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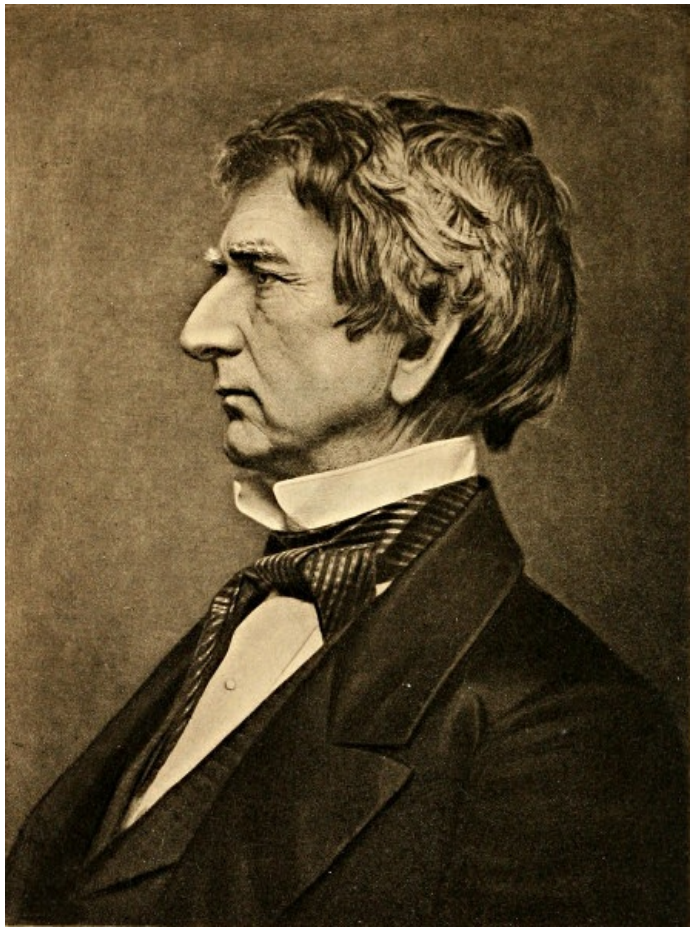

WILLIAM H. SEWARD

A. W. Elson & Co., Boston

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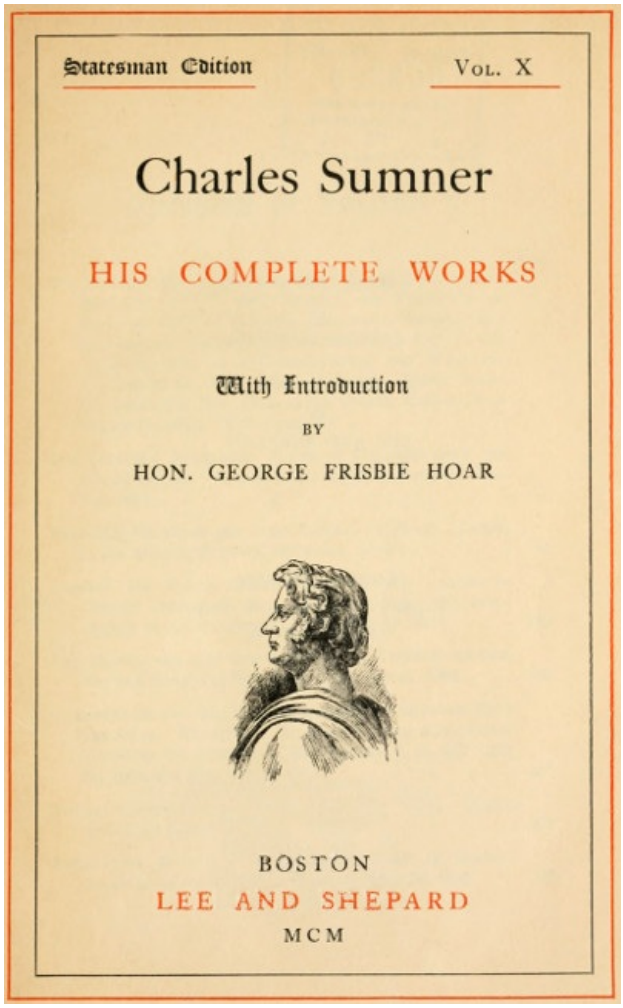

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CONTENTS OF VOLUME X.

OUR FOREIGN RELATIONS:
SHOWING

PRESENT PERILS FROM ENGLAND AND FRANCE, NATURE AND CONDITION OF INTERVENTION BY MEDIATION AND ALSO BY RECOGNITION, IMPOSSIBILITY OF ANY RECOGNITION OF A NEW POWER WITH SLAVERY AS A CORNER-STONE, AND WRONGFUL CONCESSION OF OCEAN BELLIGERENCE.

Speech before the Citizens of New York, at the Cooper Institute, September 10, 1863. With Appendix.

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Marcus. Quæro igitur a te, Quinte, sicut illi solent: Quo si civitas careat, ob eam ipsam causam, quod eo careat, pro nihilo habenda sit, id estne numerandum in bonis?

Quintus. Ac maximis quidem.

Marcus. Lege autem carens civitas estne ob id ipsum habenda nullo loco?

Quintus. Dici aliter non potest.

Marcus. *Necesse est igitur legem haberi in rebus optimis.*

Quintus. Prorsus assentior.

Cicero, *De Legibus*, Lib. II. cap. 5.

I have told,
O Britons! O my brethren! I have told
Most bitter truth, but without bitterness.
Nor deem my zeal or factious or mistimed;
For never can true courage dwell with them
Who, playing tricks with conscience, dare not look
At their own vices.

Coleridge, *Sibylline Leaves: Fears in Solitude*.

'Tis therefore sober and good men are sad
For England's glory, seeing it wax pale
And sickly.

Cowper, *The Task*, Book V. 509-511.

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The Government condemns in the highest degree the conduct of any of our citizens who may personally engage in committing hostilities at sea against any of the nations parties to the present war, and will exert all the means with which the laws and Constitution have armed them to discover such as offend herein and bring them to condign punishment.... The practice of commissioning, equipping, and manning vessels in our ports to cruise on any of the belligerent parties is equally and entirely disapproved; and the Government will take effectual measures to prevent a repetition of it.—Jefferson, *Letter to Mr. Hammond, May 15, 1793*: Writings, Vol. III. p. 559.

One spot remains which oceans cannot wash out. The slavery of the African race, which the North Americans had inherited from the ancient monarchy, was adopted and fondly cherished by the new Republic.... The logic of the Constitution declared that all men were free: the pride and avarice of the slave-owners, disowning the image of the Creator and the brotherhood of nature, degraded men of a dark color, and even all the descendants of their sons and daughters, to a level with oxen and horses. But as oxen and horses never combine, and have no sense of wronged independence, oxen and horses are better treated than the men and women of African blood.... But neither the philosophical dogma of the authors of the Constitution, nor the strict pedantry of law, can stifle the cry of outraged humanity, nor still the current of human sympathy, nor arrest forever the decrees of Eternal Justice.—Lord John Russell, *Life and Times of Charles James Fox*, Vol. I. pp. 364, 365.

To this condition the Constitution of this Confederacy reduces the whole African race; and while declaring these to be its principles, the founders claim the privilege of being admitted into the society of the nations of the earth,—principles worthy only of being conceived and promulgated by the inmates of the infernal regions, and a fit constitution for a confederacy in Pandemonium. *Now, as soon as the nature of this Constitution is truly explained and understood, is it possible that the nations of the earth can admit such a Confederacy into their society? Can any nation calling itself civilized associate, with any sense of self-respect, with a nation avowing and practising such principles?* Will not every civilized nation, when the nature of this Confederacy is understood, come to the side of the United States, and refuse all association with them, as, in truth, they are, *hostes humani generis*? For the African is as much entitled to be protected in the rights of humanity as any other portion of the human race. *As to Great Britain, her course is, in the nature of things, already fixed and immutable. She must sooner or later join the*

United States in this war, or be disgraced throughout all future time; for the principle of that civilization which this Confederacy repudiates was by her—to her great glory, and with unparalleled sacrifices—introduced into the code of Civilization, and she will prove herself recreant, if she fails to maintain it.—Josiah Quincy, *Address before the Union Club of Boston, February 27, 1863*.

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If British merchants look with eagerness to the event of the struggle in South America, no doubt they do so with the hope of deriving advantage from that event. But on what is such hope founded? On the diffusion of beggary, on the maintenance of ignorance, on the confirmation of slavery, on the establishment of tyranny in America? No; these are the expectations of Ferdinand. The British merchant builds his hopes of trade and profit on the progress of civilization and good government, on the successful assertion of Freedom,—of Freedom, that parent of talent, that parent of heroism, that parent of every virtue. The fate of South America can only be accessory to commerce as it becomes accessory to the dignity and the happiness of the race of man.—Sir James Mackintosh, *Speech in Parliament, on the Foreign Enlistment Bill, June 10, 1819*.

When a power comparable only to Thugs, buccaneers, and cannibals tries to thrust its hideous head among nations, and claims the protection and privileges of International Law,—a power which rose against the freest rule on earth for the avowed motive of propagating the worst form of Slavery ever known, having no legitimate complaint, or, if it had, certainly trying no constitutional means of redress, but plunging at once into arms, and that when the arsenals had been emptied and the fortresses seized by the treason of office-holders,—I hold it to be an offence against law, order, and public morality for a statesman whose words carry weight to speak at all of such a power without declaring abhorrence of it.—Professor Francis W. Newman, *Letter to Mr. Gladstone, December 1, 1862*.

I blame men who are eager to admit into the Family of Nations a state which offers itself to us, based upon a principle, I will undertake to say, more odious and more blasphemous than was ever heretofore dreamed of in Christian or Pagan, in civilized or in savage times. The leaders of this revolt propose this monstrous thing: that over a territory forty times as large as England the blight and curse of Slavery shall be forever perpetuated.—John Bright, *Speech at Birmingham, December 18, 1862*.

We are already culpable for a part of this bloody war; for, better informed or less indifferent, less selfish or more adroit, above all, more wise, more sincerely the friends of what is right, we could, from London and Paris, have thrown into the midst of the combatants this declaration, which would have rendered the conflict ephemeral: “Never will either England or France, Christian nations, liberal nations, recognize the existence of a people seeking to found Liberty and Independence on Slavery!” The misfortune of the times, in obscuring our judgment, in dulling our passion for the beautiful ideas of Freedom, has, then, already made us participants, in some respect, in the rebellion of the people of the South, and, in order to mask what was gross and low in our voluntary error, we set up vague reasons of commercial policy and general policy at which our fathers would have blushed.... The truth is, that the revolt of the South is the most impudent and most odious insult that has ever been offered to the ideas of modern Civilization.—Journal des Économistes, Avril, 1864, Tom. XLII. p. 88.

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The following speech[1] was delivered at the invitation of the New York Young Men’s Republican Union, at Cooper Institute, on the 10th of September, 1863. The announcement that Mr. Sumner had consented to address the citizens of New York on a subject so momentous attracted an audience numbering not less than three thousand persons, among whom were most of the acknowledged representatives of the intelligence, wealth, and influence of the metropolis. Long before the hour appointed for the delivery of the speech, the entrance-doors were besieged by an impatient and anxious crowd, who, as soon as the gates were opened, filled the seats, aisles, lobbies, and platform of the vast hall, leaving at least an equal number to return home, unable to gain an entrance to the building.

Of the following named gentlemen, who were invited to occupy seats upon the platform, a majority were present, while in the auditorium were hundreds of equally prominent citizens, who preferred to retain seats near the ladies whom they had escorted to the meeting.

Francis Lieber, LL.D., George Bancroft, Major-General Dix, Horace Greeley, George Griswold, John E. Williams, W. W. DeForest, Cornelius Vanderbilt, Abram Wakeman, Rev. Dr. Tyng, Cyrus W. Field, Alexander T. Stewart, Horace Webster, LL.D., Joseph Lawrence, John A. Stevens, Pelatiah Perit, James A. Hamilton, H. B. Claflin, T. L. Thornell, Colonel William Borden, William Goodell, Rev. Dr. Thompson, Rev. Dr. Gillette, William Cullen Bryant, Major-General Fremont, A. A. Low, John Jay, Henry Grinnell, James Gallatin, Cephas Brainerd, William B. Astor, William H. Aspinwall, Oliver Johnson, W. M. Evarts, William Curtis Noyes, Rev. Dr. Hitchcock, Shepherd Knapp, William H. Webb, James W. Gerard, Anson Livingston, Frank W. Ballard, Isaac H. Bailey, George B. Lincoln, General Harvey Brown, Rev. Dr. Shedd, Rev. Dr. Durbin, Peter Cooper, Major-General Doubleday, Charles H. Marshall, Marshall O. Roberts, Judge Bradford, Charles H. Russell, E. Delafield Smith, Hamilton Fish, Robert B. Minturn, Rev. Dr. Cheever, F. B. Cutting, Charles King, LL.D., Rev. Dr. Ferris, Ex-Governor King, George Folsom, Samuel B. Ruggles, S. B. Chittenden, Charles T. Rodgers, Mark Hoyt, Lewis Tappan, Rev. Dr. Storrs, Rev. Dr. Adams, Rev. Dr. Vinton, Daniel Drew, Francis Hall, George William Curtis, [Pg 6]
Judge Edmonds, Rev. Dr. Asa D. Smith, Truman Smith, William A. Hall, Prosper M. Wetmore, B. F. Manierre, George P. Putnam, E. C. Johnson, Rev. Dr. Osgood, Elliott C. Cowdin, Rev. T. Ralston Smith, J. S. Schultz, M. Armstrong, Jr., D. A. Hawkins, Edgar Ketchum, Joseph Hoxie, Rev. Dr. Bellows, General S. C. Pomeroy, James McKaye, George F. Butman, David Dudley Field.

David Dudley Field, Esq., who had been selected by the Committee as Chairman of the meeting, introduced Mr. Sumner to the audience in the following words.

"Ladies and Gentlemen,—At no former period in the history of the country has the condition of its foreign relations been so important and so critical as it is at this moment. In what agony of mortal struggle this nation has passed the last two years we all know. A rebellion of unparalleled extent, of indescribable enormity, without any justifiable cause, without even a decent pretext, stimulated by the bad passions which a barbarous institution had originated, and encouraged by expected and promised aid from false men among ourselves, has filled the land with desolation and mourning. During this struggle it has been our misfortune to encounter the evil disposition of the two nations of Western Europe with which we are most closely associated by ties of blood, common history, and mutual commerce. Perhaps I ought to have said the evil disposition of the governments, rather than of the nations; for in France the people have no voice, and we know only the imperial will and policy, while in England the masses have no powers, the House of Commons being elected by a fraction of the people, and the aristocratic classes being against us from dislike to the freedom of our institutions, and the mercantile classes from the most sordid motives of private gain. To what extent this evil disposition has been carried, what causes have stimulated it, in what acts it has manifested itself, and what consequences may be expected to follow from it in future, will be explained by the distinguished orator who is to address you this evening. His position as Chairman of the Senate Committee on Foreign Relations has given him an acquaintance with the subject equal, if not superior, to that of any other person in the country. He needs no introduction from me. His name is an introduction and a passport in any free community between the Atlantic and the Pacific seas; therefore, without saying more, I will give way for Charles Sumner, of Massachusetts."

Amid the most marked demonstrations of satisfaction, expressed frequently by long-continued applause and hearty cheers, Mr. Sumner proceeded in the delivery of his discourse. The meeting adjourned about an hour before midnight.

Three New York newspapers and two in Boston printed the entire speech on the day following its delivery.

SPEECH.

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FELLOW-CITIZENS,—From the beginning of the war in which we are now engaged, the public interest has alternated anxiously between the current of events at home and the more distant current abroad. Foreign Relations have been hardly less absorbing than Domestic Relations. At times the latter seem to wait upon the former, and a packet from Europe is like a messenger from the seat of war. Rumors of foreign intervention are constant, now in the form of mediation, and then in the form of recognition; and more than once the country has been summoned to confront the menace of England, and of France, too, in open combination with Rebel Slavemongers battling in the name of Slavery to build an infamous power on the destruction of this Republic.

It is well for us to turn aside from battle and siege at home, from the blazing lines of Vicksburg, Gettysburg, and Charleston, to glance for a moment at the perils from abroad: of course I mean from England and France; for these are the only foreign powers thus far moved to intermeddle on the side of Slavery. The subject to which I invite attention may want the attraction of waving standards or victorious marches; but, more than any conflict of arms, it concerns the civilization of the age. If foreign powers can justly interfere against human freedom, this Republic will not be the only sufferer.

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There is always a natural order in unfolding a subject, and I shall try to pursue it on this occasion, under the following heads.

First. The perils to our country from foreign powers, especially foreshadowed in the unexpected and persistent conduct of England and France since the outbreak of the war.

Secondly. The nature of foreign intervention by mediation, with the principles applicable thereto, illustrated by historic instances, showing especially how England, by conspicuous, wide-spread, and most determined intervention to promote the extinction of African Slavery, *is irrevocably committed against any act or policy that can encourage this criminal pretension*.

Thirdly. The nature of foreign intervention by recognition, with the principles applicable thereto, illustrated by historic instances, showing that by the practice of nations, and especially by the declared sentiments of British statesmen, *there can be no foreign recognition of an insurgent power, where the contest for independence is still pending*.

Fourthly. The moral impossibility of foreign recognition, even if the pretended power be *de facto* independent, where it is composed of Rebel Slavemongers seeking to found a *new* power with Slavery for its declared "corner-stone." Pardon the truthful plainness of the terms I employ. I am to speak not merely of Slaveholders, but of people to whom Slavery is a passion and a business, therefore Slavemongers,—now in rebellion for the sake of Slavery, therefore Rebel Slavemongers.

Fifthly. The absurdity and wrong of conceding ocean belligerence to a pretended power, which, in the first place, is without a Prize Court, so that it cannot be an ocean belligerent *in fact*,—and, in the second place, even if ocean belligerent *in fact*, is of such an odious character that its recognition is a moral impossibility.

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From this review, touching upon the present and the past, leaning upon history and upon law, enlightened always by principles which are an unerring guide, our conclusion will be easy.

I.

The perils to our country, foreshadowed in the action of foreign powers since the outbreak of the war, first invite attention.

There is something in the tendencies of nations which must not be neglected. Like individuals, nations influence each other; like the heavenly bodies, they are disturbed by each other in their appointed orbits. Apparent even in peace, this becomes more so in the convulsions of war, whether from the withdrawal of customary forces or from their increased momentum. It is the nature of war to enlarge as it continues. Beginning between two nations, it gradually widens its circle, ingulfing other nations in its fiery maelström. Such is human history. Nor is it different, if the war be for independence. Foreign powers may for a while keep out of the conflict; but examples of history show how difficult this has been.

There was liberty-loving Holland, which, under that illustrious character, William of Orange, predecessor and exemplar of our Washington, rose against the dominion of Spain, upheld by the [Pg 10] bigotry of Philip the Second, and the barbarity of his representative, Alva; but the conflict, though at first limited to the two parties, was not slow to engage Queen Elizabeth, who lent to this war of independence the name of her favorite Leicester and the undying heroism of Sidney, while Spain retorted by the Armada. The United Provinces of Holland, in their struggle for independence, were the prototype of the United States of America, which I need not remind you drew into their contest the arms of France, Spain, and Holland. In the rising of the Spanish colonies there was less interposition of other nations, doubtless from the distant and outlying position they occupied, although not beyond the ambitious reach of the Holy Alliance, whose purposes were so far thwarted by Mr. Canning, backed by the declaration of President Monroe, known as the Monroe doctrine, that the British statesman felt authorized to boast that he had called a new world into existence to redress the balance of the old. Then came the struggle of Greece, which, after painful years darkened by massacre, but relieved by exalted self-sacrifice, shining with names, like Byron and Bozzaris, that cannot die, challenged the powerful interposition of England, France, and Russia. The independence of Greece was hardly acknowledged, when Belgium, renouncing the rule of the Netherlands, claimed hers also, and here again the great powers of Europe were drawn into the contest. Then came the effort of Hungary, inspired by Kossuth, which, when about to prevail, aroused the armies of Russia. There was also the contemporaneous effort of the Roman Republic, under Mazzini, which, almost successful, evoked the bayonets of France. We have only recently witnessed the resurrection of [Pg 11] Italy, inspired by Garibaldi, and directed by Cavour; but it was not accomplished, until Louis Napoleon, with well-trained legions, bore the imperial eagles into battle.

Such are famous instances, being so many warnings. Ponder them, and you will see the tendency, the temptation, the irresistible fascination, or the commanding exigency under which foreign nations have been led to participate in conflicts for independence. I do not dwell on the character of these interventions, although mostly in the interest of Human Freedom. It is only as examples to put us on our guard that I adduce them. The footprints all lead one way.

Even our war is not without its warning. If thus far in its progress other nations have failed to intervene, they have not succeeded in keeping entirely aloof. The foreign trumpet has not sounded yet, but more than once the cry has come that we should soon hear it, while incidents too often occur, exhibiting abnormal watchfulness of our affairs and uncontrollable passion or purpose to intermeddle in them, with signs of unfriendly feeling. This is applicable especially, if not exclusively, to England and France.

And at the outset, as I am about to speak frankly, I quote the words of an eminent English statesman and orator, who felt it his duty to criticize Spain. From his place in the House of Commons, whence his words flew over Europe, Mr. Canning, Minister of Foreign Affairs, said:—

> "If, in what I have now further to say, I should bear hard upon the Spanish [Pg 12] Government, I beg that it may be observed, that, unjustifiable as I shall show their conduct to have been—contrary to the Law of Nations, contrary to the law of good neighborhood, contrary, I might say, to the laws of God and man —with respect to Portugal, still I do not mean to preclude a *locus pœnitentiæ*, a possibility of redress and reparation."[2]

Fellow-citizens, you shall decide, on hearing the story, if we also have not complaints; but I, too, hope that all will end well.

(1.) One act of the British Cabinet stands foremost as an omen of peril,—foremost in time, foremost also in the magnitude of its consequences. Though plausible in form, it is none the less injurious or unjustifiable. I refer to that inconsiderate Proclamation, in the name of the Queen, as early as 13th May, 1861, which, after raising Rebel Slavemongers to equality with the National Government, solemnly declares "neutrality" between the two coëqual parties: as if the recognition of equality was not an insult to the National Government, and the declaration of neutrality was not a moral absurdity, offensive to reason and all those precedents which make

the glory of the British name. Neutrality is equality; neutrality is equity. It is both. But is there just equality between these two parties? Can neutrality between such parties, especially at the very outset, be regarded as equity? Even if the Proclamation could be otherwise than improper at any time in such a rebellion, it was worse than a blunder at that early date. The apparent relations between the two powers were more than friendly. Only a few months had passed since the youthful heir to the British throne was welcomed everywhere, except in Richmond, as in the [Pg 13] land of kinsmen. And yet, at once, after tidings of the Rebel assault on Fort Sumter, before the National Government had begun to put forth its strength, and even without waiting for the arrival of our newly appointed minister, who was known to be at Liverpool, on his way to London, the Proclamation was suddenly launched. I doubt if any well-informed person, who reads Mr. Dallas's despatch of 2d May, 1861, recounting a conversation with the British Secretary, will undertake to vindicate it in point of time. "I informed him," the minister reports, "that Mr. Adams had apprised me of his intention to be on his way hither in the steamship Niagara, which left Boston on the 1st May, and that he would probably arrive in less than two weeks, by the 12th or 15th instant. His Lordship acquiesced in the expediency of disregarding mere rumor, *and waiting the full knowledge to be brought by my successor*."[3] And yet the blow was struck without waiting. The alacrity of this concession was unhappy, for it bore an air of defiance, or at least of heartlessness, towards an ally of kindred blood engaged in the maintenance of its traditional power against an infamous pretension. More unhappy still was it that the good genius of England did not save this historic nation, linked with so many triumphs of Freedom, from a fatal step, which, under the guise of "neutrality," was a betrayal of Civilization itself.

It is difficult to exaggerate the consequences of this precipitate, unfriendly, and immoral concession, which has been, and still is, an overflowing fountain of mischief and bloodshed,—"*hoc* [Pg 14] *fonte derivata clades*,"—*first*, in what it vouchsafes to Rebel Slavemongers on sea and in British ports, and, *secondly*, in the removal of impediments from British subjects ready to make money out of Slavery,—all of which has been declared by undoubted British authority. Lord Chelmsford, of professional renown as Sir Frederick Thesiger, now an ex-Chancellor, used these words recently in the House of Lords: "If the Southern Confederacy had not been recognized by us as *a belligerent power*, he agreed with his noble and learned friend [Lord Brougham], that any Englishman aiding them by fitting out a privateer against the Federal Government *would be guilty of piracy*."[4] But this is changed by the Queen's Proclamation. For Rebel Slavery there is recognition; for the British subject opportunity of trade. For Rebel Slavery there is fellowship and equality; for the British subject a new customer, to whom he may lawfully sell Armstrong guns, and other warlike munitions of choicest British workmanship, and, as Lord Palmerston tells us, even ships of war, to be used in behalf of Slavery.[5] What was unlawful is suddenly made lawful, while the ban is taken from an odious felony. It seems superfluous to add, that such concession, thus potent in reach, must have been a direct encouragement and overture to the Rebellion. [Pg 15] Slavery itself was exalted, when barbarous pretenders, battling to found a new power in its hateful name, without so much as a single port on the ocean where a prize could be carried for condemnation, were yet, *in face of this essential deficiency*, swiftly acknowledged as *ocean* belligerents, while, as consequence, their pirate ships, cruising for plunder in behalf of Slavery, were acknowledged as national ships, entitled to equal immunities with the national ships of the United States. This simple statement is enough. It is vain to say that the concession was a "necessity." There may have been strong temptation to it, constituting, perhaps, imagined necessity, as with many there is strong temptation to Slavery itself. But such concession to Rebels fighting for Slavery can be vindicated only as Slavery is vindicated. As well declare "neutrality" between Right and Wrong, between Good and Evil, with concession to Evil of belligerent rights, and then set up the apology of "necessity."

If he is an enemy who does what pleases an enemy, according to the rule borrowed by Grotius from the Christian lawyer of the age of Justinian,[6] then did England become the enemy of the National Union, for this most fruitful concession rejoiced beyond measure the Rebel enemy.

(2.) An act so essentially unfriendly in character, and also in the alacrity with which it was done, too clearly indicated an unfriendly sentiment, easily stimulated to menace of war. And this menace was not wanting, when, soon afterwards, the two Rebel emissaries on board the Trent were seized by a patriotic, brave commander, whose highest fault was, that, in the absence of [Pg 16] instructions from his own Government, he followed British precedents only too closely. This accident—for such it was, and nothing else—assumed at once overshadowing proportions. With indefensible exaggeration, it was changed by the British nation, backed by the British Government, into a *casus belli*,—as if an unauthorized incident, obviously involving no question of self-defence, could justify war between two civilized nations. And yet, in the face of positive declaration from the United States, communicated by our minister at London, that it was an accident, the British Government *made preparations to take part with Rebel Slavery*, and fitly began such an ignoble proceeding by keeping back from the British people the official despatch of 30th November, 1861, where our Government, after announcing that Captain Wilkes had acted "without any instructions," expresses a "trust that the British Government would consider the subject in a friendly temper," and promises "the best disposition" on our part.[7] It is painful to recall this exhibition. But it belongs to history, and we cannot forget the lesson it teaches.

(3.) This tendency to espouse the side of Slavery appears in small things as well as great, becoming more marked in proportion to the inconsistency involved. Thus, where two British subjects, "suspected" of participation in the Rebellion, were detained in a military prison without the benefit of *Habeas Corpus*, the British minister at Washington was directed to complain of their detention *as inconsistent with the Constitution of the United States*, of which this

intermeddling power assumed to be “expounder”; and the case was accordingly presented on this ground.[8] But the British Cabinet, with instinct to mix in our war, if only by diplomatic notes, seemed to have forgotten the British Constitution, under which, in 1848, with consent of all the party leaders, Brougham and Lansdowne, Peel and Disraeli, *Habeas Corpus* was suspended in Ireland, and the Government authorized to apprehend and detain “such persons as they shall suspect.” The bill sanctioning this exercise of power went through all its stages in the House of Commons on one day, and the next day went through all its stages in the House of Lords without a dissenting vote. It is hard to believe that Lord Russell, who complains of our detention of “suspected” persons as inconsistent with the Constitution of the United States, was the minister who introduced this bill, and on that occasion used these words: “I believe in my conscience that this measure is calculated to prevent insurrection, to preserve internal peace, *to preserve the unity of this empire*, and to secure the throne of these realms and the free institutions of this country.”[9] [Pg 17]

(4.) The complaint about *Habeas Corpus* was hardly answered, when another was solemnly presented, founded on the legitimate effort to complete the blockade of Charleston, by sinking at the mouth of its harbor ships laden with stone, usually known as “the stone blockade.” Did anybody find fault with the Russians for sinking their men-of-war in the harbor of Sebastopol? Nor is the allegation of permanent damage to the harbor tenable in the present advanced state of engineering science. A London journal, not inferior to any other in character and ability, has recently recognized the normal character of such a proceeding by mentioning it as a possible defence for Calcutta against naval force, saying: “The ascent of the river without pilots is impossible; for the Government can alter all the channels in a night by *merely sinking a couple of loaded schooners*.”[10] In common times her Majesty’s Government would shrink from such intermeddling. It could not forget that history, early and late, and especially English history, abounds in similar incidents: that, as long ago as 1436, at the siege of Calais by the Duke of Burgundy, and also in 1628, at the memorable siege of Rochelle by Cardinal Richelieu, ships laden with stone were sunk in the harbor; that, during the war of the Revolution, in 1779, six vessels were sunk by the British commander in the Savannah River, not far from this very Charleston, as a protection against the approach of the French naval forces; that, in 1804, under direction of the British Admiralty, there was an attempt, notorious from contemporary jest,[11] to choke the entrance into the harbor of Boulogne by sinking stone vessels; and that, in 1809, the same blockade of another port was recommended to the Admiralty by no less a person than Lord Dundonald, saying: “Ships filled with stones would ruin forever the anchorage of Aix, and some old vessels of the line well loaded would be excellent for the purpose.”[12] This complaint by the British Cabinet becomes doubly strange, when it is considered that one of the most conspicuous treaties of modern history contains solemn exactions from France by England herself, that the harbor of Dunkirk, whose prosperity was regarded with jealousy, should be permanently “filled up,” so that it could no longer furnish those hospitalities to commerce for which it was famous. This was the Treaty of Utrecht, in 1713. The Triple Alliance, four years later, compelled France to stipulate again that nothing should be omitted “which Great Britain could think necessary for the entire destruction of the harbor”; and the latter power was authorized to send commissioners as “ocular witnesses of the execution of the treaty.” These humiliating provisions were renewed in successive treaties down to the Peace of Versailles, in 1783, when the immunity of that harbor was recognized with American Independence. And yet it is Great Britain, thus persistent in closing ports and rivers, that now interferes to warn us against a stone blockade in a war to put down Rebel Slavery. [Pg 18] [Pg 19]

(5.) The same propensity and the same inconsistency appear in another instance, where an eminent peer, once Foreign Secretary, did not hesitate, from his place in Parliament, to charge the United States with making medicines and surgical instruments contraband, “contrary to all the common laws of war, *contrary to all precedent, not excluding the most ignorant and barbarous ages*.”[13] Thus exclaims the noble Lord. Now I have nothing to say of the propriety of making these things contraband. My simple object is to exhibit the spirit against which we are to guard. It is difficult to understand how such a display could be made in face of the historic fact, exposed in the satire of Peter Plymley, that Parliament, in 1808, by large majorities, prohibited the exportation of Peruvian bark into any territory occupied by France, and that this prohibition was moved by no less a person than the Chancellor of the Exchequer, Mr. Perceval, who commended it on the ground that “the severest pressure was already felt on the Continent from the want of that article,” and that “it was of great importance to the armies of the enemy.”[14] Such, in an age neither “ignorant” nor “barbarous,” is authentic British precedent, but now ostentatiously forgotten. [Pg 20]

(6.) The same recklessness, of such evil omen, breaks forth again in a despatch of the Foreign Secretary, where he undertakes to communicate the judgment of the British Cabinet on the President’s Proclamation of Emancipation. Here, at least, you will say there can be no misunderstanding and no criticism; but you are mistaken. Under any ordinary circumstances, when great passions find no vent, such an act, having such an object, and being of such unparalleled importance, would be treated by the minister of a foreign power with supreme caution, if not with sympathy; but, under the terrible influence of the hour, Earl Russell, not content with condemning the Proclamation, misrepresents it in the most barefaced manner. This was done in a communication to Lord Lyons here in Washington. Gathering his condemnation into one phrase, he says that it “makes Slavery at once legal and illegal”[15]; whereas it is obvious to the most careless observer, who looks only at the face of the Proclamation, that, whatever its faults, it is not obnoxious to this criticism, for it makes Slavery legal nowhere, while it makes it [Pg 21]

illegal in an immense territory. An official letter so incomprehensible in motive, from a statesman usually liberal, if not cautious, is another illustration of that irritating tendency which will be checked, at last, when it is fully comprehended.

(7.) The activity of our navy is only another occasion for criticism in a similar spirit. Nothing can be done anywhere to please our self-constituted monitor. Our naval officers in the West Indies, acting under instructions modelled on the judgments of the British Admiralty, are reprehended by Earl Russell in a formal despatch.[16] The judges in our Prize Court are indecently belittled by this same minister, from his place in Parliament,[17] when it is notorious that there are several who compare favorably with any British Admiralty judge since Lord Stowell, not even excepting that noble and upright magistrate, Dr. Lushington. And this same minister has undertaken to throw the British shield over a newly invented contraband trade with the Rebel Slavemongers *viâ* Matamoras, claiming that it is "a lawful branch of commerce" and "a perfectly legitimate trade." The "Dolphin" and "Peterhoff" were two ships elaborately prepared in London for this illicit commerce, and they have been duly condemned as such; but their seizure was made the occasion of official protest and complaint, with the insinuation of "vexatious capture and arbitrary interference," followed by the menace, that, under such circumstances, "it is obvious that Great Britain must interfere to protect her flag."[18] [Pg 22]

(8.) This persistent, inexorable criticism, even at the expense of all consistency, or of all memory, has broken forth in forms incompatible with that very "neutrality" so early declared. It was bad enough to declare neutrality, when the question was between a friendly power and an insulting barbarism; but it is worse, after the declaration, to depart from it, *if in words only*. The Court of Rome, at a period when it dictated the usage of nations, instructed its Cardinal Legate, on an important occasion, as a solemn duty, first and above all things, to cultivate "indifference" between the parties, and in this regard he was to be so exact, that not only should no partiality be seen in his conduct, but it should not be remarked even "*in the actions and words of his domestics*."[19] If, in that early day, before steam and telegraph, or even the newspaper, neutrality was disturbed by "words," how much more so now, when every word is multiplied indefinitely, and wafted we know not whither, to begin, wherever it falls, a subtle, wide-spread, and irrepressible influence! This injunction is in plain harmony with the refined rule of Count Bernstorff, who, in his admirable despatch at the time of the Armed Neutrality, says sententiously: "Neutrality does not exist, *when it is not perfect*."[20] It must be clear and above suspicion. Like the reputation of a woman, it is lost when you begin to talk about it. Unhappily, there is too much occasion to talk about the "neutrality" of England. [Pg 23]

I say nothing of a Parliamentary utterance, that the national cause was "detested by a large majority of the House of Commons"; nor do I speak of other most unneutral speeches. I confine myself to official declarations. Here the case is plain. Several of the British Cabinet, including the Foreign Secretary and the Chancellor of the Exchequer, two masters of "words," have allowed themselves in public speech to characterize our present effort to put down Rebel Slavery as "a contest for empire on one side and for independence on the other." Here are "words" which, under a specious form, openly encouraged Rebel Slavery. But they are more specious than true, revealing nothing but the side espoused by the orators. Clearly, on our side it is a contest for national life, involving the liberty of a race. Clearly, on the other side it is a contest for Slavery, in order to secure for this hateful crime *new* recognition and power; and it began in rebellion against the solemn judgment of the American people, declaring, in the election of Abraham Lincoln, that Slavery shall not be extended. Our empire is simply to crush Rebel Slavery. Their independence is but the unrestrained power to whip and sell women and children. If at the beginning the National Government made no declaration, yet the real character of the war was none the less apparent in the Presidential election, out of which it grew, and in the repeated declarations of the other side, who did not hesitate to assert their purpose to build a *new* power on Slavery,—as in the Italian campaign of Louis Napoleon against Austria the object was necessarily apparent, even before the Emperor tardily at Milan put forth his life-giving proclamation that Italy should be free from the Alps to the Adriatic, by which the war became, in its avowed purpose, as well as in reality, a war of liberation. That such a rebellion should be elevated by the unneutral "words" of a foreign Cabinet into respectability which it deserves so little is only another sign we have to watch. [Pg 24]

(9.) These same Cabinet orators, not content with giving us a bad name, allow themselves to pronounce against us on the whole case. They declare that the National Government cannot succeed in crushing Rebel Slavery, and that dismemberment is inevitable. "Jefferson Davis," says one of them, "has created *a nation*." Thus do these representatives of declared "neutrality" degrade us and exalt Slavery. It is apparent that their utterance, though made in Parliament and repeated at public meetings, was founded less on special information from the seat of war—disclosing its secret—than on political theory, if not prejudice. It is true that our eloquent teacher, Edmund Burke, in his famous Letter to the Sheriffs of Bristol, argued most persuasively that Great Britain could not succeed in reclaiming the colonies which had declared themselves independent. His reasoning rather than his wisdom enters into and possesses the British statesmen of our day, who do not take the trouble to see how the two cases are so entirely unlike that the example of the one is not applicable to the other,—that the colonies were battling to found a *new* power on the corner-stone of Liberty, Equality, and Happiness to All Men, while our Slavemongers are battling to found a *new* power on the corner-stone of Slavery. The difference becomes a contrast, so that whatever was once generously said in favor of American Independence now tells with unmistakable force against this new-fangled pretension. [Pg 25]

No British statesman saw the past more clearly than Earl Russell, when, long ago, in striking phrase, he said that England, in her war against our fathers, "had engaged *for the suppression of Liberty*";[21] but this is precisely what Rebel Slavery is doing. Men change, but principles are the same now as then. Therefore do I say, that every sympathy formerly bestowed upon our fathers now belongs to us their children, striving to uphold their work against bad men, who would not only break it in pieces, but put in its stead a *new* piratical power, whose declared object is "the suppression of Liberty." And yet British ministers, mounting the prophetic tripod, presume most oracularly to foretell the doom of this Republic. Their prophecies do not disturb my confidence. I do not forget how often false prophets have appeared, like the author of the "Oceana," who published a demonstration that monarchy was impossible in England[22] less than six months before Charles the Second was welcomed to London amid salvos of cannon and hurrahs of the people. Nor do I stop to consider how far such prophecies uttered in public places by British ministers are consistent with that British "neutrality" so constantly boasted. Opinions are allies more potent than subsidies, especially in an age like the present. Prophecies are opinions proclaimed and projected into the future; and yet these are given freely to Rebel Slavery. There [Pg 26] is matter for reflection in this instance, but I adduce it only as another illustration of the times. Nothing is more clear than that whosoever assumes to play prophet becomes pledged in character and pretension to sustain his prophecy. The learned Jerome Cardan, professor and doctor, also dabbler in astrology, of great fame in the sixteenth century, undertook to predict the day of his death, and he maintained his prophetic character by taking his own life at the appointed time. If British ministers, playing prophet, escape the ordinary influences of this craft, it is from that happy nature which suspends for them human infirmity and human prejudice. But it becomes us to note well the increased difficulties and dangers to which, on this account, the national cause is exposed.

(10.) It is not in "words" only, of speeches, despatches, or declarations, that our danger lies. I am sorry to add, that there are acts, also, with which the British Government is too closely associated. I do not refer to the unlimited supply of "munitions of war," so that our army everywhere, whether at Vicksburg or Charleston, is compelled to encounter Armstrong guns and Blakely guns, with all proper ammunition, from England; for the right of British subjects to sell these articles to Rebel Slavemongers was fixed, when the latter, by sudden metamorphosis, were changed from lawless vagrants of the ocean to lawful belligerents. Nor do I refer to the swarms of swift steamers, "a pitchy cloud warping on the eastern wind," always under British flag, with contributions to Rebel Slavery; for these, too, enjoy kindred immunity. Of course no royal [Pg 27] proclamation can change wrong into right, or make such business otherwise than immoral; but the proclamation may take from it the character of felony.

Even the royal manifesto gives no sanction to the fitting out in England of a *naval expedition* against the commerce of the United States. It leaves the Parliamentary statute, as well as the general Law of Nations, in full efficacy to restrain and punish such offence. And yet, in face of this obvious prohibition, standing forth in the text of the law, and founded in reason "ere human statute purged the gentle weal," also exemplified by the National Government, which, from the time of Washington, has always guarded its ports against such outrage, powerful ships are launched, equipped, fitted out, and manned in England, with arms supplied at sea from another English vessel, and then, assuming that by this insulting *hocus pocus* all English liability is avoided, they proceed at once to rob and destroy the commerce of the United States. *England is the naval base* from which are derived the original forces and supplies enabling them to sail the sea. Several such ships are now depredating on the ocean, like Captain Kidd, under pretended commissions, each in itself a *naval expedition*. As England is not at war with the United States, these ships can be nothing else than pirates; and their conduct is that of pirates. Unable to provide a court for the trial of prizes, they revive for every captured ship the barbarous Ordeal of Fire. Like pirates, they burn what they cannot rob. Raging from sea to sea, they turn the ocean into a furnace and melting-pot of American commerce. Of these incendiaries, the most famous is the "Alabama," with a picked crew of British seamen, with "trained gunners out of her Majesty's [Pg 28] naval reserve," all, like those of Queen Elizabeth, described as "good sailors and better pirates," and with everything else from keel to truck British, which, after more than a year of unlawful havoc, is still firing the property of our citizens, *without once entering a Rebel Slavemonger port*, but always keeping the umbilical connection with England, out of whose womb she sprung, and never losing the original nationality stamped upon her by origin, so that, at this day, she is a British pirate ship, precisely as a native-born Englishman, robbing on the high seas, and never naturalized abroad, is a British pirate subject.

It is bad enough that all this should proceed from England. It is hard to bear. Why is it not stopped at once? One cruiser might, perhaps, elude a watchful government. But it is difficult to see how this can occur once, twice, three times,—and the cry is, Still they sail! Two powerful rams are announced, like stars at a theatre. Will they, also, be allowed to perform? I wish there were not too much reason to believe that all these performances are sustained by prevailing British sympathy. A Frenchman, accidentally prisoner on the Alabama at the destruction of two American ships, describes a British packet in sight whose crowded passengers made the sea resound with cheers, as they witnessed the captured ships handed over to the flames. The words of Lucretius were verified:—

"Suave etiam belli certamina magna tueri."[23]

And these same cheers were echoed in Parliament, as the builder of the piratical craft gloried in his deed. The verse which filled the ancient theatre with glad applause declared sympathy with [Pg 29]

Humanity[24]; but English applause is now given to Slavery and its defenders: "I am an Englishman, and nothing of Slavery is foreign to me." Accordingly, Slavery is helped by English arms, English gold, English ships, English speeches, English cheers. And yet, for the honor of England be it known, there are Englishmen who stand firm and unshaken amidst this painful recreancy. Their names cannot be forgotten. And still more for the honor of England be it spoken, the working classes, called to suffer the most, bravely bear their calamity, without joining the enemies of the Republic. Their cheers are for Freedom, and not for Slavery.

But the cheers of the House of Commons prevail in her Majesty's Government. Municipal Law is violated, while International Law, in its most solemn obligation to do unto others as we would have them do unto us, is treated as the merest nullity. Eminent British functionaries, in Court and Parliament, vindicate the *naval expeditions* which in the name of Slavery are unleashed against a friendly power. Taking advantage of an admitted principle, that, after the concession of belligerent rights, "munitions of war" may be supplied, the Lord Chief Baron of the Exchequer tells us that "ships of war" may be supplied also. Lord Palmerston echoes Lord Chief Baron. Each vouches American authority. But they are mistaken. The steel which they strive to "impel" cannot be feathered from our sides. Since the earliest stage of its existence, the National Government has asserted a distinction between the two cases; and so has the Supreme Court, although there [Pg 30] are words of Story latterly quoted to the contrary. The authority of the Supreme Court is positive on the two points into which the British apology is divided. The first is, that, even if a "ship of war" cannot be furnished, the offence is incomplete until the armament is put aboard, so that, where the ship, though fitted out and equipped in a British port, awaits an armament at sea, she is not liable to arrest. Such apology is an insult to the understanding and to common sense,—as if it were not obvious that the offence begins with the laying of the keel for the hostile ship, *knowing it to be such*:[25] and in this spirit the Supreme Court has decided that it is not necessary to find that a ship on leaving port was armed, or in a condition to commit hostilities; for citizens are restrained from such acts as are calculated to involve the country in war.[26] The second apology assumes, that, even if the armament were aboard, so that the "ship of war" is complete at all points, still the expedition would be lawful, if the fiction of a sale were adroitly managed. On this point, the Supreme Court, speaking by Chief-Justice Marshall, has left no doubt of its deliberate and most authoritative judgment. [Pg 31] In the case before the Court the armament was aboard, but cleared as cargo; the men, too, were aboard, but enlisted for a commercial voyage; the ship, though fitted out to cruise against a nation with which we were at peace, was not commissioned as a privateer, and did not attempt to act as such, until she reached the river La Plata, *where a commission was obtained and the crew reënlisted*; yet, in the face of these extenuating circumstances, it was declared by the whole Court, that the neutrality of the United States had been violated, so that the guilty ship could not afterwards be recognized as a legitimate cruiser. All the disguises were to no purpose. The Court penetrated them every one, saying, that, if such a ship could lawfully sail, there would be on our part "a fraudulent neutrality, disgraceful to our own Government, and of which no nation would be the dupe."[27] But a "neutrality" worse even than that condemned in advance by our Supreme Court, "of which no nation would be the dupe," is now served out to us, which nothing can explain, short of the fatal war-spirit that has entered into Great Britain. There was a time when the Foreign Secretary of England, truly eminent as statesman and orator, Mr. Canning, said in the House of Commons: "If a war must come, let it come in the shape of satisfaction to be demanded for injuries, of rights to be asserted, of interests to be protected, of treaties to be fulfilled. *But, in God's name, let it not come on in the paltry, pettifogging way of fitting out ships in our harbors to cruise for gain. At all events, let the country disdain to be sneaked into a war.*"[28] These noble words were uttered in [Pg 32] reply to Lord John Russell and his associates in 1823, when trying to repeal the Foreign Enlistment Act, and to overturn the statute safeguards of British neutrality. They speak now with greater force even than then.

