perpetual obligation, they who love to linger in the humid atmosphere of Mount Ararat, and fondly cling with blind devotion to the ceremon-

ies instituted for sojourners in the wilderness, slowly emerging from centuries of slavery, must certainly have refused to trace with the Magi the course of that star which illumined the world, have avoided the manger, the carpenter's shop, the fisherman's cottage; have stuffed their ears with cobwebs of brutal prejudice, that the lessons taught by the Sermon on the Mount might not enter their hearts; have veiled their eyes with vengeance, that they might not see how He, in the extreme agony of His suffering for man, forgave His persecutors, again declared the law of reform, and took to His home the repentant thief. They may search in vain through the chronicles of the theocracy for the record of a single execution for murder under His administration of nearly thirty centuries. It is recorded that Levi, Absalom, and David, and other men of renown offended against this law, yet they died "in battle or in bed."

That this punishment has come down to us from the earliest period of time, that it has been sanctioned by the criminal codes of all races and nations of men, is no just reason for its continuance in the polity of a free and enlightened state. If age and universality are sound arguments to be offered for the continuance of this ancient principle, so they are equally sound and conclusive against every effort for progress, against every discovery in science, the perfection of the arts, the use of inventions, and the employment of the fruits of genius. Age and universality have ever been the ready arguments of those who have stood in the way of progress. Every invention, every discovery has been compelled to fight its way to recognition against ancient theories, through convictions maintained and protected by punishments, proscriptions, and abuse.

Those who claim it to be our duty to continue the laws of past ages are of the same class of men Sir Thomas More spoke of as those "who thought it a mortal sin to be wiser than their grandfathers." They have lived in every age, valiant defenders of established customs and laws. They suppressed Galileo Galilei, and sent him to a dungeon "guilty of having seen the earth revolve around the sun," by an invention which disclosed to mortal eyes the handiworks of Him in whose name they resisted truth and science. Their names have been forgotten, concealed in the molding records of unused libraries, his is whispered to the student and mariner by the stars and planets as often as he observes their course.

Morse pleaded with the stubborn defenders of physical laws, whose limits wise legislators pretended to definitely understand as not to include the possibility of transmitting intelligence to distant places by lightning, and asked those who sat in this Chamber only a generation ago for a petty pittance to construct to a neighboring city and put into practical operation an invention which, notwithstanding the difficulty attending its introduction, in the short space of the active period of a single life, has, like "the wings of the morning," carried blessings to the uttermost parts of the earth.

The students of science have discovered, but by slow degrees, the natural laws governing the physical universe. These additions to the sum of human knowledge have enlarged the sphere and increased the sum of human happiness. Let legislatures seek to discover those laws which will best regulate the relations of man to man in society, the principles underlying the best system to regulate human concerns. To "know thyself," to "know thy fellow-man," to know the impulses which move the springs of action, will enable them to properly adjust the rewards and punishments now too little acted upon, if at all understood. It will establish a system which will secure the primary object of government, "the greatest good to the greatest number." The inert legislator, the blind adherent to past regulations, ought to be warned by the fate of that nation which closed its history in the single enactment that there should be no change in its laws.

INEFFICIENCY OF THE DEATH PENALTY.

No one will maintain that our criminal laws are enacted on the principle of giving the greatest protection to the well-disposed from the acts of the unbridled and vicious. The orderly are not secured that safety and protection to life and property which wise laws should afford. The vicious are held to no certain account for their most atrocious acts. Our laws are not enforced because the sentiments of our people rise in rebellion against the infliction of irredeemable penalties. Let the criminal laws be revised so that certainty of punishment will take the place of severe penalties, now seldom awarded and next to impossible to have inflicted, first, because of the reluctance of juries to convict, and, second, by the exercise of executive clemency—granted not on account of the innocence of the prisoner, but because a concentration of social and political influence is found to be a stronger power to override and strike down the hand of justice than the simple plea of innocence.

We are daily informed by the public journals that the most atrocious offenses are committed with impunity, and that homicidal crimes have increased out of all proportion to the population. While the population of the United States within the last decade has increased about 20 per cent, the number of homicidal crimes has increased more than 400 per cent. During these years the nation has been singularly free from great calamities, war, pestilence, and famine, conditions that disrupt society and paralyze administration. Yet, in a period of unparalleled financial prosperity, homicidal crimes have increased from 1 in 35,000 in 1882 to 1 in 10,000 in 1891, as shown by statistics collected by the Chicago Tribune, which are approximately correct and entitled to the fullest credit. They are accepted as the most complete to be obtained in this country. That the method by which they are collected and revised may be understood, I give entire the letter of the statistician of that office, detailing the manner in which the work is done. These statistics show not only a rapid increase in homicidal crimes, but the more rapid decline in awarding and inflicting the prescribed punishments therefor.

THE CHICAGO TRIBUNE, EDITORIAL ROOMS,
Chicago, March 6, 1892.

DEAR SIR: Your favor requesting statistics of homicidal crimes in the United States is at hand. May I prelude them with the statement that, of course, the lists are not complete. I may state, however, that I am confident, so far as homicides are concerned, that they represent fully 90 per cent of the accurate number, and that the hangings and lynchings are substantially complete. I may also add that these statistics are made up from the daily telegraphic reports to the morning papers of this city and then supplemented from a daily scrutiny of the representative papers in every prominent city in the United States which quite completely cover the respective States. I submit the following statement for the past ten years as annually published in the Tribune:

Year.	Murders.	Hangings.	Lynchings.
1882	1,467	121	117
1883	1,697	107	135
1884	1,465	123	195
1885	1,808	108	181
1886	1,499	83	133
1887	2,335	79	123
1888	2,184	97	144
1889	3,567	98	175
1890	4,290	102	126
1891	5,906	123	195
1892, to date	875	25	36

My general impression is that the fewest murders in proportion to population are committed in Maine, Rhode Island, Vermont, Michigan, Minnesota, and Wisconsin.

Of the total number of hangings in ten years 518 have been in Northern States and 728 in Southern; of lynchings 426 in the North and 1,150 in the South.

Trusting this may supply the information you desire, I remain,
Yours, very truly,

GEO. P. UPTON,
Associate Editor Tribune.

Hon. N. M. CURTIS.

In 1882, 8 per cent of those who committed homicidal crimes suffered the extreme penalty of the law. In 1891 only 2 per cent suffered that penalty.

Mr. COBB of Alabama. Do you mean to assert that all those who did not suffer the extreme penalty went unpunished?

Mr. CURTIS. I do not mean to say that all the remainder went entirely unpunished, but there was a general failure to enforce the sanctions of the law.

Mr. COBB of Alabama. But they got the punishment that you provide in your bill.

Mr. CURTIS. Not many of them; a very few.

Mr. Speaker, I shall be glad to answer the questions of my friend, but as I am pressed for time and compelled to state hurriedly the different points in my argument, I ask that gentlemen will withhold questions until I am through, when I will endeavor to answer such as they may desire to propound.

If capital punishment did in fact deter from crime, it might be continued as a measure of expediency; but when it affords no protection to society, and all its tendencies are to debase and demoralize, what reason have we for continuing it in our criminal statutes? I do not claim, nor do the advocates of capital punishment claim, that penalties are in themselves sufficient to prevent crime, or that any punishment, however severe or certain in its infliction, will altogether banish crime. We all believe, I doubt not, that prompt trial and the certain infliction of specific penalties will do all that laws can accomplish for the suppression of crime. The character of a nation's laws reflect the moral and social condition of its people. Nor have the people of any nation risen higher than the spirit of the laws by which they have been long governed. Laws should be a crystallization of the best sentiment of the people, and calculated to lead the nation to a higher plane of administration.

Such systems have promoted civilization, and it is the only sure method by which to secure progress in the future. Prescribe mild penalties and provide for their certain enforcement,

which can never be done unless the laws command the respect and approval of the people in whose hands their administration lies. That laws should commend themselves to and be suitable to the condition of a nation was understood and expressed by Solon. When asked if he had prepared the best code he could have written for the Athenians, he answered: "Not the best code I could have prepared, but the best code the Athenians are now able to bear."

The code of many States, particularly our criminal code, are not laws under the definition "A municipal law is a rule of action prescribed by the supreme power in a State, commanding what is right and prohibiting what is wrong." Nor under the definition of that other learned Englishman, who in pertinent interrogatory and answer gives us the constituent elements of a State, and says:

> And sovereign law, that State's collected will,
> Sits empress, crowning good, repressing ill.

A criminal law whose sanctions are not enforced against 98 per cent of those who violate its provisions, evidently lacks the essential elements of a law, because it does not properly express the "State's collected will."

ABOLITION OF THE DEATH PENALTY JUSTIFIED BY EXPERIENCE.

Nations which have had much that is common to ours, and governed by a system of laws producing beneficial results, may well be imitated, for experience is a safe teacher. History gives us the results of every system of government which has been tried, and to those which were governed by cruel and sanguinary laws we are little indebted for lessons in the sciences, the arts, in jurisprudence, in patriotism. To Athens we owe most for theory and example, pertaining to the age of Pericles. At the close of his eventful career he declared that the circumstance in his whole life the most worthy of mention and remembrance was this: "That he never caused a single citizen to put on mourning."

To Rome we owe most for that period when, under the operation of the Porcian law, she did not for more than two centuries inflict the punishment of death on a single citizen. It was then she attained her greatest power and perfected that system of laws, the principles of which have been so incorporated into those of succeeding nations that to-day she sways by the silent influence of her laws many times more people than her triumphant eagles ever looked down upon as provinces or allies. Cicero, statesman and lawyer, spoke the sentiment prevailing in Rome's best period:

> Far be from us the punishment of death, its ministers, its instruments. Remove them not only from actual operation on our bodies, but banish them from our eyes, our ears, and thoughts. For not only the execution, but the apprehension, the existence, the very mention of these things is disgraceful to a freeman, to a Roman citizen.

The Empress Elizabeth, of Russia, in 1758, forbade the infliction of the punishment of death during her reign, and in 1768 Empress Catherine II caused this prohibition for all offenses but that of treason to be incorporated in her code of criminal laws. Blackstone, in commenting on a code of laws which declared one hundred and sixty offenses worthy of instant death, referred to the laws of Russia in the following language:

> Was the vast territory of the Russians worse regulated under the late Empress Elizabeth than under her more sanguinary predecessor? Is it now, under Catherine II, less civilized, less social, less secure? And yet we are assured that neither of these illustrious princesses has, throughout their whole administration, inflicted the death penalty; and the latter has, upon the full persuasion of its being useless, nay, even pernicious, given orders for abolishing it entirely throughout her extensive dominions.

Grand Duke Leopold, in 1786, abolished the death penalty in Tuscany. He referred to its operations in the following terms:

> With the utmost satisfaction to our paternal feelings, we have at length perceived that the mitigation of punishment, joined to a most scrupulous attention to prevent crime, and also a great dispatch in the trial, together with a certainty of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of smaller ones, and rendered those of an atrocious nature very rare.

We have it on the authority of Dr. Franklin that at this time in the adjoining state of Rome, protected by the deterrent influence of the death penalty, always inflicted with great pomp and parade, there were, in the city of Rome and vicinity, in the short space of three months, sixty murders. In 1790, capital punishment was restored in Tuscany for riotous disturbances, and in 1795 for four other crimes; but the punishments were seldom inflicted. And now, for more than sixty years, there have been no judicial executions in Tuscany.

The punishment of death has been abolished in Belgium, in Roumania, in Portugal, in Holland, in Switzerland, except in two cantons, and in these so seldom inflicted that there has been but one execution in twenty years.

In all the continental states of Europe, except Spain and France, great modifications have taken place in their criminal codes and penalties made milder. Those for which severe penalties had been previously inflicted have been considerably reduced in number, so that the infliction of the death penalty is now extremely rare. No evil effects have attended the remission of severe penalties. On the contrary, the crimes for which death had been the punishment, have diminished on the substitution of milder penalties.

Earnest efforts have been made to introduce this principle into the laws of England, but for a long time these efforts were attended with little success. Sir Thomas More, condemned capital punishment in his writings. He, however, ordered its infliction from the bench, approved it when lord chancellor of Henry VIII, and died on the block a victim to a law he privately condemned but officially approved.

Sir Edward Coke pathetically denounced capital punishment in his epilogue to the Third Institute:

> True it is that we have found by woeful experience that it is not frequent and often punishment that doth prevent like offenses; indeed justice is better which certainly prevents than that which harshly punishes, agreeing with the rule of the physician for the safety of the body, precaution is better than healing, and it is a certain rule that you will see those things frequently committed which are constantly punished; for the frequency of the punishment makes it so familiar as it is not feared. For example, what a lamentable thing it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians that but in one year, throughout England, come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart bleed to pity and compassion.

Lord Bacon condemned capital punishment, when he said:

> Let there be no rubrics of blood.

Notwithstanding these amiable sentiments, Lord Bacon and Lord Coke, then attorney-general, sat in the Parliament which passed the act making it a crime punishable with death "To evoke an evil spirit or to consult with, covenant with, entertain, employ, feed, or reward any evil spirit, or to take up dead bodies from their graves to be used in any witchcraft, sorcery, or charm." This bill passed in a Parliament in which sat the most learned and distinguished men of England; it was specially commended by a select committee of the House of Lords, which included among its members twelve bishops of the established church. Indeed, little improvement could have been expected in times when the soft hearts of these great legal luminaries became as steel, their sensibilities stifled in the rigorous, compassionless atmosphere of official station, graced, as it was, by these prelates, "Ministers of the gospel of Christ, who were ready to bathe their hands in blood in the name of the God of all mercy," that they might be able to thwart the machinations of the devil, operating through old women, cats, mice, and bees, to the discomfort of his majesty's loyal subjects.

With these pious prelates of England, Bacon and Coke, and many other learned men in Parliament, legislating against contracts with the devil, with Sir Matthew Hale and Chief Justice North on the bench pronouncing sentence of death against one old woman on expert evidence that she had bewitched and tormented children "in the shape of a bee and a mouse," and another on the testimony of a neighbor who had seen a cat jump into the cottage window of the accused, it may well be said that England was a poor field for practical reformers. Yet to-day, the retention of the death penalty is supported by the arguments of men nurtured in a school of which these were the chief teachers.

EFFORTS FOR AMELIORATION, AND BENEFICENT RESULTS.

In 1770 Sir William Meredith moved for a committee to inquire into the state of the criminal law, which proposed the repeal of a few acts which made certain offenses capital, but there was no parliamentary action. These efforts were merely educational. England was being educated by the writings of Montesquieu, Beccaria, and the commentaries of Sir William Blackstone. The effect of these works upon the judges was that of extending pardon to many sentenced to execution, and the proportion executed to those sentenced was less than before. This action of the judges in the direction of leniency was encouraged by the remarkable speech in Parliament of Sir William Meredith in 1777.

In 1785 was published Madan's "Thoughts on Executive Justice." He laid down five propositions.

First. Punishment, to be effective, should be certain.

Second. That there were more crimes in England than in any other country.

Third. The frequency of crime in England is occasioned by the uncertainty of punishment.

Fourth. The uncertainty of punishment in England is occasioned by the improper lenity of the judges and juries.

Fifth. The laws of England are not severe.

This was followed in 1786 by "Observations upon Thoughts on Executive Justice," by Sir Samuel Romilly, who from that time to his death stood as the champion of criminal-law reform in England.

In 1819 Sir James Mackintosh moved for the appointment of a

royal commission to inquire into the operations of the criminal laws. This commission collected a large amount of testimony, and reported in favor of modification and amelioration. Several years elapsed before favorable action was taken upon these recommendations. The commissions of 1834 and 1864 continued these investigations, which contributed materially to the modification and improvement of the criminal laws of England. In handing in the last report, January 8, 1866, the following declaration was moved by Mr. William Ewart, M. P.:

The undersigned members of your Majesty's commission, are of opinion that capital punishment might, safely and with advantage to the community, be at once abolished.

STEPHEN LUSHINGTON,
JOHN BRIGHT,
CHARLES NEATE,
WILLIAM EWART.

The effect of abolishing the penalty of death for offenses long capital by the laws of England, resulted uniformly in fewer commitments and a greater proportion of convictions. These results are not to be accredited to a general improvement in the character and morals of the people, as is shown by tables taken from the Home Office Reports to Parliament for the years 1827 to 1835 inclusive:

First. Noncapital offenses, such as larcenies, etc:

Three years ending with—	Commitments.
1829	46,833
1832	51,623
1835	51,701

Commitments rise from 46,833 to 51,701, indicating an increase of crime in that proportion.

Second. Offenses for which the punishment of death continues to be inflicted, viz., arson, murder, attempted murder, robbery, etc.:

Three years ending with—	Commitments.	Executions.
1829	1,705	108
1832	2,236	120
1835	2,247	102

Commitments rise from 1,705 to 2,247 in spite of the deterrent effects of the death penalty.

Third. Offenses for which the punishment of death was abolished in 1832-'33, viz., coining, forgery, horse stealing, sheep stealing, larcenies above £5 in dwelling, and house breaking:

Three years ending with—	Commitments.	Executions.
1829	4,622	96
1832	4,724	23
1835	4,292	2

Commitments falling from 4,622 to 4,292, a diminution in offenses from which the penalty of death had been removed.

It is also shown by returns to Parliament that in the three years ending 1835, in offenses for which capital punishment is retained, there were forty-two convictions to every one hundred commitments, while for the same period those offenses which had ceased to be capital, for every one hundred commitments there were seventy-four convictions.

The efforts of Sir Samuel Romilly in 1808, and following to the day of his death, "to abolish the penalty of death for stealing from a dwelling house to the amount of 40*s*.," "for stealing privately in a shop to the amount of 5*s*.," and "for stealing upon a navigable river," with other bills of like character, were met with the unyielding opposition of the Lords when these measures finally reached the upper house. The character of the opposition and the influence of those who led the attack on these bills can be well understood by the speech made by Lord Chancellor Eldon, in whose views all the judges concurred, in opposition to the bill to abolish the punishment of death for stealing privately in a shop to the amount of 5*s*., in which he said:

If the present bill be carried into effect, then may your lordships expect to see the whole frame of our criminal law invaded and broken in upon. The public of this country, I submit, ought, once for all, to know in what the public criminal code of the country consists, that your lordships may not, time after time and year after year, be distressed with such discussions as the the present.

In the debate on the bill to abolish the death penalty for stealing from a dwelling house to the amount of 40 shillings, Lord Chief Justice Ellenborough declared:

If the theft of 40 shillings from a dwelling house is not punishable by death, the property of every householder in the Kingdom will be left wholly without protection.

Attention may here be called to the commercial spirit which led and overrode all other sentiments in those days, and is still prominent in England, and to some extent in this country. The protection of life and personal property has been subordinated to that of trade and the extension of commerce. The shopkeeper's haberdashery was considered worthy of eight times the protection to be given to the personal effects of an Englishman stored in his house or castle.

The Home Office reports above cited, covering three years before and three years after the abolition of the death penalty for these and similar offences, furnish actual proof that these learned lords were mistaken, and show that their adherence to principles which outraged the best sentiments of humanity prevented that protection to property which later and juster laws have afforded.

In every country in Europe the abolition of the death penalty and the substitution of milder penalties for the punishment of crime has been followed by a diminution of such offenses and increased convictions in proper cases.

The revision of the criminal laws of the several States in this country, which has been going on during the last century, has been followed by like results as to homicides as well as minor crimes. Michigan led in 1847 with total abolition. In 1848 her life convicts constituted 2.71 per cent of her prison population. In 1884, as shown in the official reports, life convicts had decreased to forty-three hundredths of 1 per cent of her prison population. Rhode Island abolished the death penalty in 1852 and Wisconsin in 1853. Iowa abolished it in 1872, when her homicidal crimes averaged 1 in 800,000 of her population; after six years under this beneficent law her homicidal crimes averaged only 1 in 1,200,000 of her population. Then, in a general revision of her criminal laws, she gave to juries the right to affix the death penalty or imprisonment for life for murder; and since then she has had but two executions, but homicides have increased faster than her population, so that the wisdom of repealing her excellent law of 1872 is not apparent.

Maine had for many years practical abolition of the death penalty, although its provision was retained in her laws, which required a year to elapse between conviction and execution, and then to be ordered by the governor. The provision for execution was not mandatory, and few executions were ordered. In 1876 her Legislature abolished capital punishment. In 1883, moved to action by the maddened passion of a life convict who killed a keeper in prison, her Legislature restored the death penalty by a barely constitutional vote in each house. In 1887 her Legislature again abolished the penalty of death with a two-thirds vote in one house and a three-fourths vote in the other.

Medical men, those who have considered criminal anthropology and mental diseases, are almost unanimously for abolition. The medical societies are discussing the question of abolition to the end that death shall not be inflicted upon the irresponsible and diseased; that the just line of moral responsibility may be drawn between disease and deviltry.

The Homeopathic Medical Society of the State of New York discussed the subject at its annual meeting, held in February, 1891, and without a dissenting voice resolved—

That a committee be appointed to urge upon our Legislature the abrogation of the death penalty, and the substitution of a method of punishment more logical, more reasonable, more humane, more thoroughly effective as a protection, and more in harmony with the enlightened and progressive spirit of the age.

The Eclectic Medical Society of the State of New York had this subject under consideration of a committee for a year, and at its annual meeting held in Albany in March, 1892, agreed to the committee's report, and resolved by an almost unanimous vote—

That it is the recommendation of the Eclectic Medical Society of the State of New York that the Legislature of the State of New York pass an act abolishing capital punishment, substituting therefor life imprisonment, with such well-considered safeguards as will forever prevent any actual murderer, once incarcerated, from regaining the liberty he deservedly forfeited by his own impulsive or fiendish act. And that a committee of three be appointed by the chair to bring this report and its accompanying resolution to the Legislature of the State.

The Medical Society of the State of New York, at its annual meeting in January, 1891, referred the subject to a committee of three of its ex-presidents, of which committee Dr. A. Jacobi was chairman, to consider and report upon the subject at the next annual meeting of the society. This committee submitted an exhaustive report to the annual meeting in January, 1892, which has attracted wide attention in this country and Europe, closing with strong resolutions condemning the death penalty. This report was favorably received by the society, but on motion of those friendly to its conclusions it was referred for final action to the next annual meeting. Of its ultimate adoption by an overwhelming majority there can be no doubt.

CRIMES TO WHICH THE DEATH PENALTY IS AFFIXED BY FEDERAL LAWS.

Mr. Speaker, men generally well-informed on most political topics ask why Congress, which has so little to do with criminal matters, and that in a limited field, should abolish the death penalty when denounced against the few offenses to which it is affixed, and those of a most atrocious character. My answer is that the criminal code of the United States justifies the severe language used by Mirabeau against the English people when, reading of twenty executions taking place one morning in London, he declared "the English are the cruelest race I have ever seen or read of;" so our code is too cruel to be enforced,

too cruel to stand. It prescribes the penalty of death for nearly seventy offenses, for not one of which can its infliction be supported by good reason, justice, or expediency.

I read a letter from the Attorney-General of April 11, 1892, specifying sixteen sections of the code which provide the death penalty for those convicted in the civil courts of the United States.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 11, 1892.

SIR: In reply to your verbal inquiry as to the specific offenses, a violation of which is punishable by death under the laws of the United States, I respectfully submit the following list:

Section 5339, Revised Statutes. 1. Murder in district of country under exclusive jurisdiction of United States. 2. Murder upon the high seas, or place within the admiralty or maritime jurisdiction of the United States. 3. Maliciously striking, stabbing, wounding, poisoning, or shooting at any other person, of which such other person dies, either on land or sea, within or without the United States.

Section 5345, Revised Statutes. Committing rape within any place, or upon any waters, specified in section 5339.

Section 5365, Revised Statutes. Owner destroying vessel at sea.

Section 5366, Revised Statutes. Other persons destroying vessel at sea.

Section 5368, Revised Statutes. Piracy under the law of nations.

Section 5369, Revised Statutes. Seaman laying violent hands on his commander.

Section 5370, Revised Statutes. Robbery upon the high seas, or open roadstead, or haven, basin, or bay, or in any river where the sea ebbs and flows, in or upon any vessel.

Section 5371, Revised Statutes. Robbery on shore by crew of piratical vessel.

Section 5372, Revised Statutes. Murder, etc., upon the high seas.

Section 5373, Revised Statutes. Committing murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince or State, or on pretense of authority from any person.

Section 5374, Revised Statutes. Piracy by subjects or citizens of a foreign state.

Section 5375, Revised Statutes. Piracy in confining or detaining negroes on board vessels.

Section 5376, Revised Statutes. Piracy in landing, seizing, etc., negroes on any foreign shore.

Section 5385, Revised Statutes. Arson of dwelling house, within a fort, etc.

Section 5387, Revised Statutes. Arson of vessel of war.

Section 5332, Revised Statutes. Treason.

Very respectfully,

W. H. H. MILLER, *Attorney-General.*

Hon. N. M. CURTIS
House of Representatives.

I offer a communication from the Judge-Advocate-General of the United States Navy, dated April 23, 1892, specifying twenty-two offenses for which naval courts-martial are empowered by law to award the punishment of death. Special attention is called to the closing paragraphs, in which it is stated that notwithstanding the retention on the statute-books of these sanguinary provisions the sentence of death has not been pronounced by a naval court-martial, nor an execution under the provisions of this authority, since October 23, 1849.

Memorandum of crimes or offenses for which naval general courts-martial are empowered by law to award the punishment of death or such other punishment as such court may adjudge, in cases of the conviction thereof, by the court, of any person in the naval service of the United States.

The law relating to the punishments which naval general courts-martial may adjudge upon the conviction of any person in the naval service is contained in the "Articles for the Government of the Navy of the United States," section 1624 of the Revised Statutes.

The crimes or offenses for which naval general courts-martial are empowered, upon the conviction of an offender, to adjudge the punishment of death or such other punishment as the court may adjudge are contained in Articles 4, 5, and 6 of said articles, as follows:

"ART. 4. The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

"First. Who makes, or attempts to make, or unites with, any mutiny or mutinous assembly, or, being witness to or present at any mutiny, does not do his utmost to suppress it, or, knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer;

"Second. Or disobeys the lawful orders of his superior officer;

"Third. Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;

"Fourth. Or gives any intelligence to, or holds or entertains any intercourse with, an enemy or rebel, without leave from the President, the Secretary of the Navy, the commander-in-chief of the fleet the commander of the squadron, or, in case of a vessel acting singly, from his commanding officer;

"Fifth. Or receives any message or letter from an enemy or rebel, or, being aware of the unlawful reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof:

"Sixth. Or, in time of war, deserts or entices others to desert;

"Seventh. Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust;

"Eighth. Or sleeps upon his watch;

"Ninth. Or leaves his station before being regularly relieved;

"Tenth. Or intentionally or willfully suffers any vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded: or maliciously or willfully injures any vessel of the Navy, or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger;

"Eleventh. Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel;

"Twelfth. Or strikes or attempts to strike the flag to an enemy or rebel, without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarter;

"Thirteenth. Or, in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;

"Fourteenth. Or, in time of battle, deserts his duty or station, or entices others to do so;

"Fifteenth. Or does not properly observe the orders of his commanding officer and use his utmost exertions to carry them into execution when ordered to prepare for or join in, or when actually engaged in, battle, or while in sight of an enemy;

"Sixteenth. Or, being in command of a fleet, squadron, or vessel acting singly, neglects, when an engagement is probable or when an armed vessel of an enemy or rebel is in sight, to prepare and clear his ship or ships for action;

"Seventeenth. Or does not, upon signal for battle, use his utmost exertion to join in battle;

"Eighteenth. Or fails to encourage, in his own person, his inferior officers and men to fight courageously;

"Nineteenth. Or does not do his utmost to overtake and capture or destroy any vessel which it is his duty to encounter;

"Twentieth. Or does not afford all practicable relief and assistance to vessels belonging to the United States or their allies when engaged in battle.

"ART. 5. All persons who, in time of war or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death or such other punishment as a court-martial may adjudge.

"ART. 6. If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death."

It will be seen, upon examination of the articles above set forth, that naval general courts-martial are not empowered to inflict the death punishment, except in time of war, for any of the offenses designated in the twenty clauses, contained in the fourth article or for the crime mentioned in the fifth article, other than those stated in the first, second, third, and tenth clauses of the fourth article, and the crime of murder, contained in the sixth article.

Article 50 of the Articles for the Government of the Navy provides that—

"No person shall be sentenced by a court-martial to suffer death, except by the concurrence of two-thirds of the members present, and in the cases where such punishment is expressly provided in these articles. All other sentences may be determined by a majority of votes."

And it is also provided in article 53 of said articles that—

"No sentence of a general court-martial, extending to the loss of life, or to the dismissal of a commissioned or warrant officer, shall be carried into execution until confirmed by the President. All other sentences of a general court-martial may be carried into execution on confirmation of the commander of the fleet or officer ordering the court."

And by article 54 it is further provided that—

"Every officer who is authorized to convene a general court-martial shall have power, on revision of its proceedings, to remit or mitigate, but not to commute the sentence of any such court which he is authorized to approve and confirm."

With reference to the provision contained in article 53, above set forth, that no sentence of a general court-martial extending to the loss of life shall be carried into execution until confirmed by the President, it is proper to cite the provisions contained in articles 49 and 50 of the Articles for the Government of the Navy, as authorized by "An act for the government of the Navy of the United States," approved March 2, 1799 (Statutes at Large, volume 1, page 709), which read as follows:

"49. The sentence of a court-martial for any capital offense shall not be put in execution until it be confirmed by the commander-in-chief of the fleet. And it shall be the duty of the president of every court-martial to transmit to the commander-in-chief of the fleet and to the head of the Navy Department every sentence which shall be given, with a summary of the evidence and proceedings thereon, as soon as may be.

"50. The commander-in-chief of the fleet, for the time being, shall have power to pardon and remit any sentence of death, in consequence of any of the aforementioned articles."

Article 41 and article 42 of the Articles for the Government of the Navy, embodied in "An act for the better government of the Navy of the United States," approved April 23, 1800 (Statutes at Large, volume 2, page 45), should in this connection be stated, and are as follows:

"41. All sentences of courts-martial, which shall extend to the loss of life, shall require the concurrence of two-thirds of the members present, and no such sentence shall be carried into execution until confirmed by the President of the United States; or, if the trial take place out of the United States, until it be confirmed by the commander of the fleet or squadron. All other sentences may be determined by a majority of votes, and carried into execution on confirmation of the commander of the fleet or officer ordering the court, except such as go to the dismission of a commissioned or warrant officer, which are first to be approved by the President of the United States.

"42. The President of the United States, or, when the trial takes place out of the United States, the commander of the fleet or squadron, shall possess full power to pardon any offense committed against these articles, after conviction, or to mitigate the punishment decreed by a court-martial."

The law vesting the power in the commander of a fleet or squadron, in cases when the trial was had out of the United States, to carry into execution a sentence of a general court-martial extending to loss of life, concurred in by two-thirds of the members of the court present, remained in such commander until the adoption of the existing articles for the government of the Navy contained in section 1624 of the Revised Statutes, which articles are taken from "An act for the better government of the Navy of the United States," approved July 17, 1862 (Statutes at Large, volume 12, page 600). See article 53 of said articles, which is set forth on page 3 of this memorandum.

It appears from an examination of the records of this office, that the punishment of death has not been executed in the case of any person in the naval service of the United States in pursuance of the sentence of a naval general court-martial, since the 23d day of October, 1849. On the date last mentioned, two seamen, enlisted men in the Navy and members of the crew of the United States schooner Ewing, then in the harbor of San Francisco, Cal., and belonging to the Pacific squadron, which was then in command of Commodore Thomas Ap Catesby Jones, United States Navy suffered the death penalty. The two seamen referred to, were tried before a naval general court-martial convened on board the United States sloop-of-war Warren, in the harbor of San Francisco, on October 10, 1849, under an order issued by Commodore Jones, the commander-in-chief of said squadron, upon charges (1) "Mutiny with intent to kill;" (2) "Desertion with an attempt to kill, and running away with a boat, the property of the United States." The court found both of the seamen aforesaid guilty of the charges preferred against them, and sentenced each of them "to be hung by the neck until dead."

The sentences of the general court-martial in these cases having been approved by Commodore Jones, the commander-in-chief of the squadron, were carried out accordingly by the execution of both of the men on board vessels of the squadron in the harbor aforesaid on October 23, 1849.

WM. B. REMEY,
Judge-Advocate-General.

NAVY DEPARTMENT,
OFFICE OF THE JUDGE-ADVOCATE-GENERAL,
Washington, April 23, 1892.

I offer a letter from the Assistant Secretary of War, dated February 25, 1892, specifying twenty-five offenses for which a court-martial is authorized to prescribe the punishment of death:

WAR DEPARTMENT,
Washington, February 25, 1892.

SIR: In response to your inquiry as to what offenses are by the existing law made capitally punishable by sentence of a military court, I have the honor to state as follows;

In article 96 of the Code of Articles of War, it is provided that no person shall be sentenced to death by court-martial, except in the cases "expressly mentioned" in the code. The power of adjudging this penalty is elsewhere, (Articles 80-83), restricted to general courts-martial.

This punishment is "expressly mentioned" in the articles as follows:

1. It is expressly and exclusively required to be adjudged, on conviction, for the offense of forcing a safeguard, by article 57; and for the offense of the spy, by section 1343, Revised Statutes, the concluding provision of the military code.