Though it be admitted that "ships of war," like "munitions of war," may be sold to a belligerent, as is asserted by the British Prime-Minister, echoing the Lord Chief Baron, it is obvious that it can be only with the distinction already mentioned, that the sale is a *commercial transaction*, pure and simple, and not in any respect a *hostile expedition* fitted out in England. The ship must be "exported" as an *article of commerce*, and must continue such *until* arrival at the belligerent port, where alone can it be fitted out and commissioned as a "ship of war," when its hostile character will commence. Any attempt in England to impart a hostile character to the ship, or, in one word, to make England its *naval base*, must be criminal: but this is precisely what has been done. Ships are sent forth, armed and equipped. And, pray, how distinguish a ship armed and equipped from a regiment armed and equipped? It is not a munition, it is not even an article, but much more; and here is the distinction not to be overlooked. It is an *organized force*, and the nation sending it forth makes itself a party to the war,—all of which England has done. And here are the leonine footprints which point so badly.

(11.) Not content with misconstruing the decisions of our Supreme Court, making them a cover for *naval expeditions* to depredate on our commerce, our whole history is forgotten or misrepresented. [Pg 33] It is forgotten, that, as early as 1793, under the administration of Washington, before any Act of Congress on the subject, the National Government recognized its liability, under the Law of Nations, for ships fitted out in its ports to depredate on British commerce; that Washington, in his speech at the opening of Congress, describes such ships as "vessels commissioned or *equipped in a warlike form* within the limits of the United States," and also as "military expeditions or enterprises";[29] and that Jefferson, vindicating this policy of *repression*, said, in a letter to the French Minister, that it was "our wish to preserve the morals of our

citizens from being vitiated by courses of lawless plunder and murder";[30] that, on this occasion, the National Government made the distinction between "munitions of war," which a neutral might supply in the way of commerce to a belligerent, and "ships of war," which a neutral was not allowed to supply or even to augment with arms; that Mr. Hammond, the British plenipotentiary at that time, by his letter of 8th May, 1793, after complaining of two French privateers, fitted out at Charleston to cruise against British commerce, expressly declares that "he conceives them to be breaches of that neutrality which the United States profess to observe, and direct contraventions of the proclamation which the President issued,"[31] and that very soon there were criminal proceedings, at British instigation, on account of these privateers, in which it was affirmed by the Court that such ships could not be fitted out in a neutral port without violation of international obligations; that promptly, on the representation of the British Government, a statute was enacted by Congress, in harmony with the Law of Nations, for the [Pg 34] better maintenance of our neutrality;[32] that, in 1818, another statute followed in the nature of a Foreign Enlistment Act,[33] afterwards proposed as an example by Lord Castlereagh, when urging a similar statute upon Parliament;[34] that, in 1823, the conduct of the United States on this whole head was presented as a model by Mr. Canning;[35] that, in 1838, during the rebellion in Canada, on the appeal of the British Government, and to its special satisfaction, as was announced in Parliament by Lord Palmerston, at the time Foreign Secretary, our Government promptly declared its purpose "to maintain the supremacy of those laws which were passed to fulfil the obligations of the United States to all friendly nations who may be unfortunately engaged in foreign or domestic war," and, not satisfied with existing powers, undertook to ask additional legislation from Congress; that Congress proceeded at once to the enactment of another statute, calculated to meet the immediate exigency, where it is provided that collectors, marshals, and other officers shall "seize and detain *any vessel* or any arms or munitions of war which may be provided or prepared for *any military expedition* or enterprise against the territory or dominions of any foreign prince or state."[36] It is something to forget these things; but it is convenient to [Pg 35] forget still further, that, at the Crimean War, in 1854, the British Government, jointly with France, made another appeal to the United States, that our citizens should "rigorously abstain from taking part in armaments of Russian privateers, or in any other measure opposed to the duties of a strict neutrality";[37] and this appeal, declared by the British Government to be "in the spirit of just reciprocity," was answered on our part by a sincere and determined vigilance, so that not a single British or French ship suffered from any cruiser fitted out in our ports. And it is also convenient to forget no less the solemn obligations of treaty, binding both parties:—

> "That the subjects and citizens of the two nations *shall not do any acts of hostility or violence against each other*, nor accept commissions or instructions so to act from any foreign prince or state, enemies to the other party; nor shall the enemies of one of the parties be permitted to invite or endeavor to enlist in their military service any of the subjects or citizens of the other party; *and the laws against all such offences and aggressions shall be punctually executed*."[38]

At the date of this treaty, in 1794, there was little legislation on the subject in either country; so that the treaty, in harmony with the practice, testifies to the requirements of the Law of Nations as understood at the time by both powers.

And yet, disregarding all these things, which show how faithfully the National Government has acted, both in measures of *repression* and measures of *compensation*, also how often the British [Pg 36] Government asked and received protection at our hands, and how highly our example of neutrality has been appreciated by leading British statesmen,—and disowning, also, that "spirit of just reciprocity," which, besides being the prompting of an honest nature, has been positively promised, ship after ship is permitted to leave British ports to depredate on our commerce; and when we complain of an outrage so unprecedented and so unjustifiable, all the obligations of International Law are ignored, and we are petulantly told that the evidence against the ships is not sufficient *under the statute*; and when we propose that the statute shall be rendered efficient for the purpose,—precisely as in past times the British Government, under circumstances less stringent, proposed to us,—we are pointedly repelled by the old baronial declaration, that there must be no change in the laws of England,—"*nolumus leges Angliæ mutari*"; while, to cap this strange insensibility, Lord Palmerston, in a last debate of the late Parliament, brings against us a groundless charge of infidelity to neutral duties during the Crimean War,[39] when the fact is notoriously the reverse, and Earl Russell, in the same spirit, imagines an equally groundless charge, which he records in one of his diplomatic notes, that we have recently enlisted men in Ireland,[40] when notoriously we have done no such thing. Thus are the obligations of reciprocal service and good-will openly discarded, while our public conduct, as well in the past as the present, is openly misrepresented.

(12.) This flagrant oblivion of history and of duty, which seems the adopted policy of the British [Pg 37] Government, is characteristically followed by flat refusal to pay for the damages to our commerce caused by the hostile expeditions. The United States, with Washington as President, on application of the British Government, made compensation for damages to British commerce under circumstances much less vexatious,—and, still further, by special treaty, made compensation for damages "by vessels originally armed" in our ports,[41]—which is the present case. Of course it can make no difference, not a pin's difference, if the armament is carried out to sea in another vessel from a British port and there transshipped. Such an elaborate evasion may be effectual against a Parliamentary statute, but it must be impotent against a demand upon the

British Government, according to the principles of International Law; for this law looks always at *substance*, and not *form*, and will not be diverted by the trick of a pettifogger. Whether the armament be put on board in port or at sea, England is always the *naval base*, or, according to the language of Sir William Scott in a memorable case, the "station" or "vantage-ground," which he declared a neutral country could not be.[42] Therefore the early precedent between the United States and England is in every respect completely applicable; and since this precedent was established *not only by the consent of England, but at her motion*, it must be accepted on the present occasion as an irreversible declaration of international duty. Other nations might differ, but England is bound. And now it is her original interpretation, first made to take compensation [Pg 38] from us, which is flatly rejected when we ask compensation from her. Even if the responsibility for *a hostile expedition* fitted out in British ports were not plain, there is something in the recent conduct of the British Government calculated to remove all doubt. Pirate ships are reported on the stocks ready to be launched, and when the Parliamentary statute is declared insufficient to stop them, the British Government declines to amend it, and, so doing, openly declines to stop the pirate ships, saying, "If the Parliamentary statute is inadequate, then let them sail." It is not needful to consider the apology. The act of declension is positive, and its consequences are no less positive, *fixing beyond question the responsibility of the British Government for these criminal expeditions*. Thus fixing the responsibility, we but follow the suggestions of reason and the text of an approved authority, whose words have been adopted in England.

> "*It must be laid down as a maxim*, that a sovereign, who, knowing the crimes of his subjects, as, for example, that they *practice piracy* on strangers, and, being also able and obliged to hinder it, does not hinder it, *renders himself criminal, because he has consented to the bad action, the commission of which he has permitted*.... It is presumed that a sovereign knows what his subjects openly and frequently commit; and *as to his power of hindering the evil, this likewise is always presumed*, unless the want of it be clearly proved."[43]

Such are the words of Burlamaqui, in his work on Political Law, quoted with approbation by Phillimore, in his work on the Law of Nations.[44] Unless these words are discarded as "a maxim," [Pg 39] while the early precedent of British demand upon us is also rudely rejected, it is difficult to see how the British Government can avoid the consequences of complicity with the pirate ships in all their lawless devastation. I forbear to dwell on this accumulating liability, amounting already to many millions of dollars, with accumulating exasperations also. My present object is accomplished, if I make you see which way danger lies.

(13.) Beyond acts and words, this same British *rabbia* shows itself in the official tone towards the national cause in its unparalleled struggle, especially throughout the correspondence of the British Foreign Office. There is little friendship in any of these letters. Nor is there any sympathy with the national championship against Rebel Slavery, nor even one word of mildest dissent from the miscreant apocalypse preached in its behalf. Naturally the tone is in harmony with the sentiment. Hard, curt, captious, cynical, it evinces indifference to that kindly intercourse which nations ought to cultivate with each other, and which should be the study of a wise statesmanship. The Malay *runs amuck*, and such is the British diplomatic style in dealing with us. This is painfully conspicuous in all that concerns the pirate ships. But I can well understand that a Secretary conceding belligerent rights to Rebel Slavery so easily, and then so easily permitting its ships to sally forth for piracy, would be very indifferent to the tone of what he wrote. And yet, even outrage may be soothed or softened by gentle words; but none such come out of British diplomacy to us. Most deeply do I regret this too suggestive failure. And believe me, fellow-citizens, I say these things with sorrow unspeakable, and only in discharge of my duty, when, face [Pg 40] to face, I meet you to consider the aspects of our affairs abroad.

(14.) There is still another head of danger, in which all others culminate. I refer to intrusive mediation, or, it may be, recognition of the Slavemonger attempt as an independent nation,—for such movements have been made openly in Parliament and urged constantly by the British press, and, though not yet adopted by her Majesty's Government, have never been repelled on principle, so that they constitute a perpetual cloud threatening to break. It is plain to all who have not forgotten history, that England never can be guilty of such recognition without unpardonable apostasy; nor can she intervene by way of mediation, except in the interests of Freedom. And yet such are the "elective affinities" newly born between England and Slavery, such is the wilful blindness with regard to our country, kindred to that which prevailed in the time of George Grenville and Lord North, that her Majesty's Government, instead of repelling the proposition, simply adjourn it, adopting meanwhile the attitude of one watching to strike. The British Minister at Washington, of model prudence, whose individual desire for peace I cannot doubt, tells his Government, in a despatch found in the last Blue Book, that as yet he sees no sign of "a conjuncture at which foreign powers *may step in with propriety* and effect to put a stop to the effusion of blood."[45] Here is the plain assumption that such conjuncture may occur. For the present we are left free to wage the battle against Slavery without any such intervention in arrest of the national efforts.

Such are some of the warnings which lower from the English sky arching the graves of [Pg 41] Wilberforce and Clarkson, while sounding above these sacred resting-places are heard strange, un-English voices, crying out: "Come unto us, Rebel Slavemongers, whippers of women and sellers of children!—for you are the people of our choice, whom we welcome promptly to *ocean rights*, with Armstrong guns and *naval expeditions* equipped in our ports, and on whom we lavish

sympathy always and the prophecy of success; while for you who uphold the Republic and oppose Slavery we have hard words, criticism, rebuke, and the menace of war!”

Crossing the Channel into France, we are not encouraged much. And yet the Emperor, though acting habitually in concert with the British Cabinet, has not intermeddled so illogically or displayed a temper of so little international amiability. The correspondence under his direction, even at the most critical moments, leaves little to be desired in respect of form. Nor has there been a single blockade-runner under the French flag, nor a single pirate ship from a French port. But, in spite of these things, it is too apparent that the Emperor has taken sides against us in at least four important public acts, positively, plainly, offensively. The Duc de Choiseul, Prime-Minister of France, was addressed by Frederick of Prussia as “Coachman of Europe,”—a title which belongs now to Louis Napoleon. But he must not try to be “coachman of America.”

(1.) Following the example of England, Louis Napoleon acknowledges the Rebel Slavemongers as *ocean* belligerents, so that, with the sanction of France, our ancient ally, their pirate ships, although without a single open port which they can call their own, enjoy complete immunity as [Pg 42] lawful cruisers, while all who sympathize with them furnish supplies and munitions of war. This fatal concession was aggravated by the concurrence of the two great powers. But, God be praised, their joint act, though capable of giving brief vitality to Slavery on pirate decks, is impotent to confirm the intolerable pretension.

(2.) Sinister events are not alone, and this recognition of Slavery was followed by an expedition of France, in concurrence with England and Spain, against our neighbor Republic, Mexico. The two latter powers very soon withdrew, but the Emperor, less wise, did not hesitate at invasion. A French fleet, with an unmatched iron-clad,—the consummate product of French naval art,—is now at Vera Cruz, and the French army, after a protracted siege, has stormed Puebla and entered the famous capital. This far-reaching enterprise was originally declared to be nothing more than process, served by a general, for the recovery of outstanding debts due to French citizens. But the Emperor, in a mystic letter to General Forey, gives it another character. He proposes nothing less than the restoration of the Latin race on this side of the Atlantic, and more than intimates that the United States must be restrained in power and influence over the Gulf of Mexico and the Antilles. And now the Archduke Maximilian of Austria is proclaimed Emperor of Mexico under the protection of France. It is obvious that this imperial invasion, though only indirectly against us, would not have been made, if our convulsions had not left the door of the Continent ajar, so that foreign powers may bravely enter in. And it is more obvious that this attempt to plant a throne by our side would “have died before it saw the light,” had it not been [Pg 43] supposed that Rebel Slavery was about to triumph.[46] Plainly the whole transaction is connected with our affairs. But it can be little more than a transient experiment; for who can doubt that this imperial exotic, planted by foreign care and propped by foreign bayonets, must disappear before the ascending glory of the Republic?

(3.) This enterprise of war was followed by an enterprise of diplomacy not less hardy. The Emperor, not content with stirring against us the Gulf of Mexico, the Antilles, and the Latin race, entered upon work of a different character. He invited England and Russia to unite with France in tendering to the two “belligerents” (such is the equal designation of our Republic and the embryo Slavemonger mockery!) a joint mediation to procure “an armistice for six months, during which every act of war, direct or indirect, should provisionally cease on sea as well as on land, to be renewed, if necessary, for a further period.” The Cabinets of England and Russia, better inspired, declined the invitation, which looked to little short of recognition itself. Under the proposed armistice, all our vast operations must have been suspended, the blockade itself must [Pg 44] have ceased, while the Rebel ports were opened on the one side to unlimited supplies and military stores, and on the other to unlimited exports of cotton. Trade, for the time, would have been legalized in these ports, and Slavery would have lifted its grinning front before the civilized world. Not disheartened by this failure, the Emperor alone pushed forward his diplomatic enterprise against us, as alone he had pushed forward his military enterprise against Mexico, and presented to our Government the unsupported mediation of France. His offer was promptly rejected by the President. By solemn resolutions of both Houses, adopted with singular unanimity, and communicated since to all foreign governments, Congress announced that such a proposition could be attributed only to “a misunderstanding of the true state of the question, and of the real character of the war in which the Republic is engaged”; and that it was in its nature so far injurious to the national interests that Congress would be obliged to consider its repetition an unfriendly act.[47] This strong language frankly states the true position of our country. Any such offer, whatever its motive, must be an encouragement to the Rebellion. In an age when ideas prevail and even words become things, the simple declarations of statesmen are of incalculable importance. But the head of a great nation is more than statesman in such influence. The imperial proposition tended directly to the dismemberment of the Republic and the substitution of a ghastly Slavemonger nation.

Baffled in this effort twice attempted, the Emperor does not yet abandon his policy. We are told that it is “postponed to a more suitable opportunity”; so that he, too, waits to strike, if the Gallic [Pg 45] cock does not sound alarm in an opposite quarter. Meanwhile the development of the Mexican expedition shows too clearly the motive of mediation. It was all one transaction. Mexico was invaded for empire, and mediation was proposed to help the plot. But the invasion must fail with the diplomacy to which it is allied.

(4.) The policy of the French Emperor towards our Republic is not left to uncertain inference. For a long time public report has pronounced him unfriendly, and now public report is confirmed by what he does and says. The ambassadorial attorney of Rebel Slavery is received at the Tuileries, members of Parliament on an errand of hostility to our cause are received at Fontainebleau, and the open declaration is made that the Emperor desires to recognize Rebel Slavery as an independent power. This is hard to believe, but it is too true. The French Emperor is against us. In an evil hour, under temptations which should be scouted, he forgets the precious traditions of France, whose blood commingled with ours in a common cause; he forgets the swords of Lafayette and Rochambeau, flashing side by side with the swords of Washington and the earlier Lincoln, while the lilies of the ancient monarchy floated together with the stars of our infant flag; he forgets that early alliance, sealed by Franklin, which gave to the Republic the assurance of national life, and made France the partner of her rising glory;—"*Heu pietas! heu prisca fides! Manibus date lilia plenis!*"—and he forgets still more the obligations of his own name,—how the first Napoleon surrendered to us Louisiana and the whole region west of the Mississippi, saying: "This accession of territory establishes forever the power of the United States, and gives to England a maritime rival destined to humble her pride";[48] and he forgets, also, how he himself, when beginning intervention for Italian liberty, boasted proudly that France always stood for an "idea"; and forgetting these things, which mankind cannot forget, he seeks the disjunction of this Republic, with the spoliation of that very territory which came to us with such auspices, while France, always standing for an "idea," stands, under the second Napoleon, for the "idea" of welcome to a new evangel of Slavery, with Mason and Slidell as the evangelists. Thus is imperial influence exerted for Rebel Slavemongers. The Emperor, for the present, forbears to fling his sword into the scale; but he flings his heavy hand, if not his sword.

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Only recently we have the menace of the sword. The throne of Mexico is offered to an Austrian archduke. The desire to recognize the independence of Rebel Slavery is openly declared. These two incidents together are complements of each other. And now we are assured by concurring report, that Mexico is to be maintained as an empire. The policy of the Holy Alliance, originally organized against the great Napoleon, is adopted by his representative on the throne of France. What its despot authors left undone the present Emperor, nephew of the first, proposes to accomplish. Report informs us that Texas also is doomed to the imperial protectorate, thus ravishing a possession which belongs to this Republic as much as Normandy belongs to France.[49] The partition of Poland is acknowledged to be the great crime of the last century. It was accomplished by three powers, with the silent connivance of the rest, but not without pangs of remorse in one of the spoilers. "I know," said Maria Theresa to the ambassador of Louis the Sixteenth, "that I have brought a deep stain on my reign by what has been done in Poland; but I am sure that I should be forgiven, if it could be known what repugnance I had to it."[50] Here on this Continent the French Emperor seeks to play the very part which of old caused the contrition of Maria Theresa; nor could the partition of our broad country—if, in an evil hour, it were accomplished—fail to be the great crime of the present century. Trampler upon the Republic in France, trampler upon the Republic in Mexico, it remains to be seen if the French Emperor can prevail as trampler upon this Republic. I do not think he can; nor am I anxious on account of this new-found Emperor, who will be another King Canute against the rising tide of the American people. His chair must be withdrawn, or he will be overwhelmed.[51]

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Here I bring to an end this unpleasant review. It is with little satisfaction, and only in explanation of our relations with foreign powers, that I accumulate these instances, not one of which, small or great, is without its painful lesson, while they all testify with a single voice to the perils of our country.

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II.

Another branch of the subject is not less important. Considering all these things, and especially how great powers abroad constantly menace intervention, now by criticism and then by proffer of mediation, all tending painfully to something further, it becomes us to see what, according to International Law and the examples of history, will justify foreign intervention, in any of the forms it may take. And here there is one remark to be made at the outset. Nations are equal in the eye of International Law, so that what is right for one is right for all. It follows that no nation can justly exercise any right which it is not bound to concede under like circumstances. Therefore, should our cases be reversed, there is nothing England and France now propose, or may hereafter propose, which it will not be our equal right to propose, when Ireland or India once more rebels, or when France is in the throes of its next revolution. Generously, and for the sake of that international comity not lightly hazarded, we may reject the precedents they furnish; but it will be difficult for them to complain, if we follow their steps.

Foreign intervention is, on its face, inconsistent with every idea of national independence, which in itself is the natural and acknowledged right of a nation to rest undisturbed so long as it does not disturb others. If nations stood absolutely alone, dissociated from each other, so that what passed in one had little or no influence in another, only a tyrannical or intermeddling spirit could fail to recognize this right. But civilization, drawing nations nearer together and into one society, brings them under reciprocal influence, so that no nation can now act or suffer alone. Out of the relations and suggestions of good neighborhood, involving the admitted right of self-defence, springs the only justification or apology to be found for *foreign intervention*, which is the

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general term to signify interposition in the affairs of another country, whatever form it may take. Much is done under the name of “good offices,” whether in the form of mediation or intercession, —and much also by military power, whether in the declared will of superior force or directly by arms. Recognition of independence is also another instance. Intervention in any form is interference. If peaceable, it must be judged by its motive and tendency; if forcible, it will naturally be resisted by force.

Intervention may be between two or more nations, or between the two parties to a civil war; and yet again, it may be where there is no war, foreign or domestic. In each case it is governed by the same principles, except, perhaps, that in the case of civil war there should be more careful consideration, not only of the rights, but of the susceptibilities of a nation so severely tried. Such is the obvious suggestion of humanity. Intervention between nations is only a common form of participation in foreign war, but intervention in a civil war is intermeddling in the domestic concerns of another nation. Whoever acts at the *joint invitation* of belligerent parties to compose [Pg 50] a bloody strife is entitled to the blessings which belong to the peacemakers; but, if uninvited, or acting at the invitation of one party only, he will be careful to proceed with reserve and tenderness, in the spirit of peace, and confining action to a proffer of good offices in the form of mediation or intercession, unless he is ready for war. Such proffer may be declined without offence. But it can never be forgotten, that, *where one side is obviously fighting for Barbarism*, any intervention, whatever form it takes,—if only by captious criticism, calculated to encourage the wrong side, or to secure for it time or temporary toleration, if not final success,—*is plainly immoral*. If not contrary to the Law of Nations, it ought to be.

Intervention in the spirit of peace and for the sake of peace belongs to the refinements of modern civilization. Intervention in the spirit of war, if not for the sake of war, has filled a large space in history, ancient and modern. But all these instances may be grouped under two heads: first, intervention in *external* affairs; and, secondly, intervention in *internal* affairs. The first is illustrated by the intervention of the Elector Maurice of Saxony against Charles the Fifth, of King William against Louis the Fourteenth, of Russia and France in the Seven Years’ War, of Russia again between France and Austria in 1805, and also between France and Prussia in 1806, and of France, Great Britain, and Sardinia between Turkey and Russia in the war of the Crimea.

The intervention of Russia, Austria, and Prussia in the affairs of Poland, of Great Britain among the native provinces of India, and of the Allied Powers in the French Revolution, under the continued inspiration of the Treaty of Pilnitz, are illustrations of the second head. Without [Pg 51] dwelling on these great examples, I shall call attention to instances showing more especially the growth of intervention, first in external, and then in internal affairs. Here I shall conceal nothing. Instances seeming against the principles I have at heart will at least help illustrate the great subject, so that you may see it as it is.

(1.) First in order, and for the sake of completeness, I speak of intervention in *external* affairs, where two or more nations are parties.

As long ago as 1645, France offered mediation between what were then called “The Two Crowns of the North,” Sweden and Denmark. This was followed, in 1648, by the famous Peace of Westphalia, the beginning of our present Law of Nations, negotiated under the joint mediation of the Pope and the Republic of Venice, present by nuncio and ambassador. In 1655, the Emperor of Germany offered mediation between Sweden and Poland; but the old historian records that the Swedes suspected him of seeking to increase rather than to arrange pending difficulties; and the effort ended by the withdrawal of the imperial envoy into the Polish camp. Sweden, though often belligerent in those days, was not so always, and, in 1672, when war broke forth between France and England on one side and the Dutch Provinces on the other, we find her proffering mediation, which was promptly accepted by England, who justly rejected a similar proffer most hardily made by the Elector of Brandenburg, ancestor of the kings of Prussia, while marching at the head of his forces to join the Dutch. The English note on this occasion, written in what at the time was called [Pg 52] “sufficiently bad French, but in very intelligible terms,” declared that the Electoral proffer, though under the pleasant name of mediation (*par le doux nom de médiation*), was adjudged to be only arbitration, and that, instead of mediation *unarmed and disinterested*, it was mediation armed and pledged to the enemies of England.[52]

Such are earlier instances, all of which have their lessons for us. There are modern, also. I allude only to the Triple Alliance, between Great Britain, Prussia, and Holland, which, at the close of the last century, successively intervened, by mediation which could not be resisted, to compel Denmark, while siding with Russia against Sweden, to remain neutral for the rest of the war,— then, in 1791, to dictate terms of peace between Austria and the Porte,—and lastly, in 1792, to constrain Russia into abandonment of her designs upon the Turkish Empire by the Peace of Jassy. On this occasion, the Russian Empress, Catharine the Second, peremptorily refused the mediation of Prussia, and the mediating Alliance made its approaches through Denmark, by whose good offices the Empress was finally induced to accept the treaty. While thus engaged in professed mediation, England, in a note to the French ambassador, declined to act as mediator between France and the Allied Powers, leaving that world-embracing war to proceed. Not only has England refused to act as mediator, but *also refused submission to mediation*. This was during the last war with the United States, when Russia, at that time the ally of England, proffered mediation between the two belligerents, which was promptly accepted by the United [Pg 53] States. Its rejection by England, causing the prolongation of hostilities, was considered by Sir

James Mackintosh less justifiable, as “a mediator is a common friend, who counsels both parties with a weight proportioned to their belief in his integrity and their respect for his power; but he is not an arbitrator, to whose decision they submit their differences, and whose award is binding on them.”[53] The Peace of Ghent was concluded at last under Russian mediation. But England has not always been belligerent. When Andrew Jackson menaced letters of marque against France, on account of failure to pay a sum stipulated in a recent treaty with the United States, King William the Fourth proffered mediation; but happily the whole question was already virtually arranged. It appears, also, that, before our war with Mexico, the good offices of England were tendered to the two parties; but neither was willing to accept them, and war took its course.

Such are instances of interference in external affairs; and since International Law is traced in history, they furnish a guide we cannot now neglect, especially when we regard the actual policy of England and France.

(2.) Instances of foreign intervention in the *internal* affairs of a nation are more pertinent. They are numerous, and not always harmonious, especially if we compare the new with the old. In the earlier times such intervention was regarded with repugnance. But the principle then declared has been sapped on the one side by the conspiracies of tyranny seeking the suppression of liberal institutions, and on the other by a generous sympathy breaking forth from time to time in their [Pg 54] support. According to old precedents, most of which are found in the gossipping book of Wicquefort,[54] whence they have been copied by Mr. Wildman, in his “Institutes of International Law,”[55] even *foreign intercession* was prohibited. Not even in the name of charity could one ruler speak to another on the domestic affairs of his government. Peter, King of Aragon, was astonished at a proposed embassy from Alphonso, King of Castile, entreating mercy for rebels. Charles the Ninth of France, a detestable monarch, in reply to ambassadors of the Protestant princes of Germany, pleading for his Protestant subjects, insolently declared that he required no tutors to teach him how to rule. And yet this same sovereign did not hesitate to ask the Duke of Savoy to receive certain subjects “into his benign favor, and to restore and reëstablish them in their confiscated estates.”[56] In this appeal there was a double inconsistency; for it was not only interference in the affairs of another prince, but it was in behalf of Protestants, only a few months before the Massacre of St. Bartholomew. Henry the Third, successor of Charles, and another detestable monarch, in reply to the Protestant ambassadors, announced that he was a sovereign prince, and ordered them to leave his dominions. Louis the Thirteenth was of milder nature, and yet, when the English ambassador, the Earl of Carlisle, presumed to speak in favor of the Huguenots, he intimated that no interference between the King of France and his subjects could be approved. The Cardinal Richelieu, who governed France so long, learning that an [Pg 55] attempt was made to procure the intercession of the Pope, stopped it by a message to his Holiness, that the King would be displeased by any such interference. The Pope himself, on another recorded occasion, admitted that it would be a pernicious precedent for a subject to negotiate terms of accommodation through a foreign prince. On still another occasion, when the King of France, forgetting his own rule, interposed in behalf of the Barberini family, Innocent the Tenth declared, that, having no desire to interfere in the affairs of France, he trusted his Majesty would not interfere in his. Queen Christina of Sweden, merely hinting a disposition to proffer good offices for the settlement of the unhappy divisions in France, was told by the Queen Regent that she need give herself no trouble about them, and one of her own ministers at Stockholm declared that the overture was properly rejected. Nor were the States General of Holland less sensitive. They even refused audience to the Spanish ambassador seeking to congratulate them on the settlement of a domestic question; and when the French ambassador undertook to plead for Roman Catholics, the States, by formal resolution, denounced his conduct as inconsistent with the peace and constitution of the Republic, all of which was communicated to him by eight deputies, who added in speech whatever the resolution seemed to want in plainness.

Nor is England without similar example. Louis the Thirteenth, shortly after the marriage of his sister Henrietta Maria with Charles the First, consented that the English ambassadors should interpose for French Protestants; but when the French ambassador in England requested the repeal of a law against Roman Catholics, Charles expressed his surprise that the King of France [Pg 56] should presume to intermeddle in English affairs. Even as late as 1746, when, after the Battle of Culloden, the Dutch ambassador in France was induced to address the British Government in behalf of the unfortunate Charles Edward, to the effect, that, if taken, he should not be treated as a rebel, it is recorded that this intercession was greatly resented by the British Government, which, not content with apology from the unfortunate official, required that he should be rebuked by his own Government also.[57] And this is British testimony with regard to intervention in a civil war, even when it took the mildest form of intercession for the life of a prince.

In face of such repulses, all these nations, at different times, practised intervention in every variety of form,—sometimes by intercession or “good offices” only, sometimes by mediation, and often by arms. Even these instances attest the intermeddling spirit; for such intervention, however received, was at least attempted.

Two precedents belonging to the earlier period deserve to stand apart, not only for historic importance, but for applicability to our times. The first was the effort to institute mediation between King Charles the First and his Parliament, attempted by Cardinal Mazarin, that powerful minister, who, during the minority of Louis the Fourteenth, swayed France. The civil war had been waged for years; good men on each side had fallen,—Falkland fighting for the King, and

Hampden fighting for the Parliament,—and other costliest blood been shed on the fields of Edgehill, Newbury, Marston Moor, and Naseby, when the ambitious Cardinal, wishing to serve [Pg 57] the King, promised, as Clarendon relates, “to press the Parliament so imperiously, and to denounce a war against them, if they refused to yield to what was reasonable.”[58] For this important service he selected the famous Pomponne de Bellièvre, of a family tried in public duties,—himself President of the Parliament of Paris and peer of France,—conspicuous in personal qualities as in place, whose beautiful head, preserved by the graver of Nanteuil, is illustrious in Art, and whose dying charity lives still in the great hospital of the Hôtel Dieu, at Paris. Arriving at London, the graceful ambassador presented himself to that Long Parliament which knew so well how to guard English rights. At once every overture was rejected in formal proceedings, from which I copy these words: “We do declare that we ourselves have been careful to improve all occasions to compose these unhappy troubles, *yet we have not, neither can we, admit of any mediation or interposing betwixt the King and us by any foreign prince or state*. And we desire that his Majesty, the French King, will rest satisfied with this our resolution and answer.”[59] On the committee which drew this reply was John Selden, unsurpassed for learning and ability in the whole splendid history of the English bar, in every book of whose library was written, “Before everything, Liberty,” and also that Harry Vane whom Milton, in one of his most inspired sonnets, addresses as

> “Vane, young in years, but in sage counsel old,
> Than whom a better Senator ne’er held
> The helm of Rome, when gowns, not arms, repelled
> The fierce Epirot and the African bold.”

The answer of such men is a precedent for us, especially should England, taking up the rejected [Pg 58] policy of Mazarin, presumptuously send any ambassador to stay the Republic in its war with Slavery.

The same heart of oak, so strenuous to repel intervention of France between King and Parliament, was not less strenuous the other way, when intervention could serve the rights of England or the principles of religious liberty. Such was England when ruled by the great Protector, called in his own day “chief of men.” No nation so powerful as to be exempt from that irresistible intercession, where, beneath the garb of peace, was a gleam of arms. From France, even under the rule of Mazarin, he claimed respect for the Protestant name, which he insisted upon making great and glorious. From Spain, on whose extended empire the sun did not cease to shine, he required that no Englishman should be subject to the Inquisition. Reading to his Council a despatch from Admiral Blake, announcing justice obtained from the Viceroy of Malaga, Cromwell said, that “he hoped to make the name of Englishman as great as ever that of Roman had been.”[60] In this same exalted mood he turned to propose mediation between Protestant Sweden and Protestant Bremen, “chiefly bewailing, that, being both his friends, they should so despitefully combat one against another,” offering his assistance to “a commodious accommodation on both sides,” and exhorting them “by no means to refuse any honest conditions of reconciliation.”[61] Here was intervention between nation and nation; but it was soon followed [Pg 59] by intervention in the internal affairs of a distant country, which of all the acts of Cromwell is the most touching and sublime. The French ambassador, while at Whitehall, urging the signature of a treaty, was unexpectedly interrupted by news from a secluded valley of the Alps, far away among mountain torrents, affluents of the Po, that a company of pious Protestants, for centuries gathered there, keeping the truth pure, “when all our fathers worshipped stocks and stones,” were suffering terrible persecution from their sovereign, Emanuel of Savoy. Despoiled of all possessions and liberties, brutally driven from their homes, given over to licentious and infuriate violence, and then turning in self-defence, they had been “slain by the bloody Piemontese, that rolled mother with infant down the rocks”; and it was reported that French troops took part in the dismal transaction. The Protector heard the story, and his pity flashed into anger. He would not sign the treaty until France united with him in securing justice to these humble sufferers, whom he called the Lord’s people. For their relief he contributed out of his own purse two thousand pounds, and authorized a general collection throughout England, which reached a large sum; but besides money, he set apart a day of humiliation and prayer for them. Nor was this all. “I should be glad,” wrote his Secretary, Thurloe, “to have a most particular account of that business, and to know what is become of those poor people, for whom our very souls here do bleed.”[62] But a pen mightier than that of any plodding secretary was enlisted in this pious intervention. It was John Milton, glowing with that indignation which his sonnet “On the [Pg 60] Massacre in Piemont” makes immortal in the heart of man, who wrote the magnificent despatches, where the English nation of that day, after declaring itself “linked together” with its distant brethren, “not only by the same tie of humanity, but by joint communion of the same religion,” naturally and grandly insisted that “both this edict and whatsoever may be decreed to their disturbance upon the account of the Reformed Religion” should be abrogated, “and that an end be put to their oppressions.”[63] Not content with this call upon the Duke of Savoy, the Protector appealed to Louis the Fourteenth and his Cardinal Minister, to the States General of Holland, the Protestant Cantons of Switzerland, the King of Denmark, the King of Sweden, and even to the Protestant Reformed Prince of remote Transylvania,—and always by the pen of Milton,—rallying these princes and powers in joint entreaty and intervention, and, if need were, to “some other course to be speedily taken, that such a numerous multitude of our innocent brethren may not miserably perish for want of succor and assistance.”[64] The Regent of Savoy, daughter of Henry the Fourth, professed to be affected by this English charity, and announced for her Protestant subjects a free pardon, and also “such privileges and graces as could not but give the Lord Protector a sufficient evidence *how great a respect they bare both to his person*

and mediation."[65] But there was still delay. Meanwhile Cromwell began to inquire where in the [Pg 61]
Prince's territories English troops might debark, and Mazarin, anxious to complete the yet unfinished treaty, joined in requiring immediate pacification of the Valleys and the restoration of these persecuted people to their ancient liberties. It was done. Such is the grandest intervention of English history, inspired by Milton, enforced by Cromwell, and sustained by Louis the Fourteenth with his Cardinal Minister by his side, while foreign nations watched the scene.

This great instance, constituting an inseparable part of the Protector's glory, is not the last where England intervened for Protestant liberties. Troubles, beginning in France with the Revocation of the Edict of Nantes, broke forth in the rebellion of the Camisards, smarting under the Revocation. Sheltered by the mountains of the Cevennes, and nerved by a good cause, with the device "Liberty of Conscience" on their standards, they made head against two successive marshals of France, and perplexed the old age of Louis the Fourteenth, whose arms were already enfeebled by foreign war. At last, through the mediation of England, the great monarch made terms with his Protestant rebels, and this civil war was brought to a close.[66]

Intervention, more often armed than unarmed, showed itself in the middle of the last century. All decency was set aside, when Frederick of Prussia, Catharine of Russia, and Maria Theresa of Austria invaded and partitioned Poland, under pretext of suppressing anarchy. Here was intervention with a vengeance, and on the side of arbitrary power. Such is human inconsistency, [Pg 62]
almost at the same time was another intervention in the opposite direction. It was the armed intervention of France, followed by that of Spain and Holland, in behalf of American Independence. Spain began by offer of mediation with a truce, which was accepted by France on condition that meanwhile the United States should be independent *in fact*.[67] Then came, in 1788, the armed intervention of Prussia to sustain the Orange faction in Holland, followed soon by the compact between Great Britain, Prussia, and Holland, known as the Triple Alliance, which entered upon the business of its copartnership by armed intervention to reconcile the insurgent provinces of Belgium with the German Emperor and their ancient Constitution. As France began to shake with domestic troubles, mediation in her affairs was proposed. Among the papers of Burke, in 1791, is the draught of a memorial, in the name of the British Government, offering what he calls "this healing mediation."[68] Then came the vast coalition for armed intervention in France to put down the Republic. This dreary cloud was for a moment brightened by a British attempt in Parliament, through successive debates, to institute an intercession for Lafayette, immured in the dungeons of European despotism. "It is reported," said one of the orators, "that America has solicited the liberation of her unfortunate adopted fellow-citizen.... Let British magnanimity be called to the aid of American gratitude, and exhibit to mankind a noble proof, [Pg 63]
that, wherever the principles of genuine liberty prevail, *they never fail to inspire sentiments of generosity, feelings of humanity, and a detestation of oppression*."[69]

Meanwhile France, against whom all Europe intervened, played her part of intervention, and the scene was Switzerland. In the unhappy disputes between the aristocratic and democratic parties by which this Republic was distracted, French mediation became chronic, beginning in 1738, when it found partial apology in the invitation of several cantons and of Geneva; occurring again in 1768, and again in 1782. The mountain Republic, breathing the air of Freedom, was naturally moved by the convulsions of the French Revolution. Civil war ensued, and grew in bitterness. At last, when France herself was composed under the powerful arm of the First Consul, we find him turning to compose Swiss troubles. He was a military ruler, and always acted under the instincts of military power. By proclamation, dated at the palace of St. Cloud, September 30, 1802, Bonaparte declared that for three years the Swiss had been slaying each other, and that, if left to themselves, they would continue to slay each other for three years more, without reaching any understanding; that, at first, he had resolved not to interfere, but that he now changed his mind, and announced himself as mediator of their difficulties, proclaiming confidently that his mediation would be efficacious, as became the great people in whose name he spoke. Deputies from the cantons, together with the chief citizens, were summoned to declare the means of restoring the Union, securing peace, and reconciling all parties.[70] This was armed mediation; but Switzerland was weak and France strong, while the declared object was union, [Pg 64]
peace, and reconciliation. I know not if all this ensued, but the civil war was stifled, and the Constitution was established by what is entitled in history the Act of Mediation.

From that period down to the present moment, intervention in the internal affairs of other nations has been a prevailing practice, now cautiously and peaceably, now offensively and forcibly. Sometimes it was against the rights of men, sometimes it was in their favor. Sometimes England and France stood aloof, sometimes they took part. The Congress of Vienna, which undertook to settle the map of Europe, organized universal and perpetual intervention in the interest of monarchical institutions and existing dynasties. This compact was renewed at the Congress of Aix-la-Chapelle, in 1818, with the explanatory declaration, that the five great powers would never assume jurisdiction over questions concerning the rights and interests of another power, *except at its request*, and without inviting such power to take part in the conference,—a concession obviously adverse to any liberal movement. Meanwhile appeared the Holy Alliance, specially to watch and control the revolutionary tendencies of the age; but into this combination England most honorably declined to enter. The other powers were sufficiently active. Austria, Russia, and Prussia did not hesitate at the Congress of Laybach, in 1821, to institute armed intervention for the suppression of liberal principles in Naples; and again, two years later, at the Congress of Verona, these same powers, together with France, instituted another armed intervention to suppress liberal principles in Spain, which ultimately led to the invasion of that [Pg 65]
kingdom and the overthrow of its Constitution. France was the belligerent agent, and would not

be turned aside, although the Duke of Wellington at Verona, and Mr. Canning at home, sought to arrest her armies by the mediation of Great Britain, which was directly sought by Spain and directly refused by France. The British Government, in admirable letters, composed with unsurpassed skill, and constituting a noble page of International Law, "disclaimed for itself, and denied for other powers, the right of requiring any changes in the internal institutions of independent states, *with the menace of hostile attack in case of refusal*"; and bravely declared to the imperial and royal interventionists, that, "so long as the struggles and disturbances of Spain should be confined within the circle of her own territory, they could not be admitted by the British Government to afford any plea of foreign interference"; and in still another note repeated that a "*menace of direct and imminent danger could alone, in exception to the general rule, justify foreign interference*."[71] These were the words of Mr. Canning; but even Lord Castlereagh, in an earlier note, asserted the same limitation, which, at a later day, had the unqualified support of Lord Grey, and also of Lord Aberdeen. Justly interpreted, they leave no apology for armed intervention, except in case of direct and imminent danger, when a nation, like an individual, may be thrown upon the great right of self-defence.

Great Britain bore testimony by what she did, as well as by what she refused to do. Even while resisting the armed intervention of the great conspiracy, her Government intervened sometimes by mediation and sometimes by arms. Early in the contest between Spain and her colonies she [Pg 66] consented to act as mediator, on the invitation of the former, in hope of effecting reconciliation; but Spain declined the mediation she had invited. From 1812 to 1823, Great Britain constantly repeated her offer. In the case of Portugal she went further. Under the counsels of Mr. Canning, whose speech on the occasion was of the most memorable character, she intervened by landing troops at Lisbon; but this intervention was vindicated by the obligations of treaty. Next came the greater instance of Greece, when the Christian powers of Europe intervened to arrest a protracted struggle and to save this classic land from Turkish tyranny. Here the first step was *a pressing invitation from the Greeks* to the British and French Governments for their mediation with the Ottoman Porte. These powers united with Russia in proffering the much desired intervention, which the Greeks at once accepted and the Turks rejected. Already battle raged fiercely, reddened by barbarous massacre. Without delay, the allied forces were directed to compel the cessation of hostilities, which was accomplished by the destruction of the Turkish fleet at Navarino and the occupation of the Morea by French troops. At last, under the continued mediation of these powers, the independence of Greece was recognized by the Ottoman Porte, and another commonwealth consecrated to Freedom took its place in the Family of Nations. But mediation in Turkish affairs did not stop. The example of Greece was followed by Egypt, whose provincial chief, Mehemet Ali, rebelled, and by genius for war succeeded in dispossessing the Ottoman Porte not only of Egypt, but of other possessions also. This civil war was first arrested by temporary arrangement at Kutaieh, in 1833, under the mediation of Great Britain and France, [Pg 67] and finally ended by an armed mediation in 1840, when, after elaborate and irritating discussions threatening to involve Europe, a treaty was concluded at London between Great Britain, Russia, Austria, and Prussia, by which the Pacha was compelled to relinquish his conquests, while he was secured in the Government of Egypt as perpetual vassal of the Porte. France, dissatisfied with the terms of this adjustment, stood aloof from the treaty, which found apology, such as it had, first, in the invitation of the Sultan, and, secondly, in the desire to preserve the integrity of the Turkish Empire, as essential to the balance of power and the peace of Europe, to which may also be added the desire to stop effusion of blood.

Before the Eastern questions were settled, other complications commenced in Western Europe. Belgium, restless from the French Revolution of 1830, rose against the House of Orange and claimed independence. Civil war ensued; but the great powers promptly intervened, even to the extent of arresting a Dutch army on its march. Beginning with armistice, there was a long and fine-spun negotiation, which, assuming the guise alternately of pacific mediation and of armed intervention, ended in the established separation of Belgium from Holland, and its recognition as an independent nation. Do you ask why Great Britain intervened on this occasion? Lord John Russell, in the course of debate at a subsequent day, declared that a special motive was "the establishment of a free constitution."[72] Meanwhile the Peninsula of Spain and Portugal was torn by civil war. The regents of these two kingdoms respectively appealed to Great Britain and [Pg 68] France for aid, especially in the expulsion of the pretender Don Carlos from Spain and the pretender Dom Miguel from Portugal. For this purpose the Quadruple Alliance was formed in 1834. The moral support from this treaty is said to have been important, but Great Britain was compelled to provide troops. This intervention, however, was *at the solicitation of the actual Governments*. Even after Spanish troubles were settled, war still lingered in the sister kingdom, when, in 1847, the Queen addressed herself to her allies, among whom was Great Britain, the ancient patron of Portugal, who undertook to mediate between her and her insurgent subjects, in the declared hope of composing the difficulties "in a just and permanent manner, with all due regard to the dignity of the crown on the one hand, and to the constitutional liberties of the nation on the other."[73] The insurgents did not submit until after military demonstrations. Liberty and Peace were the two watchwords.

Then occurred the European uprising of 1848, with France once more a Republic; but Europe, wiser grown, did not interfere even so much as to write a letter. The case was different with Hungary, whose victorious armies, radiant with Liberty regained, expelled the Austrian power only to be arrested by the armed intervention of the Russian Czar, who yielded to the double pressure of invitation from Austria and fear that successful insurrection might extend into Poland. It was left for France, in another country, with strange inconsistency, to play the part [Pg 69] which Russia played in Hungary. Rome, after rising against the temporal power of the Pope and

proclaiming the Republic, was occupied by a French army, which expelled the republican magistrates, and, though fourteen years are already passed since that unhappy act, the occupation still continues. From this military intervention Great Britain stands aloof. In a despatch, dated at London, January 28, 1849, Lord Palmerston makes a permanent record, to the honor of his country, as follows: "Her Majesty's Government would, upon every account, and not only upon abstract principle, but with reference to the general interests of Europe, and from the value which they attach to the maintenance of peace, *sincerely deprecate any attempt to settle the differences between the Pope and his subjects by the military interference of foreign powers*."[74] This statesman gives further point to the position of Great Britain in contrast with France, when he says: "Armed intervention *to assist in retaining a bad Government would be unjustifiable*."[75] Such was the declaration of the Lord Palmerston of that day. How much more unjustifiable the strange assistance now proposed *to found* a bad Government! The British minister insisted that the differences should be accommodated by "the diplomatic interposition of friendly powers," which he declared a "much better mode of settlement than an authoritative imposition of terms by the force of foreign arms."[76] In harmony with this policy, Great Britain, during the same year, united with France in proffering mediation between the insurgent Sicilians and the King of Naples, the notorious Bomba, in the hope of helping good government and liberal [Pg 70] principles. Not disheartened by rebuff, these two powers, in 1856, united in friendly remonstrance to the same tyrannical sovereign against the harsh system of political arrests, and against his cruelty to good citizens thrust without trial into the worst of prisons. The advice was indignantly rejected, and the two powers that gave it withdrew their ministers from Naples. The sympathy of Russia was on the wrong side, and Prince Gortschakoff, in a circular, while admitting, that, "as a consequence of friendly fore-thought, one Government might give advice to another," declared, that "to endeavor by threats or a menacing demonstration to obtain from the King of Naples concessions in the internal affairs of his Government is a violent usurpation of his authority, and an open declaration of the right of the strong over the weak."[77] This was practically answered by Lord Clarendon, speaking for Great Britain at the Congress of Paris, when, admitting the principle that no Government has the right to interfere in the internal affairs of other states, he declares that there are cases where an exception to this rule becomes equally a right and a duty; that peace must not be broken, but that there is no peace without justice; and that therefore the Congress must let the King of Naples know its desire for the amelioration of his Government, and must demand amnesty for political offenders suffering without trial.[78] This language was bold beyond the practice of diplomacy, but the intervention it proposed was on the side of humanity.

I must draw this chapter to a close, although the long list is not yet exhausted. Even while I [Pg 71] speak, we hear of intervention by England and France in the civil war between the Emperor of China and his subjects,—and also in that other war between the Emperor of Russia on the one side and the Poles whom he claims as subjects on the other, but with this difference, that in China these powers take the part of the existing Government, while in Poland they intervene against the existing Government. In the face of positive declarations of neutrality, the British and French admirals have united their forces with the Chinese; but thus far in Poland, although there is no declaration of neutrality, the intervention is unarmed. In both these instances we witness a common tendency, directed, it may be, by the interests or prejudices of the time, and, so far as it has proceeded, it is, at least in Poland, on the side of liberal institutions. But, alas for human consistency! the French Emperor is now intervening in Mexico with armies and navies to build an imperial throne for an Austrian Archduke.

There is one long-continued British intervention, which speaks now with controlling power; and it is on this account that I reserve it for the close of what I have to say on this head. Though not without original shades of dark, it has for more than half a century been a shining example to the civilized world. I refer to that *intervention against Slavery*, which, from its first adoption, has been so constant and brilliant as to make us forget the earlier *intervention in behalf of Slavery*, when, for instance, at the Peace of Utrecht, Great Britain intervened to extort the detestable privilege of supplying slaves to Spanish America at the rate of four thousand eight hundred [Pg 72] yearly during the space of thirty years, and then again, at the Peace of Aix-la-Chapelle, higgled for a yet longer sanction of the ignoble intervention; nay, it almost makes us forget the kindred intervention, at once sordid and criminal, by which this power counteracted all efforts for the prohibition of the slave-trade even in its own colonies, and thus helped to fasten Slavery upon Virginia and Carolina. The abolition of the slave-trade by Act of Parliament, in 1807, was the signal for a change of history. A British poet at the time gave exulting expression to the grandeur of the epoch:—

> "'Thy chains are broken, Africa, be free!'
> Thus saith the island-empress of the sea;
> Thus saith Britannia. O ye winds and waves,
> Waft the glad tidings to the land of slaves!"[79]

Curiously, it was the other color which gained the first fruits of this revolution, by triumphant intervention for the overthrow of White Slavery in the Barbary States. The old hero of Acre, Sir Sidney Smith, released from long imprisonment in France, sought to organize a "holy league" for this purpose; the subject was discussed at the Congress of Vienna; and the agents of Spain and Portugal, anxious for the punishment of their piratical neighbors, argued, that, because Great Britain had abolished for itself the traffic in African slaves, therefore it must see that whites were

no longer enslaved in the Barbary States. The argument was less logical than humane. But Great Britain undertook the work. With a fleet complete at all points, consisting of five line-of-battle ships, five frigates, four bomb-vessels, and five gun-brigs, Lord Exmouth approached Algiers, [Pg 73] where he was joined by a considerable Dutch fleet, anxious to take part. “If force must be resorted to,” said the Admiral in general orders shortly before, “we have the consolation of knowing that we fight in the sacred cause of Humanity, and cannot fail of success.” Less than half a day was enough, with such a force in such a cause. The formidable castles of the great Slavemonger were battered to pieces, and he was compelled to sign a treaty, confirmed under a salute of twenty-one guns, which in its first article stipulated “the abolition of Christian Slavery forever.” Glorious and beneficent intervention! Not inferior to that renowned instance of Antiquity, where the Carthaginians were required to abolish the practice of sacrificing their own children,—a treaty which has been called the noblest of history, because stipulated in favor of human nature. The Admiral who had thus triumphed was hailed as Emancipator. He received a new rank in the peerage, and a new blazonry on his coat of arms. The rank is continued in his family, and on their shield, in perpetual memory of this great transaction, is still borne *a Christian slave holding aloft the Cross and dropping his broken fetters*. But the personal satisfactions of the Admiral were more than rank or heraldry. In his despatch to the Government, describing the battle, and written at the time, he says: “To have been one of the humble instruments in the hands of Divine Providence for bringing to reason a ferocious Government and destroying forever the insufferable and horrid system of Christian Slavery, can never cease to be a source of delight and heartfelt comfort to every individual happy enough to be employed in it.”[80]

I have said too much with regard to an instance, which, though beautiful and important, is only [Pg 74] a parenthesis in the grander and more extensive intervention against African Slavery, which was already organizing, destined at last to embrace the whole human family. Even before Wilberforce triumphed in Parliament, Great Britain intervened with Napoleon, in 1806, pressing him to join in the abolition of the slave-trade; but he flatly refused. What France would not then yield was exacted from Portugal in 1810, from Sweden in 1813, and from Denmark in 1814. An ineffectual attempt was made to enlist Spain, even by temptation of pecuniary subsidies,—and an appeal was made to the restored monarch of France, Louis the Eighteenth, with the offer of a sum of money outright or the cession of a West India island, in consideration of the desired abolition. The Prince Regent wrote with his own hand to the latter, assuring him that he could not give a more acceptable proof of his regard than by consenting to the abolition. Had gratitude to a benefactor prevailed, these powers could not have resisted; but Lord Castlereagh confessed in the House of Commons, that in France there was distrust of the British Government “even among the better classes of people,” who thought that its zeal in this behalf was prompted by desire to injure the French colonies and commerce, rather than by benevolence. The British minister was more successful with Portugal, where pecuniary equivalents led to a supplementary treaty, in January, 1815. This was followed by the declaration of the Congress of Vienna, on motion of Lord Castlereagh, 8th February, 1815, denouncing the African slave-trade “as repugnant to the principles of humanity and of universal morality.” Meanwhile Napoleon returned from Elba, and [Pg 75] what British intervention failed to accomplish with the Bourbon monarch, and the Emperor once flatly refused, was now spontaneously done by him, doubtless in the hope of conciliating British sentiment. His hundred days of power were signalized by an ordinance abolishing the slave-trade in France and her colonies. Louis the Eighteenth, once again restored by British arms, and with the shadow of Waterloo resting upon France, could not do less than ratify the imperial ordinance by a royal assurance that “the traffic was henceforth forever forbidden to all the subjects of his most Christian Majesty.”[81] Holland came under the same influence, and accepted the restitution of her colonies, except the Cape of Good Hope and Guiana, on condition of the entire abolition of the slave-trade in the restored colonies, and also everywhere else beneath her flag. Spain was the most indocile; but this proud monarchy, under whose auspices the African slave-trade first came into being, at last yielded. By the treaty of Madrid, of 23d September, 1817, extorted by Great Britain, it stipulated the immediate abolition of the trade north of the equator, and also, after 1820, its abolition everywhere, in consideration of four hundred thousand pounds, the price of Freedom, paid by the other contracting party. In vindication of this intervention, Wilberforce declared in Parliament, that “the grant to Spain would be more than repaid to Great Britain in commercial advantages by the opening of a great continent to British industry,”—all of which was impossible, if the slave-trade was allowed to continue under the Spanish flag.[82]

At the Congress of Aix-la-Chapelle, in 1818, and of Verona, in 1822, Great Britain continued her [Pg 76] intervention against Slavery. Chateaubriand, in his history of the latter Congress, pauses to express his admiration of the “singular perseverance” in this cause manifested by her at all Congresses, amidst questions the most urgent and interests the most pressing.[83] Here her primacy was undisputed, and her fame complete. It was the common remark of Continental publicists, that she “made the cause her own.”[84] One of them portrays her vividly, since 1810 waging “relentless war” against the principle of the slave-trade, and by this “crusade,” undertaken in the name of Humanity, making herself the “declared protectress” of the African race. These are the words of a French authority.[85] According to him, it is nothing less than “relentless war” and a “crusade” which she has waged, and the position which she has achieved is that of “protectress” of the African race,—while no less a person than Chateaubriand recognizes with admiration the “singular perseverance” she has displayed in this practical extension of Christianity. Not content with imposing her magnanimous system upon the civilized world, she carried it among the tribes and chiefs of Africa, who, by her omnipresent intervention, were summoned to renounce a barbarous and criminal custom. By a Parliamentary Report, it

appears that in 1849 there were twenty-four treaties in force between Great Britain and foreign civilized powers for the suppression of the slave-trade, and also forty-two similar treaties between Great Britain and native chiefs of Africa.[86] [Pg 77]

This intervention was not by treaties only; it was by correspondence and circulars also. And here I approach a part of the subject which illustrates the vivacity of its character. All British ministers and consuls were so many pickets on constant guard in the outposts. They were held to every service by which the cause could be promoted, even to translating and printing documents against the slave-trade, especially in countries where, unhappily, it was still pursued. There was the Pope's Bull of 1839, which Lord Palmerston transmitted for this purpose to his agents in Cuba, Brazil, and even in Turkey, some of whom were unsuccessful in their efforts to obtain its publication, although, curiously enough, it was published in Turkey.[87]

Such zeal could not stop at the abolition of the traffic. Accordingly, Great Britain, by Act of Parliament, in 1834, enfranchised all the slaves in her own possessions, and thus again secured to herself the primacy of a lofty cause. The intervention was now openly declared to be against Slavery itself, assuming its most positive character while Lord Palmerston was Foreign Secretary,—and I say this sincerely to his great honor. Throughout his long life, among all the various concerns in which he has acted, there is nothing to be remembered hereafter with such gratitude. By his untiring diplomacy her Majesty's Government constituted itself a vast Abolition Society, with the whole world for its field. It was in no respect behind the famous World's [Pg 78] Convention against Slavery, held at London in June, 1840, with Thomas Clarkson, the pioneer Abolitionist, as President; for the strongest declarations of this Convention were adopted by Lord Palmerston as "the sentiments of her Majesty's Government," and communicated officially to British functionaries in foreign lands. The Convention declared "the utter injustice of Slavery in all its forms, and the evil it inflicts upon its miserable victims, and the necessity of employing every means, moral, religious, and pacific, for its complete abolition, an object most dear to the members of this Convention, and for the consummation of which they are especially assembled."[88] These words became the words of the British Government, and in circular letters were sent over the world.

It was not enough to declare the true principles. They must be enforced. Spain and Portugal hung back. The Secretary of the Antislavery Society was sent "to endeavor to create in those countries a public feeling in favor of the abolition of Slavery"; and the British minister at Lisbon was desired by Lord Palmerston to "afford all the assistance and protection in his power for promoting the object of his journey."[89] British functionaries abroad sometimes backslided. This was corrected by circulars setting forth "that it would be unfitting that any officer holding an appointment under the British Crown should, either directly or indirectly, hold or be interested in slave property."[90] The Parliamentary Papers which attest the universality of this instruction [Pg 79] show the completeness with which it was executed. The consul at Rio Janeiro, in slaveholding Brazil, had among his domestics three negro slaves, two men and a woman; "of the men one was a groom and the other a waiter, and the woman he was forced to hire to nurse one of his children"; but he discharged them at once, under the antislavery discipline of the British Foreign Office, and Lord Palmerston, in formal despatch, "expresses his satisfaction."[91] In Cuba, at the time of its reception, there was not a single resident officer, holding under the British Crown, "who was entirely free from the charge of countenancing Slavery." But only a few weeks afterwards it was officially reported from Havana that there was "not a single British officer residing within the consular jurisdiction who had not relinquished, or was not at least preparing to relinquish, this odious practice."[92] This was quick work. The metamorphosis was prompt as anything in ancient fable. Every person holding office under the British Government at once set his face against Slavery, *and the way was by having nothing to do with it, even in employing or hiring the slave of another,—nothing, "directly or indirectly"*.

Lord Palmerston, acting in the name of the British Government, did not stop with changing British officials into practical Abolitionists, whenever they were in foreign countries. He sought to enlist other European Governments, and to this end requested them to forbid their functionaries residing in slaveholding communities to be interested in slave property or in any holding or [Pg 80] hiring of slaves. Denmark for a moment hesitated, from unwillingness to debar them from acting according to the laws where they resided, when the minister at once cited in support of his request the example of Belgium, Hanover, Holland, Sweden, Naples, Portugal, and Sardinia, all without delay having yielded to this British intervention, and Denmark ranged herself in the list.[93] Nor was this indefatigable Propaganda confined to the Christian powers. With a sacred pertinacity it reached into distant Mohammedan regions, where Slavery was imbedded not only in the laws, but the habits, the social system, and the very life of the people, and called upon the Government to act against it. No impediment deterred,—no prejudice, national or religious. To the Shah of Persia, ruling a vast, outlying slave empire, Lord Palmerston announced the desire of the British Government "to see the slave-trade put down and the condition of Slavery abolished in every part of the world"; "that it conceived much good might be accomplished in these respects, even in Mohammedan countries, by steady perseverance, and by never omitting to take advantage of favorable opportunities"; and "that the Shah would be doing a thing extremely acceptable to the British Government and nation, if he would issue a decree prohibiting for the future the importation of slaves of any kind into Persia, and making it penal for a Persian to purchase slaves."[94] To the Sultan of Turkey, whose mother was a slave, whose wives were all slaves, and whose very counsellors, generals, and admirals were originally slaves, he made a [Pg 81] similar appeal, and he sought to win the dependent despot by reminding him that only in this way could he hope for that good-will which was so essential to his Government; "that the continued

support of Great Britain will, for some years to come, be an object of importance to the Porte,—*that this support cannot be given effectually, unless the sentiments and opinions of the majority of the British nation shall be favorable to the Turkish Government,—and that the whole of the British nation unanimously desire, beyond almost anything else, to put an end to the cruel practice of making slaves.*"[95] Such, at that time, was the voice of the British people. Since Cromwell pleaded for the Vaudois, no nobler voice had gone forth. The World's Convention against Slavery saw itself transfigured, while platform speeches were transfused into diplomatic notes. The Convention, earnest for Universal Emancipation, declared that "*the friendly interposition* of Great Britain could be employed for no nobler purpose," and, as if to crown its work, in an address to Lord Palmerston, humbly and earnestly implored his Lordship to use his high authority for "connecting the overthrow of Slavery with the consolidation of Peace"; and these words were at once adopted in foreign despatches, as expressing the sentiments of her Majesty's Government.[96] Better watchwords could not be, nor any more worthy of the British name. *There can be no consolidation of Peace without the overthrow of Slavery.* This is as true now as when first uttered. Therefore is Great Britain still bound to her original faith; nor can she abandon the cause, of which she was the declared protectress, without betrayal of Peace, as well as betrayal of Liberty. [Pg 82]

Even now while I speak this same conspicuous fidelity to a sacred cause is announced. The ship canal across the Isthmus of Suez, first attempted by the early Pharaohs, and at last resumed by French influence, under the auspices of the Pacha, is most zealously opposed by Great Britain for the declared reason that in its construction "forced labor" is employed, which this power cannot in conscience sanction. Not even to complete this vast beneficence, bringing East and West near together, for which mankind has waited throughout long centuries, will Great Britain depart from the rule so gloriously declared. Slavery is wrong, therefore not to be employed. The canal must stop, if it cannot be constructed without "forced labor."

The veteran statesman who did so much in this cause, weaving its golden thread into the tissue of his renown, dwelt on it with pride, and accepted for his country the primacy that had been awarded. Never, in his extended Parliamentary career, did Lord Palmerston rise to a higher mood,—not even when claiming for Englishmen all the immunities of Roman citizenship,—*Civis Romanus sum*,—than when he pictured the dependence of Africans on their constant friend. "If ever," said he, "by the assault of overpowering enemies, or by the errors of her misguided sons, England should fall, and her star should lose its lustre, with her fall, for a long period of time, would the hopes of the African, whether in his own continent or in the vast regions of America, be buried in the darkness of despair. I know well that in such case Providence would in due course of time raise up some other nation to inherit our principles and to imitate our practice; but, taking the world as it is, and states as they are constituted, I do not know—and I say it with regret and with pain—I do not know any nation that is now ready in this respect to supply our place."[97] And can it be that now, instead of the African, a rebellion inspired by Slavery turns to England with hope? [Pg 83]

The honorable story of British intervention against Slavery is incomplete without showing how its generous ardor broke forth against our Republic, which was denounced as linked with Slavery. Literature, eloquence, and poetry lent themselves to expose the terrible inconsistency. Lord Russell stepped aside from the easy path of biography, to declare that among us "oxen and horses are better treated than the men and women of African blood," and then to proclaim "the cry of outraged humanity," "the current of human sympathy," and "the decrees of Eternal Justice," irresistible.[98] Lord Macaulay, in the House of Commons, thundered forth: "The Government of the United States has formally declared itself the patron, the champion, of Negro Slavery all over the world, the evil genius, the Arimanes, of the African race, and seems to take pride in this shameful and odious distinction.... They put themselves at the head of the slave-driving interest throughout the world, just as Elizabeth put herself at the head of the Protestant interest; and wherever their favorite institution is in danger, are ready to stand by it as Elizabeth stood by the Dutch."[99] Thomas Campbell, fresh from writing "Ye Mariners of England" and "Hohenlinden," struck at our Slavery in most scornful verses on the national flag:— [Pg 84]

"But what's the meaning of the stripes?
They mean your negroes' scars!"[100]

If these things, so bitterly said, were true, if Campbell, Macaulay, and Russell were right in their indignant rebuke, if Palmerston was justified in his eloquent pride, then must England make haste to turn away from a rebellion which seeks to reverse that noble intervention where the liberty of the African was a constant guide.

Here I close the historic instances illustrating the right and practice of foreign intervention. The whole subject is seen in these instances, teaching clearly what to avoid and what to follow. In this way, the Law of Nations, like History, gives its best lessons. For the sake of plainness, I gather up some of the conclusions.

Foreign intervention is *armed* or *unarmed*, although sometimes the two are not easily distinguishable. Unarmed intervention may have in it the menace of arms, or it may be war in disguise. When this is the case, it must be treated accordingly.

Armed intervention is war, and nothing less. Of course it can be vindicated only as war, and it must be resisted as war. Believing, as I do most profoundly, that war can never be a game, but must always be a crime when it ceases to be a duty,—a crime to be shunned, if not a duty to be performed swiftly and surely,—and that a nation, like an individual, is not permitted to take the [Pg 85] sword except in just self-defence,—I find the same limitation in armed intervention, which becomes unjust invasion in proportion as it departs from just self-defence. Under this head is naturally included all that intervention moved by a tyrannical or intermeddling spirit, because such intervention, whatever its professions, is essentially hostile,—as when Russia, Prussia, and Austria partitioned Poland, when the Holy Alliance intermeddled everywhere and menaced even America, or when Russia intervened to crush the independence of Hungary, or France to crush the Roman Republic. All such intervention is inexcusable, illegal, and scandalous. Its vindication is found only in the effrontery that might makes right.

Unarmed intervention is of a different nature. If sincerely unarmed, it may be regarded as obtrusive, but not hostile. It may assume the form of mediation or the proffer of good offices, at the invitation of both parties, or, in the case of civil war, at the invitation of the original authority. With such invitation, this intervention is proper and honorable; without such invitation, it is of doubtful character; but if known to be contrary to the desires of both parties, or to the desires of the original authority in a distracted country, it becomes offensive and inadmissible, *unless obviously on the side of Human Rights*, when the act of intervention takes its character from the cause in which it is made. But it must not be forgotten, that, in the case of civil war, any mediation, or, indeed, any proposition not enjoining submission to the original authority, is in its nature adverse, for it assumes the separate existence of the other party, and secures for it temporary immunity and opportunity, if not independence. Congress, therefore, was right in [Pg 86] declaring to foreign powers that any renewed effort of mediation in our affairs will be regarded as an unfriendly act.

There is another case of unarmed intervention which I cannot criticize. It is where a nation intercedes or interposes in favor of Human Rights, or to secure the overthrow of some enormous wrong,—as when Cromwell pleaded, with noble intercession, for the secluded Protestants of the Alpine valleys, when Great Britain and France declared sympathy with the Greeks struggling for independence, and when Great Britain alone, by splendid diplomacy, set herself against Slavery everywhere throughout the world.

The full lesson may be summed up briefly. All intervention in the internal affairs of another nation is contrary to law and reason, and can be vindicated only by overruling necessity. Intervening by war, then must there be the necessity of self-defence. Intervening by mediation or intercession, then must you be able to speak in behalf of civilization endangered or human nature wronged. To this humane policy no power is bound so absolutely as England; especially is none so fixed, beyond possibility of retreat or change, in hostility to Slavery, whatever shape this criminal pretension may assume, whether the animating principle of a nation, the “forced labor” of a multitude, or even the service of a solitary domestic.

III.

There is a species of foreign intervention which stands by itself and has its own illustrations. Therefore I speak of it by itself. It is where a foreign power undertakes to acknowledge the [Pg 87] independence of a colony or province renouncing its original allegiance, and it may be compendiously called *Intervention by Recognition*. Recognition is strictly applicable only to the act of the original government, renouncing all claim of allegiance, and at last acknowledging the independence in dispute. It becomes an act of intervention, where a foreign government steps between the two parties. The original government is so far master of its position, that it may select its own time in making this recognition. But the question arises, At what time and under what circumstances can this recognition be made by a foreign power? It is obvious that a recognition proper at one time and under special circumstances would not be proper at another time and under different circumstances. Mr. Canning said, with reference to Spanish America, that, “if he piqued himself upon anything, it was upon the subject of *time*”; and he added, that there were two ways of proceeding,—“recklessly and with a hurried course to the object, which might be soon reached and almost as soon lost, or by another course so strictly guarded that no principle was violated and no strict offence given to other powers.”[101] These are words of wise statesmanship, and they present the practical question occurring in every case of recognition: What condition of the controversy will justify such intervention?

Here again the whole matter is best explained by historic instances. The earliest is that of Switzerland, as long ago as 1307, breaking off from the House of Hapsburg, whose original [Pg 88] cradle was a Swiss canton. But Austria did not acknowledge the independence of the Republic until the Peace of Westphalia, nearly three centuries and a half after the struggle began under William Tell. Meanwhile the cantons lived through the vicissitudes of war, foreign and domestic, and formed treaties with other powers, including the Pope. Before Swiss independence was acknowledged, the Dutch conflict began under William of Orange. Smarting from intolerable grievances, and with a price set upon the head of their illustrious Stadtholder, the United Provinces of the Netherlands, in 1581, renounced the tyrannical sovereignty of Philip the Second, and declared themselves independent. In the history of Freedom this is an important epoch. They were Protestants, battling for rights denied, and Queen Elizabeth of England, the head of

Protestantism, acknowledged their independence, and shortly afterwards extended military aid. Nor did other powers stand aloof. In 1594, Scotland, Protestant also, under James the Sixth, afterwards the first James of England, treated with the insurgent Provinces as successors of the Houses of Burgundy and Austria, and in 1596 France entered into alliance with them. The contest continued, sustained on the side of Spain by the genius of Parma and Spinola, and on the side of the infant Republic by the youthful talent of Maurice, son of the great Stadtholder. But the claims of Spain were enduring; for it was not until the Peace of Westphalia, eighty years after the revolt, and nearly seventy years after their Declaration of Independence, that this power consented to Dutch independence. Nor do these examples stand alone, even at that early day. Portugal, unjustly subjugated by Spain in 1580, broke away in 1640 and declared herself independent, [Pg 89] under the Duke of Braganza as King. A year scarcely passed before Charles the First of England negotiated a treaty with the new sovereign. The contest had ceased, but not the claim; for it was only after twenty-eight years that Spain made this other recognition.

Traversing the Atlantic Ocean in space and more than a century in time, I come to the next historic instance, so interesting to us all, while as a precedent it dominates the whole question. The long discord between the Colonies and the mother country broke forth in blood on the 19th of April, 1775. Independence was declared on the 4th of July, 1776. Battles ensued,—Trenton, Princeton, Brandywine, Germantown, Saratoga, followed by the winter of Valley Forge. The contest was yet undecided, when, on the 6th of February, 1778, France entered into a treaty of amity and commerce with the United States, containing, among other things, a recognition of their independence, with mutual stipulations between the two parties to protect the commerce of the other, by convoy on the ocean, "against all attacks, force, and violence";[102] and on the 13th of March this treaty was communicated to the British Government by the French ambassador at London, with a diplomatic note, in which the United States are described as "in full possession of the independence pronounced by their Act of 4th July, 1776," and the British Government is warned that the King of France, "being determined effectually to protect the legitimate freedom [Pg 90] of the commerce of his subjects and to maintain the honor of his flag, has taken in consequence some eventual measures with the United States of North America."[103] A further treaty of alliance, whose declared object was the maintenance of the independence of the United States, had been signed on the same day, but this was not communicated; nor is there evidence that it was known to the British Government at the time. The communication of the other sufficed, for it was an open recognition of the new power, with promise of protection on the ocean, *while the war was yet flagrant between the two parties*. As such it must be regarded as an armed recognition, constituting in itself a belligerent act, aggravated and explained by the circumstances under which it was made, the warning, in the nature of menace, by which it was accompanied, the clandestine preparations by which it was preceded, and the corsairs to cruise against British commerce, which for some time had been allowed to swarm under the American flag from French ports. It was so accepted by the British Government. The British minister was summarily withdrawn from Paris, all French vessels in British harbors were seized, and on the 17th March a message from the King was brought down to Parliament in the nature of a declaration of war against France. In this declaration there was no allusion to anything but the treaty of amity and commerce officially communicated by the French ambassador, which was denounced by his Majesty as an "unprovoked and unjust aggression on the honor of his crown and the essential interests of his kingdoms, *contrary to the most solemn assurances, subversive of the Law of Nations, and injurious to the rights of every sovereign power in Europe*." Only three days later, on the 20th March, the Commissioners of the United States were received by the King [Pg 91] of France in solemn audience, with all the pomp and ceremony accorded by the Court of Versailles to the representatives of sovereign powers. War ensued between France and Great Britain on land and sea, in which Holland and Spain afterwards took part against Great Britain. With such allies, a just cause prevailed. Great Britain, by provisional articles, signed at Paris 30th November, 1782, acknowledged the United States "to be free, sovereign, and independent," and declared the boundaries thereof.

Colonial independence was contagious, and the contest for it presented another illustration, more discussed, and constituting a precedent, if possible, more interesting still. This was when the Spanish colonies in America, following the Northern example, broke away from the mother country and declared themselves independent. The contest began as early as 1810, but it was long continued, and extended over an immense region,—from New Mexico and California in the North to Cape Horn in the South,—washed by two vast oceans, traversed by mighty rivers, and buttressed by lofty mountains fruitful in silver, capped with snow, and shooting volcanic fire. At last the United States, satisfied that the ancient power of Spain had ceased to exist beyond reasonable chance of restoration, and that the contest was practically ended, acknowledged the independence of Mexico and five other provinces. This act was approached only after frequent debate in Congress, where Henry Clay took an eminent part, and after most careful consideration in the Cabinet, where John Quincy Adams, as Secretary of State, shed upon the question all the light of his unsurpassed knowledge, derived from long practice as well as from laborious study of [Pg 92] International Law. This judgment must be regarded as a sufficient authority. President Monroe, in a special message, on the 8th of March, 1822, twelve years after the war began, called the attention of Congress to the state of the contest, which he said had "now reached such a stage, and been attended with such decisive success on the part of the provinces, that it merits the most profound consideration whether their right to the rank of independent nations, with all the advantages incident to it in their intercourse with the United States, is not complete." After setting forth the *de facto* condition of things, he proceeded: "Thus it is manifest that all those provinces are not only in the full enjoyment of their independence, but, *considering the state of*

the war and other circumstances, that there is not the most remote prospect of their being deprived of it." In proposing their recognition, the President declared that it was done "under a thorough conviction that it is in strict accord with the Law of Nations"; and further, that "it is not contemplated to change thereby, in the slightest manner, our friendly relations with either of the parties." In accordance with this recommendation, Congress authorized the recognition. Three years later the same thing was done by Great Britain, after much debate, diplomatic and Parliamentary. No case of international duty has been illustrated by a clearer eloquence, an ampler knowledge, or a purer wisdom. The despatches were written by Mr. Canning, and upheld by him in Parliament; but Lord Liverpool took part in the discussion, succinctly declaring "that [Pg 93] there could be no right to recognition while the contest was actually going on,"[104]—a conclusion cautiously, but strongly, enforced by Lord Lansdowne, and nobly vindicated, in an oration reviewing the whole subject, by that great publicist, Sir James Mackintosh. All inclined to recognition, but admitted that it could not take place *so long as the contest continued*,—and that there must be "such a contest as exhibits some equality of force, and of which, if the combatants were left to themselves, the issue would be in some degree doubtful." The Spanish strength throughout the whole continent was reduced to a single castle in Mexico, an island on the coast of Chile, and a small army in Upper Peru, while in Buenos Ayres no Spanish soldier had set foot for fourteen years. "Is this a contest," said Mackintosh, "approaching to equality? Is it sufficient to render the independence of such a country doubtful? Does it deserve the name of a contest?"[105] It was not until 1825 that Great Britain was so far satisfied as to acknowledge this independence. France followed in 1830, and Castilian pride relaxed in 1836, twenty-six years from the first date of the contest.

The next instance is Greece, which declared independence January 27, 1822. After a cruel contest of more than five years, with alternate success and disaster, the great powers intervened forcibly in 1827; but the final recognition was postponed till May, 1832. Then came the instance of Belgium, which declared independence in November, 1830, and was promptly recognized by the great powers intervening for this purpose. The last instance is Texas, which declared independence in December, 1835, and defeated the Mexican army under Santa Aña, making him [Pg 94] prisoner, in 1836. The power of Mexico seemed to be overthrown; but Andrew Jackson, then President of the United States, in his Message of December 21, 1836, laid down the rule of caution and justice, as follows: "The acknowledgment of a new state as independent and entitled to a place in the Family of Nations is at all times an act of great delicacy and responsibility, but more especially so when such state has forcibly separated itself from another, of which it had formed an integral part, and which still claims dominion over it. *A premature recognition* under these circumstances, *if not looked upon as justifiable cause of war*, is always liable to be regarded as a proof of an unfriendly spirit." And he concluded by proposing that our country should "stand aloof" until the question was decided "beyond cavil or dispute." During the next year, when the contest had practically ceased and only the claim remained, this new power was acknowledged by the United States, who were followed in 1839 by France, and in 1840 by Great Britain, Holland, and Belgium. Texas was annexed to the United States in 1845; but at this time Mexico had not joined in the general recognition.

Such are historic instances illustrating Intervention by Recognition. As in other cases of intervention, the recognition may be *armed* or *unarmed*, with an intermediate case, where the recognition may seem unarmed, when in reality it is armed,—as when France simply announced recognition of the independence of the United States and at the same time prepared to maintain it by war.

Armed recognition is simply *Recognition by Coercion*. It is a belligerent act, constituting war, [Pg 95] and can be vindicated only as war. No nation will undertake it, unless ready to assume all the responsibilities of war,—as in the recent cases of Greece and Belgium, not to mention the recognition of the United States by France. But an attempt, under guise of recognition, to coerce the dismemberment or partition of a country is in its nature offensive beyond ordinary war, especially when the country to be sacrificed is a republic, and the plotters against it are crowned heads. Proceeding from the consciousness of brute power, such an attempt is an insult to mankind. If armed recognition at any time can find apology, it is only *where sincerely made for the protection of Human Rights*. It would be hard to condemn that intervention which saved Greece to Freedom.

Unarmed recognition is where a foreign power acknowledges in some pacific form the independence of a colony or province against the claim of its original government. Although excluding all idea of *coercion*, yet it cannot be uniformly justified.

Here we are brought to that question of "time," on which Mr. Canning so pointedly piqued himself, and to which President Jackson referred, when he suggested that "a premature recognition" might be "looked upon as justifiable cause of war." Nothing is more clear than that recognition may be favored at one time, while it must be rejected at another. So far as it assumes to determine rights instead of facts, or to anticipate the result of a contest, it is wrongful. No nation can undertake to sit in judgment on the rights of another nation without its consent. [Pg 96] Therefore it cannot declare that *de jure* a colony or province is *entitled* to independence, but, from the necessity of the case, and that international intercourse may not fail, it must ascertain

the facts, carefully and wisely, and, on the actual evidence, it may declare that *de facto* the colony or province appears *to be in possession* of independence,—which means, first, that the original government is dispossessed beyond the possibility of recovery, and, secondly, that the new government has achieved a reasonable stability, with fixed limits, giving assurance of solid power. All this is simply fact and nothing more. But just in proportion as a foreign nation anticipates the fact, or imagines the fact, or substitutes its own passions for the fact, it transcends the well-defined bounds of International Law. Without the fact of independence, positive and fixed, there is nothing but a claim. Now nothing is clearer than, that, while the terrible litigation is still pending, and the trial by battle, to which appeal is made, remains undecided, *the fact of independence cannot exist*. There is only a paper independence, which, though reddened with blood, is no better than a paper empire or a paper blockade; and any pretended recognition of it is a wrongful intervention, inconsistent with just neutrality, since the obvious effect must be to encourage the insurgent party. Such has been the declared judgment of our country, and its practice, even under circumstances tempting in another direction; and such, also, was the declared judgment and practice of Great Britain with reference to Spanish America.

The conclusion, then, is clear. To justify recognition, it must appear beyond doubt that *de facto* the contest is finished, and that *de facto* the new government is established secure within fixed [Pg 97] limits. *These are conditions precedent*, not to be avoided without open offence to a friendly power, and open violation of that International Law which is the guardian of the world's peace, even if there be not *another condition precedent* which civilization in this age will require.

Do you ask now if foreign powers can acknowledge our Rebel embryo as an independent nation? There is madness in the thought. Recognition accompanied by the breaking of the blockade would be war, impious war, against the United States, where Slavemongers would be the allies and Slavery the inspiration. Of all wars in history, none more accursed, none more sure to draw down upon its authors the judgment alike of God and man. But the thought of recognition, under existing circumstances, while the contest is still pending, even without any breaking of the blockade or attempted coercion, is a Satanic absurdity, hardly less impious than the other. It would assume unblushingly, that, already Rebel Slavery had succeeded in establishing an independent nation with an untroubled government and a secure conformation of territory, when, *in fact*, nothing is established, nothing untroubled, nothing secure, not even a single boundary-line, and there is no element of independence except the audacious attempt,—when, *in fact*, the conflict is still waged on numerous battle-fields, and these pretenders to independence have been driven from State to State, driven away from the Mississippi which parts them, driven back from the sea which surrounds them, and shut up in the interior or in blockaded ports, so that only by stealth can they communicate with the outward world. Any [Pg 98] recognition of such a pretension, existing only as pretension, scouted and denied by a whole people with invincible armies and navies embattled against it, would be a mockery of truth. It would assert independence as *a fact*, when notoriously it was not *a fact*. It would be an enormous lie. Naturally a power thus guilty would expect to support the lie by arms.

IV.

I do not content myself with a single objection to this outrageous consummation. There is another, of a different nature. Assuming, for the moment, what I glory to believe can never happen, that the *new* Slave Power has become independent *in fact*, while the national flag has sunk away exhausted in the contest, there is one objection which, in an age of Christian light, thank God, cannot be overcome, unless, after solemn covenants branding Slavery, the great powers shall forget their vows, while England, the declared protectress of the African race, and France, the declared champion of "ideas," both break away from the irresistible logic of their history, and turn their backs upon the past. Vain is honor, vain is human confidence, if these nations, at a moment of high duty, can thus ignobly fail. "Renown and grace is dead." Like the other objection, this is *of fact* also,—for it is founded on the character of the pretension claiming recognition, which constitutes *fact*. Perhaps it may be said that it is a question of policy; but it is of policy which ought to be beyond debate, *if such fact be established*. Something more is [Pg 99] necessary than that the new power shall be *de facto* independent. *De facto* it must be *fit* for independence; and, from the nature of the case, every nation will judge of this fitness *in fact*. Undertaking to acknowledge a *new* power, you proclaim its fitness for welcome and association in the Family of Nations. Can England gazette such a proclamation, elevating the whippers of women and sellers of children? Can France permit Louis Napoleon to do the same?

Here, on the threshold of this inquiry, the true state of the question must not be forgotten. It is not whether old and existing relations shall be continued with a power permitting Slavery, but *whether relations shall be commenced with a new power*, not merely permitting Slavery, but building its whole intolerable pretension upon this Barbarism. "No *new* Slave State" is a watchword with which we are familiar in our domestic history; but even such cry does not reveal the full opposition to the *new* revolt against Civilization,—for, even if disposed to admit a *new* Slave State, there must be, among men who have not yet lost all sense of decency, undying resistance to the admission of a *new* Slave Power with such an unquestioned origin and such an unquestioned purpose as that which now flaunts in piracy and blood before the civilized world, seeking recognition for its criminal chimera. Here is nothing for nice casuistry. Duty is plain as the moral law or the multiplication table.

Look for a moment at the unprecedented character of this pretension. A President known to be against the extension of Slavery was duly elected by the people in the autumn of 1860. This was [Pg 100]

all. He had not entered upon his duties. But the apostolic Slavemongers saw that Slavery at home must suffer under the popular judgment against its extension; they saw that a vote against its extension was a vote for its condemnation; and they rebelled. Under this wicked inspiration, State after State pretended to withdraw from the Union, and to construct a new Confederacy, whose "corner-stone" was Slavery. A Constitution was adopted, declaring these words: (1.) "No law denying or impairing the right of property in negro slaves shall be passed"[106]; and (2.) "In all territory belonging to the Confederate States, lying without the limits of the several States, the institution of Negro Slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the Territorial Government."[107] Do not start. These are the authentic words of the text. You will find them in the Rebel Constitution.

Such was the unalterable fabric of the new government. Nor was there any doubt or hesitation in proclaiming its distinctive character. Its Vice-President, Mr. Stephens, thus far remarked for moderation on Slavery, as if smitten with diabolic light, undertook to explain and vindicate the new Magna Charta. His words are familiar, but they cannot be omitted in a complete statement of the case. "*The new Constitution*," he said, "has put at rest *forever* all the agitating questions relating to our peculiar institution, African Slavery, as it exists among us," which he proceeds to declare "was the immediate cause of the late rupture and present revolution." The Vice-President announced unequivocally the change that had taken place. Admitting it was "the prevailing idea [Pg 101] of most of the leading statesmen at the time of the formation of the old Constitution that the enslavement of the African was in violation of the Laws of Nature, that it was wrong in principle, socially, morally, and politically," he denounces this idea as "fundamentally wrong," and proclaims the new government "founded upon *exactly the opposite idea*." Here is no disguise. "Its foundations," he avows, "are laid, its *corner-stone* rests, upon the great truth that the negro is not equal to the white man,—that Slavery, subordination to the superior race, is his natural and normal condition." Not content with exhibiting the untried foundation, he boastfully claims for the new government priority of invention. "*This our new government*," he vaunts, "*is the first in the history of the world* based upon this great physical, philosophical, and moral truth.... This stone, which was rejected by the first builders, 'is become the chief stone of the corner.'" And then, as if priority of invention were not enough, he proceeds to claim for the new government future supremacy, saying that it is already "the nucleus of a growing power, which, if we are true to ourselves, our destiny, and our high mission, will become the controlling power on this continent."[108]

Since Satan first declared the "corner-stone" of his new government, and openly denounced the Almighty Throne, there has been no blasphemy of equal audacity. In human history nothing but itself can be its parallel. The gauntlet is thrown down to heaven and earth, while a disgusting [Pg 102] Barbarism is proclaimed as the new Civilization. Here is a new method, a *novum organum*, to usher in the world's future. Two years are already passed,—but, as the Rebellion began, so is it now. A Governor of South Carolina, in a message to the Legislature, as late as 3d April, 1863, takes up the boastful strain, and congratulates the Rebel Slavemongers that they are "a refined, cultivated, and enlightened people," and that the new government is "the finest type that the world ever beheld."[109] God save the mark! Such, doubtless, was the speech of the African tyrant, as he sat in state on the prostrate bodies of his subjects and rejoiced in this manifestation of power. A leading journal, more than any other the organ of the Slavemongers, repeats the original vaunt with more than the original brutality. After dwelling on "the grand career and lofty destiny" before the new government, the "Richmond Examiner" of 28th May, 1863, proceeds as follows. "Would that all of us understood and laid to heart the true nature of that career and that destiny, and the responsibility it imposes. *The establishment of the Confederacy is, verily, a distinct reaction against the whole course of the mistaken civilization of the age.* For Liberty, Equality, and Fraternity we have deliberately substituted Slavery, Subordination, and Government. *Reverently we feel that our Confederacy is a God-sent missionary to the nations, with great truths to preach.* We must speak thus boldly; but 'whoso hath ears to hear, let him hear.'" This God-sent missionary to the nations it is now proposed to welcome at the household hearth of the civilized world.

Unhappily, there are old nations already in the family still tolerating Slavery; but now, for the [Pg 103] first time, a new nation claims admission there, which not only tolerates Slavery, but, exulting in its shame, strives to reverse the judgment of mankind, making this outrage its chief support and glory, so that all recognition of the new power will be recognition of a sacrilegious pretension,

"With one vast blood-stone for the mighty base."