2. It is expressly authorized to be adjudged at the discretion of the court, by the following articles and for the following offenses:

By article 21: For striking or assaulting a superior officer, or for disobeying his lawful command.
By article 22: For mutiny.
By article 23: For failing to suppress or give information of mutiny.
By article 39: For sleeping on post, or leaving post without authority, of a sentinel.
By article 41: For occasioning false alarms in camp, etc.
By article 42: For misbehavior before the enemy, and kindred offenses, and for leaving post or colors to plunder or pillage.
By article 43: For compelling a commander to surrender or abandon a post.
By article 44: For disclosing a watchword to an unauthorized person or giving a false watchword.
By article 45: For relieving the enemy with money, food, or ammunition, or harboring or protecting an enemy.
By article 46: For holding correspondence with or giving intelligence to the enemy.
By article 47: For desertion "in time of war."
By article 49: For abandoning the service by an officer, without authority, on a mere tender of resignation—in time of war.
By article 51: For advising or persuading another to desert—in time of war.
By article 56: For doing violence to person bringing provisions or other necessaries into camp, etc., "in foreign parts."
By article 58: For murder, manslaughter, arson, robbery, larceny, etc., where the death penalty is required to be imposed by the local law—in time of war.

In some of these articles the infliction of the death penalty is expressly limited to time of war, and in others, the particular offense or class of offenses made punishable is of such a character that it could scarcely be committed except at such a time. There are thus substantially but four articles—the twenty-first, twenty-second, twenty-third, and thirty-ninth—for the offenses specified in which the death penalty may be adjudged at any time, viz., in peace as well as war. As observed, however in Winthrop's Military Law, volume 1, page 589, where the subject of this penalty is discussed, the offenses designated in these four articles will, when committed in time of peace, "most rarely be so aggravated as to induce a court-martial to assign the extreme penalty." And "the result is that this punishment is in our military law and practice reserved almost exclusively for the purposes of the administration of justice in time of war."

As to military commissions, it may be added, these are tribunals unknown to the existing law. They are resorted to only in time of war for the trial of cases not within the jurisdiction of courts-martial, and their power to adjudge the death sentence or other punishment, where not controlled by statute, is derived solely from the laws and usages of war. As to the function and power of punishment of these courts, as exercised during the late war, I would refer you to Winthrop's Military Law, volume 2, pages 57-82.

Very respectfully, your obedient servant,

L. A. GRANT,
Assistant Secretary of War.

Hon. N. M. CURTIS,
House of Representatives, Washington, D. C.

I submit a list of executions by United States military authorities during the late war:

Offense	White troops. Mode of execution. Shot.	Hanged.	Not stated.	Total.	Colored troops. Mode of execution. Shot.	Hanged.	Total.	Aggregate.
Desertion	122	16	.....	138	1	.....	1	139
Murder	13	28	.....	41	6	20	26	67
Rape	3	6	.....	9	6	4	10	19
Mutiny	5	.....	.....	5	14	.....	14	19
Rape and theft	3	.....	.....	3	.....	.....	.....	3
Desertion and attempted murder	2	.....	.....	2	.....	.....	.....	2
Spy	2	.....	.....	2	.....	.....	.....	2
Violation of 9th article of war	1	.....	.....	1	.....	.....	.....	1
Violation of 7th and 2d articles of war	1	.....	.....	1	.....	.....	.....	1
Theft	.....	1	.....	1	.....	.....	.....	1
Desertion and rape	.....	1	.....	1	.....	.....	.....	1
Desertion and theft	1	.....	.....	1	.....	.....	.....	1
Desertion and highway robbery	1	.....	.....	1	.....	.....	.....	1
Desertion and murder	.....	1	.....	1	.....	1	1	2
Desertion and pillage	1	.....	.....	1	.....	.....	.....	1
Aiding desertion	1	.....	.....	1	.....	.....	.....	1
Pillage	1	.....	.....	1	.....	.....	.....	1
Acting as spy	1	.....	.....	1	.....	.....	.....	1
Rape and murder	.....	.....	.....	.....	.....	1	1	1
Not stated	2	.....	1	3	.....	.....	.....	3
Total	160	53	1	214	27	26	53	267

In addition to the several sections which authorize the infliction of the death penalty by the United States civil courts, military and naval courts-martial, we have sections 4083 to 4130, inclusive, enacted in compliance with treaties entered into with the powers of Algiers, the Barbary States, China, Japan, Madagascar, Morocco, Muscat, Persia, Siam, Tripoli, Tunis, the Islands of the South Pacific and Indian Oceans, which are not dependencies of Christian nations, giving extraterritorial powers to United States ministers and consular officers, authorizing them to administer justice at their several stations, and to try American citizens or those enrolled under the American flag charged with crime, and to award imprisonment for life or the punishment of death.

These consular courts consist of a United States Consul, and from one to four United States citizens he may ask to sit with him on the trial. The consul, however, awards the sentence, from which there is no appeal, except from the consular courts in China and Japan, which are appealable to the United States. district court of California. From other consular courts there is no appeal, except to the Executive for clemency. The Ross case, decided by the Supreme Court, October term, 1890, sustains the constitutionality of these sections. This case was brought within the jurisdiction of the Supreme Court of the United States after the prisoner had accepted a commutation of his sentence of death to a term of life imprisonment. When he was brought to the United States for incarceration in the Albany penitentiary he applied for a writ of habeas corpus, alleging that he was deprived of his liberty in violation of the Constitution; that he had been deprived of his liberty without a trial by jury.

This decision sustaining the provisions of this law is most important, as it shows that a citizen of the United States, or a person enrolled as a seaman under its flag, when in a heathen country, can be deprived of his life or liberty without those forms of law guaranteed to every citizen within the territory of the United States not actually in the military or naval service. When it is considered that these officers are appointed on account of their knowledge of commercial affairs, without regard to their knowledge of the principles of law, its practice, or the administration of justice, it must be regarded as a dangerous exercise of the constitutional right of Congress to commit the rights of American citizens, their lives and their liberties, to such officials, and without appeal.

ADVOCATES OF ABOLITION.

The advocates of this principle include the greatest names in European and American history. But to Beccaria, Sir William Meredith, Sir Samuel Romilly, Sir James McIntosh, Basil Montagu, Jeremy Bentham, Edward Livingston, and Robert Rantoul, jr., whose writings and active exertions have done so much to promote this reform, will be given the greatest credit when this principle shall have been adopted, as it surely will be, by the Christian nations of the earth. Hundreds of others deserve to be mentioned with honor in this connection for their labors in enlightening and instructing their fellows.

A bill containing this provision was introduced in Congress by Edward Livingston, a Senator from the State of Louisiana, on the 3d of March, 1831, in reference to which he said:

It was his intention, had time permitted, to have developed the principles of the bill, some of which would be found extremely important. Under present circumstances he would confine himself, saying that it laid down general principles applicable to the subject, provided for the cases of those general acts which ought to be punished under the powers vested in the General Government, in whatever part of the United States they may be committed, and those which may be committed in places under the exclusive jurisdiction of the United States; including, of course, the District of Columbia, that it accurately defined all offenses, provided as well for their prevention as their punishment. As these were entirely new he wished, when the document was put into the hands of Senators, they would pay particular attention to its provisions as well as to one most important principle which pervades the whole, the total abolition of the punishment of death. To this he invited the Senators to give a most serious reflection that they might be prepared to meet the discussion which he should think it a duty to invite at the next session.

While conservative influences have been able to retain the punishment of death for murder in most of the States, and in some for one other crime, it has been abolished for other offenses; but there has been no legislation by Congress to improve the system of our criminal laws. There has been a constant effort in most of the States to escape the evil influences of a system which, like the basilisk's charm, has kept legislatures under its baneful influence; but a philosophical public has compelled from time to time the curtailing of its brutalizing tendencies. The pomp and parade with which executions were once attended have been dispensed with to the great gain of society. Skillful and learned men have investigated the different methods of execution, to find one whose influence would be the least harmful and terrifying.

Had the energies given to these investigations been properly expended in seeking for the best system of governing men, and the adoption of the principles which would best secure life and property without regard to the instruments of destruction, there would not at this time be found anyone to advocate the reten-

tion of the penalty of death. The abandonment of public executions lessened commitments, and there was a consequent falling off in executions. In my own State of New York, with a strong public sentiment against the death penalty, the Legislature failed to heed it, and sought to satisfy by introducing a more humane method of execution. The friends of abolition first moved to recommit the bill with instructions to report a bill abolishing capital punishment. When that motion failed, they supported the bill establishing the new electrocution law, and I believe to-day there are few friends of abolition who would willingly see the rope substituted for the present method.

To go as far as possible to meet the views of the friends of abolition and still retain judicial execution, by which the death of criminals continues to multiply crimes, there was enacted a provision not only for continuing private executions, but one to forbid the publication of the details of an execution. How vain the attempt. The criminal maudlinism of the age demanded to know all the horrible details connected with these brutal practices, performed in the name of law and justice; and in the popular branch of the Legislature one of the first bills passed at the last session, by a vote of 103 to 2, was to strike out the provisions of the law prohibiting the publication of the details of an execution.

The large number of executions which took place in the Army during the late war furnishes no evidence that the punishment of death is essential for the enforcement of discipline, the maintenance of efficiency, or the safety of the army. These executions were, in a large proportion of cases, inflicted because the laws governing the army prescribed it specifically under certain articles of war. Had there been no such direction, no suggestion that the death penalty was the one best calculated to bring the speediest and surest correction of disorder, it would not have been so frequently enforced. The Articles of War have, to my personal knowledge, often been consulted before preparing charges and specifications, and the charge of "conduct prejudicial to good order and military discipline" used instead of that naming the specific offense, because the proof to sustain the specification might have supported a graver charge, and carried the sentence of death.

I do not, as many may think, refer to officers lacking the proper military spirit or those qualities necessary to discipline, to command, and to lead, which together make the good, the successful soldier. The martial spirit is not cultivated by instruments of torture, nor the infliction of ignominious death. Think you, sir, that the recruit instructed to obey promptly the lawful orders of his superior officer; to defend his flag in the face of all danger, to despise death and fear only dishonor, that his manhood, his self-respect, will be increased and strengthened by being informed that his devotion, his valor, may have the same reward as the dastardly coward—a violent death? Will not the sublimity of the one be degraded to the ignominy of the other?

The death penalty is not suitable for desertion. Men who desert their flag should not be deemed even worthy of dying in the presence of their comrades. Ignominious toil, not death, should be their punishment. The spy, in military operations, has, I think, been improperly regarded as one upon whom death should be promptly, unhesitatingly inflicted. This view of his case has no stronger reason to support it than that of giving no quarter in battle. The spy represents more than one personality; he goes out under the orders of his commanding officer, urged and encouraged by promises of preferment and reward. His safe detention, the preservation of his life, may enable the commander to obtain valuable information respecting the enemy in whose service the spy is employed, but nothing can be gained by his execution. To be retained in the hands of an enemy, and put to a degrading service, will be more odious than the infliction of death, for brave men challenge death in the pursuit of duty, ambition, or glory.

In this respect only, I am happy to say, I differ with the distinguished soldier, the general-in-chief of our Army, as shown by his letter of March 16, 1892. It justifies the high opinion of the profession of arms expressed by Beccaria, who said, at a time when torture was practiced in some form by all nations, England only using that of pressure to extort a plea, "that in the government of armies torture was not used. A strange phenomenon, that these men, familiar with blood and accustomed to slaughter, should teach humanity to the sons of peace." It indicates the combination of those rare qualities which make the soldier, who, though called upon to perform the cruelest service required for the support of organized and legitimate government, is, nevertheless, the tenderest, the gentlest, and most generous of men, and sooner learns the governing spirit and better understands the quality of human nature than men in any other profession or calling:

HEADQUARTERS OF THE ARMY,
Washington, D. C., March 16, 1892.

MY DEAR SIR: In reference to the bill introduced by you in the House March 14, 1892, entitled "A bill to define the crimes of murder in the first and second degree, manslaughter, and providing punishment therefor, and to abolish the punishment of death," I take pleasure in assuring you of my cordial concurrence in the general object to be accomplished by the passage of such a bill.

Long experience in the military service and observation of the administration of justice throughout the country has produced in my mind a continually increasing conviction that the death penalty is in general unnecessary, and also less effective in preventing crime than imprisonment, for the reason that it is far less certain to be executed. I think all must admit, if it is true that the death penalty is unnecessary and even less effective than some other mode of punishment, that fact is quite sufficient reason for abolishing it.

Man has no right to take the life of his fellow-man, except in self-defense and for the protection of society. It is also, I believe, generally true that the more experience men have in the sacrifice of human life, as in battle, the more they shrink from the cold-blooded execution of a fellow-man. The brave and patriotic soldier offers his own life and that of his comrades freely in the cause of his country, and in the same cause he hesitates not to take the lives of his enemies in open battle; but the moment the result is accomplished he becomes the most humane of men in face of the question of taking any more lives in cold blood.

I have observed that your bill proposes no exceptions whatever to the abolition of the death penalty. Perhaps this has been based upon the belief, in which I concur, that such punishment is not necessary under any circumstances in time of peace, and if necessary in time of war, it can be provided for by special enactment. I am not prepared to say that the death penalty is not necessary in war under some circumstances, and for certain exceptional offenses, which offenses endanger the success of military operations and even the safety of an army, in which cases the certain and immediate execution of the death penalty may be the only sufficient deterrent from the commission of such crimes. I do not think it would be wise to take from the commander of an army in the field the power to inflict such punishment when he finds it necessary; but I do not know any other case in which, in my judgment, the substitution of imprisonment for life in place of the death penalty would not increase rather than diminish the deterrent effect upon those disposed to commit crime.

Yours, very truly,

J. M. SCHOFIELD,
Major-General, United States Army.

Gen. N. M. CURTIS, M. C.,
House of Representatives.

The Navy has had no execution since 1849. During these years our flag has been carried to every clime, our ships have swung at anchor in every port, our officers and seamen have been brought in contact with the people of the most cultivated and enlightened nations, and with the wildest savages, without imbibing any of the brutal spirit which finds expression in torture and the infliction of death. The Navy has, in four years of war, with conspicuous devotion and efficiency, not only maintained all its past glory, but added new luster and honor by acts of personal devotion and bravery, performed by men in all the grades from ordinary seamen to admirals commanding fleets, and stands second to the navy of no country in those qualities and attainments which give efficiency, maintain honor, and win victories. The Navy has for forty-five years been disciplined and governed on a higher plane than the articles prescribed by Congress provide. Obsolete, useless, and barbarous laws—banish them from the code of those who, despite their lurking presence, have wholly neglected to enforce them. The abolition of flogging as an authorized punishment for offenses in the Army in 1839 and in the Navy in 1850, however much doubted at the time by conservatives, contributed much to increase the *morale* of both the Army and Navy.

PRACTICAL OBJECTIONS TO THE DEATH PENALITY.

Mr. Speaker, the subject before the House is one to which I have given many years of close study and serious consideration, to which I have brought an experience gained in the field, in the administration of martial law, while serving in all grades from the command of a company to that of a department, administering justice over a large territory at the close of hostilities, without the aid of civil law or its officers, as well as many years in civil life as a legislator and administrator in the enforcement of law, all of which has given me great opportunity to study men, their impulses, and their actions. I have known them in all classes, from prisoners to presidents. I have never found among those blessed with "sound minds in healthy bodies," one absolutely incorrigible, not one in whom might not be found some virtue, which, with proper culture, would grow and enliven and improve his whole being. Nor have I ever seen a man in whose character and qualities there was no improvement to be suggested.

The severe penalties of our laws defeat the ends for which they are enacted. With a penalty which men of humane sentiments can not inflict, and therefore are excused from jury duty, places the administration of our criminal laws in their final determination, in the hands of the stoical and indifferent. Judges say that of men drawn on juries, from one-quarter to three-fourths of the number, generally the most intelligent, are excused because of conscientious scruples against the infliction of the death penalty, and as a consequence the panel is composed of men least qualified to decide the important questions submitted to their determination.

The object of the law is defeated when it gives to any man on his own motion power to excuse himself from performing the highest and most important duty pertaining to the enforcement of the laws. Last fall, in the city of Denver, on the trial of a man charged with the murder of a woman, in which trials convictions are ten

times more certainly obtained than in those for the murder of men, of twelve hundred drawn, eleven hundred were excused because of their objections to the infliction of the penalty of death. Canning better knew the impulses of the human heart than his staid associates in Parliament when he assured them—

It is vain to suppose that jurors will enforce laws which are repugnant to the best feelings of our nature.

Sydney Smith gave the true standard by which to affix efficient punishment:

The efficient maximum of punishment is not what the legislature chooses to enact, but what the great mass of the people think that maximum ought to be.

Legislators have disregarded the demands for a revision of our laws until we have been compelled to enlarge our penitentiaries to receive the dupes of great criminals, while the teachers, through the imperfection of our laws, and not by any means the inefficiency or neglect of the officers of justice, are enabled to escape its penalties. The defeat of the law in its proper enforcement against a single offense tends to its demoralization in every part. Take away irredeemable punishments, so that no man can, by stating his honest convictions or falsely representing his sensibilities, excuse himself from jury service. When this is done, and not till then, you may discard that absurd fiction adhered to in a free nation that has no classes, with all the tenacity of the Barons when the Crown and royalty oppressed the yeoman and the vassal. Remove from our practice the absurd provision that the prisoner shall be first secured against the enmity of the State; give him a sufficient number of challenges, to insure the exclusion from the jury of all who knew him and might be prejudiced by a knowledge of his past life, and fill your jury boxes with intelligent, fair-minded men, so that it shall not be, as within a short time, when an intelligent laborer was excused because he read a daily paper, and one who could not read and did not know the name of the mayor of his city, or the name of any man who had been its mayor, nor the name of the governor of his State, or of any man who had been its governor, was accepted to sit on a jury impaneled to try a man charged with the crime of murder.

Mr. Speaker, I have from no indifference to that important feature of criminal jurisprudence—the reformation of the criminal—neglected to give that subject consideration in these remarks. The criminal requires, for the general good and the soundest public policy, that suitable provision be made for his employment and reformation. But in Federal legislation, restricted to a narrow field, its consideration is not so important as in States in whose penitentiaries Federal prisoners are detained, excepting those in the jail in the District of Columbia. While thoroughly believing that prisoners should have the benefit of reformatory treatment and influences, I am not of the class of those who believe a prisoner's life should be one of expensive luxury and slothful idleness. The jail of the District of Columbia, under Federal control, is, I feel justified in saying, entitled to be classed with the highest grade of schools for crime and idleness. There prisoners are kept in cells without labor, living at an expense and in a manner in which no honest laboring man can support a wife and child on $9 weekly wages. When these prisoners are discharged, they have lost all inclination for honest labor, and generally seek to live at the public expense by stealing or robbery, knowing that the worst fate to befall them can be no harder than a return to jail, to fatten in restricted quarters at the public charge. As bad as all this is, it is not so bad and impolitic as having the laws of the country enacted by consulting the fears and terrifying apprensions of prisoners, with a view of ascertaining what punishment will bring them the greatest sorrow. The good order of society the safety of the State is best promoted and secured by consulting the wise, the virtuous, and the prudent. A punishment to be deterrent should be exemplary, one which restrains, but does not destroy. Therefore the death penalty, horrifying to the spectators, the friends, and the victim is of short duration, and soon forgotten; while imprisonment protects both by warning and example, as stated by Sir William Meredith:

The end of all punishment is example; of the two modes of punishment I shall prefer that which is most profitable in point of example. Allowing, then, the punishment of death its utmost force, it is only short and momentary: that of labor, permanent; and so much more example is gained in him who is reserved for labor than in him who is put to death as there are hours in the life of the one beyond the short moment of the other's death.

The dread so many express of permitting the murderer to live so long as the pardoning power is retained has little to justify it. The power to pardon is a provision in the organic law, and can only be reached by constitutional amendment. Those who fear its improper use should know that it is more generally exercised in capital States than it has been or is likely to be in non-capital States. I quite agree with those who desire to see it restricted, and I have the confident opinion that it will be when its promoting cause—capital punishment—for which and only on account of which pardons were first instituted and have since come into general use to thwart and impede justice.

Have man's explorations in the fields of science and philosophy, in his contemplation of natural laws, the gospels, or revelation, yet discovered a standard wherewith accurately to measure the value of a human life? It has been said that the riches of the world are of less value than the salvation of a soul. Are we then, acting within the limits of the great organic law, justified in prescribing a standard and directing its application, on the infallibility of human judgment, if "to shorten a human life puts in jeopardy a human soul?" We are not justified in imitating even in our laws the acts of the vicious; the wise and virtuous will never do it.

I shall add, under the generous permission of the House, authorizing me to extend my remarks in the RECORD, an appendix, giving the opinions of men on this subject whose judgment will command that respect we all give to the opinion of those whose lives have been devoted to humanity, to civilization, to progress, to the establishing and maintaining of constitutional liberty.

I ask the deliberate judgment of this House on this important principle, that they will without prejudice examine it from every side, and bring to its consideration the facts of history, the experience of States blessed with its beneficent provisions, that we may contribute to the urgent duty of bringing this nation to the side, at least, if not placing her in advance of those we sometimes think less enlightened than our own. Let us enact just laws, whose penalties shall be enforced with certainty against those who violate them, and secure to the orderly and well disposed the opportunity "to enjoy in safety and tranquillity their natural rights and the blessings of life."

APPENDIX.

The following extracts are inserted at the request of several members who have expressed a desire to know the opinions of prominent men on this subject whose works are not readily accessible:

God commandeth us that we should not kill; and if a man would understand killing by this commandment of God to be forbidden, after no larger wise than man's constitution define killing to be lawful, then why may it not likewise by man's constitution be determined after what sort may be lawful? For whereas by the permission of God no man neither hath the power to kill, neither himself nor yet any other man, then if a law made by the consent of men, concerning slaughter of men, ought to be of such strength, force, and virtue, that they which—contrary to the commandment of God—have killed those whom this constitution of man commanded to be killed, be clean, quit and exempt out of the bonds and danger of God's commandment; shall it not, then, by this reason follow that the power of God's commandments shall extend no further than man's laws doth define and permit? And so shall it come to pass that, in like manner, man's constitution in all things shall determine how far the observation of all God's commandments shall extend. Now you have heard the reasons why I think this punishment (of death) unlawful.

—*Sir Thomas More*, 1516.

In subjects of this nature we are to consider, not what the individual is, nor what he may have done; we are to consider only what is right for public example and private safety.

Whether hanging ever did, or can, answer any good purpose, I doubt; but the cruel exhibition of every execution day is a proof that hanging carries no terror with it. And I am confident that every new sanguinary law operates as an encouragement to commit capital offenses; for it is not the mode but the certainty of punishment that creates terror. What men know they must endure they fear; what they think they can escape they despise. The multiplicity of our hanging laws has produced two things, frequency of condemnation and frequent pardons. As hope is the first and greatest spring of action, if it were so that out of twenty convicts one only was to be pardoned, the thief would say, "Why may not I be that one?" But since as our laws are actually administered not one in twenty is executed, the thief acts on the chance of twenty to one in his favor, he acts on a fair and reasonable presumption of indemnity; and I verily believe that the confident hope of indemnity is the cause of nineteen in twenty robberies that are committed.

But if we look to the executions themselves, what example do they give? The thief dies either hardened or penitent. We are not to consider such reflections as occur to reasonable and good men, but such impressions as are made on the thoughtless, the desperate, and the wicked. These men look on the hardened villain with envy and admiration. All that admiration and contempt of death with which heroes and martyrs inspire good men in a good cause, the abandoned villain feels in seeing a desperado like himself meet death with intrepidity. The penitent thief, on the other hand, often makes the sober villain think in this way: Himself oppressed with poverty and want he sees a man die with that penitence which promises pardon for his sins here and happiness hereafter; and straight he thinks that by robbery, forgery, or murder he can relieve all his wants, and if he be brought to justice the punishment will be short and trifling and the reward eternal.

When a member of Parliament brings in a new hanging law, he begins with mentioning some injury that may be done to private property, for which a man is not yet liable to be hanged; and then proposes the gallows as the specific and infallible means of cure and prevention. But the bill, in progress of time, makes crimes capital that scarcely deserves whipping. For instance, the shoplifting act was to prevent bankers, and silversmiths, and other shops, where there are commonly goods of great value, from being robbed, but it goes so far as to make it death to lift anything off a counter with intent to steal.

—*Sir William Meredith*, in Parliament, 1777.

But to these we may add, further, that the use of capital punishments argues a want of capacity in the legislature. It is rather an expedient to get rid of certain inconveniences in society than an attempt to remedy them. It is easy enough, indeed, for the magistrate to extirpate mankind, but it is his business to amend them and make them happy. "It is quackery in government," says Blackstone, "to apply too frequently the same universal remedy, the *ultimum supplicum*, and that magistrate must be esteemed both a weak and a cruel surgeon who cuts off every limb, which through ignorance or indolence he will not attempt to cure."

And as frequent capital punishment is an argument of the want of regular police, and a relic of barbarism in the constitution of any society, so its be-

ing obstinately continued in use among us tend to retain among the common people those barbarous manners from which this kind of punishment originally took its rise, and to check the progress of that humanity of spirit which, happily for mankind, has of late been making such rapid advances in our part of the world. Let, then, the spirit of our punishments correspond with the spirit of the times, in order that we may sooner attain that perfection of universal charity, which ought to be the governing principle of the human mind.

—*Rev. William Turner.*

Criminal jurisprudence has, within the last twenty years, become a very popular study throughout Europe, and the cultivation of it has been generally attended with very sensible and very beneficial effects. In proportion as men have reflected and reasoned upon this important subject the absurd and barbarous notions of justice, which prevailed for ages, have been exploded, and humane and rational principles have been adopted in their stead. That criminal prosecutions ought always to be carried on for the sake of the public and never to gratify the passions of individuals; that the primary object of the legislature should be to prevent crimes and not to chastise criminals; that that object can not possibly be attained by the mere terror of punishment; and that unless a just proportion be observed between the various degrees of crime in the penalties appointed for them the law must serve to excite rather than repress guilt, are truths so generally received, that they are come to be considered almost as axioms of criminal law.

But considerable as has been the progress of these principles in other parts of Europe, they have not yet produced in this country any melioration of the system of our penal laws. The most glaring defects in those laws have not escaped observation, but few have attempted to remove them, and none have been successful in their attempts, and the only beneficial effect which has yet been produced in England, is a desire in the Crown, and in its ministers, the judges, to remedy some of those defects by their mode of executing the laws, and particularly by a mitigation of that indiscriminating severity which, while it inflicts the same punishment on a pickpocket as on a parricide, confounds all ideas of justice, and renders the laws objects, not of veneration and love, but of horror and aversion.

A more permanent and a more certain correction of those defects would be so great a national benefit as one would have thought every good and reflecting citizen must ardently have wished for. At least one would have supposed that humanity, as well as patriotism, must have forbidden any endeavors to cloud the prospect of such a reformation, and much more, any efforts to lay restraint upon the sovereign in executing, according to his oath, justice in mercy, and to inforce that *summum jus* which, where the laws are such as constitute the criminal code of England, must ever prove *summum injuria.*

This ungrateful task, however, has been lately undertaken, and an attempt has been made to restore the law to all its sanguinary rigor by the author of Thoughts on Executive Justice with respect to our criminal laws. A work proceeding on principles which are now so little prevalent and breathing a spirit so contrary to the genius of the present times that I should have classed it amongst those performances, with which every literary age has been infested, and which are calculated to render the authors of them celebrated only for the singularity of their opinions, and should have therefore left it to sink into that oblivion to which such compositions seldom fail to be soon consigned, had I not found that the warmth and the earnestness of the writer's style had gained him converts, and that some of the learned judges, to whom his word is addressed, had seemed inclined to try the terrible experiment which he recommends. Errors which produce such effects are not to be despised as harmless, and it is the duty of every man who has the use of reason and who sees their fallacy to expose and to refute them.

He first asserts that the penal laws of this country are excellent, and that they have no severity, but of the most wholesome kind; and this serves as the foundation of that proposition which is the capital object of his work, namely, that those laws ought to be strictly executed, so that the certainty of punishment may operate to the prevention of crimes. If the former of these positions were true no man of common understanding could dispute the latter; for, if laws be perfect, they ought undoubtedly to be religiously observed; but if our laws, instead of being excellent, should appear to be, as it is easy to demonstrate that they are, in many instances, unreasonably severe, and such as that the punishment bears no proportion to the crime, it must surely follow that the strict execution of them is neither expedient nor even possible.

All punishment is an evil, but is yet necessary, to prevent crimes, which are a greater evil. Whenever the legislature therefore appoints, for any crime, a punishment more severe than is requisite to prevent the commission of it, it is the author of unnecessary evil. If it do this knowingly, it is chargeable with wanton cruelty and injustice; if from ignorance, and a want of proper attention to the subject, it is guilty of a very criminal neglect. If these principles be just, the legislature of Great Britain must in one or other of these ways, be culpable, unless it be impossible to prevent theft by any punishment less severe than death.

The author of the "Thoughts on Executive Justice" seems to think that it is impossible, and that these severities are therefore to be justified on the ground of necessity. But experience shows the erroneousness of this opinion, because in several European states, where the punishment of death is never inflicted but for the most atrocious crimes, these lesser offenses are very rare; while in England, where they are punished with death, we see them every day committed; and when, in the reign of Henry VIII, so many criminals were executed that their numbers were computed to amount to two thousand every year, crimes seem to multiply with the number of executions. "So dreadful a list of capital crimes," says Mr. Justice Blackstone, after having lamented that they are so numerous, "instead of diminishing, increases the number of offenders."

Nor is this a phenomenon very difficult to be accounted for; in proportion as these spectacles are frequent, the impression which they make upon the public is faint, the effect of the example is lost, and the blood of many citizens is spilt without any benefit to mankind, But this is not all; the frequent exhibition of these horrid scenes can not be indifferent; if they do not reform they must corrupt. The spectators of them become familiarized with bloodshed and learn to look upon the destruction of a fellow-creature with unfeeling indifference. They think, as the laws teach them to think, that the life of a fellow-citizen is of little value, and they imagine they see revenge sanctified by the legislature, for to what other motive can they ascribe the infliction of the severest punishments for the slightest injuries? And where the moral character of a people is depraved crimes must be frequent and atrocious.

—*Sir Samuel Romilly,* 1786

Since my arrival here in May, 1804, the punishment of death has not been inflicted by this court. Now, the population subject to our jurisdiction, either locally or personally, can not be estimated at less than 200,000 persons. Whether any evil consequence has yet arisen from so unusual—and in British dominions unexampled—a circumstance as a disuse of capital punishment, for so long a period as seven years, among a population so considerable, is a question which you are entitled to ask, and to which I have the means of affording you a satisfactory answer.

The criminal records go back to the year 1756. From May, 1756, to May, 1763, the capital convictions amounted to 141 and the executions were 47. The annual average of persons who suffered death was almost 7, and the annual average of capital crimes ascertained to have been perpetrated was nearly 20. From May, 1804, to May, 1811, there have been 109 capital convictions. The annual average, therefore, of capital crimes, legally proved to have been perpetrated during that period, is between 15 and 16. During this period there has been no capital execution. But as the population of this island has much more than doubled during the last fifty years, the annual average of capital convictions during the last seven years ought to have been 40 in order to show the same proportion of criminality with that of the first seven years.

The punishment of death is principally intended to prevent the more violent and atrocious crimes. From May, 1797, there were 18 convictions for murder, of which I omit 2, as of a very particular kind. In that period there were 12 capital executions. From May, 1804, to May, 1811, there were 6 convictions for murder, omitting one which was considered by the jury as in substance a case of manslaughter with some aggravation. The murders in the former period were, therefore, very nearly as three to one to those in the latter, in which no capital punishment was inflicted; then the murders of the last seven years will be 8, while those of the former seven years will be 16. This small experiment has, therefore, been made without any diminution of the security of the lives and properties of men. Two hundred thousand men have been governed for seven years without a capital punishment and without any increase of crimes. If any experience has been acquired it has been safely and innocently gained.

—*Sir James Mackintosh,* charge to the grand jury of the island of Bombay, July 20, 1811.

If the evil of the punishment exceed the evil of the offense, the legislator will have produced more suffering than he has prevented. He will have purchased the exemption from one evil at the price of a greater evil.

No person engages in crime, but from the hope of impunity; if the punishment consisted merely in depriving the offender of the spoil which he has gained, and this punishment were invariably inflicted, such crimes would no longer exist.

The more the certainty can be increased, the more the severity may be diminished. Punishment ought to be inflicted soon after the crime is committed; the impression upon the mind is weakened by the distance; and the distance of the punishment adds to its uncertainty by giving new chances of escape.

A real punishment which is not an apparent punishment is lost to the public; the great art consists in augmenting the apparent punishment without augmenting the real punishment.

The punishment ought to be economical—that is, it ought to have only the degree of severity which is absolutely necessary for attaining its object. Everything which exceeds the necessity is not only so much superfluous evil, but produces a multitude of inconveniences that defeat the ends of justice.

The punishment ought to be remissible. It is requisite that the suffering should not be absolutely irreparable, in cases in which it may happen to be discovered, that it was inflicted without lawful cause. So longs as proofs are susceptible of imperfection, so long as appearances may be deceitful, so long as men have no certain criterion for distinguishing truth from falsehood, one of the first securities which they reciprocally owe to each other, is not to admit, without absolute necessity, punishments absolutely irreparable. Have we not seen all the appearances of the crime heaped upon the head of the accused, where innocence has been proved when it was too late to do more than lament over the errors of a presumptuous precipitation? Feeble and short-sighted as we are, we judge as limited beings, and punish as if we were infallible.

The more we examine the punishment of death, the more we shall be induced to adopt the opinion of Beccaria. This subject is so well discussed in his work that there is scarcely any necessity for further investigation.

The infliction of this punishment originated in resentment, indulging itself in rigor; and in sloth, which, in the rapid destruction of offenders, found the great advantage of avoiding all thought. Death! always death! This requires neither the exertion of reason nor the subjugation of passion.