Elsewhere Slavery has been an accident; here it is the principal. Elsewhere it has been an instrument only; here it is the inspiration. Elsewhere it has been kept back in becoming modesty; here it is pushed forward in all its brutish nakedness. Elsewhere it has claimed nothing but liberty to live; here it claims license to rule, with unbounded empire at home and abroad. Look at this candidate power in its whole continued existence, from Alpha to Omega, and it is nothing but Slavery. Its origin is Slavery, its mainspring is Slavery, its object is Slavery. Wherever it appears, whatever it does, whatever form it takes, it is Slavery and nothing else; so that, with the agonizing despair of Satan, it might cry out:—

"Me miserable! which way shall I fly
Infinite wrath and infinite despair?
Which way I fly is Hell; *myself am Hell*."

The Rebellion is Slavery in arms, Slavery on horseback, Slavery on foot, Slavery raging on the

battle-field, Slavery savage on the quarter-deck, robbing, destroying, burning, killing, to uphold this candidate power. Its legislation is simply Slavery in statutes, Slavery in chapters, Slavery in sections, with an enacting clause. Its diplomacy is Slavery in pretended ambassadors, Slavery in [Pg 104] cunning letters, Slavery in cozening promises, Slavery in persistent negotiation,—all to secure for the candidate power its much desired welcome. Say what you will, try to avoid it, if you can, you are compelled to admit that the candidate power is nothing else than *organized Slavery*, now, in its madness, surrounded by its criminal clan, and led by its felon chieftains, braving the civilization of the age. Any recognition of Slavery is bad enough; but this will be recognition with welcome and benediction, imparting *new* consideration and respectability, and, worse still, securing *new* opportunity and foothold for the supremacy it openly proclaims.

In ancient days the candidate was robed in white, while at the Capitol and in the Forum he canvassed the people for their votes. The candidate nation, unashamed of Slavery, should be robed in black, while it conducts the great canvass, and asks the votes of the Christian powers. "Hung be the heavens with black, yield day to night," as the outrage proceeds; for the candidate gravely asks international recognition of the claim to hold property in man, to sell wife away from husband, to sell child away from parent, to shut the gates of knowledge, to appropriate all the fruits of another's labor. The candidate proceeds in the canvass, notwithstanding all history declares Slavery essentially barbarous, and that whatever it touches it changes to itself,—that it barbarizes laws, barbarizes business, barbarizes manners, barbarizes social life, and makes the people who cherish it barbarians. And still the candidate proceeds, although it is known to the Christian powers that the partisans of Slavery are naturally "filibusters," always apt for lawless [Pg 105] incursion and for robbery; that, during later years, under their instigation and to advance their pretensions, expeditions *identical in motive with the present Rebellion* were let loose in the Gulf of Mexico, twice against Cuba, and twice, also, against Nicaragua, breaking the peace of the United States and threatening the repose of the world, so that Lopez and Walker were but predecessors of Beauregard and Jefferson Davis. And yet the candidate proceeds, although it is obvious that the recognition urged will be nothing less than solemn sanction by the Christian powers of Slavery everywhere throughout the new jurisdiction, on land or sea, so that every ship, being part of *the floating territory*, will be *Slave Territory*. And yet, with the phantasy that man can hold property in man shooting from his lips, with the shackle and lash in his hands, with barbarism on his forehead, with filibusterism in his recorded life, and with Slavery woven in his flag wherever it floats on land and sea, the candidate clamors for independent recognition. It is sad to think that there is delay in repelling the insufferable canvass. Can Christian nations longer hesitate? To detest and combat such an accursed pretension it is not necessary even to be a Christian,—it is sufficient to be a man.

If the recognition of a *de facto* power were a duty imposed upon other nations by International Law, there would be no opportunity for objections founded on principle or policy. *But there is no such duty.* International Law leaves to each nation, precisely as the Municipal Law leaves to each citizen, what company to keep or what copartnership to form. No company and no copartnership [Pg 106] can be forced upon a nation. It is all a question of free choice and acceptance. International Law on this head is like the Constitution of the United States, which declares, "New States *may be admitted* by the Congress into this Union." Not *must*, but *may*,—it being in the discretion of Congress to determine whether the State shall be admitted. Accordingly, in the exercise of this discretion, Congress for a long time refused to admit Missouri *as a Slave State*. And now the old Missouri Question, in more outrageous form, on vaster theatre, with "monarchs to behold the swelling scene," is presented to the Christian powers of the world. If it was right to exclude Missouri, having only few slaves, and regarding Slavery merely as a temporary condition, it must be right to exclude a pretended nation, which not only boasts millions of slaves, but passionately proclaims the perpetuity and propagation of Slavery as the cause and object of its separate existence.

Practical statesmen have always treated recognition as a question of policy, to be determined on the whole case, even where the power is *de facto* established,—as amply appears in the Parliamentary debates on the recognition of Spanish America. If we go behind the practical statesmen and consult the earliest oracles of International Law, we find, that, according to their most approved utterances, not only may recognition be refused, but there are considerations of duty this way which cannot be evaded. It is not enough that a pretender has the form of a commonwealth. "A people," says Cicero, in a definition copied by most jurists, "is not every body [Pg 107] of men, *howsoever* congregated, but a gathered multitude *associated through agreement in right and community of interest*."[110] Again, he goes so far as to say, "When the king is unjust, or the aristocracy, or the people itself, the commonwealth is not vicious, *but null*."[111] Of course a commonwealth that is *null* cannot be recognized. This same lofty standard is of frequent recurrence in the testimony of the great Roman. But he is not alone. Grotius, who speaks always with the magistral voice of learning and genius, furnishes the just conclusion, when, after declaring that a state is "a complete body of freemen associated for the enjoyment of right and for their common benefit,"[112] he exposes the distinction between a body of men, who, being already a recognized commonwealth, are guilty of systematic crime,—as, for instance, piracy,—and another body of men, who, *not yet recognized as a commonwealth*, band together for this purpose,—*sceleris causâ coeunt*. The latter, by happy discrimination, he places beyond the pale of recognition.[113] When before, in all history, have creatures wearing the human form proclaimed the *criminal principle* of their association with the audacity of our Slavemongers? And yet there is hesitation to place them beyond the pale of recognition. A recent English authority on the Law of Nations adopts the same distinction. I quote Mr. Phillimore, who, after alluding to

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societies united *for the sake of crime*, says: "All agree to class such bodies amongst those of whose corporate existence the law takes no cognizance (*qui civitatem non faciunt*), and therefore as not entitled to international rights either in peace or war."[114]

It might be argued, on grounds of reason and authority even, that the *declared principle* of the pretended power was a violation of International Law. Eminent magistrates have solemnly ruled, that, in the development of civilization, the Slave-Trade has become illegal by a law higher than any statute. Sir William Grant, an ornament of the British bench, whose elegant mind was governed always by practical sense, adjudged that this trade "cannot, *abstractedly speaking*, be said to have a legitimate existence";[115] and our own great authority, Mr. Justice Story, in a remarkable judgment, declared himself constrained "to consider the trade *an offence against the universal law of society*";[116] and the highest professional authorities of our country adopted the same conclusion: I refer especially to the late William Pinkney and Jeremiah Mason.[117] But arguments which are strong against any recognition of the Slave-Trade are strong also against any recognition of Slavery itself, especially when it is the foundation of a *new* power.

In the determination of present duty, it is not necessary to assume that Slavery or the Slave-Trade is positively forbidden by existing International Law. It is enough to show, that, *according to the spirit* of that sovereign law which "sits empress, crowning good, repressing ill," and also according to those commanding principles of justice and humanity which cannot be set at nought without shock to human nature itself, so foul a wrong as Slavery can receive no voluntary support [Pg 109] from the Commonwealth of Nations. It is not a question of Law, but of Morality. The Rule of Law is sometimes less comprehensive than the Rule of Morality, so that the latter may positively condemn what the former silently tolerates. But within its own domain Morality cannot be less authoritative than Law. It is, indeed, nothing less than the Law of Nature, which is the Law of God. If we listen again to heathen teaching, we shall confess its truth. "Law," says Cicero, "is the highest reason, implanted in nature, *which prescribes those things which ought to be done, and forbids the contrary*."[118] This law is an essential part of International Law, as is also Christianity itself, and where treaties fail and usage is silent it is the only law between nations. Jurists of all ages and countries have delighted to acknowledge its authority, if it spoke only in the still, small voice of conscience. A celebrated professor of Germany in our own day, Savigny, whose name is honored by students of jurisprudence everywhere, touches upon this monitor of nations, when he declares that "there may exist between different nations *a common consciousness of right* similar to that which engenders the positive law of particular nations."[119] This common consciousness of right is identical with that law, which, according to Cicero, is "the highest reason, implanted in nature." Such is the *Rule of Morality*.

The Rule of Morality differs from the Rule of Law in this respect,—that the former finds support in the human conscience, the latter in the sanctions of public force. But moral power prevails [Pg 110] with a good man as much as if it were physical. I know no different rule for a good nation than for a good man. I am sure that a good nation will not do what a good man would scorn to do.

There is a Rule of Prudence superadded to the Rule of Morality. Grotius, in discussing treaties, does not forget the wisdom of Solomon, who, in not a few places, warns against fellowship with the wicked,—although he adds, that these are maxims of prudence, and not of law.[120] And he reminds us of the saying of Alexander, "that those grievously offend who enter the service of barbarians."[121] Better still are the words of the wise historian of classical antiquity, who enjoins upon a commonwealth the duty of considering carefully, when sued for assistance, "whether what is sought is sufficiently pious, safe, glorious, or whether it is *unbecoming*";[122] and also those words of the Hebrew king, who, after rebuking an alliance with Ahab, asks with scorn, "Shouldest thou help the ungodly?"[123]

The claim for recognition, when brought to the touchstone of these principles, is easily disposed of.

Urge not the *Practice of Nations* in its behalf. Never before in history has a candidacy been put forward *in the name of Slavery*, and the terrible outrage is aggravated by the Christian light which surrounds it. This is not an age of darkness. But even in the Dark Ages, when the Slavemongers of the Barbary coast had gathered into cities, the saintly Louis the Ninth was fired [Pg 111] to treat one of these communities as a "nest of wasps."[124] Afterwards, but slowly, they obtained "the right of legation" and "the reputation of a government"; when at last, weary of their criminal pretensions, the aroused vengeance of Great Britain and France blotted out this power from the list of nations. Louis the Eleventh, who has been described as the sovereign "who best understood his interest," indignant at Richard the Third of England, who had murdered two infants in the Tower and usurped the crown, sent back his ambassadors without holding intercourse with them. This is a suggestive precedent, which I give on venerable authority in diplomatic history;[125] but the parricide usurper of England had never murdered so many infants or usurped so much as the pretended Slave Power, strangely tolerated by the sagacious sovereign who sits on the throne of Louis the Eleventh.

It is not necessary, however, to go so far in history, nor to dwell on the practice of nations in withholding or conceding recognition. The whole matter is stated by Burke, with his customary power.

"In the case of a divided kingdom, by the Law of Nations, Great Britain, like

every other power, is free to take any part she pleases. *She may decline, with more or less formality, according to her discretion, to acknowledge this new system*; or she may recognize it as a government *de facto*, setting aside all discussion of its original legality, and considering the ancient monarchy as at an end. The Law of Nations leaves our court open to its choice.... The declaration of a *new species* of government on new principles is a real crisis in the politics of Europe."[126]

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This same rule Burke declared in Parliament, saying, "that the French Republic was *sui generis*, and bore no analogy to any other that ever existed in the world. It, therefore, did not follow that we ought to recognize it, merely because different powers in Europe had recognized the Republic of England under Oliver Cromwell."[127] And in his famous "Appeal from the New to the Old Whigs" this illustrious authority proclaimed the new French Government "so fundamentally wrong as to be utterly incapable of correcting itself by any length of time, or of being formed into any mode of polity of which a member of the House of Commons could publicly declare his approbation."[128]

Another eloquent publicist, Sir James Mackintosh, while pressing on Parliament the recognition of Spanish America, says: "The reception of a new state into the society of civilized nations by those acts which amount to recognition is a proceeding which has no legal character, and *is purely of a moral nature*"; and he proceeds to argue, that, since England "is the only anciently free state in the world, for her to refuse her *moral aid to communities struggling for liberty* is an act of unnatural harshness."[129] Thus does he vindicate recognition for the sake of Freedom. How truly he would have repelled any recognition for the sake of Slavery let his life testify.

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At the Congress of Verona, Chateaubriand, as representative of France, replied to a proposition from the Duke of Wellington on this subject:—

"France is influenced by considerations of more general importance with regard to the governments *de facto*. She conceives that *the principles of justice on which society is founded must not be lightly sacrificed* to secondary interests, and it appears to her that those principles increase in importance *when the matter in question is that of recognizing a political order of things virtually hostile to that which exists in Europe*."[130]

Here the rule is mildly stated, but in harmony with correct principle. A *new* government, with Slavery as its active soul, must be "virtually hostile" to European civilization, so as to make its recognition impossible; nor can the principles of justice be lightly sacrificed.

No better testimony to the practice of nations can be found than the words of Vattel, whose work, presenting the subject in familiar form, has done more, during the last century, to fashion opinion on the Law of Nations than any other authority. Here it is briefly.

"If there be any nation that *makes an open profession* of trampling justice under foot, of despising and violating the rights of others, whenever it finds an opportunity, the interest of human society will authorize all others to unite in order to humble and chastise it."[131]

"*To form and support an unjust pretension* is to do an injury only to the nation whom such pretension concerns; to mock at justice in general is to injure all nations."[132]

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"The power that assists an odious tyrant, that declares for an unjust and rebellious people, undoubtedly violates duty."[133]

"As to those monsters who under the title of sovereigns render themselves the scourges and horror of humanity, they are ferocious beasts, of whom every brave man may justly clear the earth."[134]

"If the maxims of a religion tend to establish it by violence, and to oppress all those who do not embrace it, the Law of Nature forbids us to favor that religion, or to unite unnecessarily with its inhuman followers, and the common safety of mankind invites them rather to enter into *a league against such madmen, to repress such fanatics, who disturb the public repose and menace all nations*."[135]

Nor can you urge this recognition on any principle of *Comity of Nations*. This is an expansive term, into which enters much of the refinements, amenities, and hospitalities of civilization, and also something of the obligations of moral duty. But where an act is prejudicial to national interests, or contrary to national policy, or questionable in morals, it cannot be commended by any consideration of courtesy. A paramount duty must not be betrayed by a kiss. For the sake of comity, acts of good-will and friendship not required by law are performed between nations; but an English court has authoritatively declared that this principle cannot prevail, "where it violates the law of our own country, the Law of Nature, or the Law of God," and on this exalted ground it was decided that an American slave who had found shelter on board a British man-of-war on the high seas could not be recognized as a slave.[136] The same principle must prevail against recognition of a new slave nation.

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Nor, finally, can this recognition be urged on any reason of *Peace*. There can be no peace

founded on injustice; and any recognition is injustice which will cry aloud, resounding through the earth. You may seem to have peace, but it will be only smothered war, sure to break forth in war more direful than before.

Thus is every argument for recognition repelled, whether under the sounding words, Practice of Nations, Comity of Nations, or Peace. There is nothing in practice, nothing in comity, nothing in peace, which is not against any such shameful acknowledgment.

Applying the principles already set forth,—assuming what cannot be denied, that every power is free to refuse recognition,—assuming that it is not every body of men that can be considered a commonwealth, but only those "associated *through agreement in right and community of interest*,"—that men "banding together for the sake of systematic crime" cannot be considered a commonwealth,—assuming that every member of the Family of Nations will surely obey the rule of morality,—that it will "shun fellowship with the wicked,"—that it will not "enter the service of barbarians,"—that it will avoid what is "unbecoming," and do that only which is "pious, safe, and glorious,"—and that, above all things, it will not enter into alliance to "help the ungodly,"—assuming these things, every such member must reject with indignation a new pretension whose declared principle of association is so intrinsically wicked. Here there can be no question. The [Pg 116] case is plain; nor is any language of contumely or scorn too strong to express the irrepressible repugnance to such a pretension, which, like vice, "to be hated needs but to be seen." Surely there can be no Christian power which will not rouse to expose it, crying, with irresistible voice, —

No *new* sanction of Slavery!

No *new* quickening of Slavery in its active and aggressive barbarism!

No *new* encouragement to "filibusters" engendered by Slavery!

No *new* creation of *Slave Territory*!

No *new* creation of a *Slave Navy*!

No new Slave Nation!

No installation of Slavery as a *new* Civilization!

But all this litany will fail, if recognition succeeds,—from which, good Lord, deliver us! Nor will this be the end.

Slavery, through the *new* power, will take its place in the Parliament of mankind, with the immunities of an independent nation, ready always to uphold and advance itself, and organized as an unrelenting Propaganda of the new faith. A power having its inspiration in such a Barbarism must be essentially barbarous; founded on the asserted right to whip women and sell children, it must assume a character of disgusting hardihood; and openly professing determination to revolutionize the public opinion of the world, it must be in open schism with Civilization itself, so that all its influences will be wild, savage, brutal, and all its offspring kindred in character.

"Pards gender pards; from tigers tigers spring; [Pg 117]
No doves are hatched beneath a vulture's wing."[137]

Such a power, from very nature, must be despotism at home "tempered only by assassination," with the cotton-field for its Siberia,—while abroad it must be aggressive, dangerous, and revolting, in itself a *Magnum Latrocinium*, whose fellowship can have nothing but "the filthiness of evil," and whose very existence will be an intolerable nuisance. When Dante, in the vindictive judgment hurled against his own Florence, called it *bordello*, he did not use a term too strong for the mighty house of ill-fame which the Christian powers are now asked for the first time to license. Such must be the character of the new power. But, though only a recent wrong, and pleading no prescription, the illimitable audacity of its nature can hesitate at nothing; nor is there anything offensive or detestable it will not absorb into itself. It will be an Ishmael, with hand against every man. It will be a brood of Harpies, defiling all it cannot steal. It will be the one-eyed Cyclop of nations, seeing only through Slavery, spurning all as fools who do not see likewise, and bellowing forth in savage egotism,—

"Know, then, we Cyclops are *a race above*
Those air-bred people and their goat-nursed Jove;
And learn our power proceeds with thee and thine
Not as he wills, *but as ourselves incline*."[138]

Or it will be the Læstrygonian cannibal, with Slavery a perpetual maw, and terrible to the civilized world as that distant power to the companions of Ulysses, when, according to Homer,

"One for his food the raging glutton slew."[139] [Pg 118]

Or, worse still, it will be the soulless monster of Frankenstein, the wretched creation of human science without God,—endowed with life and nothing else, forever raging madly, the scandal to

humanity, powerful only for evil, whose destruction will be essential to the peace of the world.

Who can welcome such a creation? Who can consort with it? There is something loathsome in the idea. There is contamination even in the thought. If you live with the lame, says the ancient proverb, you will learn to limp; if you keep in the kitchen, you will smell of smoke; if you touch pitch, you will be defiled. But what limp so mean as that of this pretended power? what smoke so foul as its breath? what pitch so defiling as its touch? It is an Oriental saying, that a cistern of rosewater will become impure, if a dog be dropped into it; but an ocean of rosewater with Rebel Slavemongers would be changed into a vulgar puddle. Imagine whatever is most disgusting, and this pretended power is more disgusting still. Naturalists report that the pike will swallow anything except the toad, but this it cannot do. The experiment has been tried, and though this fish, in unhesitating voracity, always gulps whatever is thrown to it, yet invariably it spews the nuisance from its throat. Our Slavemonger pretension is worse than toad; and yet there are foreign nations which, instead of spewing it forth, are already turning it like a precious morsel on the tongue. [Pg 119]

There is yet another ground on which I make this appeal. It is part of the triumphs of Civilization, that no nation can act for itself alone. Whatever it does for good or for evil affects all the rest. Therefore a nation cannot forget its obligations to others. Especially does International Law, when it declares the absolute equality of independent nations, cast upon all the duty of considering well how this privilege shall be bestowed so that the welfare of all may be best upheld. But the whole Family of Nations would be degraded by admitting this new pretension to any toleration, much more to equality. There can be no reason for such admission; for it can bring nothing to the general weal. Civil society is created for safety and tranquillity. Nations come together and fraternize for the common good. But this hateful pretension can do nothing but evil for civil society at home or for nations in their intercourse with each other. It can show no title to recognition, no passport for its travels, no old existence. It is all new. And here I borrow the language of Burke on another occasion:—

> "It is not a new power of an old kind. *It is a new power of a new species.* When such a questionable shape is *to be admitted for the first time* into the brotherhood of Christendom, it is not a mere matter of idle curiosity to consider *how far it is in its nature alliable with the rest*."[140]

The greatest of corporations is a nation; the sublimest of all associations is that composed of nations, independent and equal, knit together in the bonds of peaceful fraternity as the great Christian Commonwealth. The Slavemongers may be a corporation *in fact*, but no such corporation can find place in that august Commonwealth. As well admit the Thugs, whose first article of faith is to kill the stranger,—or the Buccaneers, those "brothers of the coast," who plundered on the sea; or, better still, revive the old Kingdom of the Assassins, where the king was an assassin, surrounded by counsellors and generals who were assassins, and all his subjects were assassins; or yet again, better at once and openly recognize Antichrist, the supreme and highest impersonation of the Slave Power. [Pg 120]

Amidst the general degradation following such obeisance to Slavery, there are two Christian powers that would appear in sad and shameful eminence. I refer to Great Britain, declared protectress of the African race, and to France, declared champion of "ideas," who, from the very abundance of pledges, are so situated that they cannot desert the good old cause and turn their faces against civilization without criminal tergiversation, which no mantle of diplomacy can cover. Where, then, is British devotion to the African race, so eloquently proclaimed by the British Minister? Where, then, is French devotion to ideas, so ostentatiously announced by the French Emperor? Remembered only to point a tale and show how nations have fallen. Great Britain knows less than France of national vicissitudes, but such an act of wrong would do something in its influence to equalize the conditions of these two nations. Rather than do this thing, better for the fast-anchored isle that it should sink beneath the sea, carrying down its cathedrals, its castles, its happy homes, its fields of glory, Runnymede, Westminster Hall, and the tomb of Shakespeare. In other days England has valiantly striven against Slavery, winning a truer glory than any achieved by her arms on land or sea; and now she is willing to surrender, at a moment when more can be done than ever before against the monster, wherever it shows its head,—for Slavery everywhere has its neck in this Rebellion. In other days France has valiantly striven for ideas; and now she, too, proposes surrender, although all that she professes at heart is involved in the doom of Slavery, which a word from her might hasten beyond recall. It is in England, where the great victory of Emancipation was first obtained, that now, more even than in France, the strongest sentiment for Rebel Slavemongers is manifest, constituting a *moral mania* which menaces a pact and *concordat* with the Rebellion itself,—as when an early Pope, head of the Christian Church, did not hesitate to execute a piratical convention with a Pagan enemy to the Christian name. It only remains that the new coalition should be signed in order to consummate the unutterable degradation. The contracting parties will be the Queen of England and Jefferson Davis, once patron of "Repudiation," now chief of Rebel Slavery. Then must this virtuous lady, whose pride is justice always, bend to receive the author of the Fugitive Slave Bill as ambassadorial plenipotentiary at her Court. [Pg 121]

A new power, dedicated to Slavery, will take its seat at the great council-board, to jostle

thrones and benches, while it overshadows humanity. Its foul attorneys, reeking with Slavery, will have their letter of license as ambassadors of Slavery, to rove from court to court, over [Pg 122] foreign carpets, poisoning the air which has been nobly pronounced too pure for a slave to breathe. Alas for England, vowed a thousand times to the protection of the African race, and by her best renown knit perpetually to this sacred loyalty, now plunging into adulterous dalliance with Slavery, recognizing the new and impious Protestantism against Liberty itself, and wickedly becoming *Defender of the Faith* as now professed by Rebel Slavemongers! Alas for England's Queen, woman and mother, carried off from the cause of Wilberforce and Clarkson to sink into unseemly association with the scourgers of women and the auctioneers of children!—for a "stain" deeper than that which aroused the anguish of Maria Theresa is settling upon her reign. Alas for that Royal Consort, humane and just, whose dying voice was given to assuage the temper of that ministerial despatch, by which, in an evil hour, England was made to strike hands with Rebel Slavery!—for the counsellor is needed now to save the land he adorned from an act of inexpiable shame.

And for all this sickening immorality I hear but one declared apology. It is, that the Union permitted and still permits Slavery,—therefore foreign nations may recognize Rebel Slavery as a *new* power. Here is the precise error. England is still in diplomatic relations with Spain, and was only a short time ago in diplomatic relations with Brazil, both permitting Slavery; but these two powers are not *new*, they are already established, there is no question of recognition, nor do they pretend to found empire on Slavery. There is no reason in any relations with them why a *new* power, with Slavery as its declared "corner-stone," whose gospel is Slavery, and whose evangelists are Slavemongers, should be recognized in the Family of Nations. If Ireland were in [Pg 123] triumphant rebellion against the British Queen, complaining of rights denied, it would be our duty to recognize her as an independent power; but if Ireland rebelled with the declared object of establishing a *new* power which should be nothing less than a giant felony and a nuisance to the world, then it would be our duty to spurn the infamous pretension, and no triumph of rebellion could change this plain and irresistible obligation. And yet, in face of this commanding rule, we are told to expect the recognition of Rebel Slavery.

An aroused public opinion, "the world's collected will," and returning reason in England and France, will see to it that Civilization is saved from this shock, and the nations themselves from the terrible retribution which sooner or later must surely attend it. No power can afford to stand up before mankind and openly vote a new and untrammelled charter to injustice and cruelty. God is an unsleeping avenger; nor can armies, fleets, bulwarks, or "towers along the steep" prevail against His mighty anger. To any application for this unholy recognition there is but one word the Christian powers can utter. It is simply and austerely "No," with an emphasis that shall silence argument and extinguish hope itself. And this proclamation should go forth swiftly. Every moment of hesitation is a moment of apostasy, casting its lengthening shadow of dishonor. Not to discourage is to encourage; not to blast is to bless. Let this simple word be uttered, and Slavery will slink away with a mark on its forehead, like Cain, a perpetual vagabond, forever accursed; and the malediction of the Lord shall descend upon it, saying: "Among these nations shalt thou [Pg 124] find no ease, neither shall the sole of thy foot have rest; but the Lord shall give thee there a trembling heart and failing of eyes and sorrow of mind; and thy life shall hang in doubt before thee, and thou shalt fear day and night, and shalt have none assurance of thy life; in the morning thou shalt say, Would God it were even, and at even thou shalt say, Would God it were morning."[141]

V.

Too much have I spoken for your patience, if not enough for the cause. But there is yet another topic, which I have reserved to the last, because logically it belongs there, or at least can be best considered in the gathered light of the previous discussion. Its immediate practical interest is great. I refer to the *Concession of Belligerent Rights*, being the first stage to independence. Great Britain led the way in acknowledging the embryo government as belligerent on sea as well as land, and by proclamation of the Queen declared neutrality between the two parties,—thus lifting an embryo, which was nothing else than animate Slavery, to equality *on sea* as well as land with its ancient ally, the National Government. Here was a blunder, if not a crime, not merely in the [Pg 125] alacrity with which it was done, but in doing it at all. It was followed immediately by France, and then by Spain, Holland, and Brazil. The concession of belligerent rights on land was a name and nothing more, therefore I say nothing about it. But the concession of *belligerent rights on the ocean* is of widely different character, and the two reasons against the recognition of independence are equally applicable to this concession: *first*, the embryo government has no *maritime* or *naval* belligerent rights *de facto*, and, *secondly*, an embryo of Rebel Slavery cannot have the character *de facto* which would justify the concession of *maritime* or *naval* belligerence; so that, were the concession vindicated on the first ground, it must fail on the second.

The concession of *ocean* belligerence is a letter of license from consenting powers to every Slavemonger cruiser, or rather it is the countersign of these powers to the commission of every such cruiser. Without such countersign the cruiser would be an outlaw, with no right to enter a foreign port. The declaration of belligerence imparts legal competence, and the right to testify by flag and arms. Without such competence there would be no flag and no right to bear arms on the ocean. Burke sententiously describes it as an "intermediate treaty *which puts rebels in*

possession of the Law of Nations with regard to war."[142] And this is plainly true.

The magnitude of this concession may be seen in three aspects: *first*, in the immunities it confers, putting an embryo of Rebel Slavery on *equality* with established governments, making its [Pg 126] cruisers lawful instead of piratical, and opening to them boundless facilities at sea and in port, so that they may obtain supplies and hospitality; *secondly*, in the degradation it fastens upon the National Government, which is condemned to see its ships treated on *equality* with the ships of Rebel Slavery, and also the just rule of "neutrality" between belligerent powers invoked to fetter its activity against a giant felony; and, *thirdly*, in the disturbance to commerce it sanctions, by letting loose lawless sea-rovers armed with belligerent rights, including the right of search, whose natural recklessness is left unbridled and without remedy even from diplomatic intercourse. The ocean is a common highway; but it is for the interest of all who traverse it that the highway should not be disturbed by predatory hostilities. Such a concession should be made with the greatest caution, and then only under the necessity of the case, on the overwhelming authority of *the fact*: for, from beginning to end, it is simply a question of fact, absolutely dependent on those conditions and prerequisites without which ocean belligerence cannot exist.

As a general rule, belligerent rights are conceded only where a rebel government or contending party in a civil war has acquired such form and body, that, for the time being, within certain limits, it is sovereign *de facto*, so far at least as to command troops and *to administer justice*. On this last point I dwell especially. It is the capacity to administer justice which is the criterion, whether on land or ocean. The concession of belligerence is the recognition of such limited sovereignty, which bears the same relation to acknowledged independence as gristle [Pg 127] bears to bone. It is obvious that such sovereignty may exist *de facto* on land without existing *de facto* on ocean. It may prevail in armies, and yet fail in navies. In short, *the fact* may be one way on land and the other way *on ocean*. Nor can it be inferred on ocean simply from existence on land. Our Supreme Court has declared that there may be "a limited, partial war," "a restrained or limited hostility," "an imperfect war, or a war as to certain objects and to a certain extent." Thus, on one occasion, hostilities were authorized "on the high seas by certain persons in certain cases," but without authority "to commit hostilities on land."[143] But by the same rule there may be war on land and not on sea, and this may follow from the necessity of the case. If Rebel Slavery does not come within the conditions of ocean war, then, whatever its belligerence on land, it cannot expect it on the ocean. Since every such concession is adverse to the original government, and is made only under the necessity of the case, it must be limited carefully to *the actual fact*. Indeed, Mr. Canning, who has shed so much light on these topics, openly took the ground that "belligerency is not so much a principle as *a fact*."[144] And the question then arises, whether Rebel Slavery has acquired such *de facto* sovereignty on the ocean as entitles it to *ocean* belligerent rights.

There are at least two "facts" patent to all: *first*, that Rebel Slavery is without a single port into which even legal cruisers can take prizes for adjudication; and, *secondly*, that the ships which now presume to exercise *ocean* belligerent rights in its name—constituting that navy which a [Pg 128] member of the British Cabinet announced as "to be created"—were all "created" in England, which is the *naval base* from which they sally forth on predatory cruise, without once entering a port of their own pretended government.

These two "facts" are different in nature. The first attaches absolutely to the pretended power, rendering it incompetent to exercise *belligerent jurisdiction* on the ocean. The second attaches to the individual ships, rendering them piratical. These simple and unquestionable "facts" are the key to unlock the present question.

From the reason of the case, there can be no *ocean* belligerent without a port into which it can take prizes. Any other rule is absurd. It is not enough to sail the sea, like the Flying Dutchman; the *ocean* belligerent must be able to touch the land, and that land its own. This proceeds on the idea of civilized warfare, that something more than *naked force* is essential to the completeness of capture. According to the earlier rule, transmutation of property was accomplished by the "pernoctation" of the captured ship within the port of the belligerent,—or, as it was called, *deductio infra præsidia*. As early as 1414, under Henry the Fifth of England, there was an Act of Parliament requiring privateers *to bring their prizes into a port of the kingdom*, and to make a declaration thereof to a proper officer, *before undertaking to dispose of them*.[145] The modern rule interposes an additional check upon lawless violence, by requiring the condemnation of a competent court. This rule, which is among the most authoritative of the British Admiralty, is [Pg 129] found in the famous letter of Sir William Scott and Sir John Nicholl, addressed to John Jay, as follows: "*Before the ship or goods can be disposed of by the captor*, there must be a regular judicial proceeding, wherein both parties may be heard, and condemnation thereupon as prize, in a Court of Admiralty, judging by the Law of Nations and treaties."[146] This is explicit, and is plainly necessary for the protection of neutral commerce. But this rule is French as well as English. It is part of International Law. A *seizure* is regarded merely as a *preliminary* act, which does not divest the property, though it paralyzes the right of the proprietor. A subsequent act of condemnation by a competent tribunal is necessary to determine if the seizure is valid. The question is compendiously called *Prize or No Prize*. Where the property of neutrals is involved, this requirement becomes of absolute necessity. In conceding belligerence, all customary belligerent rights with regard to neutrals are conceded also, so that neutral rights and interests are put in jeopardy. Here we see at once the wrong done. If nothing is due to Civilization, something is due to neutrals. Without dwelling on this point, I content myself with the authority of two recent French writers. M. Hautefeuille, in his elaborate work, says: "The cruiser is not

recognized as the proprietor of the objects seized, he cannot dispose of them, but *it is his duty to present himself before the tribunal and obtain a sentence declaring them to be prize*."[147] A later writer, M. Eugène Cauchy, whose work has appeared since our war began, says: "A usage which [Pg 130] evidently has its source in *natural equity* requires, that, before proceeding to divide the booty, there should be an inquiry as to the regularity of the prize. *Every prize taken from an enemy should be carried before the judge established by the sovereign of the captor*."[148] But if the power calling itself belligerent cannot comply with this condition,—if it has no port into which it can bring the captured ship, and no court, according to the requirement of the British Admiralty, with "a regular judicial proceeding wherein both parties may be heard,"—it is clearly *not in a situation to dispose of a ship or goods as prize*. Whatever its force in other respects, it lacks a vital element of *ocean* belligerence. In that *semi*-sovereignty which constitutes belligerence on land there must be provision for the *administration of justice*, without which there is nothing but a mob. In that same *semi*-sovereignty on the ocean there must be similar provision. It is not enough that there are ships duly commissioned to take prizes, there must also be courts to try them; and the latter are not less important than the former. Such is the conclusion of reason, in harmony with acknowledged principles. How, then, acknowledge belligerent rights where this condition is wanting?

Earl Russell himself, so swift to make this concession, is led to confess the necessity of Prize Courts on the part of *ocean* belligerents, and thus exposes the irrational character of his own work. In a letter to the Liverpool Chamber of Commerce, occasioned by the destruction of British cargoes, the Minister says: "The owners of any British property, not being contraband of war, on [Pg 131] board a Federal vessel captured and destroyed by a Confederate vessel of war, *may claim in a Confederate Prize Court compensation for destruction of such property*."[149] Even in the very speech announcing the belligerent rights of our Rebels, including the right to visit and detain British merchant vessels having enemy's property on board and to confiscate such property, Earl Russell was compelled to declare, that "it was *necessarily implied*, as a condition of such acknowledgment, that the detention was for the purpose of bringing the vessels detained before an established Court of Prize, and that confiscation did not take place until after condemnation by such competent tribunal."[150] Such was the express condition, obviously to secure justice. If there be no Prize Court, then justice must fail; and with this failure tumbles *in fact* the whole wretched pretension of *ocean* belligerence, except in the galvanism of a Queen's proclamation or a Cabinet concession.

If a cruiser may at any time burn prizes, it is because of some exceptional exigency in a particular case, and not according to general rule, which practically declares that there can be no right to take a prize, if there be no port into which it may be carried. The right of capture and the right of trial are the complements of each other, through which a harsh prerogative is supposed to be rounded into the proper form of civilized warfare. Therefore every ship and cargo burned [Pg 132] by the captors for the reason that they had no port testifies that they are without that vital sovereignty on the ocean which is needed in the exercise of belligerent jurisdiction, and that they are not *ocean* belligerents *in fact*. Nay, more, all these bonfires of the sea cry out against the power which by precipitate concession furnished the torch. As well invest the rebel rajahs of India, who never tasted salt water, with this ocean prerogative, so that they too may rob and burn; as well constitute land-locked Poland, now in arms for independence, an ocean belligerent, —or enroll mountain Switzerland in the same class,—or join with Shakespeare in giving to inland Bohemia an outlook upon the ocean.[151]

To aggravate this concession, the ships are all built, rigged, armed, and manned in Great Britain. It is out of British oak and British iron that they are constructed, rigged with British ropes, made formidable with British arms, provided with British gunners, and navigated by British crews, so as to constitute in all respects a *British naval expedition*. British ports supply the place of Rebel Slavemonger ports. British ports are open to them, when their own are closed. British ports constitute their *naval base of operations and supplies*, furnishing everything needful, except an officer, the ship's papers, and a court for the trial of the prizes, each of which is essential to the legality of the expedition. And yet these same ships, thus equipped in British ports, and *never touching a port of the pretended government* in whose name they rob and burn, [Pg 133] —being simply a rib taken out of the side of England and prostituted to Rebel Slavery,—receive the further passport of belligerence from the British Government, when *in fact* the belligerence does not exist. The whole proceeding, from the laying of the keel in a British dockyard to the bursting flames on the ocean, is a mockery of International Law and an insult to a friendly power.

The case is sometimes said to be new; but it is new only as no such "parricide" is provided against in express terms. It was not anticipated. But the principles which govern it are as old as justice and humanity, in the interests of which belligerent rights are said to be conceded. Here it is all reversed, and it is now apparent, that, whatever the motives of the British Government, the concession was in behalf of *in*justice and *in*humanity. Burning ships and scattered wrecks are the witnesses. If such a case is not condemned by International Law, then has this law lost its virtue. Call such cruisers by whatever polite term most pleases the ear, and you do not change their character with their name. Without a home and without a legal character, they are mere gypsies of the sea, disturbers of the common highway, outlaws, and enemies of the human race.

There is a precedent which shows how impossible it is for a pretended power, without a single port, to possess belligerent rights on the ocean, and how impossible it is for the ship of such pretended power to be anything but a felon ship. James the Second of England, after he had ceased to be *de facto* king, and while an exile without a single port, undertook to issue letters of

marque. It was argued unanswerably before the Privy Council of William the Third, that a deposed prince could not receive from any other sovereign "international privileges"; "that, if he could grant a commission to take the ships of a single nation, it would in effect be a general license to plunder, *because those who were so commissioned would be their own judges of whatever they took*"; and "that the reason of the thing, which pronounced that robbers and pirates, when they formed themselves into a civil society, became just enemies, pronounced also that a king without territory, without power of protecting the innocent or punishing the guilty, *or in any way of administering justice*, dwindled into a pirate, if he issued commissions to seize the goods and ships of nations, *and that they who took commissions from him must be held by legal inference to have associated 'sceleris causâ' and could not be considered as members of a civil society*."[152] These weighty words are strictly applicable to the present case. Whatever the force of Rebel Slavery on land, it is no more on the ocean than the "deposed prince," "without power of protecting the innocent or punishing the guilty, *or in any way of administering justice*"; and, like the prince, it has "dwindled into a pirate," except so far as sustained by British concession. In adducing this precedent, I follow the learned ex-Chancellor, Lord Chelmsford, who used it to show, that, without the concession of belligerent rights to our Rebels, "any Englishman aiding them by fitting out a privateer against the Federal Government would be guilty of piracy."[153] But the reasoning at the Privy Council shows, also, that the concession ought not to have been made.

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There is yet another British precedent, which shows how essential are judicial proceedings before appropriation of a captured ship or cargo. The case is memorable. It is none other than that of the famous Captain Kidd, who, on indictment for piracy, as long ago as 1701, produced a commission in justification. But it was at once declared not enough to show a commission; *he must also show condemnation of the captured ship*. The Lord Chief Baron of that day said, that, "if he had acted pursuant to his commission, *he ought to have condemned the ship and goods*"; that "by his not condemning them he seems to show his aim, mind, and intention; that he did not act in that case by virtue of his commission, but quite contrary to it, for he takes the ship and shares the money and goods, and is taken in that very ship, … *so that there is no color or pretence appears that he intended to bring this ship to England to be condemned or to have condemned it in any of the English plantations*"; and that, "whilst men pursue their commissions, they must be justified, but when they do things not authorized, or never acted by them, *it is as if there had been no commission at all*."[154] Captain Kidd was condemned to death and executed as a pirate. If he was a pirate, worthy of death, then, by the same rule, those rovers who rob cargoes, burn ships, and adorn their cabins with rows of stolen chronometers, careless of a Prize Court, are entitled to small favor from a civilized power.

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Without considering more critically what should be the fate of these ocean incendiaries, or what the responsibilities of England, out of whom they came, I content myself with the conclusion that they are not entitled to *ocean* belligerence. And here let it be understood that no question is possible with regard to an established power with access to the ocean; for belligerent rights are fixed by International Law, without foreign recognition; nor can the rights of such a power be a precedent for any concession to a rebel community without ports and Prize Courts.

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Pirate is a hard word; but Jefferson did not shrink from applying it to "private armed vessels," infesting our coasts, preying upon our commerce, and making captures at the very entrance of our harbors, as well as on the high seas. "They have carried them off," he says, "under pretence of legal adjudication; but, not daring to approach a court of justice, they have plundered and sunk them by the way, or in obscure places, where no evidence could arise against them, maltreated the crews, and abandoned them in boats in the open sea or on desert shores without food or covering." These things, kindred to what is done by our Rebel cruisers, he calls "enormities," and he announces that he has equipped a force "to bring the offenders in for trial as *pirates*."[155]

Even if Rebel Slavery, coagulated in embryo government, has arrived at that *semi*-sovereignty *de facto* on the ocean which justifies belligerent rights, yet the Christian powers should indignantly decline to make the concession, because by doing so they make themselves accomplices in shameful crime. Here I avoid details. It is sufficient to say that every argument of fact and reason, every whisper of conscience and humanity, every indignant outburst of an honest man against recognition of Slavery as an independent power, is equally strong against any concession of ocean belligerence. Such concession is half-way house to recognition, and can be made only where a nation is ready, if the fact of independence be sufficiently established, to acknowledge it, on the principle of Vattel, that "whosoever has a right to the end has a right to the means."[156] It is equally clear, that, where a nation, on grounds of conscience, must refuse recognition of independence, it cannot concede belligerence; for, *where the end is forbidden, the means must be forbidden also*. The illogical absurdity of such concession by Great Britain, so persistent always against Slavery, and now for more than a generation the declared protectress of the African race, becomes doubly apparent, when it is considered that every Rebel ship built in England and invested with ocean belligerence carries with it the Law of Slavery, so that, by British concession, the ship becomes an *extension* of *Slave* territory and a floating *Slave* castle.

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And yet it is said that this impostor is entitled to ocean rights, and the British Queen is made to proclaim them. Sad day for England, when another wicked compromise was struck with Slavery, kindred to that old treaty which mantles the cheeks of honest Englishmen, when the slave-trade was protected and its profits secured to British subjects! I know not the profits secured by the destruction of American commerce, but I do know that the Treaty of Utrecht, crimson with the

blood of slaves, is not so crimson as that reckless proclamation which gave to Slavery a frantic life, and helped for a time, nay, still helps, this demon in the rage with which it battles against Human Rights. Such a ship, with the law of Slavery on its deck and the flag of Slavery at its mast-head, sailing for Slavery, fighting for Slavery, burning for Slavery, and knowing no other sovereignty than the pretended government of Rebel Slavery, can be nothing less in spirit and character than a slave pirate and the enemy of the human race. Like produces like, and the parent power, which is Slavery, must stamp itself upon the ship, making it a floating offence to Heaven, with no limit to its audacity,—wild, outrageous, impious, a monster of the deep, to be hunted down by all who have not forgotten their duty alike to God and man. [Pg 138]

Meanwhile there is one simple act which the justice of England cannot continue to refuse. That fatal concession, made in a moment of eclipse, when reason and humanity were obscured, must be annulled. The *blunder-crime* must be renounced, so that Slave pirates may no longer sail the sea, robbing, destroying, burning, with British license. Then will they promptly disappear forever, and with them the occasion of strife between two great powers, who ought to be, if not as mother and child, at least as brothers among the nations. And may God in His mercy help this consummation!

Here I leave this part of the subject, founding my objections on two grounds.

(1.) The embryo of Rebel Slavery has not that degree of sovereignty *on the ocean* which is essential to belligerence there.

(2.) Even if it possessed the requisite sovereignty, no Christian power can make such concession to it without shameful complicity with Slavery.

Both are objections of *fact*. Either is sufficient. Even if the belligerence seems to be established as *fact*, still its concession in this age of Christian light must be impossible, except under some temporary aberration, which, for the honor of England and the welfare of Humanity, should speedily pass away. [Pg 139]

Again, fellow-citizens, I crave forgiveness for this long trespass. If the field traversed is ample, it has been brightened always by the light of international justice, exposing clearly, from beginning to end, the sacred landmarks of duty. I have been frank, disguising nothing and keeping nothing back, so that you have been able to see the perils to which the Republic is exposed from the natural tendency of war to breed war, as exhibited in examples of history, and also from the fatal proclivity of foreign powers to intermeddle, as exhibited in recent instances of querulous criticism or intrusive proposition, all adverse to the good cause, while pirate ships are permitted to depredate on our commerce; then how the best historic instances testify in favor of Freedom, and how all intervention of every kind, whether by proffer of mediation or otherwise, becomes intolerable, when its influence tends to the establishment of that soulless anomaly, a professed Republic built on the hopeless and everlasting bondage of a race; and especially how Great Britain is sacredly engaged by all the logic of her history and all her traditions in unbroken lineage against any such unutterable baseness; then how all the Christian powers constituting the Family of Nations are firmly bound to set their faces against any recognition of the embryo government.—first, because its independence is not *in fact* established, and, secondly, because, even if *in fact* established, its recognition is impossible without criminal complicity in Slavery; and, lastly, how these same Christian powers are firmly bound by the same twofold reasons against any concession of ocean rights to this hideous pretender. *[Pg 140]*

It only remains that the Republic should gird itself to the majesty of its duties. War is terrible and hard to bear, with its waste, its pains, its wounds, its funerals. But in this war we are not choosers. We are challenged to the defence of country, and in this sacred cause to crush Slavery. There is no alternative. Slavery began the combat, staking life, *and determined to rule or die*. Let it die; and to this end the country must be aroused. We need a song like “Scots who have with Wallace bled.” The cause is greater now than then. We need words like those of Luther, “half battles.” Ours is another Reformation and another Revolution. The attempted revolution for Slavery we meet by a counter revolution for Liberty. That we may continue freemen, there must be no slaves; and thus our own security is linked with the redemption of a race. Blessed lot, amidst the harshness of war, to wield the arms and deal the blows under which the monster will surely fall! The battle is mighty; for into Slavery has entered the Spirit of Evil. It is persistent; for such a gathered wickedness, concentrated, aroused, and maddened, must have a tenacity of life which will not yield at once. But no might nor time can save it now.

That the whole war is contained in Slavery may be seen not only in the acts of the National Government, but also in the confessions of Rebel Slavemongers. Already the President has proclaimed that the slaves throughout the whole Rebel region “are and henceforward shall be free”; and in order to fix the irreversible character of this sublime edict, he has further announced “that the Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.”[157] An enlightened commission is constituted to consider how these thronging freedmen can be best employed for [Pg 141]

their own good and the national defence. Already the sons of Africa, as mustered soldiers of the Union, have shown a discipline and a bravery not unworthy of their ancient fathers, when the prophet Jeremiah said, “Let the mighty men come forth, the Ethiopians and the Libyans that handle the shield”;[158] and still further, by their stature, by their appearance in the ranks, and even by the unexpected testimony of sanitary statistics, according to which for every black soldier disabled by sickness there are more than ten white, thus making the army health of the black ten times as sure as that of the white,—by all these things they have shown that the Father of History, who is our earliest classical authority, was not entirely mistaken, when he spoke of Ethiopia as “the most distant region of the earth, whose inhabitants are the tallest, most beautiful, and most long-lived of the human race.”[159] Even if these acts of the National Government were less significant, all doubt is removed by the Rebel Slavemongers themselves, who, in Satanic audacity, openly avow that Slavery is the end and aim of the government they seek to establish, so that the whole bloody war they wage is all in the name of Slavery. Therefore, [Pg 142] in battling against the Rebellion, we battle against Slavery. Freedom is the growing inspiration of our armies and the just inscription of our banners. Such a war is not a war of subjugation, but a war of liberation, to save the Republic from a petty oligarchy of taskmasters, and to rescue four millions of human beings from cruel oppression. Not to subjugate, but to liberate, is the object of our Holy War.

And yet British statesmen, forgetting for the moment all moral distinctions, forgetting God, who will not be forgotten, gravely announce that our cause must fail. Alas! individual wickedness is too often successful; but a pretended nation, suckled in wickedness and boasting its wickedness, a new Sodom, with all the guilt of the old, waiting to be blasted, and yet, in barefaced effrontery, openly seeking the fellowship of Christian powers, is doomed to defeat. Toleration of such a pretension is practical atheism. Chronology and geography are both offended. Piety stands aghast. In this age of light, and in countries boasting civilization, there can be no place for its barbarous plenipotentiaries. As well expect crocodiles crawling on the pavements of London and Paris, or the carnivorous idols of Africa installed for worship in Westminster Abbey and Notre Dame.

Even if the Republic were less strong, yet I am glad to believe that the Rebellion must fail from the essential impossibility of any such wicked success. The responsibilities of the Christian powers would be increased by our weakness. Behind our blockade there would be *a moral blockade*; behind our armies there would be the aroused judgment of the civilized world. But not on that account can we hesitate. This is no time to pause. Thus do I, who formerly pleaded so [Pg 143] often for Peace, now insist upon Liberty as its indispensable condition,[160]—clearly because, in this terrible moment, there is no other way to that sincere and solid peace without which is endless war. Even on economic grounds, it were better that this war should proceed rather than recognize any partition, which, beginning with humiliation, must involve the perpetuation of armaments and break out again in blood. But there is something worse than waste of money; it is waste of character. Give me any peace but a liberticide peace. In other days the immense eloquence of Burke was stirred against a regicide peace. But a peace founded on the killing of a king is not so bad as a peace founded on the killing of Liberty; nor can the saddest scenes of such a peace be so sad as the daily life legalized by Slavery. A queen on the scaffold is not so pitiful a sight as a woman on the auction-block.

While thus steady in purpose at home, we must not neglect that proper moderation abroad which becomes the consciousness of strength and the nobleness of our cause. The mistaken sympathy which foreign powers bestow upon Slavery,—or, it may be, the mistaken insensibility,—under the plausible name of “neutrality,” which they profess, will be worse for them than for us. For them it will be a record of shame, which their children would gladly blot out with tears. For us it will be only another obstacle vanquished in the battle for Civilization, where, unhappily, false friends are mingled with open enemies. Even if the cause seem for a while imperilled by [Pg 144] foreign powers, yet our duties are none the less urgent. If the pressure be great, the resistance must be greater. Nor can there be any retreat. Come weal or woe, this is the place for us to stand.

I know not if a republic like ours can count even now upon the certain friendship of any European power, unless it be the Republic of William Tell. The very name is unwelcome to the full-blown representatives of monarchical Europe, who forget how proudly, even in modern history, Venice bore the title of *Serenissima Respublica*. It is for us to change all this. Our consistent example will be enough. Thus far we have been known chiefly through that vital force which Slavery could only degrade, but not subdue. Now, at last, by the death of Slavery, will the Republic begin to live. For what is life without Liberty? Stretching from ocean to ocean, teeming with population, bountiful in resources of all kinds, rejoicing in that righteousness which exalteth a nation, and thrice happy in universal enfranchisement, it will be more than conqueror. Nothing too vast for its power, nothing too minute for its care. Triumphant over the foulest wrong ever inflicted, after the bloodiest war ever waged, it will know the majesty of Right and the beauty of Peace, prepared always to uphold the one and to cultivate the other. Strong in its own mighty stature, filled with all the fulness of a new life, and covered with a panoply of renown, it will confess that no dominion is of value that does not contribute to human happiness. Born in this latter day and child of its own struggles, without ancestral claim, but heir of all the ages, it will stand forth to assert the dignity of man, and wherever any member of the Human Family can be [Pg 145] succored, there its voice will reach,—as the voice of Cromwell reached across France, even to the persecuted mountaineers of the Alps. Such will be this Republic, upstart among the nations. Ay! as steam-engine, telegraph, and chloroform are upstart. Comforter and helper like these, it can

know no bounds to its empire over a willing world. But the first stage is the death of Slavery.

APPENDIX.

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This speech was made at a crisis in our foreign relations when they were watched with more than the wonted anxiety, which began with the hasty concession of belligerent rights, as early as May 13, 1861. Among painful incidents may be mentioned the affair of the Trent, with the attendant menace, the escape of the Florida, and then of the Alabama, the damage to our commerce by these British vessels, the report of other vessels building for the Rebels, the swarm of British blockade-runners with arms and powerful cannon, adverse speeches of British statesmen, offensive articles of the British press, and movements for the recognition of the Rebels as an independent power.

As early as March 4, 1861, Mr. Gregory gave notice in the House of Commons that on an early day he would call the attention of her Majesty's Government to the expediency of a prompt recognition of the Southern Confederacy of America. April 16, Mr. Gregory renewed his notice, and added a call for papers. This motion was afterward deferred from April 30 to May 13, and on May 16 until June 7, when it was finally postponed *sine die*. After that frequent debates occurred in both Houses of Parliament, involving the course of England to the United States. As late as June 30, 1863, in the summer before Mr. Sumner's speech, a long debate was started in the House of Commons by Mr. Roebuck, on presenting a petition praying the House to enter into negotiations with the great powers of Europe with the object of recognizing the independence of the Confederate States. To all these things was now superadded the open construction at Birkenhead of two powerful iron-clad war-vessels, known as the Rebel rams.

The country was alarmed, for the contribution of these powerful vessels to the Rebel navy was felt to be an open participation in the Rebellion. Foreign war seemed to menace. Mr. Sumner, in private correspondence with England during the summer, did not hesitate to say, that, in his judgment, the sailing of these Rebel rams from an English port, after the ample notice given, would be equivalent to a declaration of war by England, not unlike the seizure of the Spanish galleons or the bombardment of Copenhagen. Our diplomatic correspondence [Pg 147] shows a similar sentiment in important official quarters. July 11, Mr. Adams, our minister at London, after setting forth "a systematic plan of warfare upon the people of the United States carried on from the port of Liverpool, as well as in less degree from other ports in the kingdom," called the attention of Earl Russell to "the construction and equipment of a steam vessel of war of the most formidable kind now known," and intimated that such a proceeding would "be regarded by the Government and people of the United States with the greatest alarm, as virtually tantamount to a participation in the war by the people of Great Britain."[161] At different times he transmitted additional papers, showing the character of these vessels. Meanwhile one iron-clad ram, being launched, received her engines, and was engaged in receiving her coal, ready to depart, when, September 4, Mr. Adams, transmitting further testimony, begged permission to record, in the name of his Government, "this last solemn protest against the commission of such an act of hostility against a friendly nation."[162] On the same day he received a communication from Earl Russell, bearing date September 1, where, after setting forth the alleged insufficiency of the testimony against the vessels, he says: "Her Majesty's Government are advised that they cannot interfere in any way with these vessels."[163] The next day Mr. Adams replied: "I trust I need not express how profound is my regret at the conclusion to which her Majesty's Government have arrived.... It would be superfluous in me to point out to your Lordship that this is war. No matter what may be the theory adopted of neutrality in a struggle, when this process is carried on, in the manner indicated, from a territory and with the aid of the subjects of a third party, that third party, to all intents and purposes, ceases to be neutral. Neither is it necessary to show that any government which suffers it to be done fails in enforcing the essential conditions of international amity towards the country against whom the hostility is directed."[164] On the very day of this reply, Mr. Seward, at Washington, addressed Mr. Adams as follows: "Can the British Government suppose for a moment that such an assault as is thus meditated can be made upon us by British built, armed, and manned vessels, without at once arousing the whole nation and making a retaliatory war inevitable?... For the interest of both countries, and of civilization, I hope they will not let a blow fall from under their hands that will render peace impossible."[165] Mr. Beaman, in his essay on the [Pg 148] Alabama Claims, after examining this correspondence, says, it "shows, that, if these rams had been allowed to escape, peace between Great Britain and the United States would have been no longer possible."[166]

It is easy to see that the two countries were on the verge of war. Happily, this was avoided by a tardy act, made known to Mr. Adams by a note, under date of September 8: "Lord Russell presents his compliments to Mr. Adams, and has the honor to inform him that instructions have been issued which will prevent the departure of the two iron-clad vessels from Liverpool."[167] The Rebel rams were stopped.

Meanwhile Mr. Sumner had accepted an invitation to speak in New York on our foreign relations, at a time to be fixed by himself. Watching the course of events, and seeing clearly the alternative that presented itself to Mr. Adams and Mr. Seward, he wrote at the close of August, fixing September 10th for his speech; and here his purpose was twofold. Anxious to arrest the fatal tendency, he was not without hope that he might obtain a hearing in England, especially from the Cabinet, to most of whom he was personally known; but, if unsuccessful in this last frank effort for peace, then he trusted that his speech would be a vindication of his country on the issue forced by England, and an appeal to the moral sentiments of the civilized world. On this account he dwelt especially on Slavery, and the impossibility in a civilized age of recognizing a *new* power openly proclaiming this Barbarism as its corner-stone.

The reception of this speech at home was cordial and sympathetic; in England it was the reverse, although there were friendly exceptions. A few extracts from the American press will show the unison with Mr. Sumner, which becomes important in illustrating his position, and also the divergence of sentiment in the two countries.

The New York press was outspoken.

The *Herald* said:—

> "The very voluminous speech of Mr. Senator Sumner at the Cooper Institute, the other evening, in two or three points is a remarkable production. His exposure and denunciations of the hypocritical pleadings and false pretences of the British

Government, in justification of its sneaking and perfidious neutrality in this war, are well administered, and, considering the rapidly dissolving Davis Confederacy, these views of the learned Senator at this time can hardly fail to make a decided sensation, not only upon the public mind of England, but upon the rhinoceros hides of the British Cabinet.... [Pg 149]

"But the whole of this exhaustive and exhausting discourse of the inexhaustible Senator is spoiled by his venomous and rabid denunciations of African Slavery. In view of this peculiar Southern institution he becomes as fierce and remorseless as a vicious bull, when a piece of red flannel is flaunted before his eyes."

The *Times* said:—

"We give up one half of the entire surface of to-day's issue of the *Times* to the important speech upon our Foreign Relations delivered by Senator Sumner in this city last night. The subject at the present moment is one of such deep public interest, and of such overshadowing national importance, that we believe we cannot do a greater service than by giving in full the views of one who, by his official position as Chairman of the Senate Committee on Foreign Affairs, by his relations with some of the foremost publicists of England and France, and by his intimate knowledge of the whole subject, is capable of speaking with intelligence, if not with authority.

"We can give no analysis or estimate of the discourse at this moment, as it was a late hour of the night before he concluded its delivery; but every intelligent citizen will doubtless give due study to its views and statements, which, we need not say, are set forth in a style highly ornate, yet lucid, and distinguished by all the characteristics of a professed orator."

The *Evening Post* said:—

"It is a very important subject, treated by him with great ability and knowledge, and in a manner which must leave little to be added by the diligence of others. It was listened to with profound attention and frequent expressions of interest and approbation by one of the most closely packed audiences which the hall at Cooper Institute ever contained."

Horace Greeley, in a contribution to the *Independent*, said:—

"Mr. Sumner's speech is not, therefore, a mere rehearsal and arraignment of national wrongs already endured. It is a protest and a warning against those which are imminently threatened. In showing how deeply, flagrantly, France and England have already sinned against us, he admonishes them against persistence in the evil course on which they have entered, against aggravating beyond endurance the indignities and outrages they have already heaped upon us.... Mr. Sumner's is the authentic voice, not of the mob, but of the people. He utters the sentiments of the conscientious, the intelligent, the peace-loving. His inoffensive protest against the wrongs to which we have been subjected is utterly devoid of swagger or menace. It is a simple, but most cogent demonstration, by the application thereto of the established principles of International Law, of the systematic injustice to which we as a people have been subjected. A miracle of historical and statesmanlike erudition, his address is severe without being harsh,—an indictment judicial in its calmness, its candor, its resistless cogency." [Pg 150]

The *Boston Journal* said:—

"We trust no one will be deterred by its length from reading Mr. Sumner's speech on our Foreign Relations; and we are sure that no one will be, who fairly enters upon the subject.... The speech is the most able and elaborate ever delivered by Mr. Sumner, and will be read with great interest abroad as well as in this country. Let us hope that it will help to open the eyes of the people of England and France to the treachery of their rulers to the progress of civilization and the spirit of the age."

Then, in another article, the same journal said:—

"The recent speech of Mr. Sumner meets with the warmest expressions of commendation from all quarters, excepting, of course, the journals which are wedded to the interests of Slavery.... The speech was, in fact, timely, and, while it was designed primarily to communicate facts of the gravest interest to the people of the loyal States, it will have the secondary and not less important effect of making an impression upon the Cabinets of England and France. The fairness, candor, earnestness, and ability with which great questions of international rights are discussed by a statesman so well known abroad and so much respected as Mr. Sumner must secure for the speech an attentive perusal by those who shape public opinion in the Old World."

A correspondent of the *Boston Journal*, calling himself "An European Democrat," wrote:—

"The speech of Senator Sumner at the Cooper Institute will produce a startling effect in Europe. It may safely be asserted that the opinions of that gentleman upon international politics are received with greater favor in England and France than those of perhaps any other American statesman. He is regarded as most liberal and cosmopolitan in his views; his acquaintance with leading public men in both countries is known to be alike extended and intimate; and such declarations, therefore, as those to which he gave utterance last Thursday evening will necessarily have extraordinary weight in political and commercial circles."

The *Transcript*, of Boston, said:—

"The great speech of Senator Sumner upon the Foreign Relations of the United States will command the attention of all intelligent men in Europe and America. It is a thorough and exhaustive discussion of English and French diplomacy, so far as either bears upon the present war. The effect of the complete exposition of the policy of Great Britain with regard to Slavery since 1807, proving, by clear and irrefragable historical instances, the apostasy of the existing ministry to the high principles so long maintained, must be great [Pg 151]

among all reflective Englishmen.... Mr. Sumner's comprehensive views of International Law, the extensive learning with which he enriches the discussion of it, his convincing logic and kindling eloquence, together with the results he reaches, make this address one of great importance, and cannot but exert the most beneficial influence in this country and in Europe."

The *Independent*, of New York, in a leading article entitled "Sumner and Burke," presented an elaborate parallel between the recent speech and that against Warren Hastings.

> "The trial of Hastings was really a trial of England herself. So Burke evidently felt it. The bill of charges and the speech upon them was more of an appeal against the rulers of England than the despot of India.... As he arraigned England against herself, so does Sumner. As he sought to flatter her to the right by appeals to her highest professions and practices against the swift current of her ruling passions and purposes, so does Sumner. As he failed in his attempt, so, we fear, will Sumner.... Grander is his position, as well as his appeal, than those of Burke. He stood before a House of British nobles: Sumner stands before the Congress of Nations. Burke impeached the conduct of a satrap: Sumner the heads of powerful nations. Burke denounced him in the name of justice and law outraged by his abuse of subject provinces: Sumner denounces England in the interests of outraged internationality and humanity, for her conduct toward a free and equal nation engaged in casting out the devils that Britain's lust of gold and power had forced upon her in the days of her helplessness. He has constrained the haughty powers to appear at the bar of the Nations. The world will hear his plea, and give him the verdict."

Zion's Herald, of Boston, an able religious journal, said:—

> "This speech is not hostile in its tone, unless our transatlantic friends see fit to make it so. It is a grand effort in behalf of those principles which are to underlie our renovated nationality; it is a noble assertion of our rights against wrongs which are emphatically condemned by the best minds of England and France themselves. If our sister nations will heed this appeal, and cease to give the support hitherto accorded to our foes, it is not too late for them to gain thereby the friendship of our people and the praise of mankind; but if any European power should now directly espouse the cause of the Rebellion, the responsibility of war will rest with them and not with us; and even if they continue to grant the Rebels their sympathy and moral support, the severe words of Mr. Sumner will be but a faint expression of the infamy to which an indignant posterity will consign them."

The New York correspondent of *The Congregationalist*, at Boston, wrote:—

> "The whole country owes Mr. Sumner a debt of gratitude for this timely, thorough, and weighty exposition of our Foreign Relations. Its facts and arguments must produce a strong impression upon the popular mind in England; and every American who has friends abroad should hasten to put in circulation in Great Britain as many copies of the speech as he can command. Its tone, at once dignified, firm, and conciliatory, will help our cause wherever it is read, while it cannot fail to ally to us all who really value truth and honor between nations, and who abhor Slavery and its abettors." [Pg 152]

Numerous letters, in harmony with the press of the country, attested the extent to which Mr. Sumner was sustained, being spontaneous testimony to the prevailing sentiment. Written as they were for the purpose of sympathy and encouragement, they show the general conscience and intelligence. Prompted by the speech, and relating exclusively to it, they may be considered among its incidents. The warm appreciation of Mr. Sumner's service was less important than the aspiration for country and for mankind which they disclosed.

Mr. Seward wrote from the Department of State:—

> "I have read your address on Foreign Relations without once stopping.
>
> "You have performed a very important public service in a most able manner, and in a conjuncture when I hope that it will be useful abroad and at home....
>
> "You are on the right track. Rouse the nationality of the American people. It is an instinct upon which you can always rely, even when the conscience that ought never to slumber is drugged to death."

Mr. Chase wrote from the Treasury Department:—

> "In spite of finest print almost illegible, I have read your great speech from beginning to end. It is a noble effort, quite worthy of you. It exhausts the whole subject, leaving nothing even for a gleaner. I shall await with curiosity, not unmixed with anxiety, the rebound from Europe."

Hon. Thomas Corwin, Minister Plenipotentiary in Mexico, wrote:—

> "I cannot withhold my mite of praise for the truly masterly manner and matter of the whole pamphlet. Your country, Europe, all Christendom, and Heathendom too, are your debtors."

Hon. Christopher Robinson, Minister Plenipotentiary in Peru, wrote:—

> "I have read it with great attention, and with the highest pleasure, for the principles it announces, the facts it narrates, and the firm and manly discussion of them. As an explanation of the great principles of International Law applicable to the nefarious Rebellion, it will open the eyes of the American people to the important fact, that, in all its disguises, English and French policy has wilfully ignored the principles of justice and liberty which the Government of the United States are struggling to maintain." [Pg 153]

Hon. Horatio J. Perry, Secretary of Legation at Madrid, wrote:—

"Your noble effort was well timed. I have had portions of it reproduced in the Spanish press with the best effect. Another part will reappear here in a more durable form, which I shall take pains to send you.

"These admonitions of yours to the European powers have always been of the highest possible service. Whatever necessity there may have been (and there has been necessity) for our diplomatic representatives to act with consummate prudence in our direct intercourse with the courts hostile to us, it was no less necessary that the voice from home, the utterances of our Houses of Congress, of our leading Senators, should be bold and unsubdued,—confidence in ourselves and in our cause, above all, the consciousness of right, and the evidence that we were not afraid."

Professor Charles D. Cleveland, Consul at Cardiff, wrote from his consulate:—

"I need hardly say with what pleasure I read your recent speech at New York. Though Earl Russell did not like some things in it, *it evidently did him much good*. I think I saw clearly that he FELT the force of your arguments; for, if you will notice, it was not till after your speech had reached this country, and after quotations were made from it in papers friendly to us, that the more decided orders were given to stop the Rebel rams in the Mersey."

The latter statement is confirmed by a despatch of Mr. Adams to Mr. Seward, dated October 16, where he says: "The Government has, within the past week, adopted measures of a much more positive character than heretofore to stop the steam-rams."[168]

Hon. T. O. Howe, Senator of the United States, wrote from Wisconsin:—

"Stopping here, where I am to speak this evening, I cannot refrain from telling you that I approve it. How much I approve it I am utterly unable to tell you.

"Such conciseness of statement, such fulness of research, such wealth of illustration, such iron logic, heated, but unmalleable, I really do not think are to be found in any other oration, ancient or modern.

"To me it seems bursting with new and most inspiring ideas. But even when you deal with ideas which are not new, but old and familiar, you present them in words so marvellously chosen that they are themselves giant forces.…

"No single man has ever so grandly struggled against the barbaric tendencies of a frightfully debauched generation. I cannot certainly foresee the future; you may be worsted in this encounter; but I know the world will be the better for it." [Pg 154]

Hon. Henry B. Anthony, Senator of the United States, wrote from Providence:—

"I suppose you are tired of compliments about your great speech. Everybody says it is one of the best things that even you have done. It must have a large and beneficial effect, not only here, but in Europe, where your reputation will secure for it the consideration of those who control public affairs and mould public opinion."

Hon. Samuel S. Blair, a Representative in Congress from Pennsylvania, wrote:—

"I have just read your New York speech on our Foreign Relations, and most cordially thank you for a statement of our cause which ought to give us the verdict of the civilized world."

Hon. Joshua R. Giddings, for so many years eminent as Antislavery champion in Congress, and then Consul-General at Montreal, wrote:—

"I have just read your lecture at Cooper Institute. That production excites in my heart the deepest gratitude and the highest pleasure."

Hon. Simon Cameron, who had recently returned from Russia, where he had been Minister, wrote:—

"It is a masterly production of a master mind, and if you had never made a single mental effort before, or if you should cease from this moment to enjoy the power of speech, it would stand as a monument unrivalled among the many great productions of American and British statesmen. It is unanswerable. Its influence, like all great ideas founded on truth, may be comparatively slow, but it is already acting over the world, and in a brief period it will be so potent that men and nations will be ashamed to avow a belief in any other code of morals."

Rev. William H. Furness, the accomplished Unitarian preacher of Philadelphia, wrote:—

"I have no words to express my sense of the large familiarity with human affairs, and of the conscientious fidelity which it shows. If you had done nothing else for the past year but prepare that, I should hold you to be a miracle of work. It is impossible it should not tell. It indicates a statesmanship fitting the grandeur of our unequalled cause."

Dr. Henry I. Bowditch, of Boston, eminent in the medical profession and as an Abolitionist, wrote:—

"Allow me to express to you my most hearty thanks for your noble, and, as it seems to me, unanswerable, speech at New York. It is truly statesmanlike, and I regard it in that light as one that will last longer and have more effect than any delivered by any one in this country since the war began. It must have a wide influence in Europe. I thank you, therefore, most heartily for it. It will aid mightily public sentiment in England, and *tend* to force the Government of that country, for consistency's sake, at least, to deal more fairly." [Pg 155]

Parker Pillsbury, the earnest Abolitionist, wrote from Concord, New Hampshire:—

"When a nation is expressing its admiring gratitude for your recent masterly oration on our Foreign Relations, what place or what need for my feeble utterance remains? And all the nations will thank you, as they shall read, in present and coming time, this chapter in

the new political dispensation. It is a scripture for the ages."

Hon. Amasa Walker, formerly a Representative in Congress, a Vice-President of the American Peace Society, devoted to the cause of peace, and a writer on political economy and finance, wrote:—

> "It is the grandest thing you have yet done, if I am qualified to judge. I think it cannot fail to exert a great influence at home and abroad. I am quite anxious to find out how it is received in England, and am much mistaken, if it does not produce a great impression.
>
> "The friends of our Government will be greatly delighted at it, our enemies greatly annoyed by it.
>
> "I have the impression that there is no speech of any American statesman, that has ever been printed, that will secure such a lasting reputation, and be so often referred to in the future, as this."

Hon. George R. Russell, of various experience, who had recently returned from Europe, wrote:—

> "I have often thought of writing you about your speech on our Foreign Relations, which I read with much attention, and decided that it was the best that could be said. I met a friend of ours a few evenings since, and he told me that he had said to you that you made a great mistake in assailing England as you had done. I met him with the rejoinder, that you had hit the nail on the head, that the proofs of change we see daily are in consequence of your attacks, and that, instead of upbraiding you, we owed you our heartfelt thanks for the good you had done."

Brigadier-General Saxton, of the United States army, wrote from his station at Beaufort, South Carolina:—

> "I can hardly express to you the intense satisfaction and delight with which I read your great oration delivered in New York. In my humble opinion you have rendered a great service to our country and to humanity. The words of truth and wisdom which you have spoken cannot fail to command the attention and respect of the statesmen of England as well as of this country." [Pg 156]

Captain George Ward Nichols, of the United States army, wrote from his station at Milwaukee:—

> "I hardly know what to say of this eloquent exposition, so full of righteous indignation, terrible denunciation, exhaustive research, unanswerable argument,—so abundant, so powerful, and so eloquent in the cause of humanity. It seems to me like a timepiece, which, with unfailing faith, I consult to mark the hour in a stormy day, unmindful of the wondrous art and wit which combine this perfect whole. I thank you more than I can say for this noble speech. It is already a part of the history of this momentous time. It is as much a fact as is Gettysburg or Vicksburg."

George Baty Blake, Esq., a banker of Boston, wrote:—

> "I have read attentively your speech made in New York, and, let me say, I think it exactly suited to the occasion; and if it finds circulation in Great Britain, it cannot fail to do us much good in our foreign relations. Plain speech with John Bull, and to the point frankly, is what always proves most effective with him, in my experience."

The late James A. Dix, editor of the *Boston Journal*, declared his sympathies:—

> "I cannot resist the temptation to express the pleasure which the perusal of your speech on our Foreign Relations has afforded me. I do not think it extravagant to say that it is the ablest speech ever delivered in this country. Certainly it is the ablest of any with which it could appropriately be compared. In the number, value, interest, and importance of its historical facts and precedents, in the apt use of materials derived from laborious research, and in the lucid treatment of the topics discussed, it is unsurpassed."

Major B. Perley Poore, for a long period connected with the press, wrote from his country home:—

> "If human gratitude be among the number of our national virtues, the highest honors should contribute to reward you for your address on Foreign Relations, so replete with patriotism, learning, and practical knowledge, knowledge of public law and the practice of nations, a thorough acquaintance with civil government and the great question of Freedom which underlies and overtops everything else. I have read it twice in the small type of the *Journal*."

Pliny Miles, the writer on Postal Affairs, wrote from London to President Lincoln, who forwarded the letter to Mr. Sumner:—

> "Mr. Sumner's late speech in New York has arrived here in the journals, and is attracting a great deal of attention. Quotations and extracts are made from it in the leading liberal papers; but really the whole speech ought to be printed here, and circulated in pamphlet form. If sent to all the members of both Houses of Parliament and to the press, I think it would do great good." [Pg 157]

Daniel R. Goodloe, for a long time connected with the press, then of Washington and afterwards of North Carolina, wrote:—

> "I regard Lord Russell's speech at Blairgowrie as a reply to yours; and the country is indebted to you for the important concessions he makes, and for the greatly modified tone in which he speaks of our affairs."

Hon. A. C. Barstow, formerly Mayor of Providence, wrote:—

> "I returned from Washington this morning. Have read your speech with great satisfaction. I think you have touched the public pulse more widely than ever before."

The speech had a different reception in England, being criticized by the press, and by Earl Russell in a public

speech.

The New York correspondent of the London *Standard* called Mr. Sumner "the mouthpiece of the President," and said that the speech "had been carefully examined by the President, and was analyzed by the confidential members of the Cabinet, before being let off to the public in this great city." This was a mistake. Neither the President nor any of his Cabinet had seen a line of the speech.

Its delivery was reported by the London *Times* of September 22d, in a telegraphic despatch from Greencastle, in Ireland:—

> "He denounced the conduct of the British Government in permitting the building of war steamers in British ports for the Confederates and recognizing on the part of the South any belligerent rights upon the ocean. He disbelieved that either France or England would intervene in favor of a state that based itself upon Negro Slavery, and asserted that all intervention in the internal affairs of another nation was contrary to law and reason, unless such intervention were obviously on the side of human rights."

The *Times* followed with an elaborate leader, undertaking to correct statements of law and fact, dwelling especially on the allegation, that, without the concession of belligerent rights, the supply of munitions of war to rebels would have been a violation of English law. Here Mr. Sumner had the authority of the English Law Lords in Parliament, openly declaring that without such concession the building of a Rebel ship in England would have been under the penalties of piracy, and it is difficult to see why a corresponding penalty would not have followed the supply of munitions of war. In each case the article is supplied for offence against a friendly power. Sir George Cornewall Lewis, remarkable for learning and good sense, has said: "The law of England recognizes the principle of protecting a foreign government by its own municipal regulations"[169]; and he refers to the trials for libels on foreign sovereigns, and also to the proceedings in 1858 against Simon Bernard, the Frenchman, indicted for a plot to assassinate the Emperor Louis Napoleon, in supplying the grenades used by Orsini in his attempt. In the latter case, Lord Chief Justice Campbell said to the jury: "If you believe that he, as there is strong evidence to show, being acquainted with Allsop's views, and knowing that Allsop had got these grenades, *assisted in having them, transported to Brussels,—if you believe that he bought in this country the materials for making the fulminating powder with which these grenades were charged*,—if you believe, that, living in this country, and owing a temporary allegiance to the sovereign of this country, *he sent over the revolvers* with the view that they should be used in the plot against the Emperor of the French, … it will be a fair inference, I think, to draw, that he had a guilty knowledge of that plot."[170] Though this judgment was in the case of a conspiracy to take the life of a foreign sovereign, it is not easy to see why the same principle is not applicable to a conspiracy against a friendly power. To this case may be added the authority of Lord Lyndhurst, who laid it down in debate, with the concurrence of other Law Lords, that a conspiracy in the United Kingdom, either by native subjects or aliens, to do any act, either at home or abroad, tending to embroil the Government with that of any foreign country, is a misdemeanor.[171] Is a rebellion without belligerent rights different from a conspiracy? Its nature was changed by the Queen's Proclamation, which not only helped the Rebels, but created a new set of customers.

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The character of the leader in the *Times* appears in its conclusion:—

> "We believe our readers have by this time had enough of the logic of Mr. Sumner. It is based neither on law nor on fact, but upon his own sympathies and antipathies, which he is pleased to assume must also be ours, on the supposition, which we do not admit, that the North are obviously in the right, and on the inference, which we refuse to draw, that, even if the North are in the right, we are bound to violate the laws of neutrality in order to assist them."

The *Daily News*, of London, in its first notice, said:—

> "He spoke under the impression that the English Government was about to permit the Confederate iron-clads to leave this country, and he interpreted their previous policy by this supposed breach of neutrality. Every candid man will make allowance for words spoken under provocation, and distinguish them from the utterances of settled malevolence, such as we were accustomed to hear from the American statesmen now at Richmond, and still hear from their allies in the Northern States."

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In a second article, the same journal criticized the speech at length, saying:—

> "It is a strange delusion. It makes one wonder whether it is still possible that a republican legislator, now blinded by panic and perplexed by jealousy, should even yet recover his sense and temper, and see the case as others see it.… Instead of using his influence, as the friend of many Englishmen, to bring the two peoples to a clear understanding, and the calm temper which arises out of it, he has nourished and propagated a delusion, and has applied all his powers of influence and eloquence to raise and kindle the passions of his countrymen against a nation which, if not accustomed to flatter, is capable of a sound and durable friendship with a people exhibiting such qualities as the citizens of the Free States are manifesting now. The American people have nothing to fear from us, while they treat us justly. We believe that Mr. Sumner knows this as well as we do, however he may be for the hour beguiled into passion and error."

The *Scotsman*, of Edinburgh, said:—

> "The splendid oration which he delivered at New York on the 10th inst., though full of a strange injustice towards ourselves, ought not to lessen our love for the man, and will increase our admiration of the orator and philanthropist; but, if there was any idea that Mr. Sumner could reason clearly as well as feel rightly and speak eloquently, that idea will be dissipated. All the multitude of eloquent and burning words which he pours forth against Slavery will here find ready echo; and even when he enters on accusations against this country, as having 'intermeddled on the side of Slavery,' it will be felt that he speaks in the spirit, not of a mean and jealous enemy, but of a high-minded, though mistaken friend. But no non-American man can fail to perceive that there is a grand mistake lying at the root of all the complaints he makes against us: he would have Great Britain in her national capacity to deal with American affairs according to moral

sentiments as distinguished from political rules, and he condemns her for doing what he did himself and is doing still.... He tries, indeed, to make a difference between the hypothetical Confederate States and all other Slave States, including the late United States. They will, he says, form a '*new*' Slave Power. He forgets, that, though the Power may be new, the Slavery will be old."

The Manchester *Guardian* said:—

"We receive by the last steamer from New York the report of a speech recently delivered by a person of great consideration in the councils of the present Government at Washington, who maintains that the favor already given to the Confederacy by England deserves the execration of humanity, and supplies, if necessary, abundant cause for war. The speaker to whom we allude is Mr. Charles Sumner, the President of the Committee of the Senate on Foreign Affairs. He denounced, we are told, as 'a betrayal of civilization,' England's recognition of the Confederate States as belligerents, and her proclamation of neutrality. *The absurd injustice of this often repeated complaint is sufficiently shown by the simple observation, that, in recognizing the belligerent rights of the South, we did exactly what the Federal Government itself did*, and has continued to do from the commencement of the war. We did, moreover, what no power could have avoided, without absolutely intending to take a direct part in the subjugation of the seceding States. But Mr. Sumner correctly appreciates the consequences of this course, as adopted by ourselves and France, in perceiving that it insured to the South the free exercise of all the power of making war from its own resources which an independent state could possess." [Pg 160]

The *Economist*, of London, a weekly journal, in an article entitled "Mr. Sumner's Speech at New York," among many remarks of bad temper and doubtful candor, said:—

"Mr. Charles Sumner has been delivering a speech before a crowded audience in New York which will cause much pain and disappointment to all friends and well-wishers of the Federal United States. It is weak in argument, unfair and unjust in its representations, and bitter in tone and temper. If men of Mr. Sumner's education and position in America really believe the things they say and indulge the feelings to which they give utterance, it is clearly hopeless to attempt either to enlighten their understanding or to allay their irritation....

"Two other considerations will fully justify us in describing Mr. Sumner's address as marked by the most distinctly unfair and unfriendly *animus* toward this country. The first is, that he has carefully avoided doing the slightest justice to the strong Antislavery feeling which prevails among us, and even insinuates a disposition to favor the slave empire of the South....

"Finally, what construction is to be placed upon the remarkable circumstance, that, throughout his whole address, while endeavoring to rouse the wrath of his countrymen by a vicious enumeration of the supposed offences of Great Britain, he says not a word against France, which has participated in nearly all, and added others of her own? He charges us with hostile designs, because we recognized belligerent rights in the Confederates; but he utters no word of complaint against France, who recognized these at the same date and in the same terms."

Referring to Mr. Sumner's speech, it will be seen how untrue is the statement that he said "not a word against France"; nor is it true that he was unjust to "the strong Antislavery feeling" which had done so much honor to English history, although he lamented that it was impotent to save England from fatal concession to Rebel Slavery. [Pg 161]

There was a critical spirit in the provincial press. The Halifax *Reporter*, in Nova Scotia, said:—

"Mr. Sumner, whose judgment is evidently warped by his abhorrence of Slavery, seems to expect that England should look upon the North as waging the war on behalf of human liberty. It is obvious he considers, that, in recognizing the Confederates as belligerents, her statesmen have exhibited a sympathy with slaveholders which is unjustifiable....

"Mr. Sumner is peculiarly wrathy that any portion of the British people should have been allowed to give aid and comfort to the Rebels by affording them supplies of various kinds."

The *Globe*, at Toronto, said:—

"He reviews the whole transactions between England and the United States since the commencement of the civil war with great warmth, beginning with the proclamation of neutrality and ending with Mr. Laird's rams, and tortures every action of the British Government into a manifestation of unfriendliness towards the Republic. We expected from Mr. Sumner more enlightened consideration for the circumstances in which the English people have been placed, and some acknowledgment of the provocation they have received from this side of the Atlantic....

"There is only one excuse for Mr. Sumner. As an Abolitionist, he has been accustomed to look to England for sympathy and aid, and he is disappointed to find so many enemies where he supposed he would see none but friends. This feeling should not prevent him, however, from doing justice as a publicist, nor, as a statesman, from pursuing the course most wise and expedient at the moment."

In a different tone, the *Morning Star*, of London, the constant friend of the national cause, said:—

"The Hon. Charles Sumner has not belied the confidence inspired by a long and illustrious career. He is as firmly as ever the friend of peace, and especially of peace between Great Britain and America. The eloquent voice which has so often employed the

stores of a richly furnished mind in persuasives to international amity has not, as the telegrams suggested, been inflamed by the heat of domestic conflict to the diffusion of discord between kindred peoples. His speech at New York on the 10th of September is, indeed, heavy with charges against France and England. But it is an appeal for justice, not an incentive to strife. It is a complaint of hopes disappointed, of friendship withheld, of errors hastily adopted and obstinately maintained. It is, however, an argument which does honor even to those against whom it is urged, and which aims to establish future relations of the closest alliance. Senator Sumner's chief reproach is this,—that we have [Pg 162] acted unworthily of ourselves, unfaithfully to our deepest convictions and best memories....

"There runs through the whole of Mr. Sumner's gigantic oration—far too long to have been spoken as printed, but yet without a word of superfluous argument or declamation—an idea on which we can now only touch. From the first sentence to the last, Slavery is present to his mind. It colors all his reasoning. It inspires him to prodigious eloquence. Not merely as the Senator for Massachusetts, the honored chieftain of the political Abolitionists, but as Chairman of the Committee on Foreign Relations, he sees everywhere the presence of the Slave Power. Against it he invokes, in periods of classic beauty and of fervid strength, all the moral forces of the mother country. To England he makes a passionate and pathetic appeal—more for her own sake than that of the slave, more for the sake of the future than of present effects—that she withdraw all favor and succor from Rebel slave-owners."

The *Northern Whig*, of Belfast, Ireland, noticed especially the statement on *ocean* belligerence:—

"One point, however, on which Mr. Sumner dwells, is of such urgent present importance as to make the reproduction of his remarks, at such length as our space allows, desirable. We refer to his criticism of the claims of the Confederates to belligerent rights *at sea*. Whether the ground which Mr. Sumner takes on this question be or be not tenable, whether the authorities and examples by which he supports it really make out his case, is a matter not to be decided summarily. His argument is, beyond dispute, a most masterly one, and deserves the careful attention of the English Government and its legal advisers, and will, no doubt, engage the ingenuity of writers upon International Law."

These expressions of opinion show something of the extent to which Mr. Sumner was sustained, and also the British criticism he encountered. To the latter must be added an unexpected episode.

Earl Russell was on a visit to Scotland when Mr. Sumner's speech arrived. Being entertained at a public dinner in the Town-Hall of Blairgowrie, September 26th, he took that occasion to review the questions of the war, and especially to answer Mr. Sumner, thus making a new precedent. It is not known that any European statesman ever before made a speech criticizing a speech in another country. The part relating to us was approached by the remark, "I am speaking of what has occurred in what a few years ago were the United States of America"; and then, towards the end, he says, "The people of what were the United States, whether they are called Federals or Confederates."

The following passages belong to this answer.

"It was impossible to look on the uprising of a community of five million people as a [Pg 163] mere petty insurrection ['*Hear! hear!*"], or as not having the rights which at all times are given to those who, by their numbers and importance, or by the extent of the territory they possess, are entitled to these rights. [*Cheers.*] Well, it was said we ought not to have done that, because they were a community of Slaveholders.

"Gentlemen, I trust that our abhorrence of Slavery is not in the least abated or diminished. [*Loud and prolonged cheers.*] For my own part, I consider it one of the most horrible crimes that yet disgrace humanity. [*Cheers.*] But then, when we are treating of the relations which we bear to a community of men, I doubt whether it would be expedient or useful for humanity that we should introduce that new element of declaring that *we will have no relations with a people who permit Slavery to exist among them. We have never adopted it yet, we have not adopted it in the case of Spain or Brazil, and I do not believe that the cause of humanity would be served by our adoption of it.* ['*Hear! hear!*"]

"Well, then it was said that these Confederate States were Rebels,—Rebels against the Union. Perhaps, Gentlemen, I am not so nice as I ought to be on the subject. But I recollect that we rebelled against Charles the First [*a laugh*], we rebelled against James the Second, and the people of New England, not content with these two rebellions, rebelled against George the Third. [*'Hear!' and laughter.*] ... But, certainly, if I look to the declarations of those New England orators,—and I have been reading lately, if not the whole, yet a very great part, of the very long speech by Mr. Sumner on the subject, delivered at New York,—I own, I cannot but wonder to see these men, the offspring, as it were, of three rebellions, as we are the offspring of two rebellions, really speaking, like the Czar of Russia, the Sultan of Turkey, or Louis the Fourteenth himself, of the dreadful crime and guilt of rebellion. [*Loud laughter and cheers.*] ...

"I said, that in America, although there were some of the local courts which had not the authority of such men as Lord Stowell and Sir William Grant, yet there was a Court of Appeal, there was a Supreme Court, in the United States, which contained, and had for many years contained, men as learned and of as high reputation in the law and of as unsullied reputation for integrity as any that have sat in our English courts of justice, and that we ought to wait patiently for the decision of those tribunals. Now what is my surprise to find, and what would be your surprise to find, that Mr. Sumner is so prejudiced that he brings these declarations of mine against me, saying *that I have diminished the reputation of the American Courts*, and that I showed myself biased

against the Federal States, by the declaration I then made in Parliament! [*A gentleman from the Southern States among the company here ejaculated, 'He is not to be believed.'*]

"I will not detain you further on these subjects; but one remark I must make on the general tendency of these speeches and writings in America. The Government of America discusses these matters very fairly with the English Government. Sometimes we think them quite in the wrong; sometimes they say we are quite in the wrong; but we discuss them fairly, and with regard to the Secretary of State I see no complaint to make. I think he weighs the disadvantages and difficulties of our situation in a very fair and equal balance. But there are others, and Mr. Sumner is one of them, his speech being an epitome almost of all that has been contained in the American press, by whom our conduct is very differently judged." [Pg 164]

In defending the concession of belligerent rights to Rebel Slavery, Earl Russell forgot two things: first, that the Rebels, whatever their numbers, were without ports or Prize Courts, and therefore unable to administer justice on the ocean, which was essential to the protection of neutrals, and, in the nature of things, the condition precedent of any such concession; and, secondly, he forgot, that, whatever might be the traditional relations with existing nations "permitting Slavery to exist among them," it was now proposed, for the first time in history, to recognize a rebel community seeking to found a new nation whose declared corner-stone was Slavery, which Mr. Sumner insisted was contrary to good morals and the Antislavery principles so constantly and loftily avowed by England.