I should astonish my readers if I were to expose to them the penal code of a nation celebrated for its humanity and its intelligence; we might there expect to find the greatest proportion between offenses and punishments; but, whatever may be our expectations, we should see this proportion continually violated, and the punishment of death inflicted upon the most trifling offenses. The consequence is, that the sweetness of the national character being in contradiction to the laws, the manners triumph and the laws are eluded. They multiply pardons, they shut their eyes upon offenses, their ears to proofs; and the juries, to avoid an excess of severity, frequently fall into an excess of indulgence. The result is a penal system which is incoherent and contradictory; which unites violence to feebleness, and, depending upon the humor of the judge, varies from circuit to circuit, being sanguinary in one part of the island and merciful in another.

If the legislator be desirous to inspire humanity amongst the citizens let him set the example; let him show the utmost respect not only for the life of man, but for every circumstance by which the sensibility can be influenced. Sanguinary laws have a tendency to render men cruel, either by fear, by imitation, or by revenge. But laws dictated by mildness humanize the manners of a nation and the spirit of government.

—*Jeremy Bentham.*

Setting aside the palpable injustice and the certain inefficiency of the bill, are there not capital punishments sufficient in your statutes? Is there not blood enough upon your penal code, that more must be poured forth to ascend to heaven and testify against you? How will you carry the bill into effect?

But suppose it pass; suppose one of these men, as I have seen them—meager with famine, sullen with despair, careless of a life which your lordships are perhaps about to value at something less than the price of a stocking-frame—suppose this man surrounded by the children for whom he is unable to procure bread at the hazard of his existence, about to be torn forever from a family which he lately supported in peaceful industry, and which it is not his fault that he can no longer so support, suppose this man, and there are ten thousand such from whom you may select your victims, dragged into court, to be tried for this new offense, by this new law; still, there are two things wanting to convict and condemn him; and these are, in my opinion, Twelve Butchers for a Jury, and a Jeffries for a Judge.

—*Lord Byron,* in his first speech in House of Lords, on bill to make the breaking of frame work a capital crime.

Christianity says you must abolish the punishment of death, or you must abolish your religion. You must destroy the New Testament, or the New Testament will destroy sanguinary laws; for, powerful as are the obligations of all members of society to assist in the administration of justice, they will among Christians be overpowered by tenderness for life. The moral and religious sentiment of the community will nullify the law. Ignorance, knowing no law but force, will not be approved by intelligence, which knows no law but reason, Mohammedanism may approve cruelty, but it will not

be approved by Christianity. Our religion or our law must be altered; they can not exist together. You can not advance with the New Testament in one hand and a sanguinary code in the other.

—*Basil Montagu.*

Upon the practicable abolition of the punishment of death, totally and without reserve, my views coincide with the advocates of the measure.

—*O'Connell.*

But I must first make one other allusion, with reference to the capital convictions in England and France, of which latter kingdom the population is much the greater, by quoting a document, showing a comparative statement of these important facts, which I have no doubt will be listened to with attention, and excite much surprise. In 1825 the number of persons committed for capital offenses in England and Wales (for the return does not include Ireland) was 1,036. In France, in the same year, the number of persons committed for capital offenses was 134. In 1826 in England, 1,203; in France, 139. In 1827 the number was larger here than at any other period, being 1,529; in France, 106. In 1828, in England, 1,165; in France, 111. In 1829, in England, 1,385; in France, 83. Your lordships will see the extremely small proportions of capital convictions in France, where the population is so much larger, as compared with those which have taken place in England and Wales only, and I hold that this fact alone is a sufficient proof, if any were wanting, of the greater severity, but at the same time of the greater inefficiency of our criminal code to prevent the increase of crime.

—*The Duke of Sussex.*

In the year preceding the alteration of that law (by repealing the punishment of death for privately stealing from the person) the convictions, compared with the prosecutions, were in the proportion of 1 to 15; and in the year following the passing of that act, they were in the proportion of 10 to 15, facts which, instead of proving that the crime has increased, only show the increased efficacy of the law, in bringing home the crime to those who are really guilty of it.

—*Earl Grey.*

Let him who advocates the taking the life of an aggressor first show that all other means of safety are vain, then he will have advanced an argument in favor of taking life, which will not indeed be conclusive, but which will approach nearer to conclusiveness than any that has yet been adduced.

—*Dymond.*

The superior humanity and superior wisdom of the present age had given a merciful character to the punishments awarded for some species of offense; as it was too frequently found that the extreme severity of the laws, as administered heretofore, operated more as a preventive to prosecutions than as a preventive to crime.

—*Chief Justice Denman.*

"*Resolved*, That the efficacy of criminal laws depends less upon the severity of punishment than the certainty of infliction; and that laws which can not be carried into execution without shocking the feelings of society and exciting symyathy for the offender are contrary to reason, inconsistent with morality, and opposed to the interests of justice."

—*Thomas Barrett Lennard, M. P.*, seconded by Joseph Hume, M. P., meeting at Exeter Hall, June 2, 1832.

Resolved, That the excessive severity of the law operates to the total impunity of a great proportion of offenders by deterring humane persons from prosecuting, and by holding out a temptation to jurors to violate their oaths rather than be accessory to judicial murder; while almost all the capital punishments now on the statute book are innovations upon the temperate and wholesome principles of the ancient common law of the land, which had ever been admired for its humanity and wisdom by the greatest legal authorities, and is coeval with the noblest and best principles of the English Constitution."

—*Daniel O'Connell, M. P.*, seconded by J. Sydney Taylor, A. M., meeting at Exeter Hall, June 2, 1832.

It is most discreditable to any man intrusted with power, when the governed turn around upon their governors and say, your laws are so cruel or so foolish that we can not and will not act upon them.

We have no right to shed a criminal's blood because he has shed the blood of another man. We have no right in reason to do this, we have no warrant from religion. It is doubtless a great evil for a man to be murdered, but that, in reason, is no argument for inflicting death upon the murderer.

—*Lord Brougham.*

I do not think the punishment of death is necessary to the security and well-being of society; and I believe its total abolition would not tend to increase those crimes which it is now supposed by many to prevent. The security and well-being of society do not depend upon the severity of punishments. Barbarism in the law promotes barbarism among those subject to the law; and acts of cruelty under the law become examples of similar acts done contrary to law. The real security for human life is found in a reverence for it. If the law regarded it as inviolable, then the people would begin also so to regard it. A deep reverence for human life is worth more than a thousand executions in the prevention of murder, and is, in fact, the great security for human life.

The law of capital punishment, while pretending to support this reverence, does, in fact, tend to destroy it. If the death penalty is of any force in any case to deter from crime, it is of much more force in lessening our chief security against it, for it proclaims the fact that kings, parliament, judges and juries may determine when and how men may be put to death by violence, and familiarity with this idea can not strengthen the reverence for human life. To put men to death for crimes, civil or political, is to give proof of weakness rather than strength, and of barbarism rather than Christian civilization. If the United States could get rid of the gallows it would not stand long here. One by one we "Americanize" our institutions; and I hope in all that is good we may not be unwilling to follow you.

—*John Bright.*

My noble friend [Lord Holland] who brought forward this bill, aptly observed that the very gist of the bill is to accommodate the law of the land to the practice of our courts. And what is this but a compliment to those principles of human nature, which, in spite of the decrepitude of our laws, and the blindness and inattention of the community, instinctively operate in our courts of justice? It is a compliment to that experience, which has even, by indirect means, anticipated a reform which must eventually take place, and to that lenity which Parliament should sanction and legitimatize.

It has always appeared to me that, although the prevention of crimes be the grand object of all penal laws, yet, to some cases, capital punishment must, from the very nature of things, be utterly inapplicable. I am convinced that, when the offense and the penalty are greatly disproportionate, the enactment must be either nugatory, inasmuch as human nature will revolt from the application; or, if carried into execution, it must alienate the affections, pervert the judgment, and blunt the sensibility of the people. It must, in such cases, either excite in them a feeling of horror and of disgust against their barbarous legislators, or it must tend to confound all those moral sentiments, all those just discriminations between the degrees of crime, which nature and education and experience impress upon the heart of every rational being.

From observing the impaired effect which the punishment of death receives, if applied and enforced against minor offenses, and from observing the still greater injury which the impunity of offenders and the uncertainty of punishment occasion to the community, where such punishment is ordained and not enforced, I can not help drawing the inference that it will be much more beneficial to society as well as more conformable to justice, to apply to minor offenses some inferior punishment which may be rigorously enforced. And such being my sentiments, I do most heartily thank that excellent and great man (Sir Samuel Romilly), by whom the present measure has been introduced into Parliament, for the boon he has hereby endeavored to force on the country; and of that honorable and learned gentleman I can not refrain from speaking in terms which I am convinced he merits, although my testimony, I am aware, can add but little to the estimation in which his character is held by the community; and I can but express my share in these sentiments of admiration which he has won from all good men by his unceasing exertions for the public benefit.

—*Lord Grenville.*

It appears, then, that of the three grounds on which capital punishment for murder is defended two are entirely untenable, while on the third, which is that on which only there is room for serious or lengthened discussion, the balance is in favor of the advocates of change. Those to whom the process by which a conclusion opposed to the penal destruction of life has thus been arrived at is unsatisfactory will, it is hoped, admit that the question has at least been presented in such a form as that the precise link in the chain of reasoning which is supposed to be defective may easily be pointed out and the precise bearing upon the general issue of any error which has been committed readily perceived. But if the argument is unsound let it be confuted. The subject is one of serious and terrible moment, and indifference or inaction with regard to it on the part of those who possess any means of influencing public opinion is only justified by a carefully formed conviction that the system which sends murderers to the gallows will satisfy the most searching test of philosophical examination.

—*Lord Hobart.*

For my own part I do not doubt for a moment either the right of a community to inflict the punishment of death, or the expediency of exercising that right in certain states of society. But when I turn from that abstract right and that abstract expediency to our own state of society; when I consider how difficult it is for any judge to separate the case which requires inflexible justice from that which admits the force of mitigating circumstances, how invidious the task of the Secretary of State in dispensing the mercy of the crown, how critical the comments made by the public, how soon the object of general horror becomes the theme of sympathy and pity, how narrow and how limited the examples given by this condign and awful punishment, how brutal the scene of the execution, I come to the conclusion that nothing would be lost to justice, nothing lost in the preservation of innocent life, if the punishment of death were altogether abolished.

—*Earl Russell*, Prime Minister of England.

In a system that has been found to be inadequate to its end at all times, and under all circumstances, there must be some radical error, to the discovery of which, as indispensable to any attempt at improvement, our first efforts must be directed. Thus we shall be enabled to form an improved theory, and bring under discussion the probability of its successful operation.

As the opinions that are formed of it as a principle, or of its nature and effects in practice, for a principle it can hardly be called, necessarily vary from time to time, according to the increase of information, it is evident that what is called punishment at one time, may at another have nothing painful in its infliction; and those punishments that are adapted to a particular end in one state of society, may at a later period be altogether unsuitable. At present our code inflicts such punishments as are acknowledged by many to be neither just nor expedient; and laws are enforced that tend only to blunt the feelings of humanity, whilst they fail to reform the criminal or to prevent the commission of crime.

The defects we have endeavored to point out may be summed up as follows:

First. The principle upon which all existing systems of criminal law is founded is not well understood or defined, and in point of fact is not an ultimate principle.

Second. It is variable in its application from time to time, and under different circumstances.

Third. It increases the difficulty attending the administration of the laws and the repression of crime, in proportion to the advance of population, and the consequent complexity of human interests.

It is not upon the criminal alone that an improper effect is produced by the present system; every instance of punishment produces a reaction upon the minds of his associates, and upon society at large, the consequences of which rarely present themselves to the legislator who makes the law, to the judge who administers, or to the officer who executes it.

—*Thomas Jevons.*

The principal objects of punishment are, to benefit the injurer by correction, the injured by redress, and society in general by preventing one of its members, through the infliction of pain and privations, from doing injury, and others through the terror of example, from meditating it.

Does capital punishment, then, promote public utility by the example which it holds out?

This it assuredly does not, if instead of inspiring fear, it inspires rather pity for him who suffers and horror toward him who inflicts it.

The aversion inspired by a criminal, whatever inferences may be attempted to be drawn from it, does not necessarily sanction the punishment of death.

But all ages and nations have sanctioned capital punishment; and this extended and universal experience proves at once both its justice and its necessity. "The history of mankind," might I not answer with Beccaria, "is an immense sea of errors in which a few obscure truths are here and there observed to float," and, "the force of example and of prescription vanishes, when opposed to truth." "On the contrary, if I find some societies, though few in number, who even for a very short time have abstained from the punishment of death, I may refer to them with propriety. It is the fate of great truths, to gleam only like a flash of lightning amidst the dark clouds, in which error has enveloped the universe."

Cease, then, friends of law and justice, cease to believe that blood is necessary to deter men or to diminish crimes. Experience does not prove that so much rigor produces any salutary effect; public utility, far from giving it any sanction, sets herself against it, and it is equally reprobated by the voice of nature and of humanity.

—*Pastoret.*

I shall ask for the abolition of capital punishments until I have the infallibility of human judgment demonstrated to me.

—*Lafayette.*

I am of opinion that hanging is an advantage only to the executioner, who is paid for putting men to death; if punishments are intended for the benefit of society, they should be useful to society.

—*Montaigne.*

Gentlemen of the jury, there is, in what may be called the Old European code, a law that for more than a century all philosophers, all thinking men, all true statesmen, have desired to efface from the remarkable book of universal legislation; a law that Beccaria had declared impious, and that Franklin has declared abominable, without any prosecution having been brought against either Beccaria or Franklin; a law that particularly weighing upon that portion of the people still oppressed by ignorance and misery is odious to democracy, but that is not less repelled by intelligent conservatives; a law of which Louis Phillippe—whom I shall never name without the respect due to age, to misfortune and to a tomb in exile—a law of which Louis Philippe said:

"I have detested it all my life;" a law against which M. de Broglie has written, against which M. Guizot has written; a law the abrogation of which the Chamber of Deputies demanded by acclamation twenty years ago, in the month of October, 1830, and that at the same period the half savage Parliament of Otaheite banished from its codes; a law that the assembly of Frankfort abolished threo years ago, and that was maintained in the constitution of 1848 only with the most painful indecision and the most poignant repugnance; a law that at the hour when I am speaking is under the pressure of two propositions of abolition on the legislative table; a law, finally, of which Tuscany will have naught, of which Russia will have naught, and of which it is time that France should wish naught; that law before which the human conscience shrinks with an anxiety every day more profound; it is the death penalty.

Well, gentlemen, it is that law that causes to-day this trial; it is our adversary. I am sorry for the honorable advocate-general, but I perceive it behind him.

I will confess that for twenty years I thought—and I who speak have so stated in pages that I could read to you—I thought, my God! with M. Leon Fancher, who, in 1836, wrote in the Revue de Paris thus—I quote: "The scaffold no longer appears in public places, but at rare intervals, and as a spectacle that justice is ashamed to exhibit." I thought, I say, that the guillotine, since we must call it by its name, was beginning to do justice to itself; that it felt itself rebuked, and had resolved accordingly. It had renounced the Place de Greve; the open sun, the crowd; it was no longer cried in the streets, it was no longer announced as a spectacle; it had brought itself to making its examples as secretly as possible, away from the light of day, Barrier Saint Jacques in a deserted place, before no one. It seemed to me that it began to court concealment, and I congratulated it upon that sentiment of shame.

Well, gentlemen, I deceived myself. M. Leon Fancher deceived himself. It has recovered from that false shame. The guillotine feels that it is a social institution, as the phrase goes nowadays. And, who knows? Perhaps it dreams, too, of its restoration.

The Barrier Saint Jacques is a fall from its prerogative. Perhaps we shall see it some day reappear upon the Place de Greve at midday, in the midst of the multitudes, with its cortege of executioners, of gendarmes, and of public criers, beneath even the windows of the Hotel de Ville, from which one day, the 24th of February, the people had the insolence to assail and mutilate it.

Meanwhile it reasserts itself. It is conscious that society, shaken, needs for recuperation to return to its old traditions, and it is an old tradition. It protests against those declaiming demagogues who are called Beccaria, Vico, Filangieri, Montesquieu, Turgot, Franklin, who are called Louis Philippe, who are called Broglie and Quizot, and who dare to think and to say that a machine to cut off heads is out of place in a society whose book is the Bible.

What! By dint of encroachment upon good sense, upon reason, upon freedom of thought, upon natural right, it has come to this, that they demand of us not only a material respect—for that is not contested, we owe it and we pay it—but moral respect for those penalties that open abysses in our consciences, that blanch the cheeks of all who think of them, that religion abhors *abhorret a sanguine;* for those penalties that dare to be irreparable knowing that they may be blind; for those penalties that dip the finger in human blood to write the commandment: "Thou shalt not kill;" for those impious penalties that make us doubt of humanity when they strike the guilty, and that make us doubt of God when they strike the innocent! No! No! No! We have not come to that! No!

For—and since I am led to it, surely I must say it to you, gentlemen of the jury, and you will understand how deep must have been my emotion—the real culprit in this matter, if there be a culprit, is not my son; it is I!

The real culprit, I insist upon it, is I—I, who for twenty-five years have combated irreparable penalties in all their forms; I, who for twenty-five years have defended upon every occasion the inviolability of human life.

That crime—the defense of the inviolability of human life—I committed it long before my son, much more than my son. I accuse myself, Mr. Advocate-General! I have committed it with all the aggravating circumstances, with premeditation, with tenacity, with recidivation.

Yes, I declare it, that remnant of savage penalties, that old and unintelligible law of talion, that law of blood for blood, I have combatted all my life—all my life, gentlemen of the jury; and so long as there shall remain a breath in my bosom I will combat it, with all my efforts as a writer, with all my acts and all my votes as a legislator, I declare it [M. Victor Hugo extended his arm and pointed to the image of Christ at the end of the court room above the tribunal] before that victim of the death penalty who is there, who looks upon us, and who hears us!

I swear it before that gibbet where, two thousand years ago, for the eternal instruction of the generation, the human law nailed the law divine!

What my son wrote he wrote I repeat, because I inspired him with it from his infancy; because at the same time that he is my son in the flesh he is my son in the spirit, because he wishes to continue the traditions of his father. To continue the traditions of his father! That is a strange fault, and I wonder that for it there should be prosecution.

Gentlemen, I confess that the accusation in the presence of which we are bewilders me.

What! A law may be pernicious, may give to the populace immoral, dangerous, degrading, ferocious exhibitions, may tend to render a people cruel; at certain times may have horrible effects, and the horrible effects produced by that law we shall be forbidden to signalize. And that would be called to fail of respect to the law. And one must account for it before a tribunal of justice. And there must be so much fine and so much imprisonment. Well, then, 'tis well. Close the temples of justice, close the schools; progress is no longer possible. Let us call ourselves Mogul or Thibet; we are no longer a civilized nation. Yes, it will be soonest done. Say that we are in Asia; that there was once a country called France, but that country exists no more, and that you have replaced it by something that is no longer a monarchy, I admit, but that is certainly not a republic.

But let us apply the phraseology to the facts; let us bring it nearer to the realities.

Gentlemen of the jury, in Spain the inquisition was once the law. Well, it must be told that there is lacking respect for the inquisition. In France, torture was once the law. Well, it must be told again, there is lacking respect for the torture. Cutting off the hand was once the law; there is lacking * * * I am lacking respect for the cleaver! Branding with the hot iron was once the law; there is lacking respect for the hot iron. The guillotine is the law. Well, it is true, I admit, there is lacking respect for the guillotine.

Do you know why, Mr. Advocate-General? I will tell you. It is because we would throw the guillotine into that gulf of execration into which we have already fallen, to the applause of the human race, the hot iron, the cutting off of hands, the torture of the inquisition. It is because we would banish from the august and luminous sanctuary of justice that sinister object that is enough to fill it with horror and darkness, the executioner. Ah! and because we wish that we would convulse society! Ah, yes, it is true, we are very dangerous men. We wish to suppress the guillotine. It is monstrous!

Gentlemen of the jury, you are sovereign citizens of a free nation, and, without ignoring the nature of this trial, it is a privilege and a duty to speak to you as men of political existence. Well, reflect upon it, and since we are passing revolutionary times draw your inference from what I shall say. If Louis XVI had abolished the death penalty as he abolished the torture his head would not have fallen, '93 would have been disarmed of the *couperet*, there would have been one bloody page the less in history, the fatal date of January 28 would not have been.

For who in the face of public conscience, in the face of the civilized world, who would have dared to rebuild the scaffold for the king, for the man of whom it could be said, it was he that overthrew it?

The editor of Evenmentis is accused of having lacked respect for the laws; of having lacked respect for the death penalty. Gentlemen, let us exalt ourselves a little beyond a controversable text; let us exalt ourselves to that which is the foundation of all legislation, to that tribunal in the heart of man. When Servan—who was advocate-general, nevertheless—when Servan fixed upon the criminal laws of his time this memorable brand, "Our penal laws open all the issues for the accusation, and close nearly all for the accused;" when Voltaire thus characterized the judges of Calais, "Oh! do not speak to me of those judges, half monkeys and half tigers;" when Chateaubriand, in the Conservateur, called the law of double vote a foolish and guilty law; when Roger Collard openly, in the Chamber of Deputies, in allusion to I forget what law of censure, uttered this celebrated cry, "If you pass that law I swear to disobey it;" when those legislators, when those magistrates, when those great philosophers, when those mighty spirits, when those men, illustrious and venerable, spoke thus, what did they? Did they lack respect for the local and existing law? It is possible. The advocate-general says so; I am ignorant of the fact. But this I know—that they were the religious echo of the law of laws, the universal conscience. Did they offend justice, the justice of their day, the transitory and fallible justice? I know not; but this I know, that they proclaimed the justice that is eternal.

Look you, Mr. Advocate-General, I say it without bitterness, you defend not a good cause. In vain your efforts; you wage an unequal conflict against the spirit of civilization, against a softened sentiment, against progress. You have against you the innate resistance of the heart of man; you have against you all the principles beneath whose influence France speeds on and makes the world to speed; the inviolability of human life, fraternity for the ignorant classes, the dogma of amelioration that takes the place of the dogma of vengeance! You have against you all that enlightens reason, all that vibrates in the soul, philosophy as well as religion; on one side Voltaire, on the other Jesus Christ! In vain your efforts; that appalling service that the scaffold pretends to render to society, society at its heart holds in horror and repudiates. In vain your efforts, in vain the efforts of the partisans of capital punishment; and you see that I do not confound society with them. In vain the efforts of the partisans of capital punishment; they can not inspire with innocence the old penalty of talion; they can not cleanse those hideous texts upon which has flowed so many ages the blood of human beings slaughtered upon the scaffold.

—*Victor Hugo*, before the court of assizes in Paris, June 10, 1851.

Nature has given man a right to use force, when it is necessary for his defense and the preservation of his rights, and this principle is generally acknowledged; reason demonstrates it, and nature herself has engraven it on the heart. Most men will naturally defend themselves and their possessions; happy if they were as well instructed to keep within the just limits which nature has prescribed to a right granted only through necessity.

If we inquire into the cause of human corruptions we shall find that they proceed from the impunity of crimes, and not from the moderation of punishments. By the exacting of severe penalties the springs of government are weakened, the imagination grows accustomed to the severe as well as to the milder punishments, and as the fear of the latter diminishes they are soon obliged, in every case to have resource to the former. Robberies on the highway had grown common in some countries. In order to remedy this evil they invented the punishment of breaking upon the wheel, the terror of which put a stop for awhile to this mischievous practice. But soon after robberies on the highway were become as common as ever.

—*Vattel.*

It is undoubtedly both the right and duty of society to punish every action which can disturb the public system of justice; it can even—if the offender has, by a relapse shown himself incorrigible, or if his offense is of a nature to endanger the public safety—render him incapable of again injuring the other members of the community. But does this right extend farther than to the loss of liberty by which the object is gained? Every punishment which goes beyond the limit of necessity enters the jurisdiction of despotism and revenge.

—*Oscar*, Crown Prince of Sweden.

The virtues are all parts of a circle; whatever is humane, is wise; whatever is wise, is just; and whatever is wise, just and humane, will be found to be the true interest of States, whether criminals or foreign enemies be the subject of their legislation.

I suspect the attachment to death as a punishment for murder, in minds otherwise enlightened on the subject of capital punishment, arises from a false interpretation of a passage in the Old Testament. And that is "He that sheds the blood of man by man shall his blood be shed." This has been supposed to imply that blood could be only expiated by blood. But I am disposed to believe, with a late commentator on this text of Scripture, that it is rather a prediction than a law. The language of it is, simply, that such is the folly and depravity of men that murder in every age shall beget murder.

Laws which inflict death for murder are, in my opinion, as unchristian as those which justify or tolerate revenge; for the obligation of Christianity upon individuals, to promote repentance, to forgive injuries, and to discharge the duties of universal benevolence, is equally binding upon States.

—*Dr. Franklin.*

One would think that in a nation jealous of its liberty these important truths would never be overlooked, and that the infliction of death, the highest act of power that man exercises over man, would seldom be prescribed where its necessity was doubtful. But on no subject has government, in different parts of the world, discovered more indolence and inattention than in the construction or reform of the penal code. Legislators feel themselves elevated above the commission of crimes which the laws prescribe, and they have too little personal interest in any system of punishments to be critically exact in restraining its severity. The degraded class of men, who are the victims of the laws, are thrown at a distance which

obscures their sufferings and blunts the sensibilities of the legislator. Hence sanguinary punishments, contrived in despotic and barbarous ages, have been continued when the progress of freedom, science, and morals, render them unnecessary and mischievous.

It being established that the only object of human punishment is the prevention of crimes, it necessarily follows that when a criminal is put to death it is not to revenge the wrongs of society or of any individual; "it is not to recall past time, and to undo what is already done," but merely to prevent the offender from repeating the crime, and to deter others from its commission by the terror of the punishment. If, therefore, these two objects can be attained by any penalty short of death, to take away life in such a case seems to be an unauthorized act of power.

That the first of these may be accomplished by perpetual imprisonment, unless the unsettled state, the weakness, or poverty of a government prevent it, admits of little dispute. It is not only as effectual as death, but is attended with these advantages, that reparation may sometimes be made to the party injured—that punishment may follow quick upon the heels of the offense, without violating the sentiments of humanity or religion—and if, in a course of years, the offender becomes humbled and reformed, society, instead of losing, gains a citizen.

These circumstances make it doubtful whether capital punishments are beneficial in any cases, except such as exclude the hopes of pardon. It is the universal opinion of the best writers on this subject, and many of them are among the most enlightened men of Europe, that the imagination is soon accustomed to overlook or despise the degree of the penalty, and that the certainty of it is the only effectual restraint. They contend that capital punishments are prejudicial to society, from the example of barbarity they *furnish, and that they multiply crimes instead of preventing them.*

In support of this opinion they appeal to the experience of all ages. They affirm, it has been proved in many instances, that the increase of punishment, though it may suddenly check, does not, in the end, diminish the number of offenders. * * * They appeal to the experience of modern Europe, to the feeble operation of the increased severity against robbers and deserters in France, and to the situation of England, where, amidst a multitude of sanguinary and atrocious laws, the number of crimes is greater than in any part of Europe. They cite the example of Russia, where the introduction of a milder system has promoted civilization, and been productive of the happiest effects; and they applaud the bolder policy of Leopold, which has actually lessened the number of crimes in Tuscany, by the total abolition of all capital punishments.

This instructive fact is not only authenticated by discerning travelers, but it is announced by the celebrated edict of the grand duke, issued so lately as 1786. To these might be added the example of Sweden and Denmark; and indeed the more closely we examine the effects of the different criminal codes in Europe, the more proofs we shall find to confirm this great truth, that the source of all human corruption lies in the impunity of the criminal, not in the moderation of punishment.

—*William Bradford*, 1795.

To prevent crimes is the noblest end and aim of criminal jurisprudence; to punish them is one of the means necessary for the accomplishment of this noble end and aim. The impunity of an offender encourages him to repeat his offenses. The witnesses of his impunity are tempted to become his disciples in guilt. These considerations form the strongest—some view them as the sole—argument for the infliction of punishments by human laws.

There are in punishments three qualities which render them fit preventatives of crime: The first is their moderation; the second is their speediness; the third is their certainty.

We are told by some writers that the number of crimes is unquestionably diminished by the severity of punishments. If we inspect the greatest part of the criminal codes, their unwieldy bulk and their ensanguined hue will force us to acknowledge that this opinion may plead in its favor a very high antiquity and a very extensive reception. On accurate and unbiased examination, however, it will appear to be an opinion unfounded and pernicious, inconsistent with the principles of our nature and by a necessary consequence with those of wise and good government. So far as any sentiment of generous sympathy is suffered by a merciless code to remain among the citizens, their abhorrence of crimes is, by the barbarous exhibitions of human agony, sunk in their commiseration of criminals.

These barbarous exhibitions are productive of another bad effect—a latent and gradual, but a powerful, because a natural aversion to the laws. Can laws which are a natural and a just object of aversion receive a cheerful obedience or secure a regular and uniform execution? The expectation is forbidden by some of the strongest principles of the human frame. Such laws, while they excite the compassion of society for those who suffer, rouse its indignation against those who are active in the steps preparatory to their sufferings.

When, on the other hand, punishments are moderate and mild, every one will, from a sense of interest and duty, take his proper part in detecting, in exposing, in trying, and in passing sentence on crimes. The consequence will be, that criminals will seldom elude the vigilance or baffle the energy of public justice. True it is that on some emergencies excesses of a temporary nature may receive a sudden check from rigorous penalties; but their continuance and their frequency introduce and diffuse a hardened insensibility among the citizens; and this insensibility, in its turn, gives occasion or pretense to the farther extension and multiplication of those penalties. Thus one degree of severity opens and smooths the way for another, till, at length, under the specious appearance of necessary justice, a system of cruelty is established by law. Such a system is calculated to eradicate all the manly sentiments of the soul, and to substitute in their place dispositions of the most depraved and degrading kind.

But the certainty of punishments is that quality which is of the greatest importance, in order to constitute them fit preventives of crimes. This quality is, in its operation, most merciful as well as most powerful. When a criminal determines on the commission of crime he is not so much influenced by the lenity of the punishment as by the expectation that, in some way or other, he may be fortunate enough to avoid it. This is particularly the case with him when this expectation is cherished by examples or by experience of impunity.

It was the saying of Solon that he had completed his system of laws by the combined energy of justice and strength. By this expression he meant to denote that laws of themselves would be of very little service unless they were enforced by a faithful and an effectual execution of them. The strict execution of every criminal law is the dictate of humanity as well as of wisdom.

—*Judge Wilson*, charge to grand jury, United States circuit court, Easton, Md., November 7, 1791.

Gladly would I coöperate with any society whose object should be to promote the abolition of every form by which the life of man can be voluntarily taken by his fellow-creature, man. I do heartily wish and pray for the success of your efforts to promote the abolition of capital punishment.

—*John Quincy Adams.*

The subject of crime and puishment has for several years received much attention, both in Europe and America; and it is generally admitted, that discoveries and improvements of great practical importance have been made in this country.

A grave question has been started, whether it would be safe to abolish altogether the punishment of death. An increasing tenderness for human life is one of the most decided characteristics of the civilization of the day, and should in every proper way be cherished. Whether it can, with safety to the community, be carried so far as to permit the punishment of death to be entirely dispensed with, is a question not yet decided by philanthropists and legislators. It may deserve your consideration, whether this interesting question can not be brought to the test of the sure teacher, experience. An experiment, instituted and pursured for a sufficient length of time, might settle it on the side of mercy. Such a decision would be a matter of cordial congratulation.

Should a contrary result ensue, it would probably reconcile the public mind to the continued infliction of capital punishment as a necessary evil. Such a consequence is highly to be desired, if the provisions of the law are finally to remain, in substance, what they are at present. The pardoning power has been intrusted to the chief magistrate; but this power was not designed to be one of making or repealing law. A state of things, which deprives the executive of the support of public sentiment, in the conscientious discharge of his most painful duty, is much to be deplored.

—*Governor Edward Everett.*

There is no power more flattering to ambition, because there is none of a higher nature, than that of disposing at will of the lives of our fellow-creatures. Accordingly no power has been more frequently or more extensively assumed, exercised, and abused. When we review the past, history seems to be written in letters of blood. Until within a very short period, the trade of government has been butchery in mases, varied by butchery in detail. The whole record is a catalogue of crimes, committed for the most part under legal forms, and the pretense of public good. In church and state it is the same; this power was not given to rust unused.

That such scenes are no longer to be witnessed must be attributed to changes similar in principle and tendency to the total abolition of capital punishment. It is because the powers of governments and of the few have been greatly abridged and restricted, and particularly the very power in question. It is because the rights of the many, and of individuals have been better ascertained and secured, and especially the right of life. It is because the standard of morality has been raised, and the occurrence of the greatest crimes prevented, by restoring in some good degree, the sanctity of human life, not so much in the letter of the law as in public opinion, which decides the spirit of the law.

Let us complete this blessed reformation by pushing onward in the same direction which experience has already sanctioned; but let us not vainly imagine that the *smallest portion of a power, unnecessary, not clearly to be* justified, terrible in its most discreet and sparing use, but capable of shrouding the whole land in mourning by a single abuse, may be safely trusted to any fallible government, when by looking back but a century or two we may see all christendom groaning under its abuse, the soil red with carnage, and a never ending cry of innocent blood going up to heaven from thousands and tens of thousands of the wisest and the best, expiating under the hand of the executioner those virtues which tyrants hate and fear.

—*Robert Rantoul, jr.*

Fellow-citizens, your invitation to me to attend the anniversary meetings of the national and of the New York State societies for the abolition of capital punishment is duly received. Under circumstances which would admit of my attendance, it would give me great pleasure to meet you and the many humane citizens who will be in your city on that noble occasion. My heart is with you.

—*Vice-President Richard M. Johnson.*

The principal, and in truth the only plausible ground, from which advocates for capital punishment endeavor to derive a right to inflict them, is the authority of the sacred Scriptures. But as the laws of Moses were merely local in their operation, it is vain to attempt to justify capital punishment under their authority.