On another occasion Earl Russell seems to have laid down a rule requiring Prize Courts, as will be seen in Mr. Sumner's speech.[172] He insisted that vessels seized should be tried in a Prize Court. If this rule is correct, how vindicate the award of belligerent rights to a community without Prize Courts? Another question may also be asked: If Slavery be, as Earl Russell declared, "one of the most horrible crimes that yet disgrace humanity," how could England make any concession to Rebels whose single declared object of separate existence was this very crime?

The answer to Mr. Sumner on Prize Courts will be appreciated after reading the report in the London *Times*, June 16, 1863,[173] of what Earl Russell actually said in the House of Lords.

"With regard to the decisions in Prize Courts, I must say I lament that the Constitution of the United States is such, that, instead of being brought at once before the Court of Admiralty, where generally you have a very eminent judge to preside, perfectly well acquainted with the Law of Nations, *such cases go in the first instance before the District Courts*, then, I think, before a Circuit Court, and it is only after a considerable delay that they come before the Supreme Court of the United States. I say this, because I believe we should all very much respect a decision of the Supreme Court of the United States, and it is to be lamented that there should be a considerable delay before the judgment of that tribunal can be obtained."

The compliment to the Supreme Court of the United States, which, like the House of Lords and the Privy Council, is not a court of original jurisdiction in prize cases, will hardly excuse the reflection upon the District Courts, which are the Admiralty Courts of the United States,—especially when it is considered that those at Boston and New York, where the prize cases chiefly occurred, were administered at the time by judges who would compare favorably with the contemporary judge of the English Admiralty. Judge Sprague, of Boston, and Judge Betts, of New York, were "very eminent" and "perfectly well acquainted with the Law of Nations," although only judges of District Courts. [Pg 165]

The speech of Earl Russell was noticed by Mr. Adams, in a despatch to Mr. Seward, under date of October 1, 1863:—

"The event of the week has been the speech of Earl Russell at Blairgowrie, evidently drawn forth by the report of Mr. Sumner's address at New York."[174]

It was the subject of comment by the press of England and the United States. The sympathetic *Morning Star* said:—

"Mr. Sumner's oration has had an unexpected effect. It has stirred the phlegmatic nature of Earl Russell. The Foreign Secretary has replied from his Scottish retreat to the complaints and reproaches of the New England Senator. Absurdly contemptuous in his personal allusions to the distinguished Senator, Lord Russell confesses the force of his accusations by taking the trouble to reply to them.…

"It would also have been well, if our Foreign Secretary had included in his reply some notice of one of the most distinct and gravest of Mr. Sumner's complaints. The defence of our recognition of the Confederates as belligerents is without novelty. It is a simple repetition of the old statement, that our naval commanders required to be instructed whether they should respect the new flag or treat it as that of a pirate. Lord Russell does not touch the objection raised by Mr. Sumner, that the Confederates had no ocean navy, and could provide one only from neutral ports. Neither does his Lordship explain why the resolution to recognize the Confederates as belligerents was taken in the absence from this country of a Federal minister.

"But, notwithstanding these defects, Lord Russell's speech at Blairgowrie is an immense advance upon his previous utterances on the American Question. It is evident that he begins to perceive the real issue of the conflict, and rightly estimates the direction of British sentiment."

The Boston *Traveller* said:—

"Earl Russell has fallen into several grave errors in the course of his remarks. He has utterly misconceived the whole temper of Mr. Sumner's speech, when he says that 'it weighs the difficulties of the English Government in an unequal balance,' and that it is 'an epitome of almost all that has been contained by the press of America' on the subject of the ill-feeling against Great Britain and her neutrality, so generally prevalent among us. The feeling evoked by the belligerent articles of the New York *Herald* is one of far [Pg 166]

different character from that produced by Mr. Sumner's remarks. Lord Russell charges him with injustice to the English people. Had he read the speech to which he professes to reply with more care, there would have been found no ground to sustain such a charge."

In France the speech of Mr. Sumner was published in an abridged form, under the following title:—

"Les Relations Extérieures des États-Unis. Préface et Traduction abrégée par A. Malespine [of the *Opinion Nationale*]. Paris, 1863." 31 pp. 8vo.

The eminent historian, Henri Martin, writing in the *Siècle* on American affairs, alluded to the speech.

"We will not close these considerations without recommending to the readers of the *Siècle* the eloquent appeal addressed to public opinion by one of the greatest citizens of the United States, Charles Sumner, Chairman of the Committee of Foreign Relations in the American Senate. The French translation of this discourse on the *Foreign Relations of the United States* has just appeared. He treats here the question of foreign intervention in fact and in right, demonstrates in a victorious manner, according to our opinion, that the South had not the title to be admitted as a belligerent, and considers it impossible that France and England can recognize a political society founded on Slavery. We think to-day the cause gained. Neither the sons of '89 nor the country of Wilberforce will have this stain on their history."

These various testimonies at home and abroad, where criticism is not wanting, show that Mr. Sumner did not speak in vain. Evidently he obtained a hearing for the national cause.

OUR DOMESTIC RELATIONS: POWER OF CONGRESS OVER THE REBEL STATES.

Article in the Atlantic Monthly, October, 1863.

This argument was prepared as a speech on the resolutions of February 11, 1862, entitled "State Rebellion State Suicide, Emancipation and Reconstruction"; but the tardy success of our arms and the press of business caused its postponement, until, during the recess of Congress, it was thought best to print it as an article in the *Atlantic Monthly*. It was much discussed. Hon. Montgomery Blair, at the time a member of the Cabinet, in a speech at Rockville, Maryland, October 3d, replied to it at length, insisting that it was "the keynote of the revolution,"—"the programme of the movement,"—presenting "the issue on which the Abolition party has resolved to rest its hopes of setting up its domination in this country"; and in opposition to this "programme" he placed "that which is presented by President Lincoln," alleging that Mr. Sumner had directly arrayed himself against the President on a question of fundamental policy in the conduct of the war. The *National Intelligencer*, at Washington, in an elaborate leader, sustained the position of Mr. Blair.

From this time forward, the discussion proceeded in the press, in public meetings, and in Congress, followed by the measures of Reconstruction, including especially the requirement by Congress of the colored suffrage in the reorganization of the Rebels and in their new Constitutions,[175] all of which assumed the power of Congress.

At this moment our domestic relations all hinge upon one question,—How to treat the Rebel States. No patriot citizen doubts the triumph of our arms in the suppression of the Rebellion. [Pg 168] Early or late triumph is inevitable,—perhaps by sudden collapse of the bloody imposture, or perhaps by slower and more gradual surrender. For ourselves, we are prepared for either alternative, and shall not be disappointed, if constrained to wait yet a little longer; but when the day of triumph comes, political duties will take the place of military. The victory won by our soldiers must be assured by wise counsels, so that its hard-earned fruits shall not be lost.

The relations of the States to the National Government must be carefully considered,—not too boldly, not too timidly,—that we may understand in what way or by what process *the transition from Rebel forms may be most surely accomplished*. If I do not greatly err, it will be found that the powers of Congress, thus far so effective in raising armies and supplying moneys, will be important, if not essential, in fixing the conditions of perpetual peace. But there is one point on which there can be no question. The dogma and delusion of State Rights, as mischievously interpreted, which did so much for the Rebellion, must not be allowed to neutralize all that our arms have gained.

Already, in a remarkable instance, the President has treated the pretension of State Rights with proper indifference. Quietly and without much discussion, he has constituted military governments in the Rebel States, with governors nominated by himself: all of which testifies against the old delusion. Strange will it be, if this extraordinary power, amply conceded to the President, is denied to Congress. Practically, the whole question is opened here. Therefore to this aspect of it I ask your first attention.

Already four military governors have been appointed: one for Tennessee, one for South [Pg 169] Carolina, one for North Carolina, and the other for Louisiana. So far as known, the appointment of each was by simple letter from the Secretary of War. But if this can be done in four States, where is the limit? It may be done in every Rebel State; and if not in every other State of the Union, it will be simply because the existence of a valid State government excludes the exercise of this extraordinary power. Assuming, that, as our arms prevail, it will be done in every Rebel State, we shall then have *eleven* military governors, all deriving authority from one source, ruling a population amounting to upwards of nine millions. And this imperatorial dominion, indefinite in extent, will also be indefinite in duration; for, if, under the Constitution and laws, it be proper to constitute such governors, it is clear that they may be continued without regard to time,—for years, if you please, as well as for weeks; and the whole region they are called to sway will be a military empire, with all powers, executive, legislative, and even judicial, derived from one man in Washington. Talk of "the one-man power!" Here it is with a vengeance. Talk of military rule! Here it is, in the name of a republic.

The bare statement of this case may put us on our guard. We may well hesitate to organize a single State under military government, when we see where such step leads. If you approve one, you must approve eleven, and the National Government may crystallize into military despotism.

In appointing military governors of States, we follow an approved example in certain cases [Pg 170] beyond the jurisdiction of the National Constitution,—as in California and Mexico, after their conquest, and before peace. It is evident that in these cases there was no constraint from the Constitution, and we were perfectly free to act according to the assumed exigency. It may be proper to set up military governors for a conquered country beyond our civil jurisdiction, and yet it may be questionable if we should undertake to set up such governors in States that we all claim to be within our civil jurisdiction. At all events, the two cases are different, so that it is not easy to argue from one to the other.

In Jefferson's Inaugural Address, where he develops what he calls "the essential principles of our Government, and consequently those which ought to shape its administration," he mentions "*the supremacy of the civil over the military authority*" as one of these "essential principles," and then says:—

> "These should be the creed of our political faith, the text of civil instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty, and safety."[176]

Undertaking to create military governors of States, we reverse the policy of the Republic, as solemnly declared by Jefferson, and subject the civil to the military authority. If this has been done in patriotic ardor, without due consideration, in a moment of error or alarm, it only remains, that, according to Jefferson, we should "hasten to retrace our steps, and to regain the road which alone leads to peace, liberty, and safety."

There is nothing new under the sun, and the military governors we are beginning to appoint [Pg 171] find a prototype in the Protectorate of Oliver Cromwell. After the execution of the King and the establishment of the Commonwealth, the Protector conceived the idea of parcelling the kingdom into military districts, of which there were *eleven*, being precisely the number now proposed, under favor of success, among us. Of this system a great authority, Mr. Hallam, speaks thus:—

> "To govern according to law may sometimes be an usurper's wish, but can seldom be in his power. The Protector abandoned all thought of it. Dividing the kingdom into districts, he placed at the head of each a major-general, as *a sort of military magistrate*, responsible for the subjection of his prefecture. These were *eleven in number*, men bitterly hostile to the royalist party, and insolent towards all civil authority."[177]

Carlyle, in his Life of Cromwell, gives a glimpse of this military government.

> "The beginning of a universal scheme of Major-Generals, the Lord Protector and his Council of State having well considered and found it the feasiblest, —'if not *good*, yet best.' … 'It is an arbitrary government,' murmur many. Yes, arbitrary, but beneficial. *These are powers unknown to the English Constitution, I believe; but they are very necessary for the Puritan English nation at this time.*"[178]

Perhaps no better words could be found in explanation of the Cromwellian policy adopted by our President.

A contemporary republican, Lieutenant-General Ludlow, whose "Memoirs" add to the authentic history of those interesting times, characterizes these military magistrates as so many [Pg 172] "bashaws." Here are some of his words:—

> "The major-generals carried things with unheard-of insolence in their several precincts, decimating to extremity whom they pleased, and interrupting the proceedings at law upon petitions of those who pretended themselves aggrieved; *threatening such as would not yield a ready submission to their orders with transportation to Jamaica, or some other plantations in the West Indies*."[179]

Again, says the same contemporary writer,—

> "There were sometimes bitter reflections cast upon the proceedings of the major-generals by the lawyers and country gentlemen, who accused them to have done many things oppressive to the people, in interrupting the course of the law, *and threatening such as would not submit to their arbitrary orders with transportation beyond the seas*."[180]

At last, even Cromwell, at the height of his power, found it necessary to abandon the policy of military governors. He authorized his son-in-law, Mr. Claypole, to announce in Parliament, "that he had formerly thought it necessary, in respect to the condition in which the nation had been, that the major-generals should be intrusted with the authority which they had exercised; but, in the present state of affairs, he conceived it inconsistent with the laws of England and liberties of the people to continue their power any longer."[181]

The conduct of at least one of our military magistrates seems to have been a counterpart to that of these "bashaws" of Cromwell; and there is no argument against that early military [Pg 173] despotism which may not be urged against any attempt to revive it in our day. Some of the acts of Governor Stanly in North Carolina are in themselves an argument against the whole system.

It is clear that these military magistrates are without direct sanction in the Constitution or existing laws. They are not even "major-generals," or other military officers, charged with the duty of enforcing martial law, but special creations of the Secretary of War, acting under the President, and charged with universal powers. As governors within the limits of a State, they obviously assume the extinction of the old State governments for which they are substituted, and the President, in appointing them, assumes a power over these States kindred to his acknowledged power over Territories of the Union; but, in appointing governors for Territories, he acts in pursuance of the Constitution and laws, by and with the advice and consent of the Senate.

That the President should assume the vacation of the State governments is of itself no

argument against the creation of military governors, for it is simply the assumption of an unquestionable fact; but if it be true that the State governments have ceased to exist, then the way is prepared for the establishment of provisional governments by Congress. In short, if a new government is to be supplied, it should be by Congress rather than by the President, and it should be according to established law rather than according to the mere will of any functionary, to the end that ours may be "a government of laws, and not of men."

[Pg 174] There is no argument for military governors which is not equally strong for Congressional governments, while the latter have in their favor two controlling considerations: first, that they proceed from the civil rather than the military power; and, secondly, that they are created by law. Therefore, in considering whether Congressional governments should be constituted, I begin by assuming everything in their favor that is already accorded to the other system. I should not do this, if the system of military dictators were not now recognized; so that the question is sharply presented, which of the two to choose. Even if provisional governments by Congress are unconstitutional, it does not follow that military governments, without the sanction of Congress, can be constitutional. But, on the other hand, I cannot doubt, that, if military governments are constitutional, then surely the provisional governments by Congress must be so also. In truth, there can be no opening for military governments which is not also an opening for Congressional governments, with this great advantage for the latter, that they are in harmony with our institutions, which favor the civil rather than the military power.

Thus declaring deliberate preference for Congressional governments, I am sustained by obvious reason. But there is positive authority on this identical question. I refer to the recorded opinion of Chancellor Kent.

> [Pg 175] "Though the Constitution vests the executive power in the President, and declares him to be commander-in-chief of the army and navy of the United States, *these powers must necessarily be subordinate to the legislative power in Congress*. It would appear to me to be the policy or true construction of this simple and general grant of executive power to the President, not to suffer it to interfere with those specific powers of Congress which are more safely deposited in the legislative department, and that *the powers thus assumed by the President do not belong to him, but to Congress*."[182]

Such is the weighty testimony of this esteemed master on the assumption of power by the President, in 1847, over Mexican ports in our possession. It is found in the latest edition of his "Commentaries" that enjoyed the supervision of the author. Of course, it is equally applicable to the recent assumptions within our own territory. His judgment is clear in favor of Congressional governments.

In ordinary times, and under ordinary circumstances, neither system of government would be valid. A State in the full enjoyment of its rights would spurn a military governor or a Congressional governor. It would insist that its governor should be neither military nor Congressional, but such as its own people chose to elect; and nobody would question this right. The President does not think of sending a military governor to New York; nor does Congress think of establishing a provisional government in that State. It is only with regard to the Rebel States that this question arises. The occasion, then, for the exercise of this extraordinary power is found in the Rebellion. Without the Rebellion there would be no talk of any governor, whether military or Congressional.

Here it becomes important to consider the operation of the Rebellion in opening the way to this question. To this end we must understand the relations between the States and the National Government, under the Constitution of the United States. As I approach this question of singular [Pg 176] delicacy, let me say on the threshold, that for all those rights of the States which are consistent with the peace, security, and permanence of the Union, according to the objects grandly announced in the Preamble of the Constitution, I am the strenuous advocate at all times and places. Never, through any word or act of mine, shall those rights be impaired; nor shall any of those other rights be called in question by which the States are held in harmonious relations as well with each other as with the Union. But, while thus strenuous for all that justly belongs to the States, I cannot concede to them immunities inconsistent with that Constitution which is the supreme law of the land; nor can I admit the impeccability of a State.

From a period even anterior to the National Constitution, there has been a perverse pretension of State Rights, which has perpetually interfered with the unity of our Government. Throughout the Revolution this pretension was a check upon the powers of Congress, whether in respect to armies or finances, so that it was too often constrained to content itself with the language of advice or persuasion rather than of command. By the Declaration of Independence it was solemnly declared that "these United Colonies are, and of right ought to be, free and independent *States*" and that, as such, "they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent *States* may of right do." Thus, by this original charter, the early Colonies were changed into independent States, under whose protection the liberties of the country were placed.

Early steps were taken to supply the deficiencies of this government, which was effective only through the generous patriotism of the people. In July, 1778, two years after the Declaration, [Pg 177]

Articles of Confederation were ratified by nine States, but the assent of all was not obtained till March, 1781. The character of this new government, which assumed the style of "The United States of America," appears in the title of these Articles, which was as follows: "Articles of Confederation and Perpetual Union *between the States* of New Hampshire, Massachusetts Bay, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia." By the second article it was declared that "*each State retains its sovereignty*, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled." By the third article it was further declared that "the said *States* hereby severally enter into *a firm league* of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare." By another article, a "committee of the *States*, or any nine of them," was authorized, in the recess, to execute the powers of Congress. The government thus constituted was a compact between *sovereign States*, or, according to its precise language, "a firm league of friendship" between these *States*, administered, in the recess of Congress, by a "committee of *the States*." Thus did State Rights triumph.

But the imbecility of the Confederation, from this pretension, soon became apparent. As early as December, 1782, a committee of Congress made an elaborate report on the refusal of Rhode Island, one of the States, to confer certain powers on Congress with regard to revenue and [Pg 178] commerce. In April, 1783, an Address of Congress to *the States* was put forth, appealing to their justice and plighted faith, and representing the consequence of failure on their part to sustain the Government and provide for its wants. In April, 1784, a similar appeal was made to what were called "the several States," whose Legislatures were recommended to vest "the United States in Congress assembled" with certain powers. In July, 1785, a committee of Congress made another elaborate report on the reason why the States should confer upon Congress powers therein enumerated, in the course of which it was urged, that, "unless *the States* act together, there is no plan of policy into which they can separately enter which they will not be separately interested to defeat, and of course all their measures must prove vain and abortive." In February and March, 1786, there were three other reports of committees of Congress, exhibiting the failure of *the States* to comply with the requisitions of Congress, and the necessity for a complete accession of *all the States* to the revenue system. In October, 1786, there was still another report, most earnestly renewing the former appeals to *the States*. Nothing could be more urgent.

As early as July, 1782, even before the first report to Congress, resolutions were adopted by the State of New York, declaring "that the situation of *these States* is in a peculiar manner critical," and that "the radical source of most of our embarrassments is *the want of sufficient power in Congress* to effectuate that ready and perfect coöperation of *the different States* on which their immediate safety and future happiness depend."[183] Finally, in September, 1786, at Annapolis, commissioners from several States, after declaring "the situation of the United States delicate [Pg 179] and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy," recommended the meeting of a Convention "to devise such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union." In accord with this recommendation, the Congress of the Confederation proposed a Convention "for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union."

In pursuance of the call, delegates to the proposed Convention were duly appointed by the Legislatures of the several States, and the Convention assembled at Philadelphia in May, 1787. The present Constitution was the well-ripened fruit of their deliberations. In transmitting it to Congress, General Washington, who was the President of the Convention, in a letter, bearing date September 17, 1787, uses this instructive language:—

> "It is obviously impracticable, in the Federal Government of *these States, to secure all rights of independent sovereignty to each*, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and on the present occasion this difficulty was increased by a difference *among the several States* as to their situation, extent, habits, and particular interests. In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, THE CONSOLIDATION OF OUR UNION, in which is involved our prosperity, felicity, safety, perhaps our national existence." [Pg 180]

These famous words were in harmony with the constant sentiments of Washington. Here is additional evidence, from a letter to John Jay, during the summer of 1786:—

> "We have errors to correct. We have probably had too good an opinion of human nature, in forming our Confederation. Experience has taught us that men will not adopt and carry into execution measures the best calculated for their own good, *without the intervention of a coercive power*. I do not

> conceive we can exist long as a nation without having lodged somewhere a power which will pervade the whole Union *in as energetic a manner as the authority of the State governments extends over the several States*."

These are the words of Washington; and he then proceeds:—

> "To be fearful of investing Congress, constituted as that body is, with ample authorities for national purposes, appears to me the very climax of popular absurdity and madness."[184]

The Constitution was duly transmitted by Congress to the several Legislatures, by which it was submitted to Conventions of delegates "chosen in each State by the people thereof," who ratified [Pg 181] the same. Afterwards, Congress, by resolution, dated September 13, 1788, setting forth that the Convention had reported "a Constitution *for the people of the United States*," which had been duly ratified, proceeded to authorize the necessary elections under the new government.

The Constitution, it will be seen, was framed to remove difficulties arising from State Rights. So paramount was this purpose, that, according to the letter of Washington, it was kept steadily in view in all the deliberations of the Convention, which did not hesitate to declare *the consolidation of our Union* essential to prosperity, felicity, safety, and perhaps national existence.

The unity of the Government was expressed in the term "Constitution," instead of "Articles of Confederation and Perpetual Union between the States," and in the idea of "a more perfect union," instead of "a firm league of friendship." It was also announced emphatically in the Preamble:—

> "*We, the people of the United States, in order to form a more perfect union*, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Not "we, the States," but "we, the people of the United States." Such is the beginning and origin of our Constitution. Here is no compact or league between States, involving the recognition of State Rights, but a government ordained and established by the people of the United States for themselves and their posterity. This government is not established *by the* [Pg 182] *States*, nor is it established *for the States*; but it is established *by the people*, for themselves and their posterity. It is true, that, in the organization of the government, the existence of the States is recognized, and the original name of "United States" is preserved; but the sovereignty of the States is absorbed in that more perfect union which was then established. There is but one sovereignty recognized, and this is the sovereignty of the United States. To the several States is left that specific local control which is essential to the convenience and business of life, while to the United States, as Plural Unit, is allotted that commanding sovereignty which embraces and holds the whole country within its perpetual and irreversible jurisdiction.

This obvious character of the Constitution did not pass unobserved at the time of its adoption. Indeed, the Constitution was most strenuously opposed on the ground that the States were absorbed in the Nation. In the debates of the Virginia Convention, Patrick Henry protested against consolidated power.

> "And here I would make this inquiry of those worthy characters who composed a part of the late Federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated Government, instead of a Confederation. *That this is a consolidated Government is demonstrable clear*; and the danger of such a Government is to my mind very striking. I have the highest veneration for those gentlemen; but, Sir, give me leave to demand, What right had they to say, '*We, the people*'?... Who authorized them to speak the language of '*We, the people*,' instead of '*We, the States*'?"[185]

And again, at another stage of the debate, the same patriotic opponent of the Constitution [Pg 183] declared succinctly,—

> "The question turns, Sir, on that poor little thing, the expression, 'We, *the people*,' instead of *the States*, of America."[186]

In the same Convention, another patriotic opponent of the Constitution, George Mason, following Patrick Henry, said:—

> "Whether the Constitution be good or bad, the present clause clearly discovers that it is a National Government, and no longer a Confederation."[187]

But against all this opposition, and in face of this exposure, the Constitution was adopted, in the name of the people of the United States. Much, indeed, was left to the States; but it was no longer in their name that the government was organized, while the miserable pretension of State "sovereignty" was discarded. Even in the discussions of the National Convention Mr. Madison spoke thus plainly:—

> "Some contend that States are *sovereign*, when, in fact, they are only

political societies. The States never possessed the essential rights of sovereignty. These were always vested in Congress."[188]

Grave words, especially when we consider the position of their author. They were substantially echoed by Elbridge Gerry, of Massachusetts, afterwards Vice-President, who said:—

"It appears to me that the States never were independent. They had only corporate rights."[189] [Pg 184]

On another occasion, Mr. Madison said,—

"I hold it for a fundamental point, that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty."[190]

Better words still fell from Mr. Wilson, of Pennsylvania, known afterwards as a learned judge of the Supreme Court, and also for his "Lectures on Law":—

"Will a regard to State Rights justify the sacrifice of the rights of men? If we proceed on any other foundation than the last, our building will neither be solid nor lasting."[191]

The argument was unanswerable then. It is unanswerable now. You cannot elevate the sovereignty of the States over the Constitution of the United States. It would be even more odious than the early pretension of sovereign power over Magna Charta, according to the memorable words of Lord Coke, as recorded by Rushworth:—

"Sovereign power is no Parliamentary word. In my opinion, it weakens Magna Charta and all our statutes; for they are absolute, without any saving of sovereign power; and shall we now add it, we shall weaken the foundation of law, and then the building must needs fall. Take we heed what we yield unto. *Magna Charta is such a fellow that he will have no sovereign.*"[192]

But the Constitution is our Magna Charta, which can bear no sovereign but itself, as you will see at once, if you consider its character. And this practical truth was recognized at its formation, as may be seen in the writings of our Rushworth: I refer to Nathan Dane, who was a member of Congress under the Confederation. He tells us plainly, that the terms "sovereign States," "State sovereignty," "State rights," "rights of States," are "not constitutional expressions."[193] [Pg 185]

In the exercise of its sovereignty, Congress is intrusted with large and peculiar powers. Take notice of them, and you will see how little of "sovereignty" is left to the States. Their simple enumeration is an argument against this pretension. Congress may "lay and collect taxes, duties, imposts, and excises, to pay the debts and *provide for the common defence and general welfare of the United States*"; it may "borrow money on the credit of the United States"; "regulate commerce with foreign nations, and *among the several States*, and with the Indian tribes"; "establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, *throughout the United States*"; "coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures"; "provide for the punishment of counterfeiting the securities and current coin of the United States"; "establish post-offices and post-roads"; "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries"; "constitute tribunals inferior to the Supreme Court"; "define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations"; "declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water"; "raise and support armies"; "provide and maintain a navy"; "make rules for the government and regulation of the land and naval forces"; "provide for calling forth the militia to execute *the laws of the Union*, suppress insurrections, and repel invasions"; "provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia *according to the discipline prescribed by Congress*"; "exercise exclusive legislation, in all cases whatsoever, over the seat of the government of the United States, and like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings"; and "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." [Pg 186]

Such are the ample and diversified powers of Congress, embracing all those agencies which enter into sovereignty. With this concession to the United States, there seems to be little for the several States. In the power to "declare war" and to "raise and support armies" Congress possesses an exclusive power, in itself immense and infinite, over persons and property in the several States, while, by the power to "regulate commerce," it may put limits round about the business of the several States; and even in the case of the militia, which is the original military organization of the people, nothing is left to the States except "the appointment of the officers," and the authority to train it "according to the discipline *prescribed by Congress*." Thus these great functions are all intrusted to the United States, while the several States are subordinated to their exercise. [Pg 187]

Constantly, and in everything, we behold the constitutional subordination of the States. But there are other provisions by which the States are expressly deprived of important powers. For instance: “No State shall enter into any treaty, alliance, or confederation; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts.” Or, if the States may exercise certain powers, it is only with the consent of Congress. For instance: “No State shall, *without the consent of Congress*, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power.” Here is a magistral power accorded to Congress utterly inconsistent with the pretensions of State Rights. Then again: “No State shall, *without the consent of the Congress*, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States; *and all such laws shall be subject to the revision and control of the Congress*.” Here, again, is a similar magistral power accorded to Congress; and as if still further to deprive the States of their much vaunted sovereignty, the laws which they make with the consent of Congress are expressly declared to be subject “to the [Pg 188] revision and control of the Congress.” There is still another instance. According to the Constitution, “Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State”; but here mark the controlling power of Congress, which is authorized to “prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.”

There are five other provisions of the Constitution by which its supremacy is positively established. (1.) “The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.” As Congress has the exclusive power to establish “an uniform rule of naturalization,” it may, under these words of the Constitution, secure for its newly entitled citizens “all privileges and immunities of citizens in the several States,” in defiance of State Rights. (2.) “New States may be admitted *by the Congress* into this Union.” According to these words, the States cannot even determine their associates, but are dependent in this respect upon the will of Congress. (3.) Not content with taking from the States these important functions of sovereignty, it is solemnly declared that the Constitution, and the laws of the United States made in pursuance thereof, and all treaties under the authority of the United States, “SHALL BE THE SUPREME LAW OF THE LAND,—*anything in the Constitution or laws of any State to the contrary notwithstanding*.” Thus are State Rights again subordinated to the National Constitution, which is erected into the paramount authority. (4.) This is done again by another provision, which declares that “*the members of the several State Legislatures*, and all executive and judicial [Pg 189] officers both of the United States and of *the several States*, shall be bound by oath or affirmation to support this Constitution”; so that not only State laws are subordinated to the National Constitution, but the makers of State laws and all other State officers are constrained to declare allegiance to this Constitution, thus placing the State, alike through its acts and its agents, in complete subordination to the sovereignty of the United States. (5.) This sovereignty is further proclaimed in the solemn injunction, that “the United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion.” Here are duties of guaranty and protection imposed upon the United States, by which their position is fixed as the supreme power. There can be no such guaranty without the implied right to examine and consider the governments of the several States, and there can be no such protection without a similar right to examine and consider the condition of the several States, subjecting them to the rightful supervision and superintendence of the National Government.

Thus, whether we regard the large powers vested in Congress, the powers denied to the States absolutely, the powers denied to the States without the consent of Congress, or those other provisions which accord supremacy to the United States, we find the pretension of State sovereignty without foundation, except in the imagination of its partisans. Before the Constitution such sovereignty may have existed; it was declared in the Articles of Confederation; but since then it has ceased. It has disappeared and been lost in the supremacy of the National Government, so that it can no longer be recognized. Perverse men, insisting that it still existed, [Pg 190] and weak men, mistaking the shadow of former power for the reality, have made arrogant claims in its behalf. When the Constitution was proclaimed, and George Washington took his oath to support it as President, our career as a nation began, with all the unity of a nation. The States remained as living parts of the body, important to the national strength, and essential to those currents which maintain national life, but plainly subordinate to the United States, which then and there stood forth a nation, one and indivisible.

The new Government had hardly been inaugurated before it was disturbed by the pestilent pretension of State Rights, which has never ceased to disturb it since. Discontent with the treaty between the United States and Great Britain, negotiated by that purest patriot, John Jay, under instructions from Washington, in 1794, led Virginia, even at that early day, to commence an opposition to its ratification, *in the name of State Rights*. Shortly afterwards appeared the famous resolutions of Virginia and of Kentucky, usually known as the “Resolutions of ’98,” declaring that the National Government was founded on compact between the States, and claiming for the States the right to sit in judgment on the National Government, and to interpose, if they thought fit: all this, as you will see, *in the name of State Rights*. This pretension increased, till, at last, on the mild proposition to attach a prospective prohibition of Slavery as a condition to the admission of Missouri into the Union as a new State, the opposition raged furiously, even to the extent of menacing the existence of the Union; and this, too, was done *in the name of State Rights*. Ten

years later the pretension took the famous form of Nullification, insisting that the National Government was only a compact of States, any one of which was free to annul an Act of Congress at its own pleasure; and all this *in the name of State Rights*. For a succession of years afterwards, —at the presentation of petitions against Slavery, petitions for the recognition of Hayti, at the question of Texas, at the Wilmot Proviso, at the admission of California as a Free State, at the discussion of the Compromises of 1850, at the Kansas Question,—the Union was menaced; and always *in the name of State Rights*. The menace was constant; and it sometimes showed itself on small as well as great occasions, but always *in the name of State Rights*. When it was supposed that Fremont was about to be chosen President the menace became louder, and mingling with it was the hoarse mutter of war; and all this audacity was *in the name of State Rights*.

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But in the autumn of 1860, on the election of Abraham Lincoln, the case became much worse. Scarcely was the result known by telegraph, before the country was startled by other intelligence, to the effect that certain States at the South were about to put in execution the long pending threat of Secession, of course *in the name of State Rights*. First came South Carolina, which, by Ordinance adopted in a State Convention, undertook to repeal the original Act by which the Constitution was adopted in this State, and to declare that South Carolina had ceased to be one of the States of the Union. At the same time a Declaration of Independence was put forth by the State, which proceeded to organize as an independent community. This example was followed successively by other States, which, by formal Acts of Secession, undertook to dissolve relations with the Union, always, be it understood, *in the name of State Rights*. A new Confederation was formed by these States, with a new Constitution, and Jefferson Davis at its head; and the same oaths of loyalty by which the local functionaries of all these States had been bound to the Union were now transferred to this new Confederation, of course in utter violation of the Constitution of the United States, but always *in the name of State Rights*. The Ordinances of Secession were next maintained by war, which, beginning with the assault upon Fort Sumter, convulsed the whole country, till, at last, all the States of the new Confederation were in open rebellion, which the Government of the United States is now exerting its energies, mustering its forces, and taxing its people to suppress. The original claim, *in the name of State Rights*, has swollen to all the proportions of an unparalleled war, which, *in the name of State Rights*, now menaces the national life.

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The pretensions in the name of State Rights are not all told. While the Ordinances of Secession were maturing, and before they were yet consummated, Mr. Buchanan, who was then President, declined to interfere, on the ground that what had been done was by States, and that it was contrary to the theory of our Government “to coerce a State,” thus making the pretension of State Rights the apology for imbecility. Had the President then interfered promptly and loyally, it cannot be doubted that this whole intolerable crime might have been trampled out forever. And now, when it is proposed that Congress shall organize governments in these States, which are absolutely without loyal governments, we are met by the objection founded on State Rights. The same disastrous voice which from the beginning of our history has sounded in our ears still makes itself heard; but, alas! it is now on the lips of friends. Just in proportion as it prevails, it is impossible to establish the Constitution again throughout the Rebel States. State Rights are fully triumphant, if, first, in their name Rebel governments can be organized, and then again in their name Congressional governments to replace the Rebel governments can be resisted. If they can be employed, first to sever the States from the Union, and then to prevent the Union from extending its power over them, State Rights are at once sword and buckler to the Rebellion. It was through the imbecility of Mr. Buchanan that the States were allowed to use the sword: God forbid that now, through any similar imbecility of Congress, they shall be allowed to use the buckler!

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And here we are brought to the practical question destined to occupy so much of public attention. It is proposed to bring the action of Congress to bear directly upon the Rebel States. This may be by the establishment of provisional governments under authority of Congress, or simply by making the admission or recognition of the States depend upon the action of Congress. The essential feature of the proposition is, *that Congress shall assume jurisdiction of the Rebel States*. A bill authorizing provisional governments in these States was introduced into the Senate by Mr. Harris, of the State of New York, and was afterwards reported from the Judiciary Committee of that body; but it was left with unfinished business, when the late Congress expired on the fourth of March. The opposition to this proposition, so far as I understand it, assumes two forms: first, that these States are always to be regarded as States, with much vaunted State Rights, and therefore cannot be governed by Congress; and, secondly, that, if any government is to be established over them, it must be simply a military government, with a military governor appointed by the President, as is the case with Tennessee and North Carolina. But State Rights are as much disturbed by a military government as by a Congressional government. The local government is as much set aside in one case as in the other. If the President, within State limits, can proceed to organize a military government to exercise all the powers of the State, surely Congress can proceed to organize a civil government within the same limits for the same purpose; nor can any pretension of State Rights be effective against Congress more than against President. Indeed, the power belongs to Congress by a higher title than it belongs to President: first, because a civil government is more in harmony with our institutions, and, wherever possible, is required; and, secondly, because there are provisions of the Constitution under which this power is clearly derived.

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Assuming, then, that the pretension of State Rights is as valid against one form of government as against the other, and still further assuming, that, in the case of military governments, this pretension is practically overruled by the President at least, we are brought again to consider its efficacy when advanced against Congressional governments.

It is argued, that the Acts of Secession are all inoperative and void, and therefore the States continue precisely as before, with their local constitutions, laws, and institutions in the hands of traitors, but totally unchanged, and ready to be quickened into life by returning loyalty. Such, I [Pg 195] believe, is a candid statement of the pretension for State Rights against Congressional governments, which, it is argued, cannot be substituted for the State governments.

To prove that the Rebel States continue precisely as before, we are reminded that Andrew Johnson continued to occupy his seat in the Senate after Tennessee had adopted its Act of Secession and embarked in rebellion, and that his presence testified to the fact that rebel Tennessee was still a State of the Union. No such conclusion is authorized by this incident. There are two principles of Parliamentary Law long ago fixed: first, that the power once conferred by an election to Parliament is *irrevocable*, so that it is not affected by any subsequent change in the constituency; and, secondly, that a member, when once chosen, is *a member for the whole kingdom*, becoming thereby, according to the words of an early author, not merely knight, citizen, or burgess of the county, city, or borough which elected him, but knight, citizen, or burgess of England.[194] If these two principles are not entirely inapplicable to our political system, then the seat of Andrew Johnson was not in any respect affected by the subsequent madness of his State, nor can the legality of his seat be any argument for his State.

We are also reminded, that, during the last session of Congress, two Senators from Virginia represented that State in the Senate, and the argument is pressed that no such representation would be valid, if the State government of Virginia was vacated. This is a mistake. Two things are established by the presence of these Senators in the National Senate: first, that the old State [Pg 196] government of Virginia is extinct; and, secondly, that a new government has been set up in its place. It was my fortune to hear one of these Senators, while earnestly denouncing the idea that a State government could disappear. I could not but think that he strangely forgot the principle to which he owed his seat in the Senate, as men sometimes forget a benefactor.

It is true beyond question that the Acts of Secession are all inoperative and void against the Constitution of the United States. Though matured in successive conventions, sanctioned in various forms, and maintained ever since by bloody war, these Acts, no matter by what name they may be called, are all equally impotent to withdraw an acre of territory or a single inhabitant from the rightful jurisdiction of the nation. But while thus impotent against the United States, it does not follow that they were equally impotent in the work of self-destruction. Clearly, the Rebels, by utmost effort, could not impair the national jurisdiction; but it remains to be seen if their enmity did not act back with fatal rebound upon those very State Rights in behalf of which they commenced their treason.

It is sometimes said that the States themselves committed *suicide*, so that, as States, they ceased to exist, leaving their whole jurisdiction open to the occupation of the United States under the Constitution. This assumption is founded on the fact, that, whatever the existing governments in these States, they are in no respect constitutional; and since the State itself is known by the government with which its life is intertwined, it must cease to exist constitutionally when its [Pg 197] government no longer exists constitutionally. It were better, perhaps, to avoid the whole question of life or death in the State, and content ourselves with inquiry into the condition of its government. It is not easy to say what constitutes that entity we call a State; nor is the discussion much advanced by any theory. To my mind it seems a topic fit for the old schoolmen or a modern debating society; and yet, considering the part it has already played, I shall be pardoned for a brief allusion to it.

There are well-known words which ask and answer the question, "What constitutes a *State*?" But the scholarly poet[195] was not thinking of a "State" of the American Union. Indeed, this term is various in use. Sometimes it stands for civil society itself. Sometimes it is the general name for a political community, not unlike "nation" or "country,"—as when our fathers, in the Resolution of Independence which preceded the Declaration, spoke of "the *State* of Great Britain." Sometimes it stands for the government,—as when Louis the Fourteenth, at the height of his power, exclaimed, "The *State*, it is I,"—or when Sir Christopher Hatton, in the famous farce of "The Critic," ejaculated,—

> "I cannot but surmise,—forgive, my friend,
> If the conjecture's rash,—I cannot but
> Surmise *the State* some danger apprehends."[196]

Among us the term is most known as the technical name for one of the political societies composing our Union. When used in this restricted sense, it must not be confounded with the same term when used in a different and broader sense. But it is obvious that some persons [Pg 198] attribute to the one something of the qualities which can belong only to the other. Nobody has suggested, I presume, that any "State" of our Union has, through rebellion, ceased to exist as a *civil society*, or even as a *political community*. It is only as a *State of the Union*, armed with State Rights, or at least as a *local government*, annually renewing itself, as the snake its skin, that it can be called in question. But it is vain to challenge for the technical "State," or for the annual

government, that immortality which belongs to civil society. The one is an artificial body, the other is a natural body; and while the former, overwhelmed by insurrection or war, may change or die, the latter can change or die only with the extinction of the community itself, whatever its name or its form.

It is because of confusion in the use of this term that there has been so much confusion in the political controversies where it has been employed. But nowhere has this confusion led to greater absurdity than in the pretension recently made in the name of State Rights,—as if it were reasonable to claim for a technical "State" of the Union that immortality belonging to civil society.

From approved authorities it appears that a "State," even in a broader signification, may lose its life. Dr. Phillimore, in his recent work on International Law, says: "A State, like an individual, may die," and among the various ways, he says, "by its submission, and the donation of itself, as it were, to another country."[197] But in the case of our Rebel States there has been a plain submission and donation of themselves, *effective, at least, to break the continuity of government*, [Pg 199] if not to destroy that immortality which is claimed. Nor can it make any difference, in breaking this continuity, that the submission and donation, constituting a species of attornment, are to enemies at home rather than to enemies abroad,—to Jefferson Davis rather than to Louis Napoleon. The thread is snapped in one case as much as in the other.

But *change of form* in the actual government may be equally effective. Cicero speaks of change so complete as "to leave no image of a State behind." This is precisely what has been done throughout the whole Rebel region: no image of a *constitutional* State is left behind. Another authority, Aristotle, whose words are always weighty, says, that, *the form of the State being changed, the State is no longer the same*, as the harmony is not the same when we modulate out of the Dorian mood into the Phrygian. But, if ever an unlucky people modulated out of one mood into another, it was our Rebels, when they undertook to modulate out of the harmonies of the Constitution into their bloody discords.

Without stopping further for these diversions, I content myself with the testimony of Edmund Burke, who, in a striking passage, which seems to have been written for us, portrays the extinction of a political community; but I quote his eloquent words rather for suggestion than authority.

> "In a state of rude Nature there is no such thing as a people. A number of [Pg 200] men in themselves have no collective capacity. The idea of a people is the idea of a corporation. It is wholly artificial, and made, like all other legal fictions, by common agreement. What the particular nature of that agreement was is collected from the form into which the particular society has been cast. Any other is not *their* covenant. *When men, therefore, break up the original compact or agreement which gives its corporate form and capacity to a state, they are no longer a people, they have no longer a corporate existence*, they have no longer a legal coactive force to bind within, nor a claim to be recognized abroad. They are a number of vague, loose individuals, and nothing more. With them all is to begin again. Alas! they little know how many a weary step is to be taken before they can form themselves into a mass which has a true politic personality."[198]

If that great master of eloquence could be heard, who can doubt that he would stamp our Rebel States as senseless communities who have sacrificed that corporate existence which makes them living, component members of our Union of States?

Again, it is sometimes said that the States, by flagrant treason, have *forfeited* their rights as States, so as to be civilly dead. It is a patent and indisputable fact, that this gigantic treason was inaugurated with all the forms of law known to the States; that it was carried forward not only by individuals, but also by States, so far as States can perpetrate treason; that the States pretended to withdraw bodily, in their corporate capacities; that the Rebellion, as it showed itself, was *by* States, as well as *in* States; that it was by the governments of States, as well as by the people of States; and that, to the common observer, the crime was consummated by the several corporations, as well as by the individuals of whom they were composed. From this fact, obvious to all, it is argued, that, since, according to Blackstone, a traitor "hath abandoned his connections [Pg 201] with society, and hath no longer any right to those advantages which before belonged to him purely as a member of the community,"[199] by the same principle the traitor State is no longer to be regarded as a member of the Union. But it is not necessary, on the present occasion, to insist on the application of any such principle to States.

Again, it is said that the States by their treason and rebellion, levying war upon the National Government, have *abdicated* their places in the Union; and here the argument is upheld by the historic example of England at the Revolution of 1688, when, on the flight of James and the abandonment of his kingly duties, the two Houses of Parliament voted, that the monarch, "having violated the fundamental laws, and having withdrawn himself out of this kingdom, *has abdicated the government*, and that the throne is thereby vacant."[200] But it is not necessary for us to rely

on any allegation of abdication, applicable as it may be.

It only remains that we should see things as they are, and not seek to substitute theory for fact. On this important question I discard all theory, whether of State suicide, or State forfeiture, or State abdication, on the one side, or of State Rights, immortal and unimpeachable, on the other side. Such discussions are only endless mazes, in which a whole Senate may be lost. And discarding all theory, I discard also the jural question, whether, for instance, the Rebel States, [Pg 202] while the Rebellion is flagrant, are *de jure* States of the Union, with all the rights of States. It is enough, that, for the time being, *and in the absence of a loyal government*, they can take no part and perform no function in the Union, *so that they cannot be recognized by the National Government*. The reason is plain. Since there are in these States no local functionaries bound by constitutional oaths, there are, in fact, no constitutional functionaries; and as the State Government is necessarily composed of such functionaries, there can be no State Government. Thus, for instance, in South Carolina, Pickens and his associates may call themselves Governor and Legislature, and in Virginia Letcher and his associates may call themselves Governor and Legislature; but we cannot recognize them as such. Therefore to all pretensions in behalf of State governments in the Rebel States I oppose the simple FACT, that, for the time being, no such governments exist. The broad spaces once occupied by those governments are now abandoned and vacated.