—*Elisha Williams.*

Time and reflection have confirmed the opinion cherished by me for many years, that in our country at least no just cause exists for the infliction of death punishment, and that its abolishment will be hereafter looked upon as evidence of the moral character of nations, as they successively shall blot it from their criminal codes.

—*Vice-President Dallas.*

I have been about thirty years in the ministry, and I have never yet discovered that the founder of Christianity has delegated to man any right to take away the life of his fellow-man.

—*Father Mathew.*

At the present day the infliction of capital punishment is mainly confined to murder; and it is on that account that the chief difficulty is presented against its abolition. It will not, however, take many words to show that if capital punishment is unsuitable as a remedy for other descriptions of crime, it is, above all, the most unfit to be applied as a corrective in the case of homicide.

—*M. B. Sampson.*

I have considered the subject (capital punishment) long, patiently, and carefully, on Bible principles, and I have deliberately adopted the opinion that the death penalty ought to be abolished.

—*Rev. James Murphy.*

The difficulty of procuring capital convictions is increasing; and it is confidently anticipated that capital punishments must cease in this country, if for no other reason, because they can not be carried into effect.

—*Prof. T. C. Upham.*

The sanguinary complexion of our criminal code has long been a subject of complaint. It is certainly a matter of serious concern that capital convictions are so frequent—so little attention paid to a due proportion of punishment—I have confidence in your wisdom and humanity.

When a law is treated with manifest disrespect it should either be repealed or better means made use of to enforce it.

The wisdom of substituting imprisonment instead of death has been in a great measure realized.

—*Governor George Clinton.*

All institutions of government are imperfect; subject to the law of improvement. Despotism says, "No, because they are old." A different principle prevails in America. As the intelligence of the people increases the power of the government may be abridged.

The high reputations of our prisons has become impaired by the complaints of its inhumanity. In their management moral influence instead of severe corporal punishment should be employed.

Discipline should be tempered with kindness.

Every philanthropist clings to the hope that the supremacy of the laws will be maintained without exacting the sacrifice of life.

—*Governor Seward.*

The experience of mankind has fully proven that a largely bloody code of laws has not been the most effectual to prevent crime, while the growing objections to capital punishment, and the positive refusal of jurors to convict in many instances warn us that some other remedy ought to be tried.

—*Cassius M. Clay.*

The state teaches men to kill. If you destroy the gallows you carry one of the strong outposts of the devil.

—*Theodore Parker.*

It affords me much pleasure to observe that my own views on capital punishment are of the theme of the best men of our nation. I have in every Legislature of which I have been a member pressed the subject, and used every effort, publicly and privately, to redeem my country from this barbarous sin. As an advocate I have never received a fee for the prosecution of one capitally charged, and without reward I have defended almost to the utter prostration of my health nine-tenths of the capital cases of my circuit. As a judge, I have condemned a convict to death, only to besiege the executive chamber, several hundred miles from the court, to obtain his pardon. No vanity prompts this statement. No discouragement, no scoff nor scorn, so help me God, shall turn me back. If there is a God in Justice, so also is there a God in Mercy.

—*Judge Benj. F. Porter*, professor of law, University of Alabama.

SENATE CHAMBER, *February 12, 1855.*

DEAR SIR: In response to your inquiry, I beg leave to say that I am happy in an opportunity to bear my testimony against capital punishment. My instincts were ever against it, and from the time when, while yet a student of law, I read the classical report to the Legislature of Louisiana by that illustrious jurist, Edward Livingston, I have been constantly glad to find my instincts confirmed by reason. Nothing of argument or experience since has in any respect shaken the original and perpetual repugnance with which I have regarded it. Punishment is justly inflicted by human power, with a twofold purpose: first, for the protection of society, and secondly, for the reformation of the offender. Now, it seems to me clear that, in our age and country, the taking of human life is not necessary to the protection of society, while it reduces the period of reformation to a narrow, fleeting span. If not necessary, it can not come within the province of self-defense, and is unjustifiable.

It is sad to believe that much of the prejudice in favor of the gallows may be traced to three discreditable sources: first, the spirit of vengeance, which surely does not properly belong to man; secondly, unworthy timidity, as if a powerful civilized community would be in peril, if life were not sometimes taken by the Government; and, thirdly, blind obedience to the traditions of another age. But rack, thumbscrew, wheel, iron crown, bed of steel, and every instrument of barbarous torture, now rejected with horror, were once upheld by the same spirit of vengeance, the same timidity, and the same tradition of another age.

I trust that the time is at hand when Massachusetts, turning from the vindictive gallows, will provide a comprehensive system of punishment, which by just penalties and privations shall deter from guilt, and by just benevolence and care shall promote the reformation of its unhappy subjects. Then, and not till then, will our beloved Commonwealth imitate the Divine justice, which "desireth not the death of a sinner, but rather that he may turn from his wickedness and live."

Believe me, dear sir, very faithfully yours,

CHARLES SUMNER.

TO THE CHAIRMAN OF THE COMMITTEE.

The punishment of offenders is perhaps the gravest responsibility of civilized society, and in modern times the utmost attention of the sincerest thinkers and observers has been bestowed upon the philosophy and the phenomena of crime. In order that the laws may be both just and humane, it is necessary that detection and punishment shall be speedy and sure, and also that prevention and reform shall be secured in the largest measure. The progress of civilization steadily diminishes crimes of violence, and also steadily discourages punishment of a violent, cruel, or sanguinary character. The infliction of the penalty of death as a punishment for crime will one day be discontinued among civilized men.

Already philosophers, jurists, and statesmen in large numbers, possessed of the most comprehensive experience in human affairs, and clothed with the highest authority, have pronounced against it; and it will initiate a new era in the progress of Massachusetts when she shall conform her penal legislation to the most enlightened principles of criminal jurisprudence, and consult her truest safety by its abolition. Whenever that event shall occur, whether as a private citizen, or in a public capacity, I shall respect the intelligence and assent to the policy by which it will be accomplished.

—*John A. Andrew*, to the Legislature of Massachusetts, 1861.

I object to capital punishment because I do not think its character satisfactory or its results encouraging. I regard it in the first place as an inefficient punishment. I mean by this that it is a penalty uncertain of infliction, and yet certainty of punishment is a greater preventive of evil than severity of punishment. This is so universally acknowledged that it needs no discussion. Why is the penalty uncertain of infliction? Simply because the tribunal that tries all these crimes is a human tribunal; and the laws of the Old Testament may be as severe and imperative as possible, but the human heart is kinder than all such enactments and will be pitiful in all capital cases—in all trials where a man's life is in peril.

The history of the world shows that judges, juries, and witnesses have shrunk from being participants in verdicts of guilty where death may result; and we know in the history of our own State of one conviction at least, which was the result of assurances that the death penalty had been abolished. It will affect judges, juries, witnesses, and informers. No witness will testify with that positiveness of statement or that clearness of conviction which he really has in his own mind when he knows a man's life is hanging on his word. Judges will not charge as they would if they knew that the man was to receive a punishment which could be remitted if he was afterwards proved innocent.

Capital punishment is injurious to society because the example is bad. You propose by your laws to teach the sanctity of human life and yet you say to the people of this State that under certain circumstances their lives are not sacred. In other words, you propose to educate the public mind so that men will not kill by declaring that you will kill. In one sentence of your statute you demand that the criminal shall reverence the sanctity of human life and in the next you show your contempt for it. You demand of him in the hot blood of hate a forbearance which in the cold blood of deliberation you declare you will not grant; and so the awful lesson of killing is read from your own statute book and you give it its utmost sanction.

I feel that I may be pleading for the life of some innocent man in whose destruction the defeat of the amendment may make us participate. I pray you, gentlemen, if you have any doubts about the matter allow those doubts to enlist you on the side of mercy.

—*Thomas B. Reed*, in Maine Legislature, February 19, 1869.

The fundamental truths underlying the opinions of the distinguished men above quoted, were stated by Marquis Beccaria, of Milan, at a time when codes were promulgated by the edicts of princes, in many countries, instead of by acts of parliaments or congresses. He sent his philosophical treatise forth with promises which have been realized in many countries, by the enactment of beneficent laws based upon the principles he advocated. Shall this nation, at an early day, enjoy the blessings which these principles have in their adoption, conferred upon others? I quote his words:

If these truths should happily force their way to the thrones of princes, be it known to them that they come attended by the secret wishes of all mankind. Tell the king who deigns them a gracious reception that his fame shall outlive the glory of conquerers, and that equitable posterity will exalt his peaceful trophies above those of a Titus, an Antonius, or a Trajan

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Leonidas C. Houk.

REMARKS

OF

HON. JOHN A. CALDWELL,

OF OHIO,

IN THE HOUSE OF REPRESENTATIVES,

Saturday, January 30, 1892,

On the resolutions of respect to the memory of Hon. Leonidas C. Houk, late a Representative from the State of Tennessee.

Mr. CALDWELL said:

Mr. SPEAKER: By the death of Judge Houk we have lost a true friend and wise counsellor, and our country an able, wise, and conscientious legislator—a patriot. He was endowed with rare intellectual ability, which had been developed by patient and continuous toil. He early made himself familiar with the details of government, which, with his great ability, droll, quaint humor, made him one of the most interesting and ablest debaters in Congress.

Mr. Speaker, I desire to read as my tribute to our deceased friend the beautiful and eloquent tribute written by the editor of the Eagle, of Brooklyn, N. Y., and published in that paper May 26, 1891. This tribute is from the pen of one who differed with our late friend politically, but who appreciated his high character, great abilities, and distinguished services to his country.

LEONIDAS C. HOUK.

The death of Leonidas C. Houk removes from the stage of affairs an interesting figure. Apart from the painful circumstances under which it occurred, his decease will occasion widespread sorrow among men of all parties. To the political organization with which he had been for nearly forty years identified it is a well nigh irreparable loss. The Republican party in the South possessed no more upright, courageous, aggressive, and effective leader than the sturdy statesman who yesterday passed away at Knoxville, Tenn. If within the ranks of that party there were more members of similar character and caliber, its potency as an agency in politics and government would be immeasurably augmented. Unhappily, the Houk type of Republicanism is rarely met with in the territory below Mason and Dixon's line.

The Republicanism of Leonidas C. Houk was the Republicanism of Abraham Lincoln. His affection for and allegiance to his party were implanted and stimulated when the party was at its best. His enlistment in its membership was the outcome of that love of liberty which has ever permeated the atmosphere of his native region. Nowhere has the light of devotion to human freedom burned more luminously than in the mountains of East Tennessee. The vigorous Scotch settlers of that historic section carried with them the same detestation of slavery and reverence for the rights of man that distinguished their ancestors in the highlands beyond the sea. Amid surroundings that tried the hearts and souls of the people he was born and reared. The pages of American history recall no chain of events better calculated to illustrate the heroic traits of the masses than those which occurred before and during the war in the neighborhood of his home. The State of Andrew Jackson succumbed reluctantly to the insidious influences of treason and secession, but even after the die of disunion was cast the eastern part of the Commonwealth remained faithful to the flag. Its fidelity was one of the chief bulwarks against the triumph of rebellion.

Of the host who wore the Federal blue none were more valiant than the Unionists of East Tennessee. They were situated in the very heart of the conflict. They were pursued with a ferocity that was appalling. The fugitive black, hunted by bloodhounds, was not the object of more intense hatred than that cherished for them by their lowland adversaries. So far as they were concerned the articles of war were suspended. They were unable to invoke the immunities which accompany the practice, under ordinary conditions, of the martial calling. For them capture meant death or torture. Yet they could no more be crushed by their determined foes than the Northern line could be broken by that famous charge of Pickett on the final day of Gettysburg. They upheld with unwavering fidelity and sublime self-sacrifice the banner of the stars against all comers. They maintained it in the reflection of their burning homes, defended it amid the groans of their stricken brethren, and carried it triumphantly through four years of unexampled hardship to the goal of victory. They were fighting men, these hardy mountaineers, and they never learned what it was to be decisively and enduringly beaten. Their political convictions carried them to the verge of fanaticism. They would cheerfully have died before they would have renounced the Republican faith.

That a man moving in this inspiring community would be profoundly attached to his party is a natural result of his environment. Judge Houk clung to his convictions with a tenacity that excited the admiration alike of friends and foes. When the war, in which he valorously participated, was over, he passed into the tumultuous contentions of partisan controversy. His election to the Legislature, to the bench, and finally to Congress followed in rapid succession. Every trust to which he was called by the will of his fellow-citizens received his faithful attention. His career in Congress was

Mr. DOCKERY. Mr. Speaker, if this bill involved any very large amount, I should certainly interpose an objection. I do not do so solely for the reason that the amount carried by the bill is small.

It appears that in this case there was a defalcation of $36,000 by a deputy collector of internal revenue. His resources were ample to make good about $31,000 of this liability, and the sureties paid the remaining $5,000; so that, as it appears from the report, the collector himself was not out a dollar by reason of the transaction except the expenses involved in the pursuit of the defaulter. The report gives him credit for diligence. I imagine that commendation is entirely unnecessary, as any man under similar circumstances would use all due diligence to protect himself. That is exactly what this collector did. He was liable for $36,000, and, resting under that liability, he necessarily invoked all the agencies of the law to capture the fugitive, and in doing this he involved himself in a personal expenditure of $293.

Now, then, as to the western district of Missouri, let me say there is now pending here a bill appropriating $12,000 to reimburse a collector on account of loss by a deputy collector. I do not know whether it has been favorably reported or not. It was so reported in a former Congress, but I am quite sure it has not yet passed Congress.

Of course if we enter on the policy of reimbursing collectors, not simply for losses incurred by reason of embezzlement, but also for the payment of their expenses incurred in the pursuit of criminals, we open, as gentlemen must understand, a very wide door. I shall not object, as I have stated, Mr. Speaker, to this bill, because of the fact that it involves a trifling sum. But I do not think it ought to be passed. It involves a bad principle and establishes a bad precedent.

Mr. LOUD. Will the gentleman allow me? If the amount involved were larger, would it alter the decision or opinion of the gentleman regarding the bill?

Mr. DOCKERY. I admit, Mr. Speaker, that my position is a trifle illogical and inconsistent and that I should interpose an objection to the consideration of the bill.

Mr. LOUD. I would further ask the gentleman if the passage of this bill would not be the establishment of an exceedingly vicious precedent, even though the amount is small, that will be used hereafter—and the debate on this bill be pointed to—to form the foundation for much larger claims of a similar character?

Mr. DOCKERY. I think it is very bad legislation and establishes a vicious precedent.

Mr. LOUD. I think this man got off pretty well, for my part. It seems that this collector was involved in a possible loss of $36,000. The deputy collector paid $31,000 and the sureties $5,000. He was only at a trifling loss, therefore.

Mr. DOCKERY. That is correct; a loss of but $293. As the gentleman says, he got off exceedingly well.

Mr. WALKER of Virginia. The gentleman is mistaken in that. The amount paid by him was $885.

Mr. DOCKERY. And that was a personal liability incurred in pursuit of the defaulter or embezzler.

Mr. WALKER of Virginia. At all events, he paid it, and he ought to be reimbursed.

Mr. LOUD. Well, Mr. Speaker, the question amounts simply to this: He spent about $800 to save the loss of $36,000, and now the Government is asked to reimburse the $800.

Mr. DOCKERY. That is an accurate, terse, and forcible statement of the exact condition of the case.

Mr. PAYNE. But, Mr. Speaker, that is not all. The gentlemen do not state the full case here. Now, the deputy gave bond to the Government——

Mr. LOUD. No; to the collector.

Mr. PAYNE (continuing). The deputy gave bond, according to the report, to the Government, and the deputy's sureties paid the balance of the deficit.

Mr. LOUD. The gentleman will find that he is mistaken in that regard.

Mr. PAYNE. Well, the report so states. I am simply suggesting what I find in the report. I think the deputy collector also gave a bond. But, at all events, the report says that this loss was without any fault on the part of the collector and is in such a shape as to justify the relief asked here.

Mr. LOUD. But it was the duty of the collector to try to arrest the man, just as any other officer of the Government would have done, and to pay the expense himself.

Mr. PAYNE. The gentleman knows that the collector was responsible for the deficit——

Mr. LOUD (continuing). And he ought to be responsible for the expense incurred.

Mr. PAYNE. This is a different case from that which was acted upon by the House yesterday or the day before, which involved a principle absolving the party from all liability.

Mr. DOCKERY. What case does the gentleman refer to?

Mr. PAYNE. I refer to a case passed by the Committee of the Whole a few days ago, the case of the mint in Philadelphia. I am not certain exactly as to the day; but it involved the absolving of the principal from liability for money stolen.

Mr. LOUD. But that was not done by unanimous consent.

Mr. PAYNE. No; but it went through the House after a full consideration.

Mr. WALKER of Virginia. Mr. Speaker, there seems to be no objection to the consideration of this bill.

Mr. DOCKERY. I stated that I would not object, and suppose that I shall have to stand by the statement. I do not think, however, that the bill should pass.

The SPEAKER. It requires unanimous consent. Is there objection?

Mr. HAY. I object.

Mr. WALKER of Virginia. I hope the objection will be withdrawn.

Mr. HAY. If the gentleman will give any reason why the bill should pass or why the objection should be withdrawn, I will consider it.

Mr. WALKER of Virginia. Well, you heard the reasons, and they are set forth fully in the report.

Mr. HAY. I have heard some very good reasons from the gentleman from Missouri and the gentleman from California why I should object.

Mr. WALKER of Virginia. I suppose, of course, the gentleman has a right, if he desires to do so. But why should he object now when similar bills have been passed heretofore?

Mr. HAY. I do not think bills of this character ought to pass.

Mr. WALKER of Virginia. I hope the gentleman will not insist on his objection.

Mr. HAY. I will withdraw the objection, Mr. Speaker.

Mr. HULL. Mr. Speaker——

The SPEAKER. The gentleman from Iowa has the floor.

Mr. HULL. Mr. Speaker, I want to make a statement to the House. In the Committee on Military Affairs, at the meeting this morning, all the members who were present——

Mr. WALKER of Virginia. The gentleman has withdrawn his objection.

The SPEAKER. Does the gentleman from Iowa yield?

Mr. HULL. I will yield, if there is no objection.

Mr. KING. Regular order, Mr. Speaker.

The SPEAKER. The regular order is demanded.

ARMY REORGANIZATION BILL.

Mr. HULL. Mr. Speaker, if I can have the attention of the House for a moment, I want to say that the Committee on Military Affairs, at the meeting this morning, by unanimous vote of all who were present—I will say, however, that all the members were not present—agreed to this proposition, that the reorganization feature of the Army bill, the three-battalion organization for infantry, is the question that they are more anxious for than any other feature of the bill, and that the committee are perfectly willing to adhere to the proposition that only the three-battalion part of the bill shall be pressed before the House. [Applause.] In other words, they are willing to have the bill amended so as to strike out the expansion of the companies, provided we can close general debate and go on with the bill without further delay or contention.

Under the five-minute rule, when any proposition is up, there will be ample opportunity for gentlemen who desire to express themselves upon the general feature of army reorganization; and I now ask unanimous consent that general debate may be considered as closed, and that we may go on to the consideration of the bill under the five-minute rule.

Mr. SULZER. At 2 o'clock——

Mr. UNDERWOOD. I should like to ask the gentleman from Iowa if he means the House to understand that the committee are going to move an amendment to strike out those portions of the bill except the three organizations?

Mr. HULL. The committee will move that amendment.

Mr. SULZER. We are willing to consent that general debate shall be closed at 2 o'clock, and that a vote shall be taken on the bill at, say, a quarter to 5.

Mr. LIVINGSTON. Let us have all the time we can get under the five-minute rule.

Mr. HULL. That is better. More time under the five-minute rule will be better.

Mr. SULZER. We want until 2 o'clock in general debate.

Mr. HULL. I will say that the committee are not anxious to cut off debate, and we will extend the time of any gentleman who wants to discuss the bill, so that he will not find any fault with the action of the House——

Mr. DOCKERY. I understand that a member of the committee objects to that arrangement. He desires general debate to close at 2 o'clock.

Mr. SULZER. We want to divide up the time on our side.

Mr. HULL. I am making the proposition that the committee

authorized me to make; but I would suggest to my friend from New York [Mr. SULZER]——

Mr. ROBBINS. Has the committee got any amendment ready?

Mr. HULL. We have an amendment ready.

Mr. SULZER. Mr. Speaker——

Mr. HULL. We will give you all the time you want under the five-minute rule, and you can take it on the first section, so that you can come in at once.

Mr. SULZER. They want time to discuss the bill generally.

Mr. HULL. They can. There will be no trouble about that when we understand that we can finish the bill to-day.

Mr. SULZER. Why not go on with the general debate until 2 o'clock?

Mr. PERKINS. What is the use of discussing the bill as it is when it is to be amended?

Mr. HULL. Yes; when there will be nothing left of it but the three-battalion organization?

Mr. OGDEN. What is left of it is a very important feature.

Mr. HULL. Mr. Speaker, then I simply ask unanimous consent that general debate may be considered as closed, and that we proceed to the consideration of the bill under the five-minute rule.

The SPEAKER. The gentleman from Iowa asks unanimous consent that general debate be now closed, and that the consideration of the bill proceed under the five-minute rule. Is there objection?

Mr. SULZER. Mr. Speaker, under the statement of the gentleman from Iowa that, under the five-minute rule, there shall be liberal extensions to any member who desires to discuss the bill, or anything appertaining to it, for more than five minutes, I for one am willing to consent to that.

The SPEAKER. The Chair would suggest that it would be wise to have the extent of the extension suggested, or there may be difficulty arising from misunderstanding.

Mr. McMILLIN. Mr. Speaker, this is not——

Mr. SULZER. Suppose anybody will want as much as twenty minutes. Will you have any objection to that?

Mr. HULL. Not a bit.

Mr. SULZER. Twenty minutes, then.

The SPEAKER. If that is the understanding, the Chair will put the question again. The gentleman from Iowa——

Mr. HULL. I would not agree that every man who speaks should have twenty minutes, because he might want to talk on anything on earth.

The SPEAKER. The Chair suggests that would be the difficulty.

Mr. HULL. If the gentleman will couple with that that a vote shall be taken at half past 4, I have no objection.

Mr. RICHARDSON. A liberal extension.

Mr. HAY. Mr. Speaker——

The SPEAKER. The gentleman from Iowa asks unanimous consent that general debate be now closed. Is there objection?

Mr. SIMPSON. I object, Mr. Speaker.

Mr. HULL. Then I ask that general debate on the bill close at half past 1.

Mr. SULZER. Say 2 o'clock. I am willing to consent that general debate shall close at 2 o'clock.

The SPEAKER. The gentleman from New York asks unanimous consent that general debate be closed at 2 o'clock. Is there objection? [After a pause.] The Chair hears none.

Mr. DOCKERY. A parliamentary inquiry. I would like to know about the division of the time.

The SPEAKER. The Chair will endeavor to find out.

Mr. HULL. Mr. Speaker, I suppose I will control the time in favor of the bill. I do not know who will control in opposition.

Mr. LEWIS of Washington. Mr. Speaker, I should like to hear what the gentleman from Iowa says; I am interested in the bill.

Mr. SULZER. Mr. Speaker——

The SPEAKER. The gentleman from New York is recognized.

Mr. DOCKERY. Mr. Speaker, I would be glad to know the time occupied by the respective sides.

Mr. SULZER. Mr. Speaker, this bill was——

The SPEAKER. One hundred and eight minutes have been occupied by the friends of the bill and one hundred and fifty minutes by the opponents of the bill.

Mr. SULZER. Mr. Speaker, this bill was carefully considered in the Committee on Military Affairs. It was reported to this House with the understanding that each member should have the privilege——

Mr. HULL. Has there been any arrangement made as to the division of the time?

Mr. SULZER. As I understand it, I am recognized in my own right.

The SPEAKER. The gentleman from New York is recognized in his own right.

Mr. HULL. What I was asking about was the division of the time.

Mr. SULZER. I believe I have the floor, and I will proceed.

Mr. Speaker, the bill was reported by the Committee on Military Affairs with the understanding, on my part, at least, that each member of the committee should have the privilege of taking such position on it as he desired. For one I desire to say that I am absolutely opposed to the greater part of this bill. The only part of the bill that I favor is the provision for the reorganization of the Army on the basis of three battalions.

There are, I believe, only three countries in the civilized world to-day which have their armies organized on the basis of two battalions. They are China, Persia, and the United States. Every civilized nation in the world which considers itself a military power has the modern organization of three battalions, and China, I am informed, is about, or has recently, adopted this modern plan of organization. I therefore believe that the Government of the United States should adopt the three-battalion system. I favor that part of the bill, and I hope so much of the bill will pass.

The chairman of the committee [Mr. HULL] has said this morning on the floor of this House that at the conclusion of the debate he would favor striking out all of the bill after the second section.

The first and second sections of the bill simply provide for the reorganization of the Army on the three-battalion system. That would not increase the number of the Regular Army, except to the extent of adding twenty-five additional majors. I can see no objection to that.

I am a Jeffersonian Democrat, and I have always been opposed on principle to a large standing army in time of peace. I am opposed now to any further extension of increasing the number of men in the Federal Army.

The laws on the statute books at present seem amply sufficient for enlarging the Army in case of war.

I make no criticism upon the Regular Army. It is a magnificent body of brave and loyal men. It has made history. I have only praise for its valor and glory. The Regular Army speaks for itself and needs no eulogy from any man. But I do desire to say a few words in behalf of the militia of the States and the volunteer forces of the Government, the citizen soldiery of our land. They constitute the flower of our land, the pride and glory of our States, and the reserved strength, greatness, and power of our country in time of war.

If this bill should pass in its present shape, it would add to the Regular Army over 75,000 men. This bill is not a war measure; no one contends that it is an emergency measure. If it passes in its present shape, it would make the standing Army of the country a little over 104,000 men, and until these men were mustered in for active service there could not be and there would not be a chance for the service of volunteers or the militia. In other words, if this bill became a law in its present shape, there could not be a single military organization from any State and there could not be a volunteer force from any State mustered into the Federal service in time of war unless more than 104,000 men were required. This, in my opinion, would be unfair and unjust to the citizen soldiery of the States and to the volunteer forces of the country.

I believe in the citizen soldiery of our land. I take a deep interest in their welfare, and in so far as I can I shall always maintain their rights. The history of our country in time of war demonstates that there are no better soldiers. They are brave, patriotic, and intelligent. They come from the professions, from the workshops, from the counting rooms, from the mills, from the mines, and from the fields. There are no better fighters than those who come from the volunteer forces of the people. These volunteers constitute the great patriotic army of our country. They are no hirelings, no mercenaries; they fight for the defense of home and country, for principle and glory, for liberty and the rights of man. In time of peace they follow their usual trades, professions, and occupations. They do not menace our liberties or the stability of our free institutions. In time or war they constitute an army of intelligent, well-drilled soldiers as large as any army in the world. In a republic like ours a great standing army in time of peace is useless, expensive, and dangerous. In time of trouble we should and we must rely upon the volunteer forces of the country.

This bill, in its present shape, comes to us from the War Department, at the instigation of the officers of the Federal Army, to make places and secure promotions for them, and would be unjust to the volunteer forces and the military organizations of the States whose rank and file and officers devote days, months, and years of valuable time to practice, to drills, to tactics, and to organization.

If you pass this bill as it is now, you may just as well disband every militia company and every volunteer organization in our country.

I am glad that the chairman of the committee has agreed to strike out of this bill all the provisions increasing the Federal Army. He simply asks now, as I understand it, for the enactment of the first and second sections of the bill, which provide for the three-battalion system of organization. I can see no harm in that.

I believe good will come of it. Our Army in time of peace and in time of war should be organized on the basis of the best military organization in the world. As at present constituted it is organized on a basis now obsolete, and not followed by any other great military power in the world. We ought to be up to date in this as in everything else. The part of the bill to accomplish this should speedily pass. All the rest of it, and especially the part which seeks to increase the Federal Army, should be stricken out.

Mr. Speaker, such are my views and opinions on this bill. I give them to the House for what they are worth. I shall now and hereafter vote in accordance with them until I am convinced that I am in error. No act of mine will ever, I trust, lend assistance to the disorganization of our State military organizations, and no vote of mine will ever, I hope, be cast to chill the ardor, the loyalty, and the patriotism of the splendid and magnificent volunteer forces of our country.

While discussing this bill I may be pardoned, I hope, if I refer to the Cuban question.

Poor Cuba is now the one question uppermost in the thoughts and talks of the people of our land. It is fitting and proper that I should again raise my voice in behalf of the struggling Cuban patriots. We are told that the crisis is here, and that war with Spain is now inevitable. If such is the case, I have no fears of the result. Cuba will be free, our national honor will be vindicated, and Spain will be humiliated in the dust. We will teach Spain a lesson she will never forget; and the conflict should be short, decisive, and annihilating.

If we are on the eve of war, we are ready. I am one of those who believe either Spain or the United States must now back down. I am one of those who believe that we have now reached that crisis in Cuban affairs where nothing can be done by this country with honor unless we free Cuba.

As everyone knows who is conversant at all with the Cuban matter, there was a time when war with Spain could have been averted. In my judgment and in the judgment of almost everyone, that day is now passed. We must fight now for the independence of Cuba and our national honor, or we must retire in disgrace. We must bring about the freedom of Cuba and wipe out the stain Spain has put on our flag, or we must forever hereafter hold our heads in humiliation and shame before the civilized powers of the world.

Mr. Speaker, in the Fifty-fourth Congress a concurrent resolution recognizing the belligerent rights of the Cuban patriots was passed by an almost unanimous vote. It went to the Executive, and he quietly pigeonholed it. If he had signed it, the Cubans would have achieved their independence within six months. Nothing else was done by the Fifty-fourth Congress regarding poor Cuba and her frightful tribulations.

At the very beginning of this Fifty-fifth Congress—to be accurate, on the 20th of May, 1897—Senator MORGAN passed in the Senate of the United States by an overwhelming vote a joint resolution granting belligerent rights to the Cuban patriots. That resolution was sent to this House on or about the 20th day of May, 1897. The Speaker referred it to the Committee on Foreign Affairs, and it has slumbered in that committee ever since.

I am informed that the Committee on Foreign Affairs of this House has never taken action on that joint resolution. It is well known that if that resolution had been reported to this House, as it should have been long ere this, it would have passed by an overwhelming majority. If it had passed, it would have become a law and the Cuban people long ago would have achieved their own freedom and independence.

Mr. Speaker, some one is responsible for the suppression of that joint resolution. Its suppression was a blunder worse than a crime. Who is the man? In a number of speeches which I have made heretofore on the floor of this House relating to Cuba I have called attention in no mistaken terms to the suppression of Senator MORGAN'S joint resolution granting belligerent rights to the Cuban patriots. All this trouble could have been averated if that resolution had passed.

Since the war for Cuban independence began, over three years ago, the Cuban patriots have persistently and continuously begged and pleaded that this country grant them belligerent rights. Give them this right, they said, and they would do the rest. If it had been done a year ago, or two years ago, no one doubts but that Cuba would to-day be a free and independent republic. During this time they were and are entitled to belligerent rights, according to the facts and by every construction of international law.

They are entitled to more now, and in my judgment we should at least recognize their independence. We should have recognized the independence of Cuba long ago. We have delayed too long. We have neglected too much. The order of the day has been procrastination. Our responsibility is great, and we will realize it before a great while. The people will judge you, and nothing you can now do will alter or change their judgment regarding your nonaction for three long years.

Mr. Speaker, the following is the joint resolution of Senator MORGAN I have referred to, and which I will now read:

Joint resolution declaring that a condition of public war exists in Cuba, and that strict neutrality shall be maintained.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a condition of public war exists between the Government of Spain and the government proclaimed and for some time maintained by force of arms by the people of Cuba, and that the United States of America shall maintain a strict neutrality between the contending powers, according to each all the rights of belligerents in the ports and territory of the United States.

Passed the Senate May 20, 1897.

Attest: WM. R. COX, *Secretary.*

From that day to this the Committee on Foreign Affairs of this House has refused to report that resolution, notwithstanding the repeated efforts of Democratic members to force it to do so. It has been suppressed in the committee for almost a year. What a shame!

If it had been reported and passed, Cuba would have been free six months ago, and recent events would never have occurred. But now we should go farther, in my opinion. Now we should recognize the independence of the Cuban Republic. Recognition of independence is a fact, and we have a right to determine what constitutes a fact as well as Spain had when she recognized the Southern Confederacy in 1861. The Cuban Republic is a living fact. If we recognize the independence of the Cuban Republic now, if we had done so six months or a year ago, Spain could not justly complain. It is not and could not be construed as a casus belli. Spain could find no fault and would have no just cause of complaint against this Republic. This Government recognized the independence of all the South American Republics, and Spain never did and never could find fault.

If it is true that we have neglected our duty regarding this important question for the last two years, it is not yet too late for us to pass a joint resolution recognizing the independence of Cuba. If we do this now promptly and speedily, the Cubans will achieve their independence without any further help from us. The Cuban patriots do not ask the Government of the United States to intervene; they only ask for a recognition of their independence. We should grant it to them immediately. It is the least we can do.

They have been fighting their own battles; they have beaten Spain in every important engagement; they have conquered and hold more than three-quarters of the territory of the island; they have a stable government; they levy and collect taxes; they make and administer their own laws; they have a well-drilled army in the field; they have a permanent seat of government, and they say to us: "Give us recognition and we, with our own strong arms, will achieve our own independence." They ask for bread, and we give them a stone. We delay; we wait; we hesitate; we are to-day the laughing stock of the world. We should do our duty and let the President do his duty. We have waited here from Monday to Wednesday, from Wednesday to Monday, week in and week out, for the Executive to send his message to Congress. Why should we wait? Why should we not, as representatives of the people, do our duty and discharge our responsibility? Why should we not pass the joint resolution recognizing the independence of Cuba, send it speedily to the President, and let him take such action on it as he may deem fit and proper?

Let him sign the resolution or veto it, and let the responsibility for his action be upon his own head. Action on our part is what the people demand. No one here doubts that if the Committee on Foreign Affairs would report a joint resolution recognizing the independence of Cuba it would pass this House by an almost unanimous vote. Nine out of every ten members are in favor of recognizing Cuban independence. Why is the Committee on Foreign Affairs derelict in its duty? Resolution after resolution recognizing Cuban independence has been introduced in the House and referred to the Committee on Foreign Affairs, and there they sleep the sleep that knows no waking. The Committee on Foreign Affairs seems to be bound and shackled. It is impotent. It can not act unless the Speaker tells it to act, and the Speaker will not give the word. We are waiting, waiting, waiting, for a weak and wabbling Executive to make up his mind what to do. We are waiting for his message.

We know nothing whatever about it. We do not know that it ever will come. For one I have not yet given up hope. Perhaps next Monday, perhaps some day when it will be too late, a weak and apologetic message, similar to that submitting the testimony of the board of inquiry in regard to the tragedy of the *Maine*, may come in. For one I stand here and emphatically say I am opposed to further delay. I favor immediate action by this House. I am opposed to delegating the constitutional rights of the members of this House to the President of the United States. [Applause.]

We are the representatives of the people, and we ought to have the courage of our convictions. Let us be men. Let us do our duty. Let us be true to the people and to our constituents. Let us act here what we talk about so eloquently elsewhere. Let us do something regarding this Cuban question or admit to the world

that we are slaves or automatons. In the lobbies, in the smoking rooms of this House, on the street corners, and in the hotels, you sing the eloquent song of Cuban independence, and tell how anxious you are to bring it about; but in this House, for some reason or other, you stand mute and silent. Under your breath you murmur and mutter and threaten revolt; but when the time comes for action, you fall in line and do the bidding of your master. What secret power holds you thus? Is it the awful power of the Speaker, or is it the fear of the avenging mailed hand of MARK HANNA?

You are very brave outside of the walls of this Chamber, but here you are afraid to open your mouths. You are the absolute creatures of some potent influence more powerful apparently than the will of the American people. If you act thus much longer the people will call you Speaker REED's "reconcentrados" or President McKinley's "pacificos." [Laughter and applause.]

Mr. Speaker, some time ago I introduced a joint resolution recognizing the independence of Cuba. It is buried in the Committee on Foreign Affairs, like many other resolutions on Cuba I have introduced. I can not get it out. I send a copy of it to the Clerk's desk and ask to have it now read, so that it will go in the RECORD.

The SPEAKER. The resolution will be read in the time of the gentleman from New York [Mr. SULZER].

The Clerk read as follows:

Joint resolution (H. Res. 220) for the independence of the Republic of Cuba.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the people of the Island of Cuba are, and of right ought to be, free and independent.

That the Government of the United States hereby recognize the Republic of Cuba as the true and lawful government of that island.

That the war Spain is waging against Cuba is so destructive of the commercial and property interests of the United States and so cruel, barbarous, and inhuman in its character as to make it the duty of the United States to demand, and the Government of the United States does hereby demand, that she at once withdraw her land and naval forces from Cuba.

That the President of the United States be, and he is hereby, authorized, empowered, and directed to use, if necessary, the entire land and naval forces of the United States to carry these resolutions into effect.

That the battle ship *Maine* was blown up in the harbor of Havana February 15, 1898, and the lives of 266 American seamen and marines lost by the action of Spain.

Now, gentlemen, if you will vote here as you talk outside of the halls of this House, we can force a report of that resolution and pass it through Congress in twenty-four hours. The President will not dare refuse to sign it. It will become a law. It may avert war. Spain will probably back down, but at all events Cuba will be free in less than thirty days. [Applause.] Action on our part is all that is necessary.

Over a week ago one of the members of the Committee on Foreign Affairs, the gentleman from Pennsylvania [Mr. ADAMS], in order, no doubt, to gain time, promised that the committee would report a joint resolution recognizing the independence of Cuba if the President did not send in the right kind of a message on the the following Monday. Monday has come and gone. No message. Wednesday has come and gone. No message. Will he send it in next Monday? I hope so. We all do; but if he does not, what then? Will the Foreign Affairs Committee report, or will it wait until the indignant members of this House rise up and force it to report the proper kind of a resolution?

You all know the frightful situation and deplorable condition of affairs in Cuba. Every day is momentous. Every day of delay here means the death of thousands of innocent, peaceable men, women, and children. The suffering, the misery, the crime, and the butchery there can not be told in words. It is beyond the expression of man. It has no parallel in history. It is unprecedented in the blackest annals of the world. How much longer are we expected to wait? How much longer must we be put off? The press and the pulpit ring with denunciations against our disgraceful conduct. Ninety-nine out of every hundred citizens in our land want us to do something. They want us to recognize the independence of Cuba, and, if necessary, maintain it by force of arms. That is my position. If I am not mistaken, that is the position of every Democrat here and of the Democrats generally of the United States.

Let us as the people's representatives have the courage to do our duty without waiting any longer. If the President will not lead, he must follow. We must take action at once. Any further delay on our part will be a criminal blunder. Our responsibility is great. We can not shift it nor evade the duty which stares us in the face. The press of the whole land rings with patriotic article after patriotic article asking us to do something. Our inaction is becoming a national scandal. It is becoming a disgrace. We have done practically nothing. We are doing nothing to help the starving, struggling, heroic Cuban patriots. Everything that the Government has done since the Cuban struggle began has been done in the interest of Spain and to help the Spaniards.

We have spent millions of dollars of the people's money during the last three years doing police duty for Spain along our coasts. We have arrested and imprisoned our citizens on the alleged charge of trying to help the Cuban patriots, but they have violated no law, national or international. We have done everything in our power to prevent the Cuban patriots from buying arms, food, clothing, medicine, and the munitions of war. We have appropriated $50,000,000 to get ready for something, and we appropriated it without a murmur. We do not desire to harshly criticise the President; we have too much respect for the great office he holds; but we think it is only fair that he should take us into his confidence and let us know what he is going to do, how he is going to do it, and when he is going to do it.

Mr. Speaker, the duty of the House of Representatives in regard to Cuba is now and for the last two years has been imperative. The way we have ignored this great question should bring the blush of shame to the cheek of every liberty-loving citizen in our land. At the beginning of the Fifty-fourth Congress I introduced a joint resolution granting belligerent rights to the Cubans, and subsequently, on the 2d day of March, 1896, in a speech I made on the floor of this House I said:

The Cuban patriots are entitled by every construction of international law to belligerent rights. They have in the field a standing army of over 40,000 men. They have proclaimed their declaration of independence, similar to our own, and, in the opinion of many, more justifiable. They have adopted a provisional constitution, republican in form. They have elected a president, a vice-president, and a constituent assembly. They have a cabinet of ministers. They have a seat of government, and are in possession and hold three-quarters of the island. They are competent to-day to treat and negotiate with any other sovereign people on the face of the globe.

They have maintained their army in the field against the great army of Spain, under the command of her first Captain-General, for more than a year. They have won important and decisive battles. They are unconquered and unconquerable. They are a brave, long-suffering, and patriotic people. They ought to win, and they will win. We do not know what is going on in that island to-day, because Spain fears the light of truth; because Spain fears investigation; because Spain hates to allow the people of the world to know how she is conducting the war there. She has established a censorship of the press, of the cable, and of the post-office that is an affront and an insult to the intelligence, the progress, the civilization, and the enlightenment of the last decade of the nineteenth century.

On the 17th day of December, 1895, I offered the following resolution, which was referred to the Committee on Foreign Affairs:

Joint resolution declaring that a state of public war exists in Cuba and that belligerent rights be accorded to the Cuban Government.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Government of the United States recognizes a condition of public war between the Government of Spain and the government proclaimed and for some time maintained by force of arms by the people of Cuba; and the United States of America hereby declare that they will maintain a condition of strict neutrality between the contending powers and accord to each all the rights of belligerents in the ports and territory of the United States. The Congress of the United States protest and remonstrate against the barbarous manner in which the war in Cuba has been conducted, and the President is hereby authorized to take such steps as may be expedient, in his judgment, to secure an observance of the laws of war as recognized by all civilized nations.

That is all the Cuban patriots ask for or want. I introduced it at their request. It is moderate and conservative, but it accomplishes the object desired, hoped for, and prayed for. I had indulged the ardent hope that the Committee on Foreign Affairs would report it and that it would pass Congress.

Regarding the adoption of that resolution I said in that speech:

If you will pass this resolution, I have no hesitancy in predicting that Cuba will be free and independent ere the end of the year. [Applause.]

If it is not done, what then? Well, sufficient unto the day is the evil thereof. Congress will have to act, or the people of this country will say to their representatives and those in authority, in the words of the poet Watson:

"Betrayers of a people, know thy shame."

And what I said then is true to-day.

In that same speech, speaking of the contest the Cubans were making, I said:

These brave, noble, heroic Cuban patriots are fighting a battle of republicanism against monarchy; of democracy against plutocracy; home rule against the bayonet; the sovereignty of the individual against the sanctity of the king; the ballot against the throne; American liberty against foreign tyranny; and above all and beyond all, they are fighting a battle for the rights of man. They must and will succeed.

And I predicted that—

Spain can not win. She can not again subjugate Cuba. Her greatest generals meet with defeat in every important engagement, and her resources are drained to a condition of national bankruptcy. She can not carry on the war much longer and must soon admit her inability to quell the revolution. From what I can ascertain and from what I can learn from the best and most authoritative sources, I know the Cubans will accept no terms but the freedom of the island—no more faithless promises of reform; nothing but absolute independence.

That was true then, and it is true now. The Cuban patriots will accept no armistice, no more reforms, no system of autonomy. They will accept nothing but independence or death. God help any Administration in this country that will cooperate with Spain to coerce the Cuban patriots to accept anything but independence.

That joint resolution of mine granting belligerent rights to the Cubans was never reported from the committee of this House, although I did all I could, in season and out of season, to get it reported.

Senator MORGAN'S resolution, which passed the Senate, is very similar to it, and after it came to this House I abandoned my resolution in favor of his. The committee never reported it.

On the 17th day of June, 1897, I presented to this House a monster petition in favor of the immediate passage of Senator MORGAN'S

resolution, and, as the RECORD will show, I then said in a short speech which I made:

We are wasting time here day in and day out while hundreds and hundreds of American citizens are languishing in Cuban jails for no offense whatever. Our trade with Cuba ruined, our flag fired upon, our citizens robbed, insulted, and assassinated, or driven like wild beasts from their homes and farms in the interior of Cuba to the Spanish fortified towns on the coast to starve, to sicken, and to die! The history of the last two years' struggle in Cuba is the saddest in all the annals of the world. It is high time this great Government should protect its citizens and their property in Cuba. It is high time we should intervene in the name of humanity, civilization, and Christianity, and put a stop to this brutal, bloody, devastating carnage.

These citizens of the United States in Cuba look to this country for their rights and protection. Apparently they look in vain. The flag of their country, which should protect them, is spit upon by the brutal Spaniards. These cruel and bloodthirsty Spaniards trample our flag in the dust, ignore treaty rights, and bid defiance to this great Republic.

It is time for us to act. If we do not, we will stand disgraced in the opinion of our own liberty-loving citizens and before the Christian powers of the world. If we do not put a stop to the fiendish barbarities and refined cruelties of these Spanish brigands, our boasted republicanism will become a by-word and our flag of freedom a reproach and a farce. How long shall we submit? How much longer shall we permit poor Cuba to be a human shambles?

The joint resolution of that venerable Senator and friend of humanity, Mr. MORGAN, granting belligerent rights to the Cubans, should be speedily submitted to a vote of this House. Some one is responsible for its suppression. Somebody is responsible for its delay. Who is the man? * * *

The American people to-day are in favor of granting to the Cuban patriots belligerent rights. If that question could be submitted to the people of this country, they would decide in favor of it by an overwhelming majority. They would like to know why no action has been taken by this House on that joint resolution of belligerency. * * * We allow our citizens to be butchered, murdered, and assassinated in Cuba without a protest. * * *

The American people want Cuba to be free. They will see to it sooner or later that Cuba is free. I do not know who retards the joint resolution. I do not know who is responsible for the delay in procuring action upon it, but I do know that the day of reckoning is not far distant, and the American people, who sympathize with those brave and struggling Cuban patriots, will hold some one responsible.

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All that I then said was true, and you know it to-day. Many of you sneered and laughed then, but you do not dare to sneer or laugh now. The American people at last have found out who are and have been responsible for the suppression of debate on Cuba, and for the defeat of all legislation in behalf of the Cuban patriots.

The Republican party is responsible. No one who will read the record can escape this irresistible conclusion.

Mr. Speaker, yet again, on the 19th day of last January, in a speech I made in this House on the diplomatic and consular appropriation bill, I said:

The situation in Cuba demands immediate action, and the American people are in favor of aiding the Cuban patriots by extending to them belligerent rights. This should have been done long ago. There is not a member of this House who does not know that if the joint resolution granting belligerent rights to the Cubans which passed the Senate a long time ago by an almost unanimous vote was permitted to be voted on in this House it would pass here by an almost unanimous vote. I do not hesitate to say that nine-tenths of all the members are in favor of it. Some one is responsible for the suppression of action on that joint resolution.

The people of this country would like to know who is responsible—whether it is the Speaker, the President, or the chairman of the Committee on Foreign Affairs. The time is not far distant when we will find out. We shall know. The Republican party can not escape responsibility in regard to this matter. The people, irrespective of party, all over this country want Cuba to be free. Newspapers all over this country are in favor of granting to the Cuban patriots belligerent rights. Congress should have done so at the very beginning of the war in Cuba. This is not a partisan question and can not be made so. It is a question of right, honesty, justice, and patriotism. Everybody knows that there is war in Cuba. The Spanish monarchy almost daily admits it. No one doubts it. Thirty days after Sumter was fired on, Spain recognized the belligerent rights of the Confederacy.

Mr. OGDEN. And rightfully, too.

Mr. SULZER. Well, we did not complain, and Spain can not justly complain if we recognize the belligerent rights of the Cuban patriots. International law justifies it. We ought to take prompt and immediate action in regard to the frightful situation existing in Cuba. It is proper and humane and all well enough to send provisions, to send money, to send medicine, and to send clothing to the sick, starving, and distressed victims of Spanish barbarity in Cuba, but we should do more—we should send down the North Atlantic Squadron to the gates of Havana, stop these outrages, and aid the Cuban patriots to achieve their freedom and independence, as France aided the Revolutionary colonists in their struggle for liberty and independence.

The Democrats in this House are in favor of passing the joint resolution granting belligerent rights to the Cubans. The Republicans have persistently refused to permit a vote on the question. The people of this country will hold the Republican party responsible for that action at the coming election. We will meet you on the stump all over this country, and we will tell of your recreancy on this important question, and the people will condemn you. (See CONGRESSIONAL RECORD, Fifty-fifth Congress, second session, page 818.)

And again on the same day, discussing the same bill, I said:

I wish to submit a few words regarding the situation in Cuba and to show the country the position on this question of the party of great moral ideas before and after the election, with a commentary by the distinguished gentleman who presides over the destinies of this House and who apparently controls all legislation of the representatives of the people of the United States.

The Republican party in national convention assembled in 1896 said regarding Cuba:

"From the hour of achieving their own independence, the people of the United States have regarded with sympathy the struggles of other American people to free themselves from European domination. We watch with deep and abiding interest the heroic battle of the Cuban patriots against cruelty and oppression; and our best hopes go out for the full success of their determined contest for liberty. The Government of Spain, having lost control of Cuba, and being unable to protect the property or lives of resident American citizens, or to comply with its treaty obligations, we believe that the Government of the United States should actively use its influence and good offices to restore peace and give independence to the island."

That is the Republican national platform. On that platform Mr. McKinley stood before the people of this country. In his letter of acceptance he said that he believed in every word contained in that platform, and, if elected, he would do his best to carry out the promises and pledges therein contained. Let us see how he has done it. Let us see if he has kept the promise. I read from the President's message, submitted to the Fifty-fifth Congress on the first Monday in December, 1897, regarding the Cuban situation. After giving a brief history of the various insurrections, the various outrages, the various brutalities of the Spaniards in Cuba, he sums it all up by saying:

"For these reasons I regard the recognition of the belligerency of the Cuban insurgents as now unwise, and therefore inadmissible."

What a complete change of front! What a betrayal of a sacred trust! What a difference between now and then!

That is what has made cowards of you all; that is the reason you have changed your tune; that is the reason you sing a different song now. And a little further on he says:

"It is honestly due to Spain and to our friendly relations with Spain that she should be given a reasonable chance to realize her expectations and to prove the asserted efficacy of the new order of things to which she stands irrevocably committed."

"The new order of things to which Spain stands irrevocably committed" is the subjugation of Cuba by the ruthless extermination of the last Cuban patriot. That is the Republican party "before" election and the Republican party "after" election; and the comments I desire to read upon that record of infidelity, upon that record of betrayal of the people's confidence, are the comments of the Speaker of this House, delivered at Alfred, Me., not very long ago. In a speech on that occasion Mr. REED said:

"Boasters are worth nothing. Deeds are facts, and are forever and ever. Talk dies on the empty air. Better a pound of performance than a shipload of language."

The Republican party gave the people of this country "a shipload of language" during the last national campaign; and now when it can carry out its promises it refuses to give the people "a pound of performance." We appeal from the outrageous parliamentary tactics perpetrated by the Republicans on the minority members of this House to the American people. We appeal from Philip drunk to Philip sober. We point to the record and ask for judgment. (See CONGRESSIONAL RECORD, Fifty-fifth Congress, second session, pages 820 and 821.)

That is the record, and you can not now escape the responsibility of all that has occurred for the past year. I have no desire to severely arraign you, but I ask, and I have a right to ask, that you do something now. No more delay.

Mr. Speaker, we Democrats of the minority stand ready and willing to help you Republicans of the majority in every way that we can to aid the independence of Cuba and vindicate our national honor. On the 8th day of March, 1898, in a speech on the bill appropriating $50,000,000 for the national defence, I said, in regard to this phase of the Cuban question:

This is a time for the exhibition of the greatest degree of patriotism and for the exemplification of the smallest degree of partisanship. This is the time for action and not for talk. This is the time for unity, for harmony, and for us all to stand together shoulder to shoulder for the safety and the greatness of the Republic, for the grandeur and the glory of the flag, and for the vindication of American honor.

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In a time like this there should be no parties and no party politics. We should all be patriots, and act with a singleness of purpose for the best interest of all the people and for the greatness and glory of the Republic.

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No member of this House has more persistently and consistently for the past three years advocated and championed Cuban freedom and Cuban independence than I have. It is now a matter of great personal gratification to me that at last we are alive to the gravity of the situation and that Congress is about to do something and take decisive action.

It should have done so long ago.

In my judgment we should have recognized the independence of Cuba or granted her patriotic sons belligerent rights long ere this. We have waited too long. We have delayed too much. If we had taken decisive action, as we should have done, a year or two years ago, this crisis would have been averted and Cuba would to-day be free and independent and in her proper place among the proud nations of the world.

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Cuba is lost to Spain forever, and Spain knows it.

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In conclusion permit me to say, as a member of this House representing as loyal and as patriotic a constituency as exists to-day in the country, that no one will do more, that no one will go further than I will, now or hereafter, to do all in my power to promote the national defense, uphold and maintain the national honor, and support and strengthen the hands of the President to speedily bring about what every liberty-loving American citizen wants to see—the freedom and the independence of Cuba.

A month has come and gone since then, and we are still asked to wait and be patient.

God knows we have been patient. We have waited long and have borne much. Pending delay, the Spanish minister insults our Chief Executive; the Spaniards at Havana blow up one of our finest battle ships and send to a watery grave 266 American sailors, as brave and patriotic as ever faced an enemy. Spain destroyed the *Maine* by a mine. We know, and the world believes, she is guilty. No one doubts it. That barbarous act was a cause for war. It was a declaration of war. It was the most fiendish, the most brutal, the most barbaric act of its kind ever perpetrated in the history of the world, but it was characteristic of the cruel, cat-like, fiendish, bloodthirsty, bull-fighting Spaniard. There is not a man to-day in all this land who has read the testimony taken before the naval board of inquiry who does not believe in his heart that the *Maine* was sunk by a Spanish mine, touched off by Spanish agency. If that crime had been committed against any other great power on earth, there would have been war within five days. We are too slow. We hesitate too long. We put up with too much. We are too patient.

The President asked us to suspend judgment regarding the tragedy of the *Maine*. The people of our land, broad-minded, cool and collected, slow to anger, and level-headed, patient, and patriotic, suspended judgment. But the time is at hand when they will suspend judgment no longer. Unless something is speedily done to vindicate American honor and the glory of our flag; unless something is speedily done for the freedom of Cuba; unless something is speedily done to demonstrate that we are a brave people and a great people, conscious of our rights and willing to maintain them, the world will charge us with cowardice. We are no cravens, no cowards. Let us prove it now. [Applause.] Let us act now.

We suspend judgment against Spain no more. We come to take judgment against her. She has no true defense to make. The great American press is doing for Cuba more than Congress. And in that respect let me say to you that when the historian comes to write the true history of the heroic Cuban struggle for freedom and independence he will say, and truthfully say, that the New York Journal did more to bring it about than any other single agency in the land. The New York Journal is an American paper for the American people. Regarding the frightful crimes, the brutalities, and the cold-blooded assassinations in Cuba it has told the truth, the whole truth, and nothing but the truth. Everything it has printed has been corroborated by members of this House and by members of the Senate who have been to Cuba as its commissioners and have seen for themselves. It has given us and the people not only the news day by day, but it has given us ocular demonstration from the camera. Who can gaze on these frightful pictures and hesitate as to his duty?

No one who has seen these terrible pictures, no one who has read the terrible news, no one who has listened to the eloquent but dispassionate speeches of Senators PROCTOR, THURSTON, GALLINGER, and MONEY, will suspend judgment any longer. If we do not act now we stand disgraced in the eyes of our own people and in the estimation of all the powers of the civilized world. The selfishness of Wall street must not interfere with the performance of our patriotic duties. We can not neglect the most sacred duties of life in order to please a few manipulators of the market. We must carry out the mandate of the American people and make Cuba free, or the American people will hold us responsible now and hereafter. They are aroused, and woe to the man who is recreant to his trust.

Mr. Speaker, my position is well known and unchangeable. Long, long ago I made up my mind. I have never deviated from the first stand I took. I want to see Cuba free. She must be free and independent. The Spaniard and his yellow flag, the emblem of atrocity, must go.

You know that in all the history of the world no people ever deserved the right of self-government more than the heroic, struggling Cuban patriots. For centuries they have been oppressed, robbed, starved, and murdered by a cruel foreign power. The tyranny of Spain, her refined butcheries, her fiendish brutalities, are the blackest pages in the annals of the world.

What a sad story the history of poor Cuba tells! For more than three centuries Spain has ruled her with a bloodstained and an iron hand. It has been a thousand times worse than the rule of the Turk. It has been a thousand times worse than the rule of a barbaric military despotism over a conquered and subjected province.

The history of poor Cuba's trials, her woes, her troubles, and her tribulations never has been written and never will be written. Not half the truth will ever be known. And more the shame!

Spanish rule in Cuba has been one long, unending, hideous carnival of crime, of public plunder, of rapine, of official robbery, of murder, of starvation, of destitution, of assassination, and of cruel, torturing death—a frightful big black blot on the pages of civilization, a lasting, burning disgrace to all Christendom, an impudent, imperial challenge, backed by the bayonet, to the sober sense of humanity and the Christian civilization of the world. [Applause.]

No pen can depict, no human tongue can tell, one half of poor Cuba's woes and miseries. The horrors of Spanish rule in Cuba are beyond the conception of the human intellect.

Captain-General after Captain-General has come and gone, leaving behind a trail of blood and a pitiful record of pillage, of plunder, of rapine, of crime, and of death in all its forms. But Cuban patriotism has never been conquered. It has lived on and hoped on, and as the years rolled by has become more intensified, more united, and more persistent, until at last the bright dawn of Cuban independence is at hand and Cuba will be free.

From the very beginning of her struggle for independence I have been an ardent friend of Cuba, a pronounced sympathizer of the Cuban patriots, and a strenuous and persistent advocate for their freedom and independence. I shall not change.

I have made many speeches on the floor of this House in favor of granting the Cuban patriots belligerent rights or in favor of recognizing their independence. Every prediction that I have made regarding Cuba is true to-day. With every other liberty-loving American citizen, I want to see the Cuban patriots win their independence; and if we will do our duty, they will win.

We must give our ultimatum to Spain, and it must be that Cuba must be free; that the wanton butcheries, the frightful horrors, the fiendish brutalities, the bloody assassinations, and the willful extermination of innocent men, women, and children in Cuba must be stopped, and stopped at once. As I have said before, we want peace with honor; but there can be no peace with honor unless Cuba receives her independence. The Spaniard must go, and the Spanish flag must be hauled down on the Western Hemisphere. Spanish rule on this side of the Atlantic is at an end. It has always been a disgrace to civilization and to Christendom.

Spain has run her course. Her days of conquest are no more. She is bankrupt; she is obsolete; she is a Bourbon, never forgetting, never learning. Her throne totters, and the monarchy hangs in the scale, trembling for its existence.

Weyler, the greatest criminal of the age, has gone. But the bloody Blanco is carrying out his decrees. He is just as bad; one like the other—no difference.

Mr. Speaker, we have heard much of late about the President's policy of intervention. The President has been promising for several weeks to send to Congress a ringing patriotic message in favor of immediate armed intervention. Let us look into this for a moment. Let me say to you that as I understand it the Cuban patriots do not want armed intervention unless they are recognized as independent. Independence must come first. Intervention can follow, if necessary to maintain it. That seems to me to be the proper policy.

There can be no intervention, it seems to me, with justification unless we recognize the independence of Cuba or declare war against Spain. The Cuban patriots, battling as they are and have been for three years and more for freedom, for liberty, and for the right of self-government, do not intend to give up now. All they ask for, as I am informed, is the recognition of their independence. They do not ask for the armed intervention of this Republic. Recognize their independence, they say, and they will achieve their own freedom. Recognize their independence, and they will drive from the territory of the fairest island in all the world, the gem of the ocean, the last vestige of Spanish rule and Spanish domination.

They believe, and I believe, that if this Government will recognize their independence, England and every South American and Central American republic will also recognize their independence. This, in my opinion, is the first thing we should do. We should have done it months ago. It is not yet too late. Let us do it now.

Mr. Speaker, I believe now that if we will but do our simple duty, as I conceive it, and recognize the independence of Cuba, the Cuban patriots will speedily win. It will give them the right, by virtue of international law, to buy arms and munitions of war; to buy a navy; to fly their flag on the high seas; to sell their bonds, and to raise money. Give them this right of recognition, I say, and they will be able to cope with Spain in every way and will soon be free by their own stout hearts and their own strong arms. No doubt they can do this.

Look at the situation. According to the best statistics Spain has only about 75,000 soldiers in Cuba, and most of them are disabled. The Cuban patriots have 40,000 well-drilled soldiers, armed and thoroughly equipped. They can put 100,000 more men in the field if they have the rifles and the ammunition. Give them a chance to get 100,000 more rifles and 2,000,000 cartridges, and the Cubans in thirty days will drive the last Spaniard from the coast of Cuba without any aid or assistance from the United States. If you want to avoid war, do this, my friends, and in my judgment we will escape war. Yes, independence, and not intervention, is what the Cuban patriots ask us for. Let us, then, be brave and manly and recognize the fact, and give the proper recognition.

Why, may I ask, all this talk about intervention? In whose interest is intervention? Not in the interest of the Cuban patriots. Will it be in the interest of the Cuban sugar-plantation syndicate, whose agents reside in the New England States? Will it be in the interest of the Spanish bondholders and Wall street, or will it be for the political interest and the aggrandizement of the Republican party? Let some one on the majority side of this House answer.

Mr. Speaker, I stand now where I always have stood, where I will stand until the last—for the liberty-loving people of Cuba, who are making and have made as heroic and as gallant a battle for freedom and independence as any people ever made in the history of the world. [Applause.] I want to see them win, and I know they will win if this great Republic, which should stand as a shining light, as a beacon, and as an example for all the other republics of the world and for every people struggling for liberty and independence, will simply do its duty. [Applause.]

Let us pass a joint resolution recognizing the independence of Cuba. Let us do it at once without waiting further for a message from the President or for the consent of the Speaker.

Let us do our duty, and then let us hope the Executive will do his duty. If he believes in delay, if he believes in a policy of procrastination, I know of no reason why we should. There is not a member on the floor of this House who can rise in his place now and tell us what the policy of Mr. McKinley is or will be regarding the Cuban question. No one seems to know. There does not seem to be a man in Congress who can tell. Is there any reason to believe we shall be able to know more about the President's policy next week, or the week after next, or next month, or the month after next?

Many people of this country, I am afraid, are beginning to think that Mr. McKinley is not a free agent. A great many people will soon believe he has no mind of his own. If he does not do something pretty soon, the people will ere long believe that he is a mere automaton. [Laughter.] He wabbles; he waits; he hesitates. He changes his mind. Our countrymen are beginning to believe that something must be wrong. Many no doubt think that one day he listens to the nobler impulses of his own heart—and he has a good heart—and to the patriotic dictates of his own conscience—and his own conscience must tell him his imperative duty—and that the next day he listens to his alleged owners and advisers, HANNA, McCOOK, ELKINS, and the agents of Wall street. The American people will rebel against being governed by the agent of MARK HANNA. Take my word for it, the American people will never consent to be governed by any man who is not big enough to own himself. Let those to whom this applies take heed lest they fall. A word to the wise is sufficient.

Mr. Speaker, you know and I know that the American people are to-day aroused as they have seldom been before. They demand to know what we, their representatives, intend to do to help free Cuba. Do not mock them. Make no mistake; they will know. They want to know what the President is going to do about it, and they will know. There comes a day of reckoning.

We are waiting and waiting. For what? For the President to make up his mind; for the Executive to come to some conclusion. The American people have made up their minds long ago. They want us to act. They want us to do something. We can not gather courage by inaction and irresolution. If we are going to do anything regarding Cuba we must do it now. This talk about intervention will be ridiculous in a few weeks more when the rainy season in Cuba begins. Everyone knows who knows anything about Cuba that it will be impossible for our American soldiery to operate with any degree of success in Cuba during the rainy season. The dread disease of yellow fever will be more potent then than bullets from Spanish rifles. Now is the time to act. The watchward of the Administration should be action! action! action!

Mr. Speaker, for one I do not think the President is dealing fairly with Congress. Do you not think it was his duty to send some message to the representatives of the people telling them what he intended to do and when he would do it? We are waiting, but we are waiting in vain. I hope we will not have to wait after next Monday. We are neglecting the true performance of our duties. You gentlemen do not fully appreciate how intense the feeling is among the American people generally on this Cuban question. You do not know how they chafe under these unexplained and incomprehensible delays. I sincerely hope you gentlemen of the majority have some conception of how aroused, how embittered, how humiliated, and how disgusted the rank and file of our constituents are by these delays and these postponements. They will hold the Republican party responsible, no matter what may occur or happen hereafter. The skirts of the Democratic party are clean. For three years we have been trying to accomplish something for the freedom and independence of Cuba.

You know that the Democrats on the floor of this House have over and over again, in season and out of season, endeavored to pass Senator MORGAN'S joint resolution granting belligerent rights to the Cuban patriots. The majority, controlled by the Speaker, has frustrated our efforts. You know, and the world knows, that the Democrats on the floor of this House have time and time again voted to pass a resolution recognizing the independence of Cuba. But the Republican majority has persistently voted against every attempt that we have made. We are in the minority. We can not do anything but vote and demonstrate our sincerity and good intentions. The Republican party is charged with the responsibility of legislation.

It has most signally failed to carry out its promises regarding Cuba. The people of our country to-day know that if you Republicans did what you ought to do Spain would be compelled to get out of Cuba in twenty-four hours. You should not have delayed a week after the *Maine* was destroyed. There is not an intelligent man in our land who has read, or will read, the testimony of Captain Sigsbee and the other survivors of the *Maine* who escaped Spanish treachery and Spanish destruction who does not believe Spain deliberately destroyed our vessel and assassinated our citizens. That crime must be atoned for.

The proof of Spanish guilt is clear. The testimony is conclusive. If Spain was on trial for her life and the proof was as strong and as convincing, any jury in the land would bring in a verdict of guilty.

Spain shall not escape for this terrible crime against the laws of God and man. The *Maine* tragedy must not be lost sight of. It ought to be made a casus belli against Spain.

All honor and all glory to the heroic crew of the *Maine*. They were as brave and as gallant a crew as ever sailed the sea or challenged a foe. They died in the service of their country, and their countrymen will not forget the deep damnation of their taking off. They died in the cause of Cuba, and Cuba must be free at least to atone for their death. They sleep to-day on Spanish soil, but ere the autumn winds blow again over the Queen of the Antilles they will, if we are true to their memory, be sleeping under the Cuban flag or under the flag of the country they served so well. [Applause.]

Mr. Speaker, I am one who believes in peace with honor, and I say now and again there can be no peace with honor until Cuba is free and the crime of the *Maine* is atoned. The sinking of the *Maine* is no mere incident, but is one of the most frightful crimes ever perpetrated in the history of the civilized world. When comes the day of judgment?