That loyal Senator, Andrew Johnson,—faithful among the faithless, the Abdiel of the South,—began his attempt to reorganize Tennessee by an address, as early as the 18th of March, 1862, in which he made use of these words:—

> "I find most, if not all, of the offices, both State and Federal, *vacated, either by actual abandonment or by the action of the incumbents, in attempting to subordinate their functions* to a power in hostility to the fundamental law of the State and subversive of her national allegiance."[201]

In employing the word "vacated" Mr. Johnson hit upon the very term which, in the famous [Pg 203] Resolution of 1688, was held most effective in dethroning King James. After declaring that he had abdicated the government, it was added, "that the throne is thereby *vacant*"; on which Macaulay happily remarks:—

> "The word *abdication* conciliated politicians of a more timid school.... To the real statesman the simple important clause was that *which declared the throne vacant*; and if that clause could be carried, he cared little by what preamble it might be introduced."[202]

The same simple principle is now in issue. It is enough that the Rebel States be declared *vacated*, as *in fact* they are, by all local government which we are bound to recognize: so that the way is open to the exercise of a rightful jurisdiction.

Here the question occurs, How shall this rightful jurisdiction be established in the vacated State? Some there are, so impassioned for State Rights, and so anxious for forms, even at the expense of substance, that they insist upon the instant restoration of the old State governments in all their parts, through the agency of loyal citizens, who, meanwhile, must be protected in this work of restoration. But, assuming that all this is practicable, as it clearly is not, it attributes to the loyal citizens of a Rebel State, however few in numbers,—it may be an insignificant minority,—a power clearly inconsistent with the received principle of popular government, that the majority must rule. The thirteen voters of Old Sarum were allowed to return two members of Parliament, because this place,—once a Roman fort, and afterwards a sheep-walk,—many [Pg 204] generations before, at the early constitution of the House of Commons, had been entitled to this representation; but the argument for State Rights assumes that all these rights may be lodged in voters as few in number as ever controlled a rotten borough of England.

Pray, admitting that an insignificant minority is to organize the new government, how shall it be done, and by whom shall it be set in motion? In putting these questions, I open the difficulties. As the original government has ceased to exist, and there are none who can be its legal successors so as to administer the requisite oaths, it is not easy to see how the new government can be set in motion, without resort to some revolutionary proceeding, instituted either by the citizens or by the military power,—unless Congress, in the exercise of its plenary authority, should undertake to organize the new jurisdiction.

But every revolutionary proceeding is to be avoided. It is within the recollection of all familiar with our history, that our fathers, while regulating the separation of the Colonies from the parent country, were careful that all should be done according to forms of law, so that *the thread of legality* should continue unbroken. To this end the Continental Congress interfered by supervising direction. But the Tory argument denied the power of Congress then as earnestly as now. Mr. Duane, of the Continental Congress, made himself its mouthpiece.

> "*Congress ought not to determine a point of this sort, about instituting government.* What is it to Congress how justice is administered? You have no right to pass the resolution, any more than Parliament has. How does it

appear that no favorable answer is likely to be given to our petitions?”[203] [Pg 205]

In spite of this argument, the Congress of that day undertook, by formal resolutions, to indicate the process by which the new governments should be constituted.[204]

If we seek for the principle which entered into this proceeding of the Continental Congress, we find it in the idea that nothing can be left to illegal or informal action, but that all must be done according to rules of constitution and law previously ordained. Perhaps this principle has never been more distinctly or powerfully enunciated than by Mr. Webster, in his speech against the Dorr Constitution in Rhode Island. According to him, this principle is a fundamental part of what he calls our American system, under which the right of suffrage is prescribed by *previous law*, including its qualifications, the time and place of its exercise, and the manner of its exercise; and then, again, the results are certified to the central power by some certain rule, *by some known public officers*, in some clear and definite form, thus accomplishing two things: first, that every man entitled to vote may vote; secondly, that his vote may be sent forward and counted, so that practically he may exercise his part of sovereignty in common with his fellow-citizens. Such, according to Mr. Webster, are minute forms which must be followed, if we would impart to the result the crowning character of law. And here are other positive words from him on this important point.

> “We are not to take the will of the people from public meetings, nor from tumultuous assemblies, by which the timid are terrified, the prudent are alarmed, and by which society is disturbed. These are not American modes of signifying the will of the people, and they never were.” [Pg 206]
>
> “Is it not obvious enough, that men cannot get together and count themselves, and say they are so many hundreds and so many thousands, and judge of their own qualifications, and call themselves the people, and set up a government? *Why, another set of men, forty miles off, on the same day, with the same propriety, with as good qualifications, and in as large numbers, may meet and set up another government.*”
>
> “When, in the course of events, it becomes necessary to ascertain the will of the people on a new exigency or a new state of things or of opinion, *the legislative power provides for that ascertainment by an ordinary act of legislation*.”
>
> “What do I contend for? I say that the will of the people must prevail, when it is ascertained; but there must be *some legal and authentic mode of ascertaining that will*, and then the people may make what government they please.”
>
> “All that is necessary here is, that the will of the people should be ascertained by some regular rule of proceeding, *prescribed by previous law*.”
>
> “But the law and the Constitution, the whole system of American institutions, do not contemplate a case in which a resort will be necessary to proceedings *aliunde*, or *outside of the law and the Constitution*, for the purpose of amending the frame of government.”[205]

Happily, we are not constrained to any such revolutionary proceeding. The new governments can all be organized by Congress, which is the natural guardian of the people, without any immediate government, and within the jurisdiction of the National Constitution. Indeed, with the [Pg 207] State governments already *vacated* by Rebellion, the Constitution becomes, for the time, the supreme and only law, binding alike on President and Congress, so that neither can establish any law or institution incompatible with it; and the whole Rebel region, deprived of all local government, lapses under the exclusive jurisdiction of Congress, precisely as any other territory, —or, in other words, the negation of the local government leaves the whole vast region without any other government than Congress, unless the President should undertake to govern it by military power. Startling as this proposition may seem, especially to all who believe that there is a “divinity doth hedge” a State hardly less than a king, it will appear, on careful consideration, to be as well founded in the Constitution as it is simple and natural, while it affords easy and constitutional solution to all present embarrassments.

I have no theory to maintain, but only the truth; and in presenting this argument for Congressional government I simply follow teachings which I cannot control. The wisdom of Socrates, in the words of Plato, has aptly described these teachings, when he says,—

> “These things, as I affirm, are held and bound (though it is somewhat rude to say so) in reasons of iron and adamant, as would really appear to be the case,—so that, unless you, or some one stronger than you, can break them, it is not possible that any one who says otherwise than as I now say can speak correctly; for my statement is always the same,—that I know not how these things are, but that of all the persons with whom I have ever conversed, as now with you, no one who says otherwise can avoid being ridiculous.”[206]

Show me that I am wrong, that this conclusion is not founded in the Constitution, and is not [Pg 208] sustained by reason, and I shall at once renounce it; for, in the present condition of affairs, there can be no pride of opinion which must not fall at once before the sacred demands of country. Not

as partisan, not as advocate, do I make this appeal, but simply as citizen, seeking, in all sincerity, to offer my contribution to the establishment of that policy by which Union and Peace may be restored.

Looking at the origin of this power in Congress, we find that it comes from three distinct fountains, any one of which is ample to supply it. Three fountains, generous and hospitable, are found in the Constitution ready for this occasion.

First. From the necessity of the case, *ex necessitate rei*, Congress must have jurisdiction over every portion of the United States *where there is no other government*; and since in the present case there is no other government, the whole region falls within the jurisdiction of Congress. This jurisdiction is incident, if you please, to that guardianship and eminent domain belonging to the United States over all its territory and the people thereof, and springing into activity when the local government ceases. It can be questioned only in the name of the local government; but since this government has disappeared in the Rebel States, the jurisdiction of Congress is uninterrupted there. The whole broad Rebel region is *tabula rasa*, or "a clean slate," where Congress, under the Constitution of the United States, may write the laws. In adopting this principle, I follow the authority of the Supreme Court of the United States in determining the jurisdiction of Congress over the Territories. Here are the words of Chief-Justice Marshall:— [Pg 209]

> "Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, *may result necessarily from the facts that it is not within the jurisdiction of any particular State*, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory."[207]

If the right to govern may be the inevitable consequence of the right to acquire territory, surely, and by much stronger reason, this right must be the inevitable consequence of the sovereignty of the United States, wherever there is no local government.

Secondly. The jurisdiction may also be derived from the *Rights of War*, which surely are not less abundant for Congress than for President. If the President, disregarding the pretension of State Rights, can appoint military governors within the Rebel States to serve a temporary purpose, who can doubt that Congress can exercise a similar jurisdiction? That of the President is derived from the war powers; but these are not sealed to Congress. If it be asked, where in the Constitution such powers are bestowed upon Congress, I reply, that they are found precisely where the President now finds his powers. But it is clear that the powers to "declare war," to "suppress insurrections," and to "support armies" are all ample for this purpose. It is Congress that conquers, and the same authority that conquers must govern. Nor is this authority derived from any strained construction; it springs from the very heart of the Constitution. It is among [Pg 210] those powers, latent in peace, which war and insurrection call into being, but as intrinsically constitutional as any other power.

Even if not conceded to the President, these powers must be conceded to Congress. Would you know their extent? They are found in the authoritative texts of Public Law,—in the works of Grotius, Vattel, and Wheaton. They are the powers conceded by civilized society to nations at war, known as Rights of War,—at once multitudinous and minute, vast and various. It would be strange, if Congress could organize armies and navies to conquer, and could not also organize governments to protect.

De Tocqueville, who saw our institutions with so keen an eye, remarked, that, since, in spite of all political fictions, the preponderating power resided in the States and not in the nation, a civil war here would be "nothing but foreign war in disguise."[208] Of course the natural consequence would be to give the nation, in such a civil war, all the rights it would have in a foreign war. And this conclusion from the observation of the ingenious publicist has been practically adopted by the Supreme Court of the United States, in those recent cases where this tribunal, after most learned argument, followed by most careful consideration, adjudged, that, since the Act of Congress of July 13, 1861, the nation has been waging "a *territorial* civil war," in which all property afloat, belonging to a resident of the *belligerent territory*, is liable to capture and condemnation as lawful prize. But, surely, if the nation may stamp upon all residents in this *belligerent territory* the character of foreign enemies, so as to subject ships and cargoes to the [Pg 211] penalties of confiscation, it may perform the milder service of making all needful rules and regulations for the government of this territory under the Constitution, so long as requisite for the sake of peace and order; and since the object of war is "indemnity for the past and security for the future," it may do everything necessary to make these effectual. But it will not be enough to crush the Rebellion; its terrible root must be exterminated, so that it may no more flourish in blood.

Thirdly. There is another source for this jurisdiction common alike to Congress and the President. It is found in the constitutional provision, that "the United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion." Here, be it observed, are words of guaranty and an obligation of protection. In the original concession to the United States of this twofold power there was open recognition of the ultimate responsibility and duty of the National Government, *conferring jurisdiction above all*

pretended State Rights; and now the occasion has come for the exercise of this twofold power thus solemnly conceded. The words of twofold power and corresponding obligation are plain, and beyond question. If there be any ambiguity, it is only in what constitutes a republican form of government. But for the present this question does not arise. It is enough that a wicked rebellion has undertaken to detach certain States from the Union, and to take them beyond its protection and sovereignty, with the menace of seeking foreign alliance and support, even at the cost of every distinctive institution. It is well known that *Mr. Madison anticipated this precise danger from Slavery, and upheld this precise grant of power in order to counteract the danger*. His words, which will be found in a yet unpublished document produced by Mr. Collamer in the Senate, seem prophetic. *[Pg 212]*

Among the defects he remarked in the old Confederation was what he called "want of guaranty to the States of their constitutions and laws *against internal violence*." In showing why this guaranty was needed, he says, that, "according to republican theory, right and power, being both vested in the majority, are held to be synonymous; according to fact and experience, a minority may, in an appeal to force, be an overmatch for the majority"; and he then adds, in words of wonderful prescience, "*Where Slavery exists, the republican theory becomes still more fallacious*."[209] This was written in April, 1787, before the meeting of the Convention that formed the National Constitution. Here is the origin of the very clause in question. The danger which this statesman foresaw is now upon us. When a State fails to maintain a republican government, *with officers sworn according to requirement of the Constitution*, it ceases to be a constitutional State. The very case contemplated by the Constitution has arrived, and the National Government is invested with plenary powers, whether of peace or war. There is nothing in the storehouse of peace, and there is nothing in the arsenal of war, it may not employ in the maintenance of this solemn guaranty, and in the extension of that protection against invasion to which it is pledged. But this extraordinary power carries with it corresponding duty. Whatever shows itself dangerous to a republican form of government must be removed without delay or hesitation; and if the evil be Slavery, our action will be bolder when it is known that the danger was foreseen. [Pg 213]

In reviewing these three sources of power, I know not which is most complete. Either is ample alone; but the three together are three times ample. Thus out of this triple fountain, or, if you please, by this triple cord, do I educe the power of Congress over the vacated States.

There are yet other words of the Constitution which cannot be forgotten. "New States may be admitted by the Congress into this Union." Assuming that the Rebel States are no longer *de facto* States of this Union, but that the territory occupied by them is within the jurisdiction of Congress, then these words become completely applicable. It is for Congress, in such way as it shall think best, to regulate their return to the Union, whether in time or manner. No special form is prescribed. But the vital act must proceed from Congress. Here again is another testimony to that Congressional power, which, under the Constitution, will restore the Republic.

Against this power I have heard nothing which can be called argument. There are objections, originating chiefly in the baneful pretension of State Rights; but these objections are animated by prejudice rather than reason. Assuming the impeccability of a State, and openly declaring that States, like kings, can do no wrong, while, like kings, they wear "the round and top of sovereignty," politicians treat them with most mistaken forbearance and tenderness, as if these Rebel corporations could be dandled into loyalty. At every suggestion of rigor, State Rights are invoked; and we are vehemently told not to destroy the States, when all that Congress proposes is simply to recognize the actual condition of the States, and undertake their temporary government by providing for the condition of political syncope into which they have fallen, and during this interval substitute its own constitutional powers for the unconstitutional powers of the Rebellion. Congress will blot no star from the flag, nor will it obliterate any State liabilities; but it will seek, according to its duty, in the best way, to maintain the great and real sovereignty of the Union, by upholding the flag unsullied, and by enforcing everywhere within its jurisdiction the supreme law of the Constitution. [Pg 214]

At the close of an argument already too long drawn out, I shall not stop to array the considerations of reason and expediency in behalf of this jurisdiction; nor shall I dwell on the inevitable influence it must exercise over Slavery, which is the motive of the Rebellion. To my mind nothing can be clearer, as a proposition of Constitutional Law, than that everywhere within the exclusive jurisdiction of the National Government Slavery is impossible. The argument is as brief as it is unanswerable. Slavery is so odious that it can exist only by virtue of positive law, plain and unequivocal; but no such words can be found in the Constitution; therefore Slavery is impossible within the exclusive jurisdiction of the National Government. For many years I have had this conviction, and have constantly maintained it. I am glad to believe that it is implied, if not expressed, in the Chicago Platform. Mr. Chase, among our public men, is known to accept it sincerely. Thus Slavery in the Territories is unconstitutional; but if the Rebel territory falls under the exclusive jurisdiction of the National Government, then Slavery becomes impossible there. In a legal and constitutional sense, it must die at once. The air is too pure for a slave. I cannot doubt that this great triumph has been already won. The moment that the States fell, Slavery fell also; so that, even without any proclamation of the President, Slavery ceased to have legal and constitutional existence in every Rebel State. [Pg 215]

Even if we hesitate to accept this important conclusion, which treats Slavery within the Rebel States as already dead in law and Constitution, it cannot be doubted that by the extension of Congressional jurisdiction, as now proposed, many difficulties will be removed. Holding every acre of soil and every inhabitant within its jurisdiction, Congress can easily do whatever is needful within Rebel limits to assure freedom and save society. The soil may be divided among patriot soldiers, poor whites, and freedmen; but above all things the inhabitants may be saved from harm. Those citizens in the Rebel States who throughout the darkness of the Rebellion have kept their faith will be protected, and the freedmen rescued from hands that threaten to cast them back into Slavery.

This jurisdiction, which is so completely practical, is grandly conservative also. Had it been early recognized that Slavery depends exclusively upon the local government, and falls with that government, who can doubt that every Rebel movement would have been checked? Tennessee and Virginia would never have stirred; Maryland and Kentucky would never have thought of [Pg 216] stirring; there would have been no talk of neutrality between the Constitution and the Rebellion; and every Border State would have been fixed in loyalty. Let it be established in advance, as an inseparable incident to every Act of Secession, that it is not only impotent against the National Constitution, but that, on its occurrence, both soil and inhabitants lapse beneath the jurisdiction of Congress, and no State will ever again pretend to secede. The word "territory," according to old and quaint etymology, is said to come from *terreo*, to terrify, because it was a bulwark against the enemy: *Territorium est quidquid hostis terrendi causâ constitutum est*,[210]—"A territory is anything established for the purpose of terrifying an enemy"; but I know of no way in which our Rebel enemy would have been more terrified than by being told that his course would inevitably precipitate his State into a territorial condition. Let this principle be adopted, and it will contribute essentially to that consolidation of the Union which was so near the heart of Washington.

The necessity of this principle is apparent as a restraint upon the lawless vindictiveness and inhumanity of the Rebel States, whether against Union men or against freedmen. Union men in Virginia already tremble at the thought of being delivered over to a State government wielded by original Rebels pretending to be patriots; but the freedmen, who have only recently gained their birthright, are justified in keener anxiety, lest it should be lost as soon as won. Mr. Saulsbury, a Senator from Delaware, with most instructive frankness, has announced in public debate what [Pg 217] the restored State governments will do. Assuming that the local governments will be preserved, he predicts that in 1870 there will be more slaves in the United States than there were in 1860, and then unfolds the reason as follows, all of which will be found in the "Congressional Globe."

> "By your Acts you attempt to free the slaves. You will not have them among you. You leave them where they are. Then what is to be the result? I presume that local State governments will be preserved. If they are, if the people have a right to make their own laws and to govern themselves, they will not only reënslave every person that you attempt to set free, but they will reënslave the whole race."[211]

Nor has the horrid menace of reënslavement proceeded from the Senator from Delaware alone. It has been uttered even by Mr. Willey, the mild Senator from Virginia, speaking in the name of State Rights. Newspapers have taken up and repeated the revolting strain. That is to say, no matter what may be done for Emancipation, whether by proclamation of the President, or by Congress even, the State, resuming its place in the Union, will, in the exercise of its sovereign power, reënslave every colored person within its jurisdiction; and this is the menace from Delaware, and even from regenerated Western Virginia! I am obliged to Senators for their frankness. If additional motive were needed for the urgency with which I assert the power of Congress, it would be found in the pretensions thus savagely proclaimed. In the name of Heaven, let us spare no effort to save the country from such shame, and an oppressed people from the additional outrage.

As I quote Mr. Willey, I desire his precise words should be understood, that the country may [Pg 218] see the necessity of Congressional action. In opposing Emancipation in the District of Columbia, he depicted the unhappy fate of the freedman.

> "Suppose they are emancipated, what then? Are they freemen in fact? Will they have the rights of freemen? Sir, such an idea is utterly fallacious. It will practically amount to nothing. You cannot enact the slave into a freeman by bill in Congress. A charter of his liberty may be engrossed, enrolled, and passed into a law, with all the formalities of legislation, *and still he must remain virtually a slave*."[212]

Pursuing this same strain in a later debate on the Confiscation Bill, which provided for Emancipation in certain cases, the Senator said:—

> "Sir, what will be the necessary and inevitable result of this policy, if it be carried into effect? It will be that Virginia, by this increase of the free negro population under the operation of this bill, will be driven not only to reënslave those who may be manumitted under the operation of the present bill, but also to reënslave the sixty thousand free negroes already there.... Sir, the evil will be unendurable, and the result will be the reënslavement of the slaves thus manumitted, as well as those already free in our State."[213]

I quote these words with extreme pain. Their author is not known as a fanatic of Slavery. Therefore do they reveal the terrible peril against which Congress must provide.

"Once free, always free." This is a rule of law and an instinct of humanity. It is a self-evident [Pg 219] axiom, which only tyrants and slave-traders have denied. The brutal pretension thus flamingly advanced already puts us all on our guard. There must be no chance or loophole for such intolerable, Heaven-defying iniquity. Alas! there have been crimes in human history, but I know of none blacker than this. There have been acts of baseness, but I know of none more utterly vile. Against the possibility of such a sacrifice we must take a bond which cannot be set aside; and this can be found only in the powers of Congress.

Congress has already done much. Besides its noble Act of Emancipation, it has provided that every person guilty of treason, or of inciting or assisting the Rebellion, shall be "disqualified to hold any office under the United States"[214]; and by another Act it has provided, that every person, elected or appointed to any office of honor or profit under the Government of the United States, shall, before entering upon its duties, *take and subscribe an oath or affirmation* that he has "never voluntarily borne arms against the United States since he has been a citizen thereof," or "voluntarily given aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto," or "sought, or accepted, or attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States."[215] This oath is a bar against return to *national office* of any taking part with the Rebels. It shuts out in advance the whole criminal company. But these same persons, rejected by the National [Pg 220] Government, are left free to hold office in the States; and here is another motive to further action by Congress. The oath is well as far as it goes; more must be done in the same spirit.

But enough. The case is clear. Behold the Rebel States in arms against that paternal government to which, as the supreme condition of constitutional existence, they owe duty and love; and behold all legitimate powers, executive, legislative, and judicial, in these States, abandoned and vacated. *It only remains that Congress should enter and assume the proper jurisdiction.* If we are not ready to exclaim with Burke, speaking of revolutionary France, "It is but an empty space on the political map," we may at least adopt the response hurled back by Mirabeau, that this empty space is a volcano red with flames and overflowing with lava-floods. But whether we deal with it as "empty space" or as "volcano," the jurisdiction, civil and military, centres in Congress, to be employed for the happiness, welfare, and renown of the American people,—changing Slavery into Freedom, and present Chaos into a Cosmos of perpetual beauty and power.

[Pg 221]

BENJAMIN FRANKLIN AND JOHN SLIDELL AT PARIS.

Article in the Atlantic Monthly, November, 1863.

This article appeared originally under the title, “Monograph from an Old Note-Book.” Beyond the curiosity of the discussion was the object, at a critical moment, of contrasting the diplomatic representative of our fathers at Paris and that of Rebel Slavery, with a new appeal to France. It was in the same vein with the recent speech on Our Foreign Relations.[216]

In a famous speech, made in the House of Lords, March 6, 1838, against the Eastern slave-trade, Lord Brougham arrests the current of his eloquence by the following illustrative diversion.

> “I have often heard it disputed among critics, which of all quotations was the most appropriate, the most closely applicable to the subject-matter illustrated; *and the palm is generally awarded to that which applied to Dr. Franklin the line in Claudian,*—
>
> ‘Eripuit fulmen cœlo, mox sceptra tyrannis’;
>
> yet still there is a difference of opinion, and even that citation, admirably close as it is, has rivals.”[217]

The British orator errs in attributing this remarkable verse to Claudian, misled, perhaps, by [Pg 222] reminiscence of like-sounding words by that poet,—

“Rapiat fulmen sceptrumque Typhœus.”[218]

And he errs also in the quotation of the verse itself, which he fails to give with entire accuracy. And this double mistake becomes more noticeable, when it appears in the carefully prepared collection of speeches, revised at leisure, and preserved in permanent volumes.

The beauty of this verse, even in its least accurate form, will not be questioned, especially as applied to Franklin, who, before the American Revolution, in which he performed so illustrious a part, had already awakened the world’s admiration by drawing the lightning from the skies. But, beyond its acknowledged beauty, this verse has an historic interest which has never been adequately appreciated. Appearing at the moment it did, it is closely associated with the acknowledgment of American Independence. Plainly interpreted, it calls George the Third “tyrant,” and announces that the sceptre has been snatched from his hands. It was a happy ally to Franklin in France, and has ever since been an inspiring voice. Latterly it has been adopted by the city of Boston, and engraved on granite in letters of gold, in honor of its greatest son and citizen. It may not be entirely superfluous to recount the history of a verse which has justly attracted so much attention, and in the history of Civilization has been of more value than the whole State of South Carolina.

From its first application to Franklin, this verse has excited something more than curiosity. [Pg 223] Lord Brougham tells us that it is often discussed in private circles. There is other evidence of the interest it has created. For instance, in an early number of “Notes and Queries,” is the following inquiry:—

> “Can you inform me who wrote the line on Franklin,
>
> ‘Eripuit cœlo fulmen, sceptrumque tyrannis’?
>
> “Henry H. Breen.
>
> “St. Lucia.”[219]

A subsequent writer in this same work, after calling the verse “a parody” of a certain line of Antiquity, says: “I am unable, however, to say who adapted these words to Franklin’s career. Was it Condorcet?”[220] Another writer in the same work says: “The inscription was written by Mirabeau.”[221]

I remember well a social entertainment in Boston, where a distinguished scholar of our country,[222] in reply to an inquiry at the table, said that the verse was founded on a line from the “Astronomicon” of Manilius, which he repeated:—

“Eripuitque Jovi fulmen, viresque tonandi.”[223]

John Quincy Adams, who was present, seemed to concur. Mr. Sparks, in his notes to the correspondence of Franklin, attributes to it the same origin.[224] But there are other places where its origin is traced with more precision. One of the correspondents of “Notes and Queries” says that he has read, but does not remember where, “that this line was *immediately* taken from one [Pg 224] in the ‘Anti-Lucretius’ of Cardinal Polignac.”[225] Another correspondent shows the intermediate authority.[226] My own notes were made without any knowledge of these studies, which, while fixing its literary origin, fail to exhibit its important character, especially as illustrating an historical epoch.

The verse cannot be found in any ancient writer,—not Claudian or anybody else. It is clear that it does not come from Antiquity, unless indirectly; nor does it appear that at the time of its first production it was referred to any ancient writer. Manilius was not mentioned. It is of modern invention, and was composed after the arrival of Franklin in Paris on his eventful mission. At first it was anonymous, but was attributed sometimes to D'Alembert and sometimes to Turgot. Beyond question, it was not the production of D'Alembert, while it is found in the Works of Turgot, published after his death, in the following form:—

"Eripuit cœlo fulmen, sceptrumque tyrannis."[227]

There is no explanation by the editor of the circumstances under which the verse was written; but it is given among poetical miscellanies of the author, immediately after a translation into French of Pope's "Essay on Man," in connection with the following French composition, entitled "Verses beneath the Portrait of Benjamin Franklin":—

[Pg 225]

"Le voilà ce mortel dont l'heureuse industrie
Sut enchaîner la Foudre et lui donner des loix,
Dont la sagesse active et l'éloquente voix
D'un pouvoir oppresseur affranchit sa Patrie,
Qui désarma les Dieux, qui réprime les Rois."

The single Latin verse is a marvellous substitute for these diffuse and feeble lines.

If there were any doubt upon its authorship, it would be removed by the positive statement of Condorcet, who, in his Life of Turgot, written shortly after the death of this great man, says: "There is known from Turgot but one Latin verse, designed for the portrait of Franklin"; and he gives the verse in this form:—

"Eripuit cœlo fulmen, mox sceptra tyrannis."[228]

But Sparks and Mignet,[229] and so also both the biographical dictionaries of France,—that of Michaud and that of Didot,—while ascribing it to Turgot, concur in the form already quoted from Turgot's Works, which was likewise adopted by Ginguené, the scholar who has done so much to illustrate Italian literature, on the title-page of his "Science du Bon-Homme Richard," with an abridged Life of Franklin, in 1794, and by Cabanis, who lived in such intimacy with Franklin.[230] It cannot be doubted that this was the final form the verse assumed,—as it is unquestionably the best.

This verse was no common event. It was a new expression of the French alliance, and an assurance of independence. After its appearance and general adoption, there was no retreat for France.

To appreciate its importance in marking and helping a great epoch, certain dates must be borne in mind. Franklin reached Paris on his mission towards the close of 1776. He had already signed the Declaration of Independence, and his present duty was to obtain the recognition of France for the new power. The very clever Madame du Deffand, in her amusing correspondence with Horace Walpole, describes him in a visit to her "with a fur cap on his head and spectacles on his nose," in the same small circle with Madame de Luxembourg, a great lady of the time, the Abbé Barthélemy, and the Duc de Choiseul, late Prime-Minister. This was on the 31st of December, 1776.[231] A pretty good beginning. More than a year of effort and anxiety ensued, brightened at last by the Burgoyne surrender at Saratoga. On the 6th of February, 1778, the work of the American Plenipotentiary was crowned by the signature of the two Treaties of Alliance and Commerce, by which France acknowledged our independence and pledged her belligerent support. On the 13th of March, one of these treaties, with a diplomatic note announcing that the Colonies were free and independent States, was communicated to the British Government, at London, which promptly encountered it by a declaration of war. On the 20th of March, Franklin was received by the King at Versailles, and this remarkable scene is described by the same feminine pen to which we are indebted for the early glimpse of him on his arrival in Paris.[232] But throughout this intervening period he had not lived unknown. Indeed, he had become at once a celebrity. Lacretelle, the eminent French historian, says: "By the effect which Franklin produced in France he might have been said to have fulfilled his mission, not to a court, but to a free people.... His virtues and renown negotiated for him."[233]

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Condorcet, who was part of that intellectual society which welcomed the new Plenipotentiary, has left a record of his reception. "The celebrity of Franklin in the sciences," he says, "gave him the friendship of all who love or cultivate them, that is, of all who exert a real and durable influence upon public opinion. At his arrival he became an object of veneration to all enlightened men, and of curiosity to others. He submitted to this curiosity with the natural facility of his character, and with the conviction that he thereby served the cause of his country. It was an honor to have seen him. People repeated what they had heard him say. Every *fête* which he was willing to receive, every house where he consented to go, spread in society new admirers, *who became so many partisans of the American Revolution*.... Men whom the reading of philosophical books had secretly disposed to the love of Liberty became enthusiastic for that of a strange people.... A general cry was soon raised in favor of the American War, and the friends of peace dared not even complain that peace was sacrificed to the cause of Liberty."[234] This is an animated picture by an eye-witness. But all authorities concur in its truthfulness. Even

Capefigue, whose business is to belittle all that is truly great, and especially to efface the names associated with human liberty, while, like another Old Mortality, he furbishes the tombstones of royal mistresses, is yet constrained to attest the popularity and influence which Franklin achieved. The critic dwells on what he styles his “Quaker garb,” his “linen so white under his brown clothes,” and also the elaborate art of the philosopher, who understood France and knew well “that a popular man became soon more powerful than power itself”; but he cannot deny that the philosopher “fulfilled his duties with great superiority,” or that he became at once famous.[235] The rosewater biographer of Diane de Poitiers, Madame de Pompadour, and Madame du Barry would naturally disparage the representative of Science and Revolution.

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From other quarters proceeds concurring testimony. A correspondent at Paris wrote: “He now engrosses the whole attention of the public. People of all ranks pay their court to him. His affability and complaisant behavior have gained him the esteem of the greatest people in this kingdom.”[236] Another wrote a little later: “When Dr. Franklin appears abroad, it is more like a public than a private gentleman, and the curiosity of the people to see him is so great that he may be said to be followed by a genteel mob.”[237] His mysterious power was asserted by an American newspaper, in announcing his intention “shortly to produce an electrical machine of such wonderful force, that, instead of giving a slight stroke to the elbows of fifty or a hundred thousand men who are joined hand in hand, it will give a violent shock even to Nature herself, so as to disunite kingdoms, join islands to continents, and render men of the same nation strangers and enemies to each other.”[238] The London paper which spoke of him as “the old fox” acknowledged his power.[239]

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The influence of Franklin was great beyond that of any American in Europe since. His presence gave character to the cause he represented, and was a standing recommendation of our country. Jefferson, who served two years with him at Paris, describes his influence there, and, in reply to the charge of subservience, says, in pregnant words: “He possessed the confidence of that Government in the highest degree, insomuch that it may truly be said that they were more under his influence than he under theirs. The fact is, that his temper was so amiable and conciliatory, his conduct so rational, never urging impossibilities, or even things unreasonably inconvenient to them, in short, so moderate and attentive to their difficulties, as well as our own, that what his enemies called subserviency I saw was only that reasonable disposition which, sensible that advantages are not all to be on one side, yielding what is just and liberal, is the more certain of obtaining liberality and justice.”[240] It is easy to see how such a character obtained from the French people the fame of snatching the sceptre from the tyrant.

The arrival of Franklin was followed very soon by the departure of the youthful Lafayette, who crossed the sea to offer his inspired sword to the service of American Liberty. Our cause was now widely known. In the thronged *cafés* and the places of public resort it was discussed with sympathy and admiration.[241] And so completely was Franklin recognized as the representative of new ideas, that the Emperor Joseph the Second of Austria, professed reformer as he was, visiting France under the travelling name of Count Falkenstein, is reported to have remarked, when asked to see him, “My business is to be a royalist,”—thus doing homage to the real character of him in whom the Republic was personified.

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Franklin became at once, by natural attraction, the welcome guest of that brilliant company of philosophers who exercised such influence over the eighteenth century. The “Encyclopédie” was their work, and they were masters at the Academy. He was received into their guild. At the famous table of the Baron D’Holbach, where twice a week, Sunday and Thursday, at dinner, lasting from two till seven o’clock, were gathered the wits of the time, he found a hospitable chair. But he was most at home with Madame Helvétius, the widow of the rich and handsome philosopher, whose name, derived from Switzerland, is now almost unknown. At her house he met in social familiarity D’Alembert, Diderot, D’Holbach, Morellet, Cabanis, and Condorcet, with their compeers. There, also, was Turgot, greatest of all. There was another, famous in some respects as any of these, but leading a different life, whom Franklin saw often,—Caron Beaumarchais, author already of the “Barbier de Séville,” as he was afterwards of the “Mariage de Figaro,” who, turning aside from an unsurpassed success at the theatre, exerted his peculiar genius to enlist the French Government on the side of the struggling Colonies, predicted their triumph, and at last, under the assumed name of a mercantile house, became the agent of the Comte de Vergennes in furnishing clandestine supplies of arms before the recognition of independence. It is supposed that through this popular dramatist Franklin maintained communications with the French Government until the mask was thrown aside.[242]

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Beyond all doubt, Turgot is one of the most remarkable intelligences that France has produced. He was by nature a philosopher and a reformer; but he was also a statesman, with a seat in the Cabinet of Louis the Sixteenth, first as Minister of the Marine, and then as Comptroller-General of the Finances. Perhaps no minister ever studied more completely the good of the people. His administration was one constant benefaction. But he was too good for the age,—or, rather, the age was not good enough for him. The King was induced to part with him, forgetting his earlier words, “You and I are the only two persons who really love the people.” This was some time in May, 1776; so that Franklin, on his arrival, found this eminent Frenchman free from all constraints of ministerial position. The character of Turgot shows how naturally he sympathized with the Colonies struggling for independence, especially when represented by a person like Franklin. In a prize essay of his youth, written in 1750, when he was only twenty-three years of

age, he foretold the American Revolution. These are his remarkable words:—

> "Colonies are like fruits, which hold to the tree only till their maturity. Having become sufficient to themselves, they do that which Carthage did, *that which America will one day do*."[243]

One of his last acts before leaving the Ministry was to prepare a memoir on the American War, [Pg 232] for the information and at the request of the King, where he says, that "the idea of the absolute separation of the Colonies and the mother country seems infinitely probable,—that, when the independence of the Colonies shall be entire and acknowledged by the English themselves, there will be a total revolution in the political and commercial relations of Europe and America,—and that all the parent states will be forced to abandon all empire over their colonies, to leave them entire liberty of commerce with all nations, and to be content in sharing with others this liberty, and in preserving with their colonies the bonds of amity and fraternity."[244] This memoir of the French statesman bears date the 6th of April, 1776, nearly three months before the Declaration of Independence.

Leaving the Ministry, Turgot devoted himself to literature, science, and charity, translating Odes of Horace and portions of Virgil, studying geometry with Bossut, chemistry with Lavoisier, astronomy with Rochon, and interesting himself in everything by which human welfare is advanced. Such a character, with such experience of government, and the prophet of American independence, was naturally prepared to welcome Franklin, not only as philosopher, but also as statesman.

The classical welcome was partially anticipated,—at least in an unsuccessful attempt. Baron Grimm, in that interesting and instructive "Correspondance," prepared originally for the advantage of distant courts, but now constituting a literary and social monument of the period, [Pg 233] mentions, under date of October, 1777, that the following French verses were made for the portrait of Franklin by Cochin, engraved by St. Aubin:—

> "C'est l'honneur et l'appui du nouvel hémisphère;
> Les flots de l'Océan s'abaissent à sa voix;
> Il réprime ou dirige à son gré le tonnerre:
> Qui désarme les dieux, peut-il craindre les rois?"[245]

These lines seem to contain the very idea in the verse of Turgot. But they were suppressed at the time by the censor, on the ground that they were "blasphemous," although it is added in a note that "they concerned only the King of England." Was it that the negotiations with Franklin were not yet sufficiently advanced? And here mark the dates.

It was only after the communication to Great Britain of the Treaty of Alliance and the reception of Franklin at Versailles, that the seal seems to have been broken. Baron Grimm, in his "Correspondance," under date of April, 1778, makes the following entry.

> "A very beautiful Latin verse has been made for the portrait of Dr. Franklin, —
>
> 'Eripuit cœlo fulmen, sceptrumque tyrannis.'
>
> It is a happy imitation of a verse of the 'Anti-Lucretius,'—
>
> 'Eripuitque Jovi fulmen, Phœboque sagittas.'"[246]

Here is the earliest notice of this verse, authenticating its origin. Nothing further is said of the "Anti-Lucretius"; for in that day it was familiar to every lettered person. But I shall speak of it before I close.

Only a few days later the verse appears in the correspondence of Madame D'Épinay, whose intimate relations with Baron Grimm—the subject of curiosity and scandal—will explain her early [Pg 234] knowledge of it. She records it in a letter to the very remarkable Italian Abbé Galiani, under date of May 3, 1778. And she proceeds to give a translation in French verse, which she says "D'Alembert made the other morning on waking."[247] Galiani, who was himself a master of Latin versification, and followed closely the fortunes of America, must have enjoyed the tribute. In a letter written shortly afterwards, he enters into all the grandeur of the occasion. "You have," says he, "at this hour decided the greatest revolution of the globe,—the question whether America shall rule Europe, or Europe shall continue to rule America. I would wager in favor of America."[248] In these words the Neapolitan said as much as Turgot.

I cannot quote Galiani without adding that nobody saw America with more prophetic eye than this inspired Pulcinello of Naples. As far back as May 18, 1776, several weeks even before the Declaration of Independence, and much longer before it was known in Europe, he wrote: "The epoch is come for the total fall of Europe and for transmigration to America.... Do not, then, buy your house in the Chaussée d'Antin, but at Philadelphia. The misfortune for me is that there are no abbeys in America."[249] Once a favorite in the very circle where Franklin was welcomed, he left Paris for Italy before the arrival of the negotiator, so that he knew the tribute only through a [Pg 235] faithful correspondence.

Shortly afterwards the verse appears in a different scene. It had reached the *salons* of Madame Doublet, whence it was transferred to the "Mémoires Secrets" of Bachaumont, under date of June 8, 1778, as "a very beautiful verse, quite proper to characterize M. Franklin and to serve as an

inscription for his portrait."[250] These Memoirs, as is well known, are the record of news and town-talk gathered in the circle of that venerable Egeria of gossip;[251] and here is evidence of the publicity this welcome had promptly obtained.

The verse was now fairly launched. War was flagrant between France and Great Britain. No longer was there any reason why the new alliance between France and the United States should not be placed under the auspices of genius, and why the same hand that had snatched the lightning from the skies should not have the fame of snatching the sceptre from King George the Third. The time for free speech had come. It was no longer "blasphemous."

It will be observed that these records of this verse fail to mention the immediate author. Was he unknown at the time? or did the fact that he was recently a Cabinet Minister induce him to hide behind a mask? Turgot was a master of epigram,—as witness the terrible lines on Frederick of Prussia;[252] but he was very prudent in conduct. "Nobody," said Voltaire, "so skilful to launch [Pg 236] the shaft without showing the hand." There is a letter from no less a person than D'Alembert, which reveals something of the "filing" which the verse underwent, and something of the persons consulted. Unhappily, the letter is without date; nor does it appear to whom it was addressed, except that the "*cher confrère*" seems to imply that it was to a brother of the Academy. This letter is found in a work now known to have been the compilation of the Marquis Gaëtan de la Rochefoucauld,[253] entitled "Mémoires de Condorcet sur la Révolution Française, extraits de sa Correspondance et de celles de ses Amis," and is introduced by the following words from the Marquis:—

> "It is known how Franklin was fêted when he came to Paris, because he was the representative of a republic. The philosophers, especially, received him with enthusiasm. It may be said, among other things, that D'Alembert lost his sleep; and we are going to prove it by a letter which he wrote, while racking his brain to versify in honor of Franklin."

The letter is then given as follows:—

> "Friday Morning.
>
> "My dear Colleague,— … You are acquainted with the Franklin verse,—
>
> 'Eripuit cœlo fulmen, *mox sceptra* tyrannis.'
>
> You should surely cause it to be put in the Paris paper, if it is not there already.
>
> "I am inclined to agree with La Harpe that *sceptrumque* is better: first, because *mox sceptra* is a little hard, and then because *mox*, according to the [Pg 237] dictionary of Gesner, who adduces examples, signifies equally *statim* or *deinde*, which makes an ambiguity, *mox eripuit* or *mox eripiet*.
>
> "Be that as it may, here is how I have attempted to translate this verse for the portrait of Franklin:—
>
> 'Tu vois le sage courageux
> Dont l'heureux et mâle génie
> Arracha le tonnerre aux dieux
> Et le sceptre à la tyrannie.'
>
> If you find these verses sufficiently tolerable, so that people will not laugh at me, you can have them put into the Paris paper, even with my name. I shall honor myself in rendering this homage to Franklin, but on condition once more that you find the verses *printable*. As I make little pretension on account of them, I shall be perfectly content, if you reject them as bad.
>
> "The third verse might be put, *A ravi le tonnerre aux cieux* or *aux dieux*. I should prefer the other; but you shall choose."[254]

From this letter it appears that the critical judgment of La Harpe, confirmed by D'Alembert, sided for *sceptrumque* as better than *mox sceptra*.

The verse of Turgot was not alone in its testimony. An incident precisely contemporaneous shows how completely France had fallen under the fascination of the American cause. Voltaire, the acknowledged chief of French literature in the brilliant eighteenth century, after many years of busy exile at Ferney, in the neighborhood of Geneva, where he had wielded his far-reaching sceptre, was induced in old age to visit Paris once again before he died. He left his Swiss retreat on the 6th of February, 1778, the very day on which Franklin signed the alliance with France, and, after a journey which resembled the progress of a sovereign, reached Paris on the 10th of [Pg 238] February. He was at once surrounded by the homage of all most illustrious in literature and science, while the Theatre, grateful for his contributions, vied with the Academy. There were two characters on whom the patriarch, as he was fondly called, lavished a homage of his own. He had already addressed to Turgot a most remarkable epistle in verse, the mood of which may be seen in its title, "Épître à un Homme"; but on seeing the discarded statesman, who had been so true to benevolent ideas, he came forward to meet him, saying, with his whole soul, "Let me kiss the hand which signed the salvation of the people." The scene with Franklin was more touching still. Voltaire began in English, which he had spoken early in life, but, having lost the habit, soon

changed to French, saying that he “could not resist the desire of speaking for one moment the language of Franklin.” The latter had brought with him his grandson, for whom he asked a benediction. “God and Liberty,” said Voltaire, putting his hands upon the head of the child; “this is the only benediction proper for the grandson of Franklin.” A few weeks afterward, at a public session of the Academy, they were placed side by side, when, amidst the applause of the enlightened company, the two old men rose and embraced. The political triumphs of Franklin and the dramatic triumphs of Voltaire caused the exclamation, “Solon and Sophocles embrace!” It was more than this. It was France and America embracing beneath the benediction of “God and Liberty.” Only a month later Voltaire died. But the alliance with France had received new assurance, and the cause of American independence an immutable impulse.

Turgot did not live to enjoy the final triumph to which he had given such remarkable [Pg 239] expression. He died March 20, 1781, several months before that “crowning mercy,” the capture of Cornwallis, and nearly two years before the Provisional Articles of Peace, by which the Colonies were recognized as free and independent States. But his attachment to Franklin was one of the enjoyments of his latter years.[255] Besides the verse to which so much reference has been made, there is an interesting incident attesting the communion of ideas between them, if not the direct influence of Turgot. Captain Cook, the eminent navigator, who “steered Britain’s oak into a world unknown,” was in distant seas on a voyage of discovery. Such an enterprise naturally interested Franklin, and, in the spirit of a refined humanity, he sought to save it from the chances of war. Accordingly, he issued a passport, addressed “To all captains and commanders of armed ships acting by commission from the Congress of the United States of America, now in war with Great Britain,” where, after setting forth the nature of the voyage of the English navigator, he proceeded to say: “This is most earnestly to recommend to every one of [Pg 240] you, that, in case the said ship, which is now expected to be soon in the European seas on her return, should happen to fall into your hands, you would not consider her as an enemy, nor suffer any plunder to be made of the effects contained in her, nor obstruct her immediate return to England by detaining her or sending her into any other part of Europe or to America, but that you would treat the said Captain Cook and his people with all civility and kindness, affording them, as common friends to mankind, all the assistance in your power which they may happen to stand in need of.”[256] This document bears date March 10, 1779. But Turgot had anticipated Franklin. At the first menace of war he had submitted a memoir to the French Government, on which it was ordered that Captain Cook should not be treated as an enemy, but as a benefactor of all European nations.[257] Here was a triumph of Civilization by which we, too, have been gainers; for such an example is universal and immortal in influence.