I am no jingo crying for war for the sake of war; but there are things more horrible than war. I would rather be dead upon the battlefield than live under the white flag of national disgrace, national cowardice, national decay, and national disintegration. Yes, gentlemen, I believe if you had done your duty, if you had passed the resolution of belligerency or the resolution for independence, there would have been no war, and Cuba would be free. Many believe that war is now inevitable. If it must come, the quicker the better. If it comes, we have nothing to fear, nothing to be ashamed of. We appeal to the enlightened judgment of the world for the justice of our cause. Let us make it short, sharp, crushing, and decisive.

Mr. Speaker, I believe it is the duty of this Government now, before another hour or another day goes by, to serve notice on the Spanish monarchy that her torpedo flotilla must not leave the harbor of the Canary Islands. I believe this Government should serve immediate notice on the Spanish monarchy that she must get out of Cuba; that we will not tolerate her kind of administration on this hemisphere, and that if she does not get out and give the Cuban people their independence, we will recognize them and help them to achieve it, just as France helped our revolutionary fathers in the dark days of '76.

We must be firm. We must stand up for the right. We must help the weak and oppressed. There is nothing the American people despise so much as a weak and impotent foreign policy. It will wreck any Administration. There is nothing that will destroy our Republic so quickly as national cowardice. We must maintain our rights or sink into national decay. Let us all stand together for the glory of our country. We know our own greatness and our own power. We are the greatest Republic the sun of noon ever looked down upon. We are invincible and invulnerable. [Applause.] If Spain desires trouble, so much the worse for poor old Spain. Let us teach her our greatness in war. That will be an object-lesson to the world. Every one knows, who knows anything about our Army and our Navy, and her army and her navy, that if she goes to war with us she will be crushed and humbled to the dust in thirty days. [Applause.]

We must do our duty and fear nothing. Let us do what we know to be right, and let the consequences take care of themselves.

Let us, then, at once meet the paramount duty of the hour and recognize the independence of Cuba. There are many who believe that if this is done at once there will be no war and that Spain will soon give up the contest and get out of Cuba. But, war or peace, let us do our duty.

Oh, for one day of an Andrew Jackson in the White House, with his courage, his backbone, his nerve, and his patriotism! If a man like Jackson were at the helm of the ship of state there would be no more delay, no more hesitation, no more apologies, but he would say in trumpet tones that would shake the very throne in Madrid, "Onward the whole fleet; forward the whole line. And let the battle cry be 'Cuba must be free!'" [Long applause.]

Mr. LEWIS of Washington. Mr. Speaker, a parliamentary inquiry. How much time is left to the gentleman from New York?

The SPEAKER pro tempore. The gentleman has thirteen minutes remaining, five of which go to the gentleman from Tennessee [Mr. COX], which would leave eight minutes to the gentleman from Washington [Mr. LEWIS].

Mr. COX. Mr. Speaker, this bill, as it is proposed to amend it, will simply be a bill to reorganize the Army under the three-battalion system or basis. When amended, that is all there is in this bill. Necessarily in every battalion there must be a major, and the effect will be to increase the majors to the extent of twenty-five, so that is all this bill will cover when it is properly amended,

in time of peace. In time of war, so as to reach the battalion system, two new companies will be organized, because you can not reach that system without them. The size of the companies remains as now authorized by law. They can at no time go beyond 100 men, and then, to reach that, war must exist.

A little matter has occurred since yesterday that has made a very great impression upon me. My friend the gentleman from Missouri [Mr. DOCKERY] is not present, but I want to pay him a very high compliment, and I think that yesterday I treated him a little wrongfully. I know he was very eager to get two large regiments into the permanent Army in time of peace that cost the people $500,000 a year, and I could not understand yesterday why he did not want to put any men in the Army with muskets in their hands. I understand it now. Whenever a man is going to be governor, you know he will be commander in chief of the forces of the State, and the gentleman from Missouri thought this bill might run in on some of his Missouri troops. I am sorry that I made the mistake of trying to take away any of his command.

One other thing, and then I am done. Yesterday we wanted to fill up the Army because it was expected that war would come. We were sitting here tied up to the very highest pitch, expecting a great declaration or recommendation of war from the President of the United States. Then it did not come, and so we concluded, as sensible men, that there was no necessity of increasing the Army, and went back and left the law just as it was except for that change in the organization. Now, when the war does come, I imagine my good friend [Mr. DOCKERY], whom I appreciate as such, coming from the great State of Missouri, heading the militia of the State with great strides of valor, and war on his brow, for he can get as serious as a preacher sometimes, when he undertakes to do it. I assure him now that from this time on I will never advocate anything that takes one of the men away from that intended great governor of the State of Missouri. [Laughter and applause.]

Mr. LEWIS of Washington. Mr. Speaker, it is my desire to address a few suggestions to the provisions of the bill exclusively. It has been found agreeable by some on this side that I conclude this debate against this measure because of my previous attitude toward this subject. I join, of course, very heartily in the patriotic and eloquent sentiments expressed by the distinguished gentleman from New York [Mr. SULZER] upon the immediate demands of Cuba. If I had a creed to place before the House upon which I would pin its faith, I would inscribe that text simply in the words that I used in my late speech upon this question: "The freedom of Cuba is a sentiment, the avenging of the *Maine* a duty," and there I would rest the discharge of our duty.

But I desire the attention of the honorable chairman of the Committee on Military Affairs, and call the attention of the House to the fact that I am very much like the gentleman from Pennsylvania [Mr. ROBBINS]—I am interested in this bill, and somewhat personally; and as the rules of the House require that I should make that known personally, I do not hesitate to do so. If this bill goes into effect as now provided it legislates me out of office. I am at present an officer of the National Guard of the State in which I live.

The most cordial associations and the dearest moments of my life have been intertwined within the social associations as well as the sacrifices attending that Guard. While that to some extent stimulates and inspires me to investigation of this measure, there are greater influences. This House will recall that I informed the gentleman from Iowa on the 17th day of January, when I stood in this House making my speech on the "passing of representative government," said that it was his purpose and the purpose of his committee to eventually bring forth in this Chamber a bill that would have for its object the strengthening and increase of the National Army in time of peace. He at once made the accusation in that very patent invective, that I was talking "claptrap." Some of his party papers throughout the country appended to me the antique anathema of a "demagogue."

I desire to bring now as a witness to this House this bill as brought in by this honorable gentleman as chairman of the Military Committee, the first section of which reading: "A bill providing for the organization of the Army in time of peace." Mr. Speaker, according to the provisions of this bill, it would increase the Army by 255 officers of the infantry and 31 in the other arms of the Army, and bring the standing army to 105,000 men; and, coupled with the National Guard of this country, taking the serviceable men, you have in the service at the present the highest, greatest, and numerically the strongest standing army in the world. What think you now, sir, of the accusation you made against me? Was I not right, and you unconstitutional?

Mr. Speaker, a theory of organization brought forth in this bill is given as the excuse for the measure. It is said that it is a war measure. We have no war upon us. If it is a war measure, it can not possibly succeed. Far from stimulating the patriotism of this country by inducing those to join the Army who fight for their homes and firesides under the command and leadership of friends and neighbors, you have no other purpose in this bill than to provide for 250 officers who have been graduated at West Point, who have no other hope than promotion to life service under this law.

There is no other object in this bill, and you can not keep the secret longer from us. Your real mission concerning this is to give these positions to these men. I am opposed to that. I am tired of such a reigning influence in this country. I shall, as heretofore, fight any organization composed of gilded military satraps on the one hand and tasseled society sapheads on the other. [Applause and laughter on the Democratic side.] I am opposed to every form and frame of the measure, because as a war measure it is futile, empty, and delusive, and so it has been shown in the best armies in the world.

I remind the distinguished gentleman that this measure is wholly without value. France tried your measure. She had her officers who were educated at St. Cyr. She tried that system under Napoleon III. She assembled her soldiers from the vine-clad cottages and from out of the hamlets and hillsides of that poetic country under the command of the graduates of her colleges, and they lost the battles for Napoleon III and yielded the victory at Sedan to the Germans. England has tried your policy. In 1872 she made such recommendations. It was attempted by Lord Derby, and had been by Lord Cardiff before him, but it proved a failure, and now it comes from the honorable Lord Bulwer, commander in chief, that the same system was considered in England and declared a failure.

These condemned courses were the same as the prospective plan that is now here considered. After an exhaustive trial it has been demonstrated to be a failure. A great many gentlemen around me have said that the only countries that have their armies on the formation that our Army is formed are China, on the one hand, and Persia on the other. I would remind gentlemen that while that may have been true seven years ago, it has not been since. The Chinese army has been re-formed. They have formed it on the English plan, and to-day are considering a general revision because of that English report that such a policy serves no good purpose.

That I would indicate to the gentlemen of this House how absolutely ineffectual would be this plan of organization, I call to your attention the fact that there will be 3,000 men under the command of a colonel, and 2,000 under the command of a major and a multitude of captains and lieutenants, and not one of these officers to bear the slightest relation to the men under his control. The captains and lieutenants will be neither friends nor neighbors of those under their control, the officers of these men to be "West Point graduates," and their main stimulus, "seeking the bubble reputation in the cannon's mouth," will be to drive the men into battle, irrespective of sentiment or regard for their lives or safety, and exterminate them in order to maintain the "official reputation" of these national officers. This can never be the theory of the National Guard, the armed force in a free country, intended to oppose foreign invasion in a State. This attempt to put armed power in the hands of the selected few in order to give power and exemption to the few favored and place the burdens of government and the right of authority upon the weak, is not a new question.

The Marquis of Beccaria wrote an essay and sent it down to the constitutional convention of this country, and it was read and commented upon by Governor Morris, of Pennsylvania. The doctrines asserted by these gentlemen now as something new have been in every form confronted, combatted, and overthrown time and time again. Their establishment has ever been regarded as a blow against the ranks of the poor and the army of the toilers, and to bring them forward now is to bring something obsolete and oppressive which has been tried and proven a disaster when successful and a failure when not oppressive and tyrannical.

Mr. Speaker, I am opposed to this measure aside from the fact that it has no merit and has no utility as a measure of organization. I am opposed to it because, as I have said on this floor with such humble ability as I possessed, I will fight consistently every measure that will tend to reduce this country to imperialism and to place upon the standard Cæsarism instead of freedom. Increase the standing army in order to provide berths for a favored few, for those who may have graduated at West Point and hold now the privileges of this nation. This is the object of the law; make mercenaries of our volunteer soldiers and martinets of every insolent military understrapper. Let these men work for a living as men, and be entitled to the consideration of the American citizens.

We are not pensioning these distinguished gentlemen by giving them official titles as favor; we are not creating an official army for the purpose of satisfying the yet unsatisfied ambition of these pampered maudlins. Unless these gentlemen can come with some measure which will add to the efficiency of the Army by adding inspiration and influences which bring to the country's defense

patriotism, which is essential in the hour of her trial, this measure has no purpose and is futile and should be defeated. The soldiers now in command or service will be protected and dignified; where there are faithful services these officers will be honored. The gentleman says the law may be remedied by some amendments. It can not be amended so as to give it the qualities which it lacks. It lacks constitutionality. It is devoid of Americanism. It is an engine of oppression and the stealthy destroyer of the weak.

I conclude my sentence. I said the bill could not be amended, and to continue the illustration that you could not amend this bill so that it would be efficient, because the bill stands as the artist's work of "Virago." It may sometimes bear the maidenly smile of virtue, yet there is something so vicious and odious hidden within it that it has the look of distortion, the form of infamy, and the purpose of crushing to death all who shall come within its embrace.

Mr. HULL. How many sentences does the gentleman want to conclude.

Mr. LEWIS of Washington. My concluding sentence is to sentence the gentleman from Iowa to political oblivion if he imposes this bill further upon the country. [Laughter and applause.]

Mr. HULL. Mr. Speaker, I have been much interested in the speech of my distinguished friend from Washington, but he fails to point out any part of the bill that increases the number of officers or men in the time of peace. There is no difference of opinion between Democrats and Republicans on the committee in regard to that. I do not want to take up the time of the committee, for I want to yield to the gentleman from Virginia [Mr. HAY] ten minutes.

Mr. HAY. Mr. Speaker, I have been much surprised at the remarks of the gentleman who has just taken his seat. The gentleman seems to think that he is the only Democrat on this floor. He has implied, if he has not stated, that the Democratic members of the Committee on Military Affairs were—I can not exactly catch the always distinguished language which the distinguished gentleman uses—but that we were tessellated somethings and brazen somethings else, I do not know what. [Laughter.] However that may be, the gentleman is entirely mistaken in the object of this bill.

I propose to discuss the bill from the standpoint which was announced by the chairman of the Military Committee this morning, and that was that we did not propose to increase the Army one particle; that an amendment would be offered by the committee which would take from it the objections which have been raised by gentlemen on both sides of the Chamber; that there would not be any increase whatever of the Army in the time of war, except of 5,000 men, which is now authorized by law, not officers, because it seems that it is the officers that want to lead the National Guard and do not want to be kept out of this fight which they say is imminent, but which I do not believe is ever coming. I say we have eliminated and taken from the bill the sting which seems to have struck the members of both sides of this House.

There will not be a single officer added to a single company or a single regiment, except the twenty-five majors who will be necessary to carry out the three-battalion formation provided for in this bill.

Now, the gentleman from Washington has repeated to us a great deal of history. He tells us that England has tried the three-battalion system and has abandoned it. I defy the gentleman to point to any authority showing that England has ever tried the three-battalion formation. She has stuck to her old system beginning in the seventeenth century and coming down to the present time. And the greatest military authority in England to-day says that if that country should have a war with one of her strong neighbors, it would be necessary for her to have the three-battalion formation in order to succeed.

I say that this three-battalion organization which we insist upon is one which is now used by Germany, the greatest military power on earth, and by France, and by all the civilized countries except Persia, China, and perhaps one or two others that have gone back in their civilization.

Now, I want to call attention to the fact, and to insist upon it, that this bill, when it shall be amended as the committee proposes to amend it in this House, will be in such shape that the National Guard will not be affected by it in any way. I want to call attention to the fact that the National Guard of New York and Pennsylvania have now the three-battalion system, and that if those military organizations should now be mustered into the service of the United States, instead of continuing the battalion system which they now have, they would be compelled to adopt the system which is by law the system of the United States Army. That is the law; and they could not get away from it.

Therefore, I say, this bill will help the National Guard throughout the country in adopting the system which is recognized to be the best infantry system that can be used by any army. There is no possible argument that can be used against the system which we propose. Notwithstanding the argument of the gentleman who has just taken his seat, the bill can be amended without the least trouble in any manner which may be desired; and therefore it will not be necessary to recommit it.

When gentlemen talk about the National Guard they are talking alone about those troops which are under the control of the governors of the States. The militia of the United States and the National Guard of the United States are two separate and distinct things. The National Guard are State troops, under the command of the governors of the different States. The militia are the men of this country between the ages of 18 and 45 who are subject to military duty.

Mr. MARSH. Will the gentleman allow me?

Mr. HAY. Certainly.

Mr. MARSH. I do not want the statement the gentleman has just made to go to the country uncontradicted. I deny that there is any distinction, so far as the power of the National Government is concerned, between the National Guard and the militia. They are all comprised within the provision of the Constitution which makes the President the Commander in Chief of the militia of the United States. There is no military organization of the States that is not the militia of the United States.

Mr. HAY. Notwithstanding the statement of the gentleman, I adhere to the statement I have just made, and if the gentleman will take the trouble to examine the law he will find that what I say is true. Perhaps if he had taken the trouble some little while ago to do this there would not have arisen the conflict there has been in this House over this bill.

Now, Mr. Speaker, I do not care to occupy further time in speaking upon this measure. It seems to me that the statement of the chairman of the Committee on Military Affairs this morning that this bill would be amended in accordance with the evident wish of the majority of this House ought to be entirely satisfactory to all. For myself, I never desired—and I can say for the committee of which I am a member that they never intended or wished to bring in any measure here which would in any way affect the efficiency of the National Guard or prevent them from going to the front when the country is attacked or when the country attacks somebody else. We all recognize the fact that the citizens of this country are the soldiers of the country; that they are the people upon whom this Government must rely in time of war.

Mr. HUNTER. Will the gentleman allow me a question?

Mr. HAY. Certainly.

Mr. HUNTER. If the National Guard were called out as a body to-day by the President of the United States, directly or through the governors of the States, could they go into the ranks of the Army as a National Guard organization?

Mr. HAY. Yes; as I understand.

Mr. WHEELER of Alabama. The law expressly says that they shall.

Mr. HUNTER. I mean under this bill.

Mr. HAY. This bill does not touch or in any way whatsoever interfere with the National Guard. It says not a word about the National Guard. It leaves the existing law to operate.

The SPEAKER pro tempore. The time of the gentleman from Virginia has expired.

Mr. HAY. I ask the gentleman from Iowa [Mr. HULL] to yield me three minutes more.

Mr. HULL. I will do so.

Mr. HAY. I wish to answer more fully the question just put by the gentleman from Illinois [Mr. HUNTER]. I say that under this bill the National Guard is not touched; and if the President were to call upon the governors of the States for troops, those troops would enter the Army as an organization—as organized regiments, officered by their own colonels, their own majors, their own captains; they would be a separate and distinct organization. This bill does not touch that. The law remains just as it was.

Mr. LEWIS of Washington. Will the gentleman allow an interruption for a question?

Mr. HAY. Certainly.

Mr. LEWIS of Washington. I would like to ask my friend if he does not understand that this bill creates 175 new officers, or an addition of 20 per cent to the officers now in the standing army; and that they would take command in the Regular Army, including also the State militia and the volunteers, should they be called into service?

Mr. HAY. Mr. Speaker, I was discussing this bill, as I stated, from the standpoint on which the members of the House must vote on it. The amendments to be offered by the chairman of the Committee on Military Affairs will eliminate any objection that may be raised in the direction the gentleman speaks of. I am discussing the bill now as it will be before the House, finally, for its adoption.

Mr. LEWIS of Washington. I mean the portion of the bill that is still before the House after the proposed amendment.

A MEMBER. But that does not appoint any additional officers, except in the event these skeleton regiments are filled up. This does not make any additional colonels.

Mr. HAY. The bill would make an addition in time of peace of one major to each regiment. There are twenty-five infantry regiments, but in time of peace—not war—there will be one additional major to each regiment; that is to say, the bill will provide for the three-battalion system. A lieutenant-colonel will command one of the battalions, one major will command one, and the other major the third. That is all that the bill provides.

Mr. WHEELER of Alabama. That is correct.

Mr. LEWIS of Washington. Where do you get the other officers, the subordinates, lieutenants, and captains?

Mr. WILLIAMS of Mississippi. Will the bill increase the number of regiments?

Mr. HAY. It will not, sir.

Mr. KELLEY. Does not the bill provide for the increase of the Regular Army to 104,000, exclusive of the National Guard?

Mr. HAY. Why, Mr. Speaker, I have just stated to the gentleman from Washington [Mr. LEWIS], in response to his inquiry, that I am discussing this bill from the standpoint of the statement of the chairman of the Committee on Military Affairs that that provision will be stricken from the bill and the Army remain just as it is now.

The SPEAKER pro tempore (Mr. PAYNE). The time of the gentleman has expired.

Mr. BRUNDIDGE. Mr. Speaker, I desire to submit a report at this time.

Mr. HULL. I yield five minutes to the gentleman from Illinois [Mr. BELKNAP].

Mr. BRUNDIDGE. I ask consent to submit a report that will take but a moment.

Mr. HULL. If it comes out of the time allowed for debate, I can not yield.

The SPEAKER pro tempore. The time for general debate has been fixed for 2 o'clock. The Chair will recognize the gentleman after that to submit the report.

Mr. BELKNAP. Mr. Speaker, I had no intention whatever of saying anything relative to the pending bill until the gentleman from Washington [Mr. LEWIS] made his remarks a few moments ago, and although I do not think he intends to be unfair in his statement, I must say frankly that he made suggestions which are manifestly unfair and statements that are not founded on the present situation relative to this bill as it comes from the Military Committee. He stated that the Committee on Military Affairs was desirous of increasing the Regular Army. I as a member of that committee and as a Republican most heartily oppose increasing the Regular Army either in time of peace or in time of war. And his accusation therefore is unjust and unfounded upon facts.

This bill—and we must consider it now simply as it comes to the House to be voted upon—every feature of the bill will be eliminated except the sections that provide for a modern organization of the regiments. That is all there is to it. As our organization is now, it would be absolute murder to fight the men. We will have a new organization under the bill; and, mark you, gentlemen, that will bring the Regular Army up to the perfected standard of organization now in vogue in the National Guard throughout the country.

Mr. OTEY. Does not this bill increase the standing army in time of peace 5,000 men?

Mr. BELKNAP. No, sir; it does not increase it one man.

Mr. WHEELER of Alabama. It increases it just twenty-five—twenty-five officers.

Mr. OTEY. Does it increase the number of officers for each regiment or companies in each regiment?

Mr. BELKNAP. No, sir; it does not; and I will state to the gentleman that I would be utterly opposed to it if it did. I will say to the gentleman, further, that I am absolutely fair and frank in my statement that all I would vote for is the reorganization of the Regular Army to put it on a modern basis. That is all I ask, because, Mr. Speaker, when war comes I believe that the volunteers and the militia of this country should have the opportunity to fight for our flag, and they will properly and nobly defend it. [Applause.]

Mr. MARSH. Will the gentleman allow me an interruption?

Mr. BELKNAP. Certainly.

Mr. MARSH. I understand it is now proposed to strike out all of the bill except the first and second sections.

Mr. BELKNAP. I believe that is correct.

Mr. MARSH. Will you now inform the House how many men will be increased in the Army, and how many officers, by the sections remaining after the bill is perfected?

Mr. BELKNAP. You mean in time of peace?

Mr. MARSH. I mean at any time. The bill, I believe, does not go into operation except in time of war; but what would be the increase, under the second section, of officers and enlisted men when it does go into operation? I ask the question because the impression prevails with many members that the adoption of the first and second sections will perfect the new organization, or permit the reorganization, but will not add officers or men to the Army.

Mr. BELKNAP. As I understand it, that is the case, and if it is not the case, I will not vote for it.

Mr. MARSH. Well, it is not the case.

Mr. BELKNAP. Very well, sir, then I can not vote for it. I took my feet so that I would not be placed in the position of advocating an increase in the Regular Army.

I want simply a modern organization for the Regular Army, not an increase. I will not vote for a bill that will shut out the National Guard or militia and the volunteers by the Regular Army.

Mr. MARSH. If you vote for the second section, you do increase it.

Mr. LEWIS of Washington. That was my understanding from the gentleman from Illinois [Mr. MARSH] yesterday, and I investigated the matter, and sanction his remarks this morning. I have no intention of being unfair to my friend from Illinois.

Mr. BELKNAP. Of course there is an increase of 25 majors for the modern organization.

Mr. LACEY. And also 100 lieutenants and 50 captains.

Mr. BINGHAM. If the President in his discretion establishes a third battalion, and so forth, as he is authorized to do in section 2, what will be the increase of officers and men?

Mr. MARSH. My colleague says there will be no increase under the second section.

Mr. BINGHAM. Suppose the President establishes a third battalion in time of war. It says he may establish a third battalion to each infantry regiment.

Mr. MARSH. My colleague understands that the adoption of that very section does not increase the Army, does not authorize the increase of the Army, either in enlisted men or in officers.

Mr. BELKNAP. Beyond what the present law allows. I will ask if that is not so?

[Here the hammer fell.]

Mr. HULL. Mr. Speaker, I want to take up the first and second sections of the bill for a minute. The first section provides——

Mr. DOCKERY. I hope the gentleman will give the information desired by the gentleman from Illinois.

Mr. HULL. The first section provides—

That hereafter the peace organization of each regiment of infantry now in service shall embrace 1 colonel, 1 lieutenant-colonel, 2 majors, 10 captains, 12 first lieutenants, 10 second lieutenants, 1 sergeant-major, 1 quartermaster-sergeant, 1 chief musician, 2 principal musicians, 2 battalions of 4 companies each, and 2 skeleton or unmanned companies; the organized companies to be constituted as now authorized by law: *Provided*, That nothing herein contained shall be construed as abolishing the office of chaplain in each regiment of colored troops.

The colored troops have regimental chaplains. Now, that provides for an increase in time of peace of 25 majors, and 25 majors only. The language will not admit of any construction beyond that. It takes the 8 companies as now organized by law and divides them into 2 battalions, where there is now 1 battalion, and provides a major for the second battalion.

Mr. OGDEN. Right there, now, I want to ask what becomes of the other 2 companies?

Mr. HULL. It leaves them as they are.

Mr. OGDEN. Then you would have to amend the section.

Mr. HULL. Not at all. It leaves the 2 skeleton companies as they are now, in time of peace.

Mr. OGDEN. How can you divide 10 companies into 2 battalions of 4 companies each? What becomes of the other 2 full companies that we already have?

Mr. HULL. There will be 2 battalions of 4 companies each and 2 skeleton companies.

Mr. OGDEN. It musters the men out of the service, then, and leaves 2 companies skeleton?

Mr. HULL. They are already skeletonized, and the officers are detailed to teach in the colleges of the different States of the Union, and there is not enough of them to meet the demand for the colleges and schools of the United States; and we are now besieged to increase the number, so that the Government of the United States can furnish these instructors.

Mr. CONNOLLY. Why do you provide for 12 first lieutenants?

Mr. HULL. Because one first lieutenant is detailed to act as quartermaster, and another first lieutenant is detailed to act as adjutant.

Mr. CONNOLLY. That is for detail, but you are providing for the regular organization.

Mr. HULL. That is where the adjutants and quartermasters of the regiments will be filled from.

Mr. CONNOLLY. But they will have 12 first lieutenants, and then detail others in addition, as is done now.

Mr. HULL. Not at all.

Mr. CONNOLLY. That is the case in the Army now.

Mr. HULL. That is not the case in the Army now.

Mr. CONNOLLY. They detail an officer for adjutant and an officer for quartermaster.

Mr. HULL. Yes, and that is the reason you get 1 extra first lieutenant for adjutant and 1 extra first lieutenant for quartermaster now.

Mr. CONNOLLY. Why do you not say so?

Mr. HULL. It is clear enough now.

Mr. CONNOLLY. It is not clear enough. It depends on the construction of the Department.

Mr. MORRIS. I should like to ask the gentleman from Iowa if there are not 2 skeleton companies under the present law?

Mr. HULL. Yes; that has been stated here over and over again.

Mr. BARROWS. Mr. Speaker, perhaps I am the only one here who has any curiosity about the provision the gentleman from Iowa just read, "that nothing herein contained shall be construed as abolishing the office of chaplain in the regiments of colored troops." I wish to ask if it is presumed that the colored troops need chaplains *and that the white troops do not?*

Mr. HULL. The chaplains for the white troops are, as a rule, post chaplains, but the regiments of colored troops are provided with chaplains for the regimental organizations, they being kept together more as regimental organizations. It was feared that if that was not put in, the construction of the law would be that these offices would be abolished. The white troops have their chaplains in their posts.

Mr. BARROWS. I suppose I am the only one who has any professional interest in the subject.

Mr. BINGHAM. Will the gentleman permit an inquiry?

Mr. HULL. Yes.

Mr. BINGHAM. I think in the gentleman's statement yesterday he left the House under the impression that the President, under the existing law, could double the present force of the Regular Army. Upon what authority does the gentleman make that statement? Let me submit to the gentleman that in 1877 the Army appropriation bill contains the following provision:

For expenses of recruiting and transportation of recruits, $90,000. And no money appropriated by this act shall be paid for recruiting the Army beyond the number of 25,000 enlisted men, including Indian scouts and hospital stewards. Nothing, however, in this act shall be construed to prevent enlistments for the Signal Service, which shall hereafter be maintained as now organized, and as provided by law with a force of enlisted men not exceeding 400 after present terms of enlistment have expired.

That was the act of 1877, but I come to the act of 1885 and I find this:

And there shall not hereafter.

That is the first time the word "hereafter" appears in the Army bill.

For expenses of recruiting and transportation of recruits from rendezvous to depot, $107,302.50. And no money appropriated by this act shall be paid for recruiting the Army beyond the number of 25,000 enlisted men, including Indian scouts and hospital stewards; and thereafter there shall be no more than 25,000 enlisted men in the Army at any one time, unless otherwise authorized by law. * * * And there shall not hereafter be expended out of appropriations made for the support of the Army any money for the support of the Signal Service or Corps, or for any purpose connected therewith, other than the pay of such commissioned officers as may be detailed by the Secretary of War for service therein, except such sums as may be specifically appropriated therefor.

That is the statute law. The old law no longer runs. The President has no power beyond the existing law, which is a limitation of 25,000, "unless otherwise authorized by law."

Mr. HULL. The President will have absolutely no power to recruit the Army except the Congress authorizes him. Now, let me read you what I think everybody will find, considering the whole statutes and considering the law as to infantry organization.

Mr. DOCKERY. Will the gentleman allow me, in that connection?

Mr. HULL. I will when I get through with my statement. The law provided:

1079. Each company of infantry shall consist of 1 captain, 1 first lieutenant, 1 second lieutenant, 1 first sergeant, 1 quartermaster-sergeant, 4 sergeants, 4 corporals, 2 artificers, 2 musicians, 1 wagoner, and 50 privates; and the number of privates may be increased, at the discretion of the President, not to exceed 100, whenever the exigencies of the service require such increase.

Mr. BINGHAM. What was the date of that?

Mr. HULL. The date of the enactment was away back.

Mr. BINGHAM. I am disposed to think that the law in the appropriation bill repeals it.

Mr. HULL. That was whenever the President thought there was an exigency, and that law has never been repealed. There was a limitation as to the number of enlisted men in the Army, but no limitation over the men whenever Congress authorized the employment of additional troops. I believe the gentleman from Pennsylvania will admit that this law governs and fixes it. In fact, the President can enlist additional men when authorized by Congress.

Mr. BINGHAM. Yesterday the gentleman left an impression on the House that on the ipse dixit of the President he could do it.

Mr. HULL. We were discussing this only as a war measure, and assumed that Congress would authorize more troops. The limitation as to number of men in the Army leaves the law forming companies in full force, and when the number is increased the President can fill the companies. Now, Mr. Chairman, I want to go on to the second section.

Mr. DOCKERY. Right at that point I want to submit an inquiry.

The SPEAKER pro tempore. The time for general debate has expired.

Mr. HULL. Wait until we read the section, and then I will take the floor.

CONTESTED-ELECTION CASE—PATTERSON AGAINST CARMACK.

Mr. BRUNDIDGE submitted the views of the minority in the contested-election case of Patterson against Carmack, Tenth Congressional district of Tennessee, which, under a previous order of the House, were ordered to be printed.

ARMY REORGANIZATION BILL.

The SPEAKER pro tempore. The Clerk will report the first section.

The Clerk read as follows:

Be it enacted, etc., That hereafter the peace organization of each regiment of infantry now in service shall embrace one colonel, one lieutenant-colonel, two majors, ten captains, twelve first lieutenants, ten second lieutenants, one sergeant-major, one quartermaster-sergeant, one chief musician, two principal musicians, two battalions of four companies each, and two skeleton or unmanned companies; the organized companies to be constituted as now authorized by law: *Provided*, That nothing herein contained shall be construed as abolishing the office of chaplain in each regiment of colored troops.

The amendment recommended by the committee was read, as follows:

In line 12 insert, after the words "colored troops," the proviso:
"*And provided further*, That the vacancies in the grade of major created by this section shall be filled by promotion according to seniority in the infantry arm."

Mr. WHEELER of Alabama. I move to strike out the last word.

Mr. DOCKERY. I wish the gentleman from Alabama would allow me to make an inquiry of the chairman of the committee.

Mr. HULL. The question will first be on the amendment of the committee, Mr. Speaker.

Mr. DOCKERY. We are not ready to vote. I desire the gentleman from Alabama to give way to me to make an inquiry of the gentleman from Iowa.

Mr. HULL. I take the floor simply to find out what the gentleman wants to inquire about.

Mr. DOCKERY. Following up the inquiry propounded by the gentleman from Pennsylvania—because I did not catch the reply of the chairman of the committee—as I understood the chairman of the committee yesterday, he stated that under the existing law the President has the right in time of war to increase the Regular Army to about 42,000 men. Not knowing anything to the contrary, I very gracefully assented to the proposition.

Mr. HULL. My proposition was, assuming that Congress would authorize the calling out of troops, I think the very minute the limit of troops organized in the company is authorized it can be increased, as I read by the law this morning.

Mr. DOCKERY. But the gentleman from Illinois and the gentleman from Pennsylvania read a section of the statutes which, in my judgment, absolutely, it seems to me, forbids an increase.

Mr. BINGHAM. I do not believe the President has power to do it, unless Congress permits an organization under this act of 1886.

Mr. DOCKERY. What I want the House to understand is that the President has no authority to increase the Regular Army to 42,000 men.

Mr. HULL. Unless he is authorized by law.

Mr. DOCKERY. Why, certainly.

Mr. HULL. So that contention would be settled without any specific organization of the Regular Army if Congress provided for an increase of the troops. That is not before us now. So that it is not necessary to have a judicial decision. I believe under the law, never repealed, if there is an authorization under the

the intent under which he occupies it which is the controlling feature. The House of Representatives held that Mr. Key was, within the constitutional sense, an inhabitant of Maryland and entitled to his seat in the House of Representatives.

A case which was relied upon in the argument to uphold the exclusion of Mr. BECK from his seat was the case of John Bailey, elected from Massachusetts to the Eighteenth Congress, reported on page 419 of the first volume of Hinds' Precedents. The facts in that case were as follows:

On October 1, 1817, Mr. Bailey, who was then a resident of Massachusetts, was appointed a clerk in the Department of State. He immediately repaired to Washington and entered upon the duties of his position and continued to hold the position and reside in Washington until October 21, 1823, when he resigned the appointment. It did not appear that he exercised any of the rights of citizenship in the District, and there was evidence to show that he considered Massachusetts as his home, and his residence in Washington only temporary. It was shown that Mr. Bailey resided in Washington in a public hotel with occasional absences on visits to Massachusetts until his marriage in Washington, at which time he took up his residence with his wife's mother. He never exercised the right of suffrage in Massachusetts after leaving there for Washington.

The election at which Mr. Bailey was chosen as a Representative was held September 8, 1823, at which time he was actually residing in Washington in his capacity as clerk in the State Department. This case was debated in the House for seven days, and, of course, many things were said, but the facts in it are what seem important in its use as a precedent. Mr. Bailey had no abode in Massachusetts. Before he came to Washington he lived with his parents in their house. He had none of his own, either leased or owned. In support of the committee it was stated "had he left a dwelling house in Massachusetts in which his family resided a part of the year; had he left there any of the insignia of a household establishment, there would be indication that his domicile in Massachusetts had not been abandoned."

We think that the Bailey case is clearly distinguishable from the Beck case in that Mr. Bailey had no habitation, no place of abode, under his control in Massachusetts at any time after he accepted the appointment in Washington. The very report of the committee in the Bailey case shows that had he maintained any place of abode or insignia of domestic establishment to which he had repaired from time to time, the holding of the committee would have been otherwise.

No doubt it would do violence to words to hold that a man was an inhabitant of a place where he had no habitation. The House of Representatives held that Mr. Bailey was not entitled to his seat.

The case of Nathan B. Scott, elected a Senator from the State of West Virginia in 1899, was contested on the ground that he was not an inhabitant of the State of West Virginia at the time he was elected. Mr. Scott resided at Wheeling, W. Va., until January 1, 1898, when he was appointed Commissioner of Internal Revenue, at which time he came to Washington to discharge the duties of that office. His intention was to retain his residence and habitation at Wheeling, W. Va., and in carrying out that intention he voted in the election held November 8, 1898, at Wheeling, W. Va. He had no intention to change his domicile to Washington from Wheeling and he claimed to be an inhabitant of Wheeling, W. Va. The committee found that Mr. Scott was an inhabitant of Wheeling, W. Va., at the time he was elected to the Senate of the United States.

In the Bailey case, Mr. Bailey did not exercise the rights of citizenship in the State of Massachusetts, nor did he vote in the State of Massachusetts. In the Scott case, Senator Scott did, and the Senate found that he was an inhabitant of the State of West Virginia.

The committee desires to direct attention to the language in the decision of the Supreme Court of the United States in the case of Shelton *v.* Tiffin (6 Howard, 163, 185). The Federal courts had no jurisdiction in this controversy, unless within the meaning of section 2 of Article III of the Constitution of the United States, the parties thereto were citizens of different States. Hence, this question being raised, its solution was necessary to the decision of the court. In this case, the Supreme Court uses the following language:

"On a change of domicile from one State to another, citizenship may depend upon the intention of the individual. But this intention may be shown more satisfactorily by acts than declarations. An exercise of the right of suffrage is conclusive on the subject; but acquiring a right of suffrage, accompanied by acts which show a permanent location, unexplained, may be sufficient."

It is true that a holding of even the Supreme Court of the United States is not binding on the House of Representatives in the question at bar, since this question is committed by the Constitution solely to the House of Representatives, but we think the opinion of the Supreme Court of the United States ought to be regarded with the highest respect and should be very persuasive in deciding a similar question. It will be remembered in this connection that Mr. Beck registered as a voter and exercised the right of suffrage in Philadelphia in the month of September, prior to the November in which he was elected to Congress.

It is true that in the many court decisions that have been rendered in various courts of the States, under different legal situations, many contradictory definitions of the words "inhabitant" and "resident" may be found. We are impressed, however, with the conviction that the framers of the Constitution were seeking to use the word "inhabitant" in the plain, nontechnical sense in which it had been understood as explained above up to the time of the framing of the Constitution, and that their purpose was to require those who represented the several States in the House of Representatives to be identified with the local interests of those States by having a habitation therein and being in addition a member of the body politic of the particular State from whence they came to the House.

It was argued before the committee that such a construction would lead to the existence of "rotten boroughs" in the United States as once existed in England. We think this argument misapprehends what the "rotten boroughs" were. It will be remembered that the "rotten boroughs" consisted of small communities with few inhabitants, which were given representation in Parliament out of all proportion to the population of other areas and large centers. In other words, the "rotten boroughs" situation in England resulted in insufficient representation for large bodies of the population as compared to many small communities. We call attention to the fact that if a man, because he has business in the District of Columbia and arranges a place of abode there so that he may conveniently care for such business when necessity occasions it, whether it be public or private, is to be denied for that reason the right to have a habitation within one of the States, to acquire citizenship there, to be an elector there, to take his part in exercising the duties and responsibilities of citizenship, it will result in a much closer approximation to the "rotten borough" situation which has been described and condemned.

After all, we must rely upon the integrity, the patriotism, and the good common sense of the electors in the various districts with respect to the choice of a fit membership in the House of Representatives. This is a part of the very genius of representative government. And we do not think that it is proper to seek for strained and captious interpretations of this paragraph of the Constitution to find reasons for rejecting men who have been chosen through the deliberate will of their constituents as indicated at the polls. We believe that every word of the Constitution should be upheld, but we do not think that men who have been chosen to represent a district should be excluded unless their case presents a clear violation of the constitutional provision. We are convinced that such is not the case in the matter now before us. We believe that Mr. BECK is clearly entitled to his seat.

For the above reasons, the committee recommends the adoption of the following resolution:

"*Resolved*, That JAMES M. BECK is entitled to his seat in the Seventieth Congress as a Member of the House of Representatives from the first congressional district of the State of Pennsylvania."

MINORITY VIEWS

JAMES M. BECK CONTESTED-ELECTION CASE

We, the minority, regret to find ourselves in disagreement with a majority of the committee who report that Mr. JAMES M. BECK is entitled to a seat in the House of Representatives from the first Pennsylvania district. If the question involved were not one of vast importance, in our opinion, we would not interpose our opposition; for there could be no personal objection to Mr. BECK as a Member. Neither is there any political significance that could attach to the challenge of his right to sit, as anyone from that district at this time undoubtedly would be of his political faith. And we recognize fully that the renown of Mr. BECK as a constitutional lawyer and a man of high intellectual attainments necessarily is persuasive with the committee.

But the issue is one which goes to the vitals of the National Constitution. Mr. BECK in his opening statement expressly recognized that the question is not free from difficulty. The question arises as to his qualification under Article I, section 2, of the Constitution, wherein it says:

"No person shall be a Representative who shall not have attained to the age of 25 years, and been 7 years a citizen of the United States, and who shall not, when elected, be an inhabitant of the State in which he shall be chosen."

Our conviction is that he was not an inhabitant of the State of Pennsylvania in November, 1927, when chosen.

Mr. BECK was born in Philadelphia July 9, 1861, and had his home in that State until 1900, when he came to Washington, D. C., as Assistant Attorney General. In 1903 he resigned his position in Washington, gave up his residence in Philadelphia, and moved to New York to practice law with a view to securing a competence. He owned one or more homes in New York where he lived and voted and practiced law until November, 1920. At that time he sold his New York home and purchased a commodious residence on Twenty-first Street NW.,

Washington, D. C., to which he immediately moved his family, his extensive personal library, his art treasures, and all his personal belongings he holds most dear.

In June, 1921, Mr. BECK was appointed Solicitor General of the United States by President Harding, and held that position until June, 1925, when he resigned on account of his eyes failing. He immediately established a law office in the Southern Building, Washington, and specialized in United States Supreme Court practice, which law office he still maintains. He also resumed his connection with his old law firm in New York. He does not practice law in Pennsylvania, and has not since 1900.

For several years he has owned and used a summer home in Sea Bright, N. J., on the ocean front. After moving from New York in 1920 he established a voting status at his summer home and he and his wife voted there in the 1924 presidential election by mail. In November, 1927, when chosen he sustained the same relation as to voting status in New Jersey which he did in 1924 and does at the present time, except expressing an intention, which was not carried out, to transfer it to Pennsylvania. His residential connection there is exactly the same, having used that residence for himself and family the last summer months. So far as the New Jersey authorities are concerned, no act of Mr. BECK has shown withdrawal of claims for voting privileges in that State.

In the early spring of 1926 he went to Philadelphia, and with Mr. Greenfield, a real-estate man who is also prominent politically, looked at some two or three apartments in the first congressional district with a view to retaining one for the specific purpose of running for Congress from that district. Mr. BECK states that he had two purposes in view by this. One was to again establish a status in Philadelphia as one of its people. The other was to run for Congress from that district. As to the latter purpose he said:

"The seat in Congress was then a possibility undoubtedly, and I would not want to say, and could not say truthfully, that it had nothing to do with the renting of the apartment." (Rec. p. 58.)

Again he states:

"The apartment was selected in full anticipation of the fact that I might run for Congress. My point is that my taking any habitation in Philadelphia had as its dominant purpose the desire to be reidentified with the political life of Philadelphia, quite irrespective of whether I ran for Congress or not. But the selection of this locality had in mind the possibility of my going to Congress; and it also had in mind that it was very accessible to the main thoroughfare of Philadelphia, and right around the corner from my club." (Rec. p. 61.)

Mr. VARE, the then sitting Member from the first Pennsylvania district, was at that time a candidate for nomination to the United States Senate.

But no apartment was then agreed on, and Mr. BECK went to Europe on a business mission in April, 1926. He returned early in June. On the 6th of July following it seemed that Mr. Greenfield had put in order a 2-room apartment at 1414 Spruce Street, and Mr. BECK then leased it as of date June 1, 1926. This was a yearly renewable lease, unless either party exercised the option of giving a legal notice of its termination. The apartment was then furnished by Mr. BECK, and he still holds it and pays rent on it.

His unmarried sister, Miss Helen Beck, has occupied this apartment continuously for a year; and while she is in it he goes to the Art Club to sleep when in Philadelphia rather than incommode her. The apartment is equipped with a kitchenette, but Mr. BECK has never eaten a meal there. It has one bedroom.

Mr. BECK states that he is in Philadelphia most every week; that he frequently goes to New York on business, and stops over there to break the trip. He was carried as a nonresident member of several clubs in Philadelphia at the time of election and until January last. In none of them was he listed as a resident member.

The janitor of this apartment house, who admits he is entirely unreliable, when approached on the premises, and without notice of the purpose of the inquiry, first said he had only seen Mr. BECK there three times in the 18 months. When placed on the stand he finally estimated that he had known of him being there fifteen or twenty times.

On page 66 of the record, Mr. BECK gives the status of his family as follows:

"Mr. KENT. Now, your family consists of whom?

"Mr. BECK. My wife and myself. I have two children.

"Mr. KENT. Where are they?

"Mr. BECK. My daughter is the wife of the United States consul at Geneva; my son has been in London ever since he was in the Army in France. But neither of my children live with Mrs. Beck and myself. We live alone."

And there can be no question but that Mr. BECK and his wife "live alone" in Washington, D. C., and have lived here since November, 1920, have had this as their domicile, their abode, their habitation. Mr. BECK always registers from Washington when he goes to hotels, has his merchandise for personal comfort sent to him here, has his automobiles for every use registered here; and at no time has he treated the small two-room apartment in Philadelphia as a real, bona fide habitation for any purpose except a gesture at compliance with the constitutional requirement for an inhabitant.

So his claim to inhabitancy is based on the rental of this apartment, which is in reality a place for his unmarried sister to live, with occasional visits to the city of Philadelphia by him when he would stop largely at the Art Club or a hotel; his testimony of intent to return; that he transacts his private affairs in Pennsylvania; and that he attempted to qualify and did vote there in a primary in that State in 1927.

We can not ascribe to the doctrine that intention is the controlling part of inhabitancy. Mr. BECK quotes approvingly a letter relating to his speech in Philadelphia, on April 30, 1925, to the effect that he was "then in a position to take a permanent home again in Philadelphia, where, among your old friends and your books, you would indulge yourself for the balance of your life." Of this Mr. BECK said, "that is just what I said in substance." It would be a strange perversion of every rule to accept even undisputed intentions, shown by declarations, in the face of a state of facts, such as we have in this case, to prove inhabitancy. In truth, Mr. BECK never took a permanent home again in Philadelphia. Had he done so, and moved his family and his books and household there before election, as his expressed intention was, no question would now be made as to his eligibility. Intention, in a case of this kind, is a deduction or conclusion of law founded on fact. We must determine from the facts whether inhabitancy exists. It certainly can not be shifted or designated at the whim or pleasure of the individual affected.

Granting that he had the intention to return, this was outweighed by his desire to inhabit Washington, to practice law here, to have advantage of proximity to the United States Supreme Court, to all Federal activities, to retain all his books, works of art, home, servants, automobiles, mental endeavors, entirely without the borders of the State of Pennsylvania.

As to the transaction of his private affairs in Pennsylvania, it is a fair inference from the proof that he has $20,000 in securities or some other form of property in that State, as he submitted to an assessment in that sum. But he pays taxes in New Jersey on both real and personal property, pays his income tax from Washington, as well as a realty tax here, no doubt on more property value than that for which he is assessed in Pennsylvania. We can find no burdens of citizenship carried by Mr. BECK in that State which he does not bear both in New Jersey and the District of Columbia, except 25 cents paid in September last for an occupational tax.

It is contended that a mere political status meets this requirement of the Constitution. If a political status could be counted the sole qualification for holding this office under the Federal Constitution, a citizen just naturalized and having acquired a voting privilege in his State could sit in Congress, although the Constitution says he must have "been seven years a citizen of the United States"; and likewise, if the citizen is 21 years of age and can vote in his State he could come to Congress in the face of the constitutional provision that "no person shall be a Representative who shall not have attained the age of 25 years." The burdens of citizenship are definitely placed on these two classes who are forbidden to hold a seat in Congress, even though their constituents should choose them unanimously. There is no more discrimination against one who has met the requirements for voting in a State, but who is not an inhabitant of that State within the meaning of our National Constitution, than there is against these others so limited in this privilege.

A mere voting privilege is granted by each separate State in its own way. If a voter can satisfy the requirements of a State law, he can exercise the privilege of franchise. But compliance with the requirements of the Federal Constitution in qualifying for membership in this House is entirely independent of State regulation. A voting status can not be the measure of inhabitancy. If it had been thus intended, the Federal Constitution would have remained silent and thereby left the matter to the separate States. This would amount to the same thing as expressly telling each of the States to fix this qualification, when they would leave that right in the absence of any expression by the Federal Constitution.

One of the conclusive reasons that they regarded a "citizen" and an "inhabitant" as entirely different designations is that they used both in this same clause, this same sentence, for separate and distinct qualifications for membership. No trivial matter of verbiage or curious distinction is necessary to a sensible meaning of this term as used by great men.

The word was substituted for "resident," and the reason clearly given by the great Madison was to allow a temporary absence from a true domicile, not to place it on a casual presence in a temporary domicile.

Mr. BECK was not a qualified elector of the State of Pennsylvania at the time he voted in the primary of September, 1927, nor at the time of his election to Congress. The constitution of that State requires that an elector must be a "resident" of the State for 6 months next before voting in his case, and 12 months for one who has never before been a citizen of Pennsylvania. And the courts of that State have repeatedly and uniformly held, as in Fry's election case (71 Pa. 302, p. 305):

"When the constitution declares that the elector must be a resident of the State for one year it refers beyond question to the State as his home or domicile, and not as the place of a temporary sojourn." * * *

"These extracts will enable us to understand more clearly the term 'residence,' as denoting that home or domicile which the third article of the constitution applies to the freeman of the Commonwealth. It means that place where the elector makes his permanent or true home, his principal place of business, and his family residence, if he have one; where he intends to remain indefinitely; and without a present intention to depart; when he leaves it he intends to return to it, and after his return he deems himself at home."

It can not be reasonably contended that Mr. BECK had his home or domicile in Pennsylvania at that time. It was here in Washington, where it has been since November, 1920, the place where he has his family life, where he comes when he is sick, his true home, the only establishment he has had which resembles a home or permanent domicile, where he keeps his five servants, two automobiles, and the only place he keeps these or any other semblances of home life to comport with his accustomed comfort.

In addition to this, he did not procure his occupational tax receipt on the 9th of September, 1927, legally. This is not meant in the sense of imputing bad faith to Mr. BECK, but the law requires specifically that this must be purchased from the office of the receiver of taxes in person or from a deputy at the place of registration on any of the registration days provided by law; and the only exception to this is when a written and signed order is given by the elector to a person to purchase same for him. This was not done. The receipt was delivered to Mr. BECK in the office of Mr. VARE, not on registration day, not at the place for registration, not in the office of the receiver of taxes, and after being procured by some person with no written authority to purchase same. It is expressly made unlawful in Pennsylvania for any person to vote or attempt to vote upon a tax receipt so obtained in violation of this law. It appears from the testimony by Harry W. Keely, receiver of taxes for the city of Philadelphia, Mr. BECK, and others, that this receipt was not issued in accordance with law and could not be used lawfully. It was only 11 days old when used by him, whereas the law directs that it must have been purchased 30 days before the election in which it is used. But the disqualification for voting which is in no way technical is that of failure to comply with the requirements of a "resident," since his real home, his actual established home, is elsewhere than in Pennsylvania, where at best he only has a place of temporary sojourn.

But if Mr. BECK had been qualified and had legally voted in all Pennsylvania elections, this would in no way be conclusive of inhabitancy. In the Virginia case of Bayley *v.* Barbour (47th Cong., Hinds, vol. 1, p. 425) the House held as follows:

"In answer to this position, without deeming it necessary upon the facts of this case to enter into the constitutional signification of inhabitancy, it is only necessary to say that the right to vote is not an essential of inhabitancy within the meaning of the Constitution, which is apparent from an inspection of the Constitution itself. In Article I, section 2, the electors of Members of Congress 'shall have the qualifications requisite for electors of the most numerous branch of the State legislature,' but in the succeeding section, providing for the qualifications of Members of Congress, it is provided that he shall be an inhabitant of the State in which he is chosen. It is reasonable to conclude that if the elective franchise was an essential the word 'elector' would have been used in both sections, and that it is not used is conclusive that it was not so intended."

And if a voting status "is not an essential of inhabitancy within the meaning of the Constitution," but is vitally essential to citizenship or a political status, it would be sophistry indeed to hold them synonymous.

The term "inhabitant" has never been defined by the courts in connection with this clause of the Constitution, as the House is the sole judge of the qualifications of its Members, so we must look elsewhere for an authentic definition. The intent of the framers should govern if that can be ascertained, and we insist it is very patent from the only definite construction of the word which has ever been in common usage. There has been no marked change in the commonly accepted meaning of the term since 1787, when the Constitution was framed.

Webster's New International Dictionary says of "inhabitant":

"One who dwells or resides permanently in a place, as distinguished from a transient lodger or visitor."

"It ordinarily implies more fixity of abode than resident."

"Inhabitant, the general term, implies permanent abode; citizen, enjoyment of the full rights and privileges of allegiance."

Entick Dictionary, London, 1786, gives the following:

"Inhabitant, one who dwells in a place."

Dr. Samuel Johnson's Dictionary, 1770, gives the following:

"Inhabitant, dweller; one who lives or resides in a place."

Ash's Dictionary, 1775, gives the following:

"Inhabitant: A dweller, one that resides in a place."

Dyche's English Dictionary, 1794, gives the following:

"Inhabitant: One who lives in a place or house, a dweller."

Law dictionaries contemporaneous with the framing of the Constitution do not vary from this. A new Law Dictionary, by Giles Jacob, ninth edition, published in London, 1772, gives the following:

"Inhabitant: Is a dweller or householder in any place."

Doctor Burn's Law Dictionary, published in London, 1792, Vol. II, page 21:

"The word 'inhabitant' doth not extend to lodgers, servants, or the like; but to householders only."

Burrill's Law Dictionary says:

"The Latin Habitara, the root of this word, imparts by its very construction frequency, constancy, permanency, closeness of connection, attachment, both physical and moral; and the word 'in' serves to give additional force to these senses."

Black's Law Dictionary:

"Inhabitant: One who resides actually and permanently in a given place, and has his domicile there."

In Book I, chapter 19, section 213, Vattel says:

"The term 'inhabitant' is derived from abode and habitation, and not from political privileges."

We think the test of inhabitancy is a permanent and fixed abode with the personal presence of the individual in that place, ordinarily; and absence from it must be for a cause temporary in its nature, with the intent to return to said place of abode to reside as soon as the purpose of the said absent mission is accomplished. The absent mission may be in its nature for pleasure, business, or public duty. When said absence is for the purpose of engaging in a business or occupation which calls for the establishment of a home and indeterminate presence therein pursuant to said activity, we consider the former inhabitancy broken, or suspended at least until it again takes on the degree of permanency it formerly had. The overwhelming weight of authority, both as to legal construction and definition, support this view.

Every recognized authority, whether legal or otherwise, excludes the idea of temporary residence, and holds that the term "inhabitant" carries with it the necessity of a fixed and permanent home, the place at which one is habitually present under ordinary circumstances, and to which, when he departs for temporary purposes, he intends to return. This is the common and only justified construction of the word.

The constitution of New Hampshire, adopted in 1792, shows clearly what the common acceptation and meaning of this term was in the following declaration:

"And every person qualified as this constitution provides, shall be considered an inhabitant, for the purpose of electing and being elected into any office or placed within this State, in the town, parish, and plantation where he dwelleth or hath his home."

The constitution of Massachusetts, adopted in 1780, Chapter I, section 2, article 2, declares that—

"to remove all doubts concerning the word 'inhabitant,' in this constitution, every person shall be considered an inhabitant (for the purpose of electing and being elected into any office or place within this State) in that town, district, or plantation, where he dwelleth or hath his home."

This constitution was amended in 1821 to confer the right to vote on citizens who have resided in the State one year, and in the town or district six months. In 46 Mass. (5 Metc.) 587, 588, it was held that "inhabitant" as used in the original constitution is identical in meaning and synonymous with "citizen who has resided," as expressed in the amendment. These provisions and construction are the best possible means of determining the exact use made of the term at that time. Some of the men who were in the National Constitutional Convention were members of the State conventions that placed in the documents themselves this definition of "inhabitant."

On the 8th of August, 1787, in the Constitutional Convention, the committee of detail struck out of the text at this place the word "resident" and substituted the word "inhabitant." The motion was made by Mr. Sherman and seconded by Mr. Madison, who thought the latter less vague, and would permit absence for a considerable time on public or private business without disqualification. They were trying to get away from the abuse being made of the loose construction of "resident" by personal enemies of those who sought to qualify. There is no suggestion of an uncommon meaning to be given the word in their use of it here. The construction placed on these statements of Mr. Madison and others by Mr. BECK is to apply it to his case wherein he was absent from Pennsylvania 23 years, under his own admission, and yet he would not be disqualified on the grounds of inhabitancy. (Rec. p. 15.) And this regardless of the fact that during that time he had been an inhabitant of New York, New Jersey, and the District of Columbia, and had voted in both these States, and still has his only true home in Washington. Nothing was further from the thoughts of these great men.

Mr. James Wilson preferred "inhabitant" to "resident." Statements made by him and Mr. Sherman at other stages of the debates prove conclusively that they would not countenance a provision to permit representation by one who had not had his actual habitation among his constituents for such a long time. The brilliant James

Wilson, when insisting on election of the Members of the House by the people, as shown in Formation of the Union, page 755, said:

"Mr. Wilson is of the opinion that the national legislative powers ought to flow immediately from the people so as to contain all their understanding and to be an exact transcript of their minds."

Mr. Sherman, in advocating annual election of Members of the House, said:

"Mr. Sherman thought Representatives should return home and mix with the people. By remaining at the seat of government they would acquire the habits of the place, which might differ from those of their constituents. So he perferred annual elections. (Formation of the Union, p. 256.)

"Mr. SHERMAN. I am for one year. Our people are accustomed to annual elections. Should the Members have a longer duration of service and remain at the seat of government, they may forget their constituents and perhaps imbibe the interest of the State in which they reside, or there may be danger of catching the esprit de corps." (Formation of the Union, p. 794.)

And this from the man who moved to substitute "inhabitant" for "resident." He was unwilling that a man should stay more than a year at the seat of government before giving an account of his convictions to his people.

In placing this limitation on qualifications for membership in the House it was an attempt on their part to preserve the coloring of local State convictions, State feelings, which might be lost if men with attachments to other locations and other conditions were permitted to sit for them; that otherwise they feared attachments for State governments would be lost to the General Government, and usurpation of powers by the latter encouraged. No fear was ever better founded or more completely borne out by the present trend toward centralization.

In Story on the Constitution, Volume I, article 619, he says:

"The object of this clause, doubtless, was to secure an attachment to, and a just representation of, the interests of the State in the national councils. It was supposed that an inhabitant would feel a deeper concern and possess a more enlightened view of the various interests of his constituents than a mere stranger. And, at all events, he would generally possess more entirely their sympathy and confidence."

In Constitution of the United States, by John Randolph Tucker, Volume I, pages 394, 395, we find:

"This inhabitancy or domicile of the person in the State which chooses him was to exclude all who, by noninhabitancy, might secure an election when by reason of no community of interest, with the constituency, he would be unfitted to represent it."

There was the purpose, no doubt, as shown by the committee discussion, to guard against corruption by the wealthy who might hunt for a district to purchase. But the very foundation of representative government, to their minds, rested on their ability to insure a true reflection of local sentiment in the most numerous legislative branch. They sought to make the House a cross section of national thought, of national aspirations, of national feelings. They will that their Government should always have a common interest with the people and be administered for their good, be responsive to their will; so it was essential to their rights and liberties that the Members of the House should have an immediate instruction from and sympathy with the people. Hence the reasonableness of the provision that a person, to become a Representative, must have a bona fide and permanent abode and actually live among his future constituents. No habitual nonresident is eligible.

The leading case directly in point is that of John Bailey, of Massachusetts, decided in the Eighteenth Congress, as shown in Hinds' Precedents, Volume I, page 419.

On October 1, 1817, Mr. Bailey was appointed a clerk in the State Department from his father's home in Massachusetts, and held said position for six years. During that time he lived in Washington in hotels until a year before his election in September, 1823, at which time he married in Washington and moved into the home of his wife's mother. He had made occasional visits back to Massachusetts, had his library there, claimed his father's home as his habitation, declared his stay in Washington temporary, and that his real habitation was Massachusetts.

In the report adopted in that case Annals of Congress, volume 41, page 1594, a full discussion and interpretation of the word "inhabitant" is given. It is set forth that the word was substituted for "resident" as being a "stronger" term, intended to express more clearly their intention that the persons to be elected should be completely identified with the State in which they were to be chosen. Because of the importance of this case, we quote extensively from the report as follows:

I

"The difficulty attending the interpretation of constitutional provisions, which depend on the construction of a particular word, renders it necessary to complete explication, to obtain, if possible a knowledge of the reasons which influenced the framers of the Constitution in the adoption and use of the word 'inhabitant' and to make an endeavor at ascertaining, as far as practicable, whether they intended it to apply, according to its common acceptation, to the persons whose abode, living, ordinary habitation, or home should be within the State in which they should be chosen, or, on the contrary, according to some uncommon or technical meaning.

II

"The true theory of the representative Government is bottomed on the principle that public opinion is to direct the legislation of the country, subject to the provisions of the Constitution, and the most effectual means of securing a due regard to the public interest, and a proper solicitude to relieve the public inconveniences, is to have the Representative selected from the bosom of that society which is composed of his constituents. A knowledge of the character of the people for whom one is called to act is truly necessary, as well as of the views which they entertain of public affairs. This can only be acquired by mingling in their company and joining in their conversations; but, above all, that reciprocity of feeling and identity of interest, so necessary to relations of this kind, and which operate as a mutual guaranty between the parties, can only exist, in their full extent, among members of the same community.

"All these reasons conspire to render it absolutely necessary that every well-regulated government should have in its constitution a provision which should embrace those advantages; and there can be no doubt it was from considerations of this kind that that convention wisely determined to insert in the Constitution that provision which declares no person shall be a Member of either House of Congress 'who shall not at the time of the election be an inhabitant of that State in which he shall be chosen,' meaning thereby that they should be bona fide members of the State, subject to all the requisitions of its laws and entitled to all the privileges and advantages which they confer. That this subject occupied the particular attention of the convention and that the word 'inhabitant' was not introduced without due consideration and discussion is evident from the journals, by which it appears that in the draft of a constitution reported by the committee of five on the 6th of August the word 'resident' was contained, and that on the 8th of that same month the convention amended that report by striking out 'resident' and inserting 'inhabitant' as a stronger term, intended more clearly to express their intention that the persons to be elected should be completely identified with the State in which they were to be chosen. Having examined the case in connection with the probable reasons which influenced the minds of the members of the convention and led to the use of the word 'inhabitant' in the Constitution in relation to Senators and Representatives in Congress, it may not be improper, before an attempt is made at a further definition of the word, a little to consider that of citizen with the view of showing that many of the misconceptions in respect to the former have arisen from confounding it with the latter.

"The word 'inhabitant' comprehends a simple fact, locality of existence; that of 'citizen,' a combination of civil privileges, some of which may be enjoyed in any of the States in the Union. The word 'citizen' may properly be construed to mean a member of a political society; and although he might be absent for years and cease to be an inhabitant of its territory, his rights of citizenship may not be thereby forfeited, but may be resumed whenever he may choose to return; or, indeed, such of them as are not interdicted by the requisition of inhabitancy may be considered as reserved, as, for instance, in many of the States a person who by reason of absence would not be eligible to a seat in the legislature might be appointed a judge of any of their courts. The reason of this is obvious. The judges are clothed with no discretionary powers about which the public opinion is necessary to be consulted; they are not makers but expounders of the law, and the constitution and statutes of the State are the only authorities they have to consult and obey.

III

"If citizenship in one part of the Union was only to be acquired by a formal renunciation of allegiance to the State from which the person came previous to his being admitted to the rights of citizenship in the State to which he had removed, the expression of an intention to return would be of importance; but as it is it can have no bearing on the case; the doctrine is not applicable to citizens of this confederacy removing from one State and settling in another; nor can it in the present case be considered as going to establish inhabitancy in Massachusetts, when the fact is conceded that at the time of the election, and for nearly six years before, Mr. Bailey was actually an inhabitant of the city of Washington, in the District of Columbia, and by the charter of the city and the laws in force in the District was, to all intents and purposes, as much an inhabitant thereof as though he had been born and resided there during the whole period of his life, and the refusal to exercise the rights of a citizen can be of no consequence in the case. It is not the exercise of privileges that constitutes a citizen; it is being a citizen that gives the title to those privileges."

If the former action of the House is to have any weight with us now, this Bailey decision definitely disposes of the major contention that a political status is the answer to inhabitancy. Mr. Madison was then

alive and vigorous, and no doubt watched with interest every interpretation of the Constitution. Had this decision done any violence to the intention of the framers, it would have been his nature to protest. But no comment from him can be found. And no holding of the House has ever reversed or modified the principles of interpretation established in this report.

It is apparent that temporary absence from a regular habitation on private or official business does not disqualify under this clause. The same committee which reported the Bailey case, and at the same session, in the Forsyth case, so held. But the presence of Mr. BECK in his home in Washington can not stand on that exception. He purchased his home here and moved into it from a full citizenship of the State of New York some seven months before he became connected with a Government position. He remained an inhabitant of the District of Columbia from June, 1925, until July, 1926, with no official connection whatsoever, before he rented the apartment in Philadelphia. And in this connection let it be denied, as charged by him, that almost one-half the Senate and a large number of the House who have homes here are in a similar position to his.

The Members of Congress referred to, when elected, were bona fide inhabitants of their respective States. Any home established here for their use is incident to the discharge of public duty, temporary, and does not destroy the status of inhabitancy they had when elected. He seeks to reverse that order by having his real habitation in Washington to begin with an attempting to create a fictitious abode in the State of Pennsylvania for the purposes of qualification and not as an incident to service after election. There is no such wholesale condition of noninhabitancy prevailing, but if such were the case the House would have all the more reason to check a flagrant violation of the Constitution.

His former residence in Pennsylvania can not enter into this consideration, for the reason that, at least for 23 years, he was completely severed and divorced from that State so far as any pretense to habitation or voting privilege or citizenship is concerned. He divested himself of every privilege of citizenship in Pennsylvania to avail himself of the superior advantages he would have in moving to New York. His claim must stand or fall on the facts developing after July, 1926. It will be observed from the record that Mr. BECK had but little to do personally with the effort to qualify him under the State law for voting. Undoubtedly he did not even familiarize himself with the legal requirements for voting. While he was in Europe and two months before he rented any apartment, he was entered on the assessment roll for a voting tax out of the regular order and of date exactly six months before the November election, the time required for returning to citizenship in that State. He never regarded this assessment enough to pay the 25-cent tax. He did not run for Congress that year because he did not get the indorsement of the Vare organization. A brother-in-law of Mr. VARE was nominated and elected.

The question then arose as to the legality of the election of Mr. VARE to the Senate and his right to a seat therein, and Mr. BECK because of counsel for him. He was assessed in the semiannual assessment for 1926 and again ignored it. Twice in 1927 Mr. BECK'S name was placed on the assessors' list, once out of regular order, which assessment was again ignored by him, and Mr. VARE'S office procured the only tax receipt of any kind he has purchased in that State, 25 cents each for him and Mrs. Beck, and delivered it to him in said office. He registered the next day and voted in the primary 10 days later, in which the Member of Congress from that district was nominated for a city office and immediately resigned his seat.

Thereupon the Vare organization, through Mr. VARE'S secretary, notified Mr. BECK that he would be nominated for Congress at a certain time, and for him to be in waiting. He was called for at the designated time, conducted to a hall, and was formally notified of and accepted the nomination from the seven men present, who had nominated him, two of whom he states he knows. He made no canvass whatever in this district for the purpose of developing sentiment in his favor or for expressing his views on national issues.