There is yet another circumstance which should be mentioned as revealing an identity of sympathies in these two eminent persons. Each sought to marry Madame Helvétius: Turgot early in life, while she was still Mademoiselle Ligniville, belonging to a family of twenty-one children, from a château in Lorraine, and a niece of Madame de Graffigny, author of the “Peruvian Letters”; Franklin in his old age, while a welcome guest in the intellectual company which this widowed lady continued to gather about her at Auteuil, in the neighborhood of Paris, and not far from his own house at Passy. Throughout his stay in France he continued in unbroken relations with this circle, dining with it very often, and adding much to its gayety, while Madame Helvétius, with her friends, dined with him once a week. It was with tears in his eyes that he parted from her, whom he never expected to see again in this life; and on reaching his American home he addressed her in words of touching tenderness: “I stretch out my arms towards you, [Pg 241] notwithstanding the immensity of the seas which separate us, while I wait the heavenly kiss which I firmly trust one day to give you.”[258]

In the permanent group about Madame Helvétius were Cabanis and Morellet, both living for many years under her hospitable roof. To the former we are indebted for the interesting extract last quoted. The intimacy with Franklin is attested in other ways. Nobody who has visited the Imperial[259] Library at Paris can forget his very pleasant autograph note in French concerning Madame Helvétius, exhibited in the same case with an autograph note of Henry the Fourth to Gabrielle d’Estrées.

Another glimpse is furnished by Mrs. Adams, who, in her family correspondence, reports a scene at the house of Franklin. “The Doctor entered at one door, she [Madame Helvétius] at the other; upon which she ran forward to him, caught him by the hand, ‘Hélas, Franklin!’—then gave him a double kiss, one upon each cheek, and another upon his forehead.... She carried on the chief of the conversation at dinner, frequently locking her hand into the Doctor’s.” Franklin spoke of her as “a genuine Frenchwoman, wholly free from affectation or stiffness of behavior, and one of the best women in the world.”[260] Madame Helvétius died at Auteuil, August 12, 1800, aged eighty-one, and, according to her desire, was buried in her garden. A few years later the same house became the home of Benjamin Thompson, Count Rumford, who died there, and was buried [Pg 242] in the neighboring cemetery.

But the story of the verse is not yet finished. And here it mingles with the history of Franklin in Paris, constituting an episode of the American Revolution. The verse was written for a portrait. And now that the costly first step had been taken, the portrait of Franklin was seen everywhere, —in painting, in sculpture, and in engraving. I have counted in the superb collection of the Bibliothèque Impériale, at Paris, forty-seven engraved heads of him. At the royal exhibition of pictures the republican portrait found place, and the name of Franklin was printed at length in the catalogue,—a circumstance which did not pass unobserved at the time; for the “Espion Anglais,” in recording it, treats it as “announcing that he began to come out of his obscurity.”[261]

The same curious authority, describing a festival at Marseilles, says, under date of March 20, 1779, "I was struck, on entering the hall, to observe a crowd of portraits representing the insurgents; but that of M. Franklin especially drew my attention, on account of the device, '*Eripuit cœlo fulmen, sceptrumque tyrannis*.' This was inscribed recently, and *every one admired the sublime truth*."[262] Thus completely was France, not merely in its social centre, where fashion gives the law, but in its distant borders, pledged to the cause of which Franklin was the representative.

As in halls of science and popular resorts, so was our Plenipotentiary even in the palace of princes. The biographer of the Prince de Condé dwells with admiration upon the illustrious character, who, during the great debate and the negotiations that ensued, had fixed the regards [Pg 243] of Paris, of Versailles, of the whole kingdom indeed,—although in simple and farmer-like exterior, so unlike those gilded plenipotentiaries to whom France was accustomed,—and he recounts, most sympathetically, that the Prince, after an interview of two hours, declared that "Franklin appeared to him above even his reputation."[263] And here we encounter again the unwilling testimony of Capefigue, who says that he was followed everywhere, taking possession of "hearts and minds," and that "his picture, in his simple Quaker dress, was suspended at the hearth of the poor and in the boudoir of the fashionable,"[264]—all of which is in harmony with the more sympathetic record of Lacretelle, who says that "portraits of Franklin were to be seen everywhere, with this inscription, *which the Court itself found just and sublime*, '*Eripuit cœlo fulmen, sceptrumque tyrannis*.'"[265]

Fragonard, the King's painter, united in this adulation. A French paper describes the artist as displaying his utmost efforts "in an elegant picture dedicated to the genius of Franklin, who is [Pg 244] represented with one hand opposing the ægis of Minerva to the thunderbolt, which he first knew how to fix by his conductors, and with the other commanding the God of War to fight against Avarice and Tyranny, whilst America, nobly reclining upon him, and holding in her hand the fasces, true emblem of the union of the American States, looks down with tranquillity on her defeated enemies." It is then said, that "the painter, in this picture, most beautifully expressed the idea of the Latin verse which has been so justly applied to M. Franklin." The enthusiastic journalist, not content with the picture and the verse, proceeded to claim him as of French ancestry. "Franklin appears rather to be of French than of English origin. It is certain that the name of Franklin, or Franquelin, is very common in Picardy, especially in the districts of Vimeux and Ponthieu. It is very probable that one of the Doctor's ancestors was an inhabitant of this country, and went over to England with the fleet of Jean de Biencourt, or that which was fitted out by the nobility of this province."[266] The story of Homer seems revived.

The tribute of Madame d'Houdetot was most peculiar. This lady, one of the riddles of French society in the eighteenth century, whom Rousseau depicted in a passage of surpassing fervor and made the inspiration of his "Nouvelle Éloïse," received Franklin at her château, near Paris, in a brilliant circle, with banquet and verses in his honor. The famous guest, at his arrival, and then at dinner, with every glass of wine was saluted by a new verse, the whole ending with the ascription of Turgot.[267] Whether to admire or pity the philosopher on this occasion is the question.

In the minds of Frenchmen Franklin was associated always with this verse; but such association was no common fame. The Marquis de Chastellux, while on board the French frigate in the Chesapeake Bay, on which he was about to leave, after those travels which did so much to [Pg 245] make our country known in Europe, addressed a communication to Professor Madison, of Virginia, on the fine arts in America, where he recommends for all the great towns a portrait of Franklin, "with the Latin verse inscribed in France below his portrait."[268] Thus, while teaching our fathers the homage due to the great citizen, the generous Frenchman did not forget the testimony of his countryman.

French invention stopped not with Turgot. Other verses were pitched on the same key. An engraving of Franklin by Chevillet, after a portrait by Duplessis, has this tribute:—

"Honneur du Nouveau Monde et de l'Humanité,
Ce Sage aimable et vrai les guide et les éclaire;
Comme un autre Mentor, il cache à l'œil vulgaire,
Sous les traits d'un mortel, une Divinité."

Under another engraving, by F. N. Martinet, where Franklin is seated in a chair, are these lines:—

"Il a ravi le feu des cieux,
Il fait fleurir les arts en des climats sauvages;
L'Amérique le place à la tête des sages,
La Grèce l'auroit mis au nombre de ses Dieux."

It was at Court, even in the palatial precincts of Versailles, that the portrait and its famous inscription had their most remarkable experience. Of this there is authentic account in the Memoirs of Marie Antoinette by her attendant, Madame Campan. This feminine chronicler relates that Franklin appeared at court in the dress of an American farmer. His flat hair without powder, his round hat, his coat of brown cloth contrasted with the bespangled and embroidered dresses, the powdered and perfumed coiffures of the courtiers. The novelty charmed the lively [Pg 246] imagination of the French ladies. Elegant *fêtes* were given to the man who was said to unite in himself the renown of one of the greatest of natural philosophers with "those patriotic virtues which had made him embrace the noble part of Apostle of Liberty." Madame Campan records

that she assisted at one of these *fêtes*, where the most beautiful among three hundred ladies was designated to place a crown of laurel upon the white head of the American philosopher, and two kisses upon the cheeks of the old man. Even in the palace, at the exposition of the Sèvres porcelain, the medallion of Franklin, with the legend, "*Eripuit cœlo*," etc., was sold directly under the eyes of the King. Madame Campan adds, however, that the King avoided expressing himself on this enthusiasm, which, "without doubt, his sound sense led him to blame." But an incident, called "a pleasantry," which has remained quite unknown, goes beyond speech in explaining the secret sentiments of Louis the Sixteenth. The Comtesse Diane de Polignac, devoted to Marie Antoinette, shared warmly the "infatuation" with regard to Franklin. The King observed it. But here the story shall be told in the language of the eminent lady who records it: "Il fit faire à la manufacture de Sèvres un vase de nuit, au fond duquel était placé le médaillon avec la légende *si fort en vogue*, et l'envoya en présent d'étrennes à la Comtesse Diane."[269] Such was the exceptional treatment of Franklin, and of the inscription in his honor which was "so much in vogue." Giving to this incident its natural interpretation, it is impossible to resist the conclusion, [Pg 247] that the French people, and not the King, sanctioned American independence.

The conduct of the Queen on this occasion is not recorded, although we are told by the same communicative chronicler, who had been her Majesty's companion, that she did not hesitate to express herself more openly than the King on the part taken by France in favor of American independence, to which she was constantly opposed. A letter from Marie Antoinette, addressed to Madame de Polignac, under date of April 9, 1787, declares unavailing regret in memorable words: "The time of illusions is past, and to-day we pay dear on account of our infatuation and enthusiasm for the American War."[270] Evidently, Marie Antoinette, like her brother Joseph, thought that her "business was to be a royalist."

But the name of Franklin triumphed in France. So long as his residence continued there he was received with honor; and when, after the achievement of independence, and the final fulfilment of all that was declared in the verse of Turgot, he undertook to return home, the Queen—who had looked with so little favor upon the cause he so grandly represented—sent a litter to receive his sick body and carry him gently to the sea. As the great Revolution began to show itself, his name was hailed with new honor; and this was natural; for the French Revolution was an outbreak of the spirit that had risen to welcome him. In snatching the sceptre from a tyrant he had given a lesson to France. His death, when at last it occurred, was the occasion of a magnificent eulogy from Mirabeau, who, borrowing the idea of Turgot, exclaimed from the tribune of the National [Pg 248] Assembly, "Antiquity would have raised altars to the powerful genius, who, to the benefit of mankind, embracing in his thought both heaven and earth, *could subdue lightning and tyrants*." On his motion, France went into mourning for Franklin.[271] His bust became a favorite ornament, and, during the festival of Liberty, it was carried, with the busts of Sidney, Rousseau, and Voltaire, before the people to receive their veneration.[272] A little later, the eminent medical character, Cabanis, who had lived in intimate association with Franklin, added his testimony, saying, that the enfranchisement of the United States was in many respects his work, and that the Revolution, the most important to the happiness of men which had then been accomplished on earth, united with one of the most brilliant discoveries of physical science to consecrate his memory; and he concludes by quoting the verse of Turgot.[273] Long afterwards, his last surviving companion in the cheerful circle of Madame Helvétius, still loyal to the idea of Turgot, hailed him as "that great man who placed his country in the number of independent states, and made one of the most important discoveries of the age."[274]

It is time to look at this verse in its literary relations, from which I have been diverted by its commanding import as a political event; but this naturally enhances the interest in its origin. [Pg 249]

The poem which furnished the prototype of the famous verse was "Anti-Lucretius, sive de Deo et Natura," by the Cardinal Melchior de Polignac. Its author was of that patrician house associated so closely with Marie Antoinette in the earlier Revolution, and with Charles the Tenth in the later Revolution, having its cradle in the mountains of Auvergne, near the cradle of Lafayette, and its present tomb in the historic cemetery of Picpus, near the tomb of Lafayette, so that these two great names, representing opposite ideas, begin and end side by side. He was not merely author, but statesman and diplomatist also, under Louis the Fourteenth and Fifteenth. Through his diplomacy a French prince was elected King of Poland. He represented France at the Peace of Utrecht, where he bore himself very proudly towards the Dutch. By the nomination of the Pretender, at that time in France, he obtained the hat of a cardinal. At Rome he was a favorite, and also at Versailles, with some interruptions. His personal appearance, his distinguished manners, his genius, and his accomplishments, all commended him. Literary honors were superadded to political and ecclesiastical. He succeeded to the chair of Bossuet at the Academy. But he was not without the vicissitudes of political life. Falling into disgrace at court, he was banished to the abbacy of Bonport. There the lettered Prince of the Church occupied himself with a refutation of Lucretius, in Latin verse.

The origin of the poem is not without interest. Meeting Bayle in Holland, the Frenchman found the indefatigable skeptic most persistently citing Lucretius, in whose elaborate verse the [Pg 250] atheistic materialism of Epicurus is developed and exalted. Others had answered the philosopher directly; but the indignant Christian was moved to answer the poet through whom the dangerous system was proclaimed. His poem was, therefore, a vindication of God and religion, in direct response to a master-poem of antiquity in which these are assailed. The attempt was lofty,

especially when the champion adopted the language of Lucretius. Perhaps no writer of Latin verse since the admired Sannazaro, found equal success. Even before its publication, in 1747, it was read at court, and was admired in the princely circle of Sceaux. It appeared in elegant editions, was translated into French prose by Bougainville, and into French verse by Jeanty-Laurans, also most successfully into Italian verse by Ricci. At the latter part of the last century, when Franklin reached Paris, it was hardly less known in literary circles than a volume of Grote's History in our own day. Voltaire, the contemporary arbiter of literary fame, regarding the author only on the side of literature, said of him, in his "Temple du Goût":—

"Le Cardinal, oracle de la France,
...
Réunissant Virgile avec Platon,
Vengeur du Ciel et vainqueur de Lucrèce."[275]

The last line of this remarkable eulogy has a movement and balance not unlike the Latin verse of Turgot, or that which suggested it in the poem of Polignac; but the praise it so pointedly offers attests the fame of the author. Nor was this praise limited to the "fine frenzy" of verse. The "Anti-Lucretius" was gravely pronounced the "rival of one of the greatest poems of ancient [Pg 251] Rome,"—"with verses as flowing as Ovid, sometimes approaching the elegant simplicity of Horace and sometimes the nobleness of Virgil,"—and then again, with a philosophy and a poetry combined which "would not be disavowed either by Descartes or by Virgil."[276]

Turning now to the poem itself, we see how completely the verse of Turgot finds its prototype. Epicurus is indignantly described as denying to the gods all power, and declaring man independent, so as to act for himself; and here the poet says: "Assailing the thundering temples of heaven, *he snatched the lightning from Jove and the arrows from Apollo*, and, liberating the human race, bade it dare all things":—

"Cœli et tonitralia templa lacessens,
Eripuit fulmenque Jovi, Phœboque sagittas;
Et mortale manumittens genus, omnia jussit
Audere."[277]

To deny the power of God, and to declare independence of His commands, which the poet here holds up to judgment, is very unlike the life of Franklin, all whose service was in obedience to God's laws, whether in snatching the lightning from the skies or the sceptre from tyrants; and yet it is evident that the verse picturing Epicurus in his impiety suggested the image of the American plenipotentiary in his double labors of science and statesmanship.

The present story will not be complete without further reference to the poem of Antiquity supposed to have suggested the verse of Turgot, and which doubtless did suggest the verse of the [Pg 252] "Anti-Lucretius." Manilius is a poet little known. It is difficult to say when he lived or what he was. He is sometimes imagined to have lived under Augustus, and sometimes under Theodosius. He is sometimes imagined to have been a Roman slave, and sometimes a Roman senator. His poem, under the name of "Astronomicon," is a treatise on astronomy in verse, recounting the origin of the material universe, exhibiting the relations of the heavenly bodies, and vindicating this ancient science. While describing the growth of knowledge, gradually mastering Nature, the poet says,—

"Eripuitque Jovi fulmen, viresque tonandi."[278]

The meaning of this line is seen in the context, which, for plainness as well as curiosity, I quote from a metrical version of the first book, entitled "The Sphere of Marcus Manilius made an English Poem, by Edward Sherburne, Esquire," and dedicated to Charles the Second:—

"Nor put they to their curious search an end,
Till reason had scaled heaven, thence viewed this round,
And Nature latent in its causes found:
Why thunder does the suffering clouds assail;
Why winter's snow's more soft than summer's hail;
Whence earthquakes come, and subterranean fires;
Why showers descend; what force the wind inspires:
From error thus she wondering minds uncharmed,
Unsceptred Jove, the Thunderer disarmed."

Enough has been said on the question of origin; but there is yet one other aspect of the story.

The verse was hardly divulged when it became the occasion of various efforts in the way of translation. Turgot had already done it into French; so had D'Alembert. M. Nogaret wrote to [Pg 253] Franklin, inclosing an attempted translation, and says in his letter: "The French have done their best to translate this Latin verse, where justice is done you in so few words. They have appeared as jealous of transporting this eulogy into their language as they are of possessing you. But nobody has succeeded, and I think nobody will succeed." He then quotes a translation which he thinks defective, although it appeared in the "Almanach des Muses" as the best:—

"Cet homme que tu vois, sublime en tous les tems,
Dérobe aux dieux la foudre et le sceptre aux tyrans."[279]

To this communication Dr. Franklin made the following reply.

"Passy, 8 March, 1781.

"Sir,—I received the letter you have done me the honor of writing to me the 2d instant, wherein, after overwhelming me with a flood of compliments, which I can never hope to merit, you request my opinion of your translation of a Latin verse that has been applied to me. If I were, which I really am not, sufficiently skilled in your excellent language to be a proper judge of its poesy, the supposition of my being the subject must restrain me from giving any opinion on that line, except that it ascribes too much to me, especially in what relates to the tyrant,—the Revolution having been the work of many able and brave men, wherein it is sufficient honor for me, if I am allowed a small share. I am much obliged by the favorable sentiments you are pleased to entertain of me....

"With regard, I have the honor to be, Sir, &c.,

"B. Franklin."[280]

In acknowledgment, M. Nogaret says: "Paris is pleased with the translation of your '*Eripuit*,' and your portrait, as I had foreseen, makes the fortune of the engraver."[281] But it does not appear to which translation he refers. [Pg 254]

Here is an attempt preserved in the Works of Turgot:—

"Il a, par ses travaux toujours plus étonnans,
Ravi la foudre aux Dieux et le sceptre aux Tyrans."[282]

Mr. Sparks found among Franklin's papers the following paraphrastic version:—

"Franklin sut arrêter la foudre dans les airs,
Et c'est le moindre bien qu'il fit à sa patrie;
Au milieu de climats divers,
Où dominait la tyrannie,
Il fit régner les arts, les mœurs, et le génie;
Et voilà le héros que j'offre à l'univers."[283]

Nor should I omit a translation into English by Mr. Elphinston:—

"He snatched the bolt from Heaven's avenging hand,
Disarmed and drove the tyrant from the land."[284]

A song, by the Abbé Morellet, written for one of the dinners of Madame Helvétius, adopts, in some of its verses, the idea of Turgot.

"Comme un aigle audacieux,
Il a volé jusqu'aux cieux,
Et dérobé le tonnerre
Dont ils effrayaient la terre,
Heureux larcin
De l'habile Benjamin.

"L'Américain indompté
Recouvre sa liberté;
Et ce généreux ouvrage, [Pg 255]
Autre exploit de notre sage,
Est mis à fin
Par Louis et Benjamin."

These verses are characteristic of that intimate circle. *L'habile Benjamin!*

Nothing with regard to Franklin is more curious than the Memoirs of the long-lived Abbé,[285] including especially the humorous engraving illustrating the benevolence of Nature in the construction of the elbow, from a design by the lightning-and-sceptre-seizer. In some copies this engraving is wanting. Franklin is represented as fond especially of Scottish airs and *chansons à boire*, which he accompanied sometimes on the harmonica, "an instrument, as is known, of his invention." The scandalous whispers with regard to him, strangely adopted by a German traveller in our country,[286] had no better authority, probably, than these hilarities and the well-known "infatuation" of the court ladies. But the good Abbé, who saw him so freely with the friends he loved, dwells on his exquisite social qualities, his perfect good-nature, his simplicity of manners, his uprightness of soul, which made itself felt in the smallest things, his extreme tolerance, and, above all, his sweet serenity, changing easily into gayety; and he describes the great void made in that circle when he left for America.

In concluding this sketch, I wish to say that the literary associations of the subject did not tempt me; but I could not resist the inducement to present in proper light an interesting incident, which is truly comprehended only when seen in its political relations. Its history, even in details, becomes important, so that the verse which occupied so much attention should be recognized not only in its scholarly fascination, but in its wide-spread influence among the learned and even the fashionable in Paris and throughout France, binding this great nation by an unchangeable vow to [Pg 256]

the support of American Liberty. Words are sometimes deeds; but never were words so completely deeds as those with which Turgot welcomed Franklin. The memory of that welcome cannot be forgotten in America. Can it ever be forgotten in France?

And now the country is amazed by the report that the original welcome of France to America, and the inspired welcome of Turgot to Franklin, are forgotten by the France of this day, or, rather let me say, forgotten by the Emperor, whose memory for the time is the memory of France. It is said that Louis Napoleon is concerting alliance with the Rebel Slavemongers of our country, founded on the recognition of their independence, so that they may take their place as a new power in the Family of Nations. Indeed, we have been told, through the columns of the official organ, the "Moniteur," that he wishes to do this thing. Can he imagine that he follows the great example of the last century?

What madness!

The two cases are in conspicuous contrast,—as opposite as the poles, as unlike as Liberty and Slavery.

The struggle for American independence was for Liberty, and was elevated throughout by this holy cause. But the struggle for Slavemonger independence is necessarily and plainly for Slavery, and is degraded throughout by the unutterable vileness of its undisguised pretensions. [Pg 257]

The earlier struggle, adopted by the enlightened genius of France, was solemnly placed under the benediction of "God and Liberty." The present struggle, happily thus far discarded by that same enlightened genius, can have no other benediction than "Satan and Slavery."

The earlier struggle was to snatch the sceptre from a kingly tyrant. The present struggle is to put whips in the hands of Rebel Slavemongers with which *to compel work without wages*, thus giving wicked power to vulgar tyrants without number.

The earlier struggle was fitly pictured by the welcome of Turgot to Franklin. But another feeling must be found, and other words invented, to portray the struggle now seeking the protection of France.

The earlier struggle was grandly represented by Benjamin Franklin, who was already known by a sublime discovery in science. The present struggle is characteristically represented by John Slidell,[287] whose great fame is from electioneering frauds to control a Presidential election; so that his character is fitly drawn, when it is said that he thrust fraudulent votes into the ballot-box, and whips into the hands of taskmasters. [Pg 258]

The earlier struggle was predicted by Turgot, who said, that, in the course of Nature, colonies must drop from the parent stem, like ripe fruit. But where is the Turgot who has predicted, that, in the course of Nature, the great Republic must be broken to found a new power on the corner-stone of Slavery?

The earlier struggle gathered about it the sympathy of the learned, the good, and the wise, while the people of France rose up to call it blessed. The present struggle can expect nothing but detestation from all not lost to duty and honor, while the people of France must cover it with curses.

The earlier struggle enjoyed the favor of France, whether in assemblies of learning or of fashion, in spite of its King. It remains to be seen if the present struggle must not ignobly fail in France, still mindful of its early vows, in spite of its Emperor.

Where duty and honor are so plain, it is painful to think that even for a moment there can be hesitation.

Alas for France!

[Pg 259]

VICTORY AND PEACE THROUGH EMANCIPATION.

Letter to Colored Citizens in New York, celebrating the Anniversary of the Proclamation, December 18, 1863.

Washington, December 18, 1863.

GENTLEMEN,—It is not in my power to be present at your festival in honor of the Proclamation of Emancipation. But, wherever I may be, I shall celebrate it in my heart.

That Proclamation was the key to open the gates of victory and peace. Without it victory would have been doubtful, and peace impossible. And now both are certain.

Accept my best wishes, and believe me, Gentlemen,

Faithfully yours,

Charles Sumner.

The Committee, &c.

THE MAYFLOWER AND THE SLAVE SHIP.

Letter to the New England Society at New York, December 21, 1863.

At the anniversary of the Society speeches were made by Rev. Dr. Hitchcock, Mayor Opdyke, General Dix, General Burnside, General Sickles, Senator Hale, Rev. Henry Ward Beecher, and James T. Brady, Esq. Among the letters read was one from Mr. Sumner.

Senate Chamber, December 21, 1863.

MY DEAR SIR,—I had counted on partaking of your patriotic, invigorating, and gratifying festival, where New-Englanders away from home annually meet for fellowship; but the Senate is in session, and you know it is not a habit with me to leave my post. I must put off to another occasion the pleasure I had promised myself.

Never before, since the Mayflower landed its precious cargo, have New-Englanders had more reason for pride and gratulation than now. We are told that a little leaven shall leaven the whole lump, and that saying is verified. The principles and ideas which constitute the strength and glory of New England have spread against opposition and contumely, till at last their influence is visible in a regenerated country,—tried, it may be, by murderous conspiracy and rebellion, but aroused and stimulated to the manly support of Human Rights.

Amid all the sorrows of a conflict without precedent, let us hold fast to the consolation that it is in simple obedience to the spirit in which New England was founded that we are now resisting the bloody efforts to raise a wicked power on the corner-stone of Human Slavery, and that as New-Englanders we could not do otherwise. [Pg 261]

If such a wicked power can be raised on this continent, the Mayflower traversed its wintry sea in vain.

We remember, too, that another ship crossed at the same time, buffeting the same sea. It was a Dutch ship, with twenty slaves, who were landed at Jamestown, in Virginia, and became the fatal seed of that Slavery which has threatened to overshadow the land. Thus the same ocean, in the same year, bore to the Western Continent the Pilgrim Fathers, consecrated to Human Liberty, and also a cargo of slaves. In the holds of those two ships were the germs of the present direful war, and the simple question now is between the Mayflower and the slave ship. Who that has not forgotten God can doubt the result? The Mayflower must prevail.

Believe me, with much regard, my dear Sir,

Very faithfully yours,

Charles Sumner.

Elliot C. Cowdin, Esq.

[Pg 262]

COMMUTATION FOR THE DRAFT: DIFFERENCE BETWEEN RICH AND POOR.

Remarks in the Senate, on an Amendment moved to the Enrolment Bill, January 8, 12, and June 20, 1864, and February 7, 1865.

January 8, 1864, the Senate having under consideration a bill to amend an act entitled "An Act for enrolling and calling out the national forces and for other purposes," approved March 3, 1863, Mr. Sumner moved an amendment, afterwards modified as follows.

> "That, in addition to the substitute furnished by a drafted person, or, where no substitute is furnished, then in addition to the sum fixed by the Secretary of War for the procuration of a substitute, every such drafted person shall, before his discharge from the draft, be held to contribute a certain proportion, in the nature of a tithe, of his annual gains, profits, or income, whether derived from any kind of property, dividends, salary, or from any profession, trade, or employment whatever, according to the following rates, to wit: on all income over one thousand dollars and not over two thousand dollars, five per centum; over two thousand dollars and not over five thousand dollars, ten per centum; and on all income over five thousand dollars, twenty per centum. And it shall be the duty of every such person, seeking to be discharged, to make return, either by himself or his guardian, to the provost-marshal of his district, of the amount of his income, according to the requirements of the Act to provide internal revenue, of July 1, 1862. And it is further provided, That the contribution thus made shall be employed by the Secretary of War, in his discretion, to promote enlistments, or for the benefit of enlisted men."

January 8th, Mr. Sumner explained his amendment, remarking as follows.

MR. PRESIDENT,—I presume that I do not exaggerate, if I say, that, of all the questions connected with this bill, that relating to commutation for service is the most difficult and [Pg 263] the most sensitive. It is the question which has most occupied the attention of the country. It has been most discussed in the newspapers, and also in conversation. I presume it is the ground of objection most often made against the draft.

Now I think all Senators will unite in any proposition that promises in any way to smooth these difficulties,—in short, to popularize a part of the bill which has been open to so much objection among the people.

January 12th, in the course of debate, Mr. Sumner replied to Mr. Sherman, of Ohio.

The Senator from Ohio, not contenting himself with opposing the amendment, introduced other and extraneous matter, which has been under discussion since, diverting our minds from the original proposition. But if I can have his attention for a few minutes, it seems to me—I do not know—- I may even satisfy him that his argument was not well founded.

If I understand the Senator, he objects to my proposition on the ground, in the first place, that it is an unusual tax. Sir, what is the draft but a tax? The draft compels all persons drafted to contribute strength, muscle, life, to the defence of the Republic. That, if I am not mistaken, is the highest tax the country can impose. But, still further, what is the commutation which the statute positively requires but a tax? If, then, there be anything in the argument of the Senator, both the draft itself and the commutation of three hundred dollars are a tax, and both are therefore objectionable. But neither the one nor the other is a tax in a received sense, because neither the one nor the other is an imposition for revenue; and I ask the attention of the Senator to the [Pg 264] distinction, neither the one nor the other is an imposition for revenue. Not on any such ground do I present this amendment, but simply and distinctly on the duty of equalizing this burden, that it shall bear, so far as we can make it, with something like equality upon the rich and the poor. Now I have to say that at present the burden is not equalized, and that it does not bear with anything like equality upon the rich and the poor. You make the poor man pay three hundred dollars; but the rich man pays no more. Is this equality?

But the Senator went further. Not satisfied with objecting to the amendment on the ground that it was a tax, he complained that it was an exorbitant tax, and asked me whether in all history I could point to any instance of a tax of thirty per cent on income. It seems to me that it should be the pride of our country, at this moment and on an occasion like this, that it is not to be deterred by history from an endeavor to equalize a burden upon the rich and the poor. Because other nations have not undertaken to equalize this burden, is that a reason why we should not set the example? But is the tax exorbitant? I will read it.

> "On all income over six hundred dollars and not over two thousand dollars, ten per cent; over two thousand dollars and not over five thousand dollars, twenty per cent; and on all income over five thousand dollars, thirty per cent."[288]

Now the Senator complains of the thirty per cent, that is, thirty per cent on an income over five thousand dollars. Suppose a person drafted with an income over five thousand dollars, I put it to [Pg 265] the Senator, what sum would be too great for him to pay for exemption, carrying with it, as the draft does, exposure to death, disease, wounds, with the absolute consumption of time during the period of one, two, or three years, according to the duration of the service? Is thirty per cent on

an income above five thousand dollars too much for the exemption? Is it exorbitant? Is that the estimate the Senator puts upon such exposure? He requires three hundred dollars from the poor man who has no income, but he thinks it exorbitant to require thirty per cent on an income over five thousand dollars. Sir, I do not think that even in the requirement of this amendment there is equality. If any objection can be brought forward, it is that it is too lenient, that it does not go far enough.

I am sure, eminent as the Senator is, and justly representing his own State, that he does not represent on this question every citizen of that State. I have in my hand a letter, received since this amendment was first mentioned, from a most respectable citizen of Cincinnati, and with your permission I will read three or four sentences from it. I read simply to show how this proposition strikes citizens at a distance, yet having the same interest in it that we have.

> "Permit a stranger to address a few words to you, expressive of approbation of your bill"—

He calls it a bill, when it is only an amendment.

> —"providing for a revision of the Enrolment Act, so as to afford a sliding scale of commutation for the draft, the object being to rate commutation according to the means of the drafted individual. I quote from telegrams of this morning's news. In my humble opinion you have hit the nail on the head. I think this is the only method to equalize the burden, and satisfy all claims for justice and equitable dealing. When any fixed sum is indicated as the commutation fee to exempt from actual military duty, it needs but little reflection to see that it indirectly imposes a premium upon property while it taxes the poor."

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Then he goes on to suppose a case, somewhat at length, quite elaborately indeed, between two citizens of Cincinnati, neighbors, whom he minutely describes, and finally winds up that part of his communication by saying,—

> "Suppose the latter person [whom he calls John Smith] is drafted. Why, three hundred dollars is no more to him than a three-penny loaf to the other person. Am I not right, that a fixed sum for exemption imposes a tax upon honest poverty and a premium upon wealth?"

This intelligent constituent of the Senator objects to his whole theory as a tax upon honest poverty and a premium upon wealth. The Senator opposes my amendment as a tax upon wealth. Call it, if you please, a tax upon wealth. The time has come when it should be levied. But I put aside such language. I put aside the idea, except in the general sense, that the draft itself is a tax, and the amendment simply aims to equalize that tax.

The amendment was lost,—Yeas 15, Nays 25.

January 15th, Mr. Sumner moved his amendment as an additional section. Again it was lost,—Yeas 16, Nays 28.

June 20th, the Senate having under consideration a bill to prohibit the discharge of persons from liability to military duty by reason of the payment of money, Mr. Sumner moved again the former amendment, with the further proviso:—

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> "That the contributions thus made shall be employed by the Secretary of War as a fund for bounties to be paid to the men actually drafted and mustered into the service under any call subsequent to the date of this Act, whenever they shall be honorably discharged, or, in the case of death, to the widow and minor children of any such man, according to rules and regulations established by the War Department."

Mr. Sumner again vindicated his amendment. In the course of his remarks, he said:—

When a citizen is drafted as a soldier, and the question arises of his ransom by a pecuniary contribution, there is no element of equity which is not shocked, so my conscience tells me, if you fail to regulate the requirement of money according to the wealth of the individual. What is there which a man will not give for his life? What is there which a man, having the means, and indisposed to military exposure, will not pay for his exemption? And yet, Sir, by the law as it now stands, you compel the poor to pay the same as the rich. The rich man is drafted, and he pays three hundred dollars, which to him is nothing; he puts his hand into his purse, as you put yours into your pocket to find the change for a newspaper; whereas the poor man, perhaps, is driven to sell all that he has to save himself for his family. Sir, is that just? To my mind it is not.

…

Suppose the Senator himself were drafted; indisposed, as he probably would be, to the toils of war, what is there that he would not consent to pay for exemption? To him, under such circumstances, the required amount would be nothing; and yet to the poor man it is everything. In short, there are many who have it not; and there are many, who, by calling upon their friends, and exhausting every resource within their reach, are not able to command that small sum; others, perhaps, just able to command it, are compelled to burden their families and deny

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comfort to wife and child.

Now, Sir, the rich man is under no such obligation. If he be drafted under existing laws, he finds his substitute, or he tosses into the Treasury the required amount; he draws his check, and it is all over. Sir, there is no equity in the law as it stands. The proposition I present has in it two elements: the first is that it seeks justice; the second is that it provides a fund out of which bounties may be distributed by the Secretary of War among the men drafted and mustered into service. Here is another attraction to the service,—or, if it be not another attraction, it is something which will mitigate its hardships. The soldier, while on the field of battle, or on his weary march, will bear in mind, that, when the time of honorable discharge at last arrives, or should he be taken away by death, then, for the benefit of his wife and minor children, he may look to the fund from these contributions for a bounty which shall be to him or to them something in the way of support. Therefore in the pending amendment is an inducement which all confess is needed to carry forward our enrolments, and also something more to mitigate them.

On motion of Mr. Grimes, of Iowa, the bill was recommitted to the Committee on Military Affairs, who reported it without amendment.

February 7, 1865, the Senate having under consideration another bill in addition to the several acts for enrolling and calling out the national forces and for other purposes, Mr. Sumner seized the occasion to renew his amendment, and again vindicated it. In reply to Mr. Cowan, of Pennsylvania, he said:—

The Senator from Pennsylvania opposes my proposition, and treats the Senate to a very [Pg 269] elaborate disquisition on political economy in general, on the depreciation of the currency in particular, also on taxation, and still further on salaries.

Now, Sir, admitting all the honorable Senator has so ably said as perfectly true, that it is according to just principles of political economy and the experience of the world (for I am not disposed to go at this moment into that discussion with the learned Senator), the proposition that I have the honor to make is not touched by a hair's breadth. My proposition involves no question of political economy, no question of the currency, or of taxation, or of salaries. It has nothing to do with any of these matters. Its single and exclusive object is to equalize the burden of the draft. There is no political economy in it. There is nothing but justice. Therefore I propose that every drafted person, before discharge from the draft, shall be held to contribute not merely a substitute, but a certain tithe of his annual gains.

I am not tenacious with regard to the percentage. If Senators suggest a different rate, I shall be perfectly willing to yield. The proposition is the best that, under the circumstances, I can devise. Other Senators may improve it; it is open to improvement; but I submit that the criticism of the Senator from Pennsylvania does not touch it in the least. The proposition still stands, in its original character, as a measure which, if adopted, would equalize this burden of the draft. It would, if I may so express myself, temper this terrible draft to the poor of the country. It would make them see that legislators here, while imposing it, thought of the poor, and took such steps [Pg 270] as they could to the end that this burden should not press upon them with undue severity,—so that it might, to a certain extent, be equalized upon them and upon the rich. I know full well that this cannot be accomplished completely; but, Sir, an endeavor in such direction is something. I think that the Senate must make the endeavor. In the name of the poor, who are liable to be enrolled, I ask it. Let it appear to the country, that, while requiring this draft, we recognize inequalities of condition,—that some are poor and some rich, and that the same sum ought not to be exacted from all alike.

The proposition was again lost,—Yeas 8, Nays 30. The war was near its close, and the Senate was not disposed at that late day to enter upon a change.

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SPECIAL COMMITTEE ON SLAVERY AND FREEDMEN.

Resolution in the Senate, January 13, 1864.

Mr. Sumner submitted the following resolution, which was considered by unanimous consent and adopted.

RESOLVED, That a Special Committee of seven be appointed by the Chair to take into consideration all propositions and papers concerning Slavery and the treatment of Freedmen, with leave to report by bill or otherwise.

January 14th, the Vice-President appointed on this Special Committee, Mr. Sumner, Mr. Howard of Michigan, Mr. Carlile of Virginia, Mr. Pomeroy of Kansas, Mr. Buckalew of Pennsylvania, Mr. Brown of Missouri, and Mr. Conness of California. Reports from this Committee will appear in subsequent pages.

FOUNDATION OF THE FREE PUBLIC LIBRARY IN BOSTON.

Letter to a Committee in Boston, January 20, 1864.

In 1850, Hon. John P. Bigelow, Mayor of Boston, declined to receive a costly vase as a tribute to the faithful discharge of official duty, and suggested that the funds obtained for that purpose be devoted to founding a Free Public Library in Boston. Accordingly, one thousand dollars was paid to the city in the name of Mr. Bigelow, and this was the first contribution to this important object. There was a dinner at the Tremont House to commemorate this benefaction, with speeches and letters. Among the latter was the following.

Senate Chamber, January 20, 1864.

MY DEAR SIR,—It is too late for me to send anything for your meeting to-morrow evening; but it is not too late for me to express the gratitude and admiration with which at the time I witnessed the appropriation of that first thousand dollars to a Free Public Library in Boston. The money collected as a testimony to a favorite mayor became the corner-stone of a favorite institution, destined to be cherished with pride so long as our beloved city endures.

Believe me, dear Sir, faithfully yours,

Charles Sumner.

Dr. David K. Hitchcock.

LOYALTY IN THE SENATE: THE IRON-CLAD OATH FOR SENATORS.

Speech in the Senate, on a New Rule requiring the Oath of Loyalty for Senators, January 25, 1864.

By an Act of Congress of July 2, 1862, a new oath of office was prescribed in the following terms:—

> "That hereafter every person elected or appointed to any office of honor or profit under the Government of the United States, either in the civil, military, or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation."

Then follows the oath or affirmation, as follows:—

> "I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto. And I do further swear (or affirm) that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

The Act then provides:—

> "Which said oath, so taken and signed, shall be preserved among the files of the Court, House of Congress, or Department to which the said office may appertain."[289]

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This oath was popularly known as "the Iron-Clad Oath."

On the organization of the Senate, March 4, 1863, being the first organization after the statute requiring the oath, it became necessary to consider its applicability to the Senate. Debate ensued, which can be understood only by a preliminary explanation.

The Senate was organized, in the absence of the Vice-President, by the choice of Hon. Solomon Foot, of Vermont, as President *pro tempore*. The oath to support the Constitution was administered to him by Mr. Foster, of Connecticut, but the additional oath was omitted. The President *pro tempore* then proceeded to say:—

> "Senators elect and Senators whose term commences under a reëlection at this time *will receive the oath of office in the order in which their names will be called by the Secretary*."

The Secretary then called the names of a long list of Senators, who came forward and took the customary oath. But the President *pro tempore* did not offer to administer the additional oath; nor, at the time of qualification, was anything said with regard to it. After the conclusion of the ceremony, Mr. Trumbull, of Illinois, said:—

> "I desire to call the attention of the President of the Senate, and of the Senate itself, to an Act of Congress approved 2d July, 1862."

Then, reading the Act, he added:—

> "I do not know that any motion in regard to it is necessary, further than calling the attention of the presiding officer and of the Senate to the law."

The President *pro tempore* said:—

> "The Chair presumes it is sufficient to call the attention of Senators to that duty, and that that duty will be performed as required by law."

Nothing, however, was done by the Chair or by Senators.

The next day, 5th March, two other Senators, Mr. Hendricks and Mr. Sprague, came forward to be qualified. The Chair proceeded to administer to these Senators the usual oath to support the Constitution, but did not administer the additional oath, and these Senators took their seats. Shortly afterwards, during the session of that day, on a call of the yeas and nays, all these Senators were called, and answered to their names.

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Immediately after this call, Mr. Sumner moved an additional rule of the Senate, requiring that the oath or affirmation prescribed by Act of Congress of July 2, 1862, should be taken and subscribed by every Senator in open Senate before entering upon his duties.

On the next day, 6th of March, Mr. Bayard, of Delaware, who had been absent before, came forward to be qualified. The Chair, as in the other cases, administered the oath to support the Constitution, but omitted the additional oath, and Mr. Bayard took his seat. Afterwards, on this day, Mr. Sumner called up the proposed rule for consideration, and objected to an executive session until the question of the rule was settled, as follows.

> "Here is a statute of Congress, and the question is, whether the Senate is going to set an example of obedience to it or of disobedience; that is all.... If the Senate now choose

to go into executive session, they choose to enter upon most important duties in disregard of an Act of Congress which they have assisted in putting upon the statute-book."

On coming out of executive session, which was ordered, the Senate proceeded with the consideration of the proposed rule, when Mr. Sumner spoke in vindication of it, concluding as follows.

> "And now, Sir, as I conclude, let me say that I desire to take and subscribe the new oath in open Senate, that I may in all respects qualify myself for the discharge of my duties as a Senator. Others will do as they please, or as the Senate shall require. But I hope that I may appeal to the Chair to administer that oath to myself, or to direct that it shall be administered. With the expression of this desire I take my seat."

The President *pro tempore* made no offer to administer the oath, but said simply:—

> "The subject is under debate."

The debate was continued until the Senator from Illinois [Mr. TRUMBULL] proposed that the Chair should proceed to administer the oath, while Mr. Sumner expressed a hope that the Chair would consent to administer the oath to him.

Shortly afterwards the President *pro tempore* said:—

> "The Chair proposes now to take and subscribe this oath, in pursuance of the law of 2d July last, and, that being done, the Chair will administer the oath *to such members as will voluntarily take it*."

The oath was then administered to Mr. Foot by Mr. Foster. Resuming the chair, the President *pro tempore* then said:—

> "The Chair will now direct the Clerk to call, in alphabetical order, the names of all Senators who have been elected or reëlected since the 2d July, 1862, that being the day of the approval of the Act; and *such Senators present*, whose names shall be called, *as choose to do so*, will come forward to the Secretary's desk and receive the oath of office administered by the Chair, *after which they will have an opportunity to subscribe the oath*."

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The Senators present, whose names were called, some of them after delay, came forward and took the oath; and then, at the suggestion of the Chair, Mr. Sumner withdrew the resolution. The Senator from Delaware [Mr. BAYARD] was not then present.

Before withdrawing the resolution, Mr. Sumner, in reply to Mr. Reverdy Johnson, of Maryland, again vindicated the proposed rule, insisting that the statute was applicable to Senators as "civil officers," concluding as follows.

It is our duty to guard the loyalty of this Chamber. In requiring that a person shall purge himself with regard to the past, we simply take a new assurance of fidelity for the present. Others may think that Jefferson Davis, Robert Toombs, or Judah Benjamin may resume his seat in this body, on taking a simple oath to support the Constitution. I do not think so; and I gladly seize the earliest opportunity, since the commentary of the Senator from Maryland, to declare my conviction that no person, whose loyalty is not manifest to the Senate, can be allowed to approach your desk and take the oath of a Senator. The Senate must shut the door upon him. This is not the first time that I have made this declaration: nor have I contented myself with making the declaration; I have argued it. Nothing is clearer than this: a traitor cannot be a member of the Senate. But a person who cannot take this oath, retroactive though it be, must have been a traitor. Once a traitor, always a traitor, unless where changed by pardon or amnesty.

I know not what changes may be required by changing events. For myself, I shall always welcome every act of just clemency or condonation. But for the present the statute is wise and conservative. It only remains that we should stand by it.

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At the next session of Congress Mr. Sumner returned to this question. December 17, 1863, he submitted a resolution proposing a new rule.

> "*Resolved*, That the following be added to the rules of the Senate:—
>
> "The oath or affirmation prescribed by Act of Congress of July 2, 1862, to be taken and subscribed before entering upon the duties of office, shall be taken and subscribed by every Senator in open Senate before entering upon his duties. It shall also be taken and subscribed in the same way by the Secretary of the Senate; but the other officers of the Senate may take and subscribe it in the office of the Secretary."

December 18th, the resolution came up for consideration, when Mr. Saulsbury, of Delaware, moved as a substitute that the Judiciary Committee