Mr. BECK made only three speeches in Philadelphia in the city-wide campaign in November, 1927, general election, at which time he was elected, all on Friday or Saturday next before the election on Tuesday, and then left immediately for his Washington home. He did not vote in the said election the following Tuesday for the reason that he was at home and not in Pennsylvania. He had entertained anxiety that an adverse city election for the Vare ticket would be construed as a repudiation of his client, and his speeches had been made in an effort to avert this.

In a day when a political machine can select any individual it chooses to put into the House there are multiplied dangers to those the fathers knew when they made this inhibition. Without reflecting in the least on the personal desirability of Mr. BECK, it is clear that, if his contention is to prevail, an all-powerful, though it be an unscrupulous, combine in control of a district machine can select anyone they need for any special purpose, and the House would be powerless to resist it. All that would be required of their choice would be to establish what can be termed a technical, constructive, fictitious, superficial, fly-by-night residence and then go a-carpetbagging. This presages a radical and serious departure from the fundamentals of representative government as we know it.

This is not a case of simply thwarting the will of a constituency. We consider that any constituency should have the right of choice, but that choice must be within constitutional bounds. Our charter of liberties, the Constitution, should stand above the aspirations of an individual who would subvert it or the action of constituencies who ignore it. If Mr. BECK is to retain his seat we view the precedent, not as a part of the general "erosion" of the Constitution, but as a frontal attack on it, a blasting process which is to weaken the foundation of the great American dream of representative government.

Respectfully submitted.

GORDON BROWNING.
T. WEBBER WILSON.

Mr. VINCENT of Michigan. Mr. Speaker, before we proceed perhaps we had better have some understanding as to time. The rule, I understand, gives an hour of debate. The gentleman from Tennessee [Mr. BROWNING], I presume, would like an extension of that time.

Mr. BROWNING. I would desire all the time that can possibly be given for discussion.

Mr. VINCENT of Michigan. Mr. Speaker, I think it is advisable that there be longer than half an hour to a side on this matter, and I am perfectly willing and ask consent to double that time. I ask unanimous consent that debate be limited to two hours, one-half of that time to be controlled by the gentleman from Tennessee [Mr. BROWNING] and one-half by myself.

The SPEAKER. The gentleman from Michigan asks unanimous consent that the time for general debate be extended to two hours upon this resolution and substitute, one-half of that time to be controlled by himself and one-half by the gentleman from Tennessee, at the end of which time the previous question shall be considered as ordered. Is there objection?

Mr. LAGUARDIA. Mr. Speaker, reserving the right to object, I do it for the purpose of asking the gentleman from Michigan how this matter comes before the House at this late day. Under the rules passed some time ago the committee is required to make a report on a contested-election case within six months. In this case the committee did report within six months, and yet we are almost at the end of the Congress before the House has opportunity to pass upon it.

Mr. VINCENT of Michigan. In explanation of the delay I will say that a date was fixed for the matter, and unfortunately one of the Senators from Michigan at the last session died at that time and the delegation from Michigan attended his funeral, and later on I myself was confined to a hospital, and for that reason there was a delay in bringing this case before the House.

Mr. LAGUARDIA. It is not the purpose of the gentleman and of the Election Committee to disregard the rule?

Mr. VINCENT of Michigan. No. I can speak not only for myself but for every member of the committee when I say they desire to have these matters disposed of at the very earliest time.

The SPEAKER. Is there objection?

Mr. GARRETT of Tennessee. Would the gentleman from Michigan be willing to extend the time?

Mr. VINCENT of Michigan. I understand the program before the House to-day includes another important matter. I think that the question before us, which is a clear and narrow question, can be fully considered in two hours.

Mr. GARRETT of Tennessee. It is a question with some Members of the House whether there might not perhaps be a longer time allowed. Of course, the matter is in the gentleman's control, and we will have to accept with as much grace as we can the gentleman's suggestion.

Mr. VINCENT of Michigan. Personally I want to be perfectly fair in this matter. I think heretofore I have been quite fair, and I think I am quite fair now, in view of the other bill that is pending before the House to be disposed of to-day.

Mr. GARRETT of Tennessee. I would like to prefer the request, if I may, to make it three hours, one-half the time to be controlled by the gentleman from Michigan and one-half by the gentleman from Tennessee; one hour and a half to a side.

Mr. VINCENT of Michigan. I am sorry, but I can not yield to that suggestion.

Mr. GARRETT of Tennessee. Then I hope the gentleman will not insist on that part of his request, that the previous question be considered as ordered at the end of two hours, although I do not suppose there will be objection to the previous question.

Mr. TILSON. Mr. Speaker, I suggest that we make it two and one-half hours, and regard the previous question as ordered, the time to be equally divided.

Mr. VINCENT of Michigan. I will modify my request, Mr. Speaker, to conform to that suggestion.

The SPEAKER. The gentleman from Michigan asks unanimous consent that the time be extended to two and one-half hours, one hour and a quarter to be controlled by each side, and at the conclusion of that time the previous question shall be considered as ordered. Is there objection?

There was no objection.

The SPEAKER. The gentleman from Michigan is recognized.

Mr. VINCENT of Michigan. Mr. Speaker, I would like to be advised when I shall have consumed 20 minutes.

The SPEAKER. Very well.

Mr. VINCENT of Michigan. Mr. Speaker and Members of the House, this matter comes before the House in a form a little different from most election contests. This matter was referred to Committee on Elections No. 2 by House Resolution 9, which raised the question whether Mr. JAMES M. BECK was entitled to a seat in this House to which he had been elected because of the question as to whether or not he was at the time of his election an inhabitant of the State of Pennsylvania, as required by the Constitution.

That is the bare and only question that is presented in this case. There is no contest except that this matter was referred to the committee for its inquiry and report. No charge of fraud or any wrongdoing of any kind is asserted against Mr. BECK or his right to a seat. The Constitution of the United States provides that no person shall be a Representative who shall not have attained the age of 25 years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he was chosen. The question before the House is whether or not Mr. BECK was an inhabitant of the State of Pennsylvania at the time he was chosen.

That question, of course, depends for its solution upon the facts presented in the case and upon the precedents which this House has established. I hope the House will give careful attention to the facts as they were developed by the committee in this inquiry. They show that Mr. BECK was born in Philadelphia, in the State of Pennsylvania, in 1861; that he was raised there; that he obtained his college education in that State; that he was called to the bar and practiced law in Philadelphia; that he held the office of assistant United States attorney in that city; that later he held the office of United States attorney in that city; that in 1900, having resided there continuously, he was appointed Assistant Attorney General of the United States. He held this office until 1903, when he resigned it. At the time he resigned the office of Assistant Attorney General of the United States he had lived continuously in Philadelphia from his birth.

He testified before the committee—and it is not controverted, except incidentally—that in 1903 he resigned the office of Assistant Attorney General of the United States and gave up his residence in Philadelphia and took up his residence in the city of New York for the practice of law. He testified that it was his purpose in going to the city of New York to practice law to gain for himself a competence, with the hope and intention then, at that time, of returning to Philadelphia to take up his residence when such a competence had been acquired. He resided in New York and practiced law there until 1920. That period was from 1903 to 1920. In 1920 he sold his home in New York City and gave up every residential connection with that city. He came to Washington and purchased a home here in Washington on Twenty-first Street, and came here and occupied that house. He came here to Washington at that time in the expectation that he would receive an appointment to the public service in the Harding administration. In 1921 he was appointed Solicitor General of the United States by President Harding.

In the interim, while he was residing in the city of New York, he purchased a summer home at Sea Bright, N. J., on the ocean. It was useful only for a summer place. He has continued to own that place up to the time of the inquiry by the committee.

In 1925 he resigned the office of Solicitor General of the United States on account of failing eyesight, and testified that he then intended to take up his residence again and reassume and reidentify his interests with the city of his birth, Philadelphia. After resigning from the office of Solicitor General of the United States he was appointed by the mayor of Philadelphia to visit foreign countries and interest them in the Sesquicentennial Exposition to be held in Philadelphia. He did travel abroad on that commission. A little later, in 1926, he was appointed by President Coolidge as one of the commissioners of the Sesquicentennial Exposition, the law requiring that two commissioners be appointed from each State, and Mr. BECK was appointed as one of the commissioners to the governing body of that exposition to represent thereon the State of Pennsylvania. In 1926, in addition to going abroad under this commission and continuing the work of interesting foreign nations in the Sesquicentennial, he opened negotiations, in the spring of that year, for the acquirement of a place of abode in the city of Philadelphia. Prior to doing so he addressed one of the clubs that he had been a member of ever since his original residence in Philadelphia, stating that it was his purpose at that time to come back to Philadelphia, to reassume his citizenship thereof, and to reidentify himself with the interests of his native city.

These negotiations for an apartment in Philadelphia continued along until June, 1926. On the 6th day of July, 1926, a lease was entered into between the owner of an apartment house and Mr. BECK wherein Mr. BECK leased an apartment in the Richelieu Apartments in the city of Philadelphia, on Spruce Street, in the first congressional district thereof, for the sum of $110 a month, for an unfurnished apartment. This lease was to run from year to year unless one party or the other gave two months' notice of its ending. That lease continued in force up until at least the conclusion of the inquiry and, as I understand it, has continued since. Mr. BECK immediately furnished that apartment in proper order as a place of abode and entered into possession of it. He has maintained it ever since that time. He testified before the committee that he had occupied that apartment in the city of Philadelphia at least twice a week ever since he had acquired it; that a large portion of the time it is occupied by his sister, who makes her place of abode there when it is not occupied by Mr. BECK himself.

Now, mind you, that was in July, 1926. During all of the period of time that Mr. BECK had been away from the city of Philadelphia, from 1903 until the occasion I speak of in 1926, as supporting his testimony that he did always intend to return to the city of Philadelphia and reidentify himself with its interests, he had maintained his membership in a number of civic organizations in that city. I might state to the House some of those organizations in which he had maintained his membership during all those years in the city of Philadelphia as having some bearing on the intention of Mr. BECK with respect to his citizenship in that city. He had continued to be a member of the Fairmount Park Art Association, which has for its purpose the progress of art and the embellishment of public places in that city. He had continued to be a member of the Philadelphia Commission, which has a somewhat similar purpose; the City Parks Association; the American Philosophical Society; the Art Club; the Legal Club; the Shakespeare Society; the Mahogany Tree Club; the Franklin Inn Club; the New England Society of Pennsylvania; the Historical Society of Pennsylvania; and some other social organizations.

Mr. BECK acquired this place of abode in Philadelphia in July, 1926. He was assessed for personal taxes in the city of Philadelphia thereafter. In 1927 he applied for registration as a voter in the city of Philadelphia, and he was registered as a voter there without challenge; he voted there in the city primaries in September, 1927. At that time he was not running for office and he was not a candidate for Congress.

The Congressman elect was Mr. Hazlett, of Philadelphia. After the primary in September, 1927, Mr. Hazlett resigned, and the properly constituted authority of the Republican Party in the first congressional district of Philadelphia nominated Mr. BECK as the candidate for Congress in the by-election which was held November 6, 1927, to contest as its candidate for a seat in this House. The Democratic Party chose as its candidate Mr. J. P. Mulrenan. At the election held November 6, 1927, Mr. BECK was elected by a majority of over 60,000.

During the period of time that he had control of and occupied this apartment in the city of Philadelphia, he continued to maintain his house in the District of Columbia on Twenty-first Street. He occupied it when it was convenient for him to do so and he occupied the apartment in Philadelphia when it was convenient for him to do so. He also has continued to own the summer property on the ocean front at Sea Bright, N. J.

When Mr. BECK left New York and came to the District of Columbia he registered and voted at Sea Bright, N. J., where his summer house was. He cast his last vote there in the presidential election of 1924 and has not done anything on his part to maintain his registration and status as a voter at that place since the election of 1924. As I stated before, after he had acquired the leasehold on the apartment in Philadelphia and had continued to hold it for the constitutional period of time as fixed by the constitution of Pennsylvania he registered and voted in the primaries in Philadelphia in 1927.

In the hearings some question was raised with respect to this registration. In my own view of the constitutional provision I think that is an immaterial matter, but I desire to point it out to the House for its consideration. The law of the State of Pennsylvania requires that, in order to register, you must have paid a tax of some kind. If you have not paid a real estate or

a personal-property tax prior to the registration you must pay a poll tax of 25 cents. The law provides that this poll tax must be paid by the individual in person to the proper official receiving taxes or that it be paid by an agent who is authorized in writing to pay it for his principal. It has been suggested in the hearings before the committee that Mr. BECK in his registration failed to comply entirely with that statute. These are the facts concerning that matter: He was sitting in the office of Senator VARE, in Philadelphia, across the street from the office where the receiver of taxes has his place of business. By telephone call it was suggested to the office of the receiver of taxes as to where Mr. Beck was at that moment, and that he desired to pay his poll tax. One of the clerks from that office came over to the office where Mr. BECK was sitting and came to the door of the room in which he was sitting in a chair. The door was opened and the young man from the tax collector's office had in his hand an envelope containing the tax receipts for Mrs. Beck and Mr. BECK.

Mr. BECK, instead of handing the 50 cents personally to the young man who came from the collector's office; instead of doing that, the young man stayed at the doorway and another person in the office took the envelope over and handed it to Mr. BECK, to whom he handed 50 cents, who carried it to the man at the door and handed it to him.

To my mind this is too technical a matter to be considered as throwing suspicion upon the registration of Mr. BECK.

The SPEAKER. The gentleman from Michigan has consumed 20 minutes.

Mr. VINCENT of Michigan. Mr. Speaker, I yield myself 15 minutes more.

Mr. BECK, when he presented himself for registration as a resident in the city of Philadelphia, subjected himself to all of the obligations of that status. He immediately subjected himself, of course, to an assessment for his personal property, and that assessment promptly was made, and he is assessed for his personal property in the city of Philadelphia.

It further appears that all of his personal financial business is transacted in Philadelphia, the Girard Trust Co. being his fiscal agent for that purpose.

It is fair to say to the House that the house in Washington owned by Mr. BECK is a more commodious, better furnished house than the apartment in Philadelphia.

It is true also that two of the clubs to which I have referred in the city of Philadelphia have nonresident and resident rosters. When Mr. BECK was in New York he was carried as a nonresident member of these two clubs. When he came back, his attention was called to it—he had not personally paid his dues, his secretary attending to that—and he immediately had his status changed to a resident member of the club, to which his attention was called. It appeared in the hearing that the other single club which carried a nonresident roster still carried him as a nonresident member.

It appeared, too, that the automobiles which Mr. BECK owns and operates here in Washington were provided with District of Columbia licenses.

I think this is a fair statement of the facts connected with this matter. The testimony shows Mr. BECK has occupied this apartment about twice a week during the period of time he has had it, a year and a half before he was elected to Congress, except when he was absent from the city in Europe in connection with the Sesquicentennial Exposition, where he went in the employ and in the interest of the very city where he now claims his inhabitancy to be. Of course, he was not in the apartment during the time of these trips, but he went abroad as a representative of the city of Philadelphia and in connection with its work and, incidentally, without remuneration therefor, because of his interest in its civic affairs.

Now, there is a precedent established by this House that in my own honest belief seems to dispose of this case if it is followed by this House, which precedent I think an examination will show has never been disturbed, and that is the case of Philip B. Key, of Maryland, who was elected to Congress in the Tenth Congress in 1806.

At that time many of the framers of the Constitution were still living; Thomas Jefferson was then President of the United States; Madison was later to become President of the United States.

These are the facts in the Philip B. Key case:

Mr. Key was born and raised and educated and called to the bar and practiced law continuously as a resident of the State of Maryland. He was born before the Constitution was adopted, of course. He lived there and practiced law until 1801, when he disposed of every semblance of a habitation in the State of Maryland and removed to a house which he owned in the District of Columbia at Georgetown. This house in Georgetown was the only house he possessed from 1801 until 1806.

About 1805 or 1806 he purchased a tract of land out in Maryland, upon which there was no house. He gave a contract in the spring of 1805 to erect thereon for his use a summer home, and it is set forth in the record of that case that this was useful only for a summer home. Before that house was entirely finished he removed with his family from the house in Georgetown out to the summer house in Maryland. He made this removal in September, 1806. He retained the house in Georgetown, in the District of Columbia, fully and completely furnished as it had been before.

Eighteen days after he moved his family out to the summer house in Maryland he was elected in an election to Congress. Twelve days after the election he moved back into the house in Georgetown, and he moved back and forth as his convenience dictated. He would spend the winter in his house in Georgetown and the following early summer move out with his family to the house in Maryland.

When he came to take his seat in this House his right to do so was challenged on the ground that he was not when elected an inhabitant of the State of Maryland.

There was prolonged discussion on this point; and the House, after full consideration, having in view the fact that he was born in that State, had been in the past identified with its interests, was returning to settle again in it when he went back 18 days before the election to his house there, found that he was, within the meaning of the constitutional provision, an inhabitant of the State of Maryland and sustained his right to a seat in this House.

To my mind there is no legal difference between these two cases, except, it seems to me, that Mr. BECK's case presents a stronger argument for his right to a seat than did that of Mr. Key.

There are these differences which you may consider. Mr. BECK, when he moved from Philadelphia, moved first into the State of New York, later came to the District of Columbia, and from there proceeded to Pennsylvania. Mr. Key did not have any intervening residence in a different State. But inhabitancy is a matter of mixed fact and intent on the part of the person, and I can see no legal difference in the situation of a man who gives up entirely his home in a given State and moves to the District of Columbia and then returns, as Mr. Key did, than in the case of a man who gives up his physical residence, moves to the State of New York, then to the District of Columbia, and then reestablishes his residence or inhabitancy in his original State.

There is this other difference between these two cases, that Mr. BECK in his tenure in the apartment in Philadelphia has a leasehold, while Mr. Key when he went back into Maryland had a freehold estate. But, to my mind, again—and I think to the Members of this House—it is well known that people are commonly making their inhabitancy, their abode in this country, in places where they hold it by lease as well as where they hold it by fee simple title. In the case of Mr. Key, his physical inhabitancy of that State existed for 18 days prior to the election. In the case of Mr. BECK it existed for 18 months before election.

It was argued in the hearings before the committee that there was another precedent which threw doubt on the applicability and standing of the Key precedent. That is the case of Bailey of Massachusetts—and, by the way, this Key case can be found on page 417, volume 1, Hinds' Precedents. In the case of Bailey he was a man who lived in Massachusetts in the house of his father and mother, when he was appointed on October 1, 1817, to a clerkship in the Department of State. He continued to hold that clerkship and to stay here in the District of Columbia and look after the duties of his clerkship until 1823, when he was elected to a seat in Congress from the district in Massachusetts where he had grown up. He had in the meantime, according to the report of the committee, maintained absolutely no indicia of any place of abode whatever in the State of Massachusetts during all of the period that he was engaged in the State Department. He married while he was here in the District of Columbia, and he and his wife established their residence, the place where they lived at least, in the home of her mother here in the District of Columbia. There was no house, no place of abode, no habitation of any kind in the district in Massachusetts which elected him to Congress from the period when he came to the State Department in 1817 until he was elected. The House in that case held that he did not conform to the provision of the Constitution requiring a man to be an inhabitant.

I think myself that to consider a man an inhabitant of a State where he has no habitation would be a contradiction in terms, and that the holding of the House was correct, and that it does

not in any way affect the validity of the Key precedent, nor of the right of Mr. BECK as the facts are presented here.

I think my time has almost expired and I must leave time for others.

Mr. Speaker, I reverence the Constitution of the United States. I would not vote to keep any man here who I considered had violated it with respect to his qualifications for his seat in the House, not even a man of the attainments of Mr. BECK of Pennsylvania, but I feel that the true conception of the thing is this, that in the last analysis for a fit membership of this House of Representatives we have got to depend upon the patriotism and the intelligence and the common sense of the people who inhabit the various districts of the country, and that after a district has selected a man deliberately at the polls by an unquestioned majority, before this House denies to that constituency the right to have the man of their choice represent them in this House, we ought to be perfectly certain and absolutely clear that his election does violate the Constitution of the United States, and until that is clear, and it is not in this case, that constituency should have the right to be represented by the representative of its choice. [Applause.]

The SPEAKER pro tempore. The time of the gentleman from Michigan has expired.

Mr. BRAND of Georgia. Mr. Speaker, may I be permitted to ask the gentleman a question?

Mr. VINCENT of Michigan. I yield the gentleman half a minute.

Mr. BRAND of Georgia. I simply wanted to ask whether Mr. Key was a married or a single man?

Mr. VINCENT of Michigan. He was a married man with a family.

Mr. BROWNING. Mr. Speaker, I yield myself 30 minutes and ask unanimous consent to extend and revise my remarks in the RECORD.

The SPEAKER pro tempore. Without objection, it is so ordered.

Mr. BROWNING. Mr. Speaker and gentlemen of the House, I regret exceedingly, of course, at any time to find myself in disagreement with the very delightful gentleman who is the chairman of my committee, and I wish to say that in my experience of six years' service with him on that committee this is the first time we have disagreed on any major issue with respect to an election contest. Neither am I free from the influence that always affects Members when they are voting on the seat of a colleague for whom they have the highest regard. But in my humble judgment the test of fidelity to my oath when I asserted that I would uphold and defend the Constitution of the United States comes when I am called upon to apply it to a friend and to some one whom I do hold in high regard and whose ability and capacity is unquestioned, as is the case in the matter of Mr. BECK.

I hope the membership will not consider that any political or partisan consideration has entered into this case so far as I am concerned, because there is nothing to be gained from a partisan standpoint, if Mr. BECK should be unseated. No one is contesting his seat. I do regard it an important matter when we have a mandate of the Constitution, and we come to a deliberate conclusion that our Constitution has been violated, that we vote in accordance with our convictions. That is why I am here to-day offering the substitute resolution in this case.

I have listened very attentively to the facts stated by the chairman of the committee. You will pardon me if I reiterate and add to some of those statements in giving my recollection of the facts in the case. Mr. BECK, after being a Federal official in the city of Philadelphia, came to Washington in 1900 as an Assistant Attorney General of the United States. He held that position until 1903, when he resigned to take up the practice of law in the city of New York. At that time he sold all of his property, so far as residences are concerned, in the city of Philadelphia and the State of Pennsylvania, and in Washington if he had any, and bought a home in the city of New York and lived there and practiced law until 1920, in November, just after the presidential election. He voted there in all elections until after 1920. He then came to the city of Washington, selling his New York home and severing all residential relations there, and bought a home on Twenty-first Street in this city and moved his family here, moved his extensive private library here, moved his art treasures and other things he had which comport with his accustomed degree of comfort, to which, of course, he was clearly entitled in the place where he lived. He retained his summer home at Sea Bright, N. J. He went back there to spend his summers on the ocean front and established a voting residence there, registered and paid taxes there, and he and his wife voted from there by mail in the presidential election of 1924.

In 1921, as has been stated, he was appointed Solicitor General of the United States by President Harding. That was several months after he had completely severed his relations in New York and after he got a home in Washington and moved into the home with his family. He acted in that capacity for four years, approximately. He resigned from his position as a public official, I believe, because of his eyesight failing. After his resignation he never moved his residence, he never moved his home or acquired a home elsewhere. He established a law office in the Southern Building in Washington and began the practice of law as a specialist in practice before the Supreme Court of the United States. He also renewed his connection with his law firm in the city of New York.

Since 1900 Mr. BECK has not practiced law in the State of Pennsylvania. Now, in 1926, Mr. BECK states he wished for two reasons to get a residential relation in the State of Pennsylvania. One was that he wanted to reestablish his connections with that State, he said, and the other was that he wanted to come to Congress from the first district of that State. In company with a Mr. Greenfield, a real estate man and a man of considerable connection in politics of that city, he went over the first district looking for a desirable apartment. He did not contract for one, but went to Europe on a business trip. While he was gone Mr. Greenfield seems to have made a selection of an apartment in the Richelieu Apartments, 1414 Spruce Street, and reserved it for Mr. BECK. It has one bedroom, one living room, a kitchenette, and bath. After Mr. BECK got back, and on the 6th of July, 1926, he signed a lease for this apartment as of June 1 of that year, agreeing, and has paid since that time, according to the proof, $110 a month rental. He furnished it. I do not remember the testimony exactly as does the chairman when he states the amount of time Mr. BECK says he has been in the apartment. I do remember definitely, page 53 of the hearings, Mr. BECK's statement was that he had been in Philadelphia most every week since that time except summers and when he was in Europe on business. He stated that while in Philadelphia, up to about the 1st of January, 1927, he stayed in the apartment at night. After that time his sister, Miss Helen Beck, returned from Europe, and he turned over the apartment to her; and while she was there he went to either the Arts Club or the Bellevue-Stratford Hotel at night while he was in the city.

His visits there were sometimes to make speeches, but most of them, as was indicated in his statement, were to break the trip between New York and the city of Washington. Mr. BECK's family consists of himself and wife. He has two children, a daughter, whose husband is United States consul at Geneva, and his son, who is still in Europe and has been there since the World War, having served in the American forces. But he says, "My wife and I live alone." In other words, his family consisted of himself and Mrs. Beck. Mrs. Beck has never spent a night in this apartment in the city of Philadelphia, as I remember the record. Mr. BECK has never eaten a meal in that apartment, and so far as the record shows undoubtedly the ordinary, regular, permanent home where Mr. BECK has spent most all of the time since November, 1920, has been in the District of Columbia in his home on Twenty-first Street, Washington.

Now this question comes up: The chairman of the committee suggests that the supreme consideration is to be given the constituency of Mr. BECK in their right to select a person to represent them. In this same clause of the Constitution I call your attention to the fact that there are three inhibitions placed upon men who shall sit in this House: First, they must be 25 years of age; second, they must have been seven years a citizen of the United States; and, third, they must be an inhabitant of the State from which they are chosen at the time they are chosen.

Now, there is no difference in my mind in the effect of these inhibitions. Suppose that a constituency elected a man only 21 years of age to represent it in the House of Representatives, and this question was raised. What are you going to do? Suppose they had selected a man who had been naturalized less than seven years. No matter what his other qualifications are, what are you going to do? The same thing applies to an inhabitant; and the whole thing, my friends, rests on the determination of the question whether Mr. BECK is properly an "inhabitant" within the meaning of the framers of the Constitution.

We are not undertaking, those of us who are supporting the minority views in this case, to override the will of any constituency which is within constitutional bounds. We are not undertaking to disregard the will of the people. We are insisting that the people should rule; that their will is the Constitution. We are insisting that if Mr. BECK is not an inhabitant

of the State of Pennsylvania he falls in the same category with those men who are not citizens, or who have not been citizens for seven years, and have not attained the age of 25.

Mr. DEMPSEY. Mr. Speaker, will the gentleman yield?

Mr. BROWNING. Certainly.

Mr. DEMPSEY. Is there not this very vital distinction between the two questions on the one side, of age and of being an inhabitant or citizen of this country, that the evidence must be necessarily clear, distinct, and convincing, while in the other case the evidence may be conflicting and may be determined largely upon the intention of the man?

Mr. BROWNING. Not at all. The evidence in each of these cases ought to be treated exactly the same.

Mr. DEMPSEY. Treated exactly the same, but there can not be any real dispute about a man's age, or about how long he has been a citizen.

Mr. BROWNING. We are not disputing the facts in this case. We are taking Mr. BECK's word for them.

Mr. DEMPSEY. But there can be very easily a dispute about where a man resides in this country, and that question may depend almost wholly upon the intention of the man himself.

Mr. BROWNING. No. The intention does not determine the matter. An intention in this instance is a deduction of law, founded on fact, as has been numerously laid down, not based upon what a man says alone but based upon that and the facts of what he did. That is what I am insisting on. Mr. BECK did make the declaration that he was going back there to Philadelphia where, among his books and art treasures and his friends, he could spend the declining years of his life. But he did not do it. If he had borne out his intention and moved his family to Philadelphia, then his case would be different.

Mr. JACOBSTEIN. Mr. Speaker, will the gentleman yield?

Mr. BROWNING. Yes.

Mr. JACOBSTEIN. Have you noted the authorities on that point?

Mr. BROWNING. We have cited numerous authorities in the report.

Mr. JACOBSTEIN. Is not the fact emphasized that a man ought to be familiar with conditions in the district represented by him?

Mr. BROWNING. Yes. Now, mind you, when the draft of the Constitution was offered to the committee of five, the word "resident" was in there. Mr. Sherman moved to strike out that word and insert instead the word "inhabitant." Mr. Madison engaged in the discussion, and it was clearly the intention to put in that language, because Mr. Madison called attention to the fact that a man might be away on business, public or private, or pleasure, and it might be claimed by some man having spite against him that because of this temporary situation he was not a resident; and so the word "inhabitant" was inserted instead, because they wanted a man completely identified with the constituency which he represented. That is fundamental; it should be fundamental with the American Government to-day if we have any fundamentals. We should seek to guarantee a true representation of local sentiment, as it were, to present a cross section of the people's thoughts, to represent them truly in the more numerous branch of Congress. I believe Mr. Wilson expressed it when he said that they wanted a transcript of the people's mind.

Now, in the discussion of this change of verbiage, and elsewhere in the debate, these very men, Mr. Sherman and Mr. Wilson and Mr. Gouverneur Morris, all insisted that the Representatives should be elected every year. They said in substance, "We do not want a man to go away from his constituency and stay at the seat of government more than a year before he comes back and renders an account of himself to his constituents and permits them to determine whether he has taken on the esprit de corps of the locality of the Capitol."

Now, what about this as to Mr. BECK? He had been away from his constituency 23 years. During that length of time he had lived 17 years in the city of New York. My experience as a countryman is that if there is any place in this world that could get under a man's skin it is the city of New York. [Laughter.]

Mr. WELLER. I would like to ask the gentleman if he does not like to come to New York?

Mr. BROWNING. I do. It is a stupendous and magnificent city, ringing with the tumult of nocturnal pleasure, and other enjoyments. [Laughter.] However, it is a dangerous place for a man to go, regardless of where he has been raised. I do not care who he is. [Laughter.] I only spent about three weeks there at one time, and yet Mr. BECK stayed there for 17 years.

Mr. CAREW. Will the gentleman yield?

Mr. BROWNING. Yes.

Mr. CAREW. Do you think he is a Republican from New York? [Laughter.]

Mr. BROWNING. Well, I will say this to the gentleman: That I do not know whether he is or not, but I know the record discloses that he started out in very good company as an official under the Democratic administration in the State of Pennsylvania; that he then came to Washington, after he had changed his allegiance, which he had a perfect right to do, though I think he made a great mistake. Then he became a Republican official here. Then he went to New York and came back to Washington and held office under a Republican administration. I do not think the city of New York itself had anything to do with his becoming a Republican. They are not so indigenous to that city.

Mr. HASTINGS. I want to ask the gentleman one question.

Mr. BROWNING. Briefly, if you please.

Mr. HASTINGS. Does the gentleman state the record shows that Mr. BECK never ate a meal in this apartment nor his wife remained there a single night?

Mr. BROWNING. That is true.

Mr. VINCENT of Michigan. I do not think that is borne out by the record, if the gentleman pleases. Further than that, the gentleman from Tennessee, in giving the rooms of this apartment, left out the living room.

Mr. BROWNING. Possibly I did that, but it is a two-room apartment. May I ask the chairman what objection he has to the statement I made that Mr. BECK never ate a meal in this apartment? The record shows that, and that Mrs. Beck never spent a night there. The record shows that.

Mr. VINCENT of Michigan. I do not think the record shows that. It may possibly show that she did not eat a meal there, but she did stay there with Mr. BECK, according to the record.

Mr. BROWNING. I am positive the record shows different.

Mr. BLACK of New York. Will the gentleman yield?

Mr. BROWNING. For a brief question.

Mr. BLACK of New York. Does the gentleman take the position that the fact that Mr. BECK maintained a home in the District of Columbia of itself disqualifies him as an inhabitant of the State of Pennsylvania?

Mr. BROWNING. Not at all. The position I take is this: That he not only maintained a home in Washington but occupied it as his place of abode. I do not claim that the fact that he bought himself a home in the District disqualifies him at all, but the fact that he is an inhabitant of the District of Columbia is the thing that disqualifies him.

Mr. GREEN. Where did his family reside?

Mr. BROWNING. His family resided here in Washington. Now, under any of the circumstances which you can find in this record, when Mr. BECK got through with the temporary duties he was performing, whether they were in the city of Philadelphia, whether they were in New York, or whether they were in Europe, he came to Washington where his home is. Now, the test of inhabitancy is the place where a man lives, to which he goes under all ordinary circumstances, the place where he has his family life, the place where his folk live, the place where he goes to when he is sick. Mind you, in this case, in 1926, Mr. BECK made, I believe, three speeches in the city of Philadelphia during that campaign; but after he finished on Saturday night before the election on Tuesday he came home to Washington. He was not even there to vote. Why? Because he was at home and not in Pennsylvania at all. He was sick in his regular place of abode.

Now, the chairman of the committee discusses this Key case. Let me show you the difference in that case and this one. Mr. Key made a declaration in the spring before this house was built, when he bought this farm, that he intended to build a home on it and to live in it himself. He did do that. He declared in the spring of the year that he was going to do it. He bought a part of his wife's family estate; he built a house on it for himself expressly; he went back to it and was living there at the time he was elected to Congress. He had moved his family there; he had taken his complete household, including his servants. And when he left Maryland and came to the District of Columbia he kept his law practice in Baltimore. He declined to take practice in the city of Washington at all, but he kept all of his activities there in Maryland. He was completely identified with that State except for the time he was a resident of the District; but he went back and qualified. There is too much of a disposition in this case to get the idea of citizenship and the idea of inhabitancy interwoven. They are not the same at all.

Take the Key case, for instance. At the time he was elected to Congress and got his seat from the State of Maryland, the law required a man to live in the State of Maryland for 12 months before he could vote. Key had only been there 18 days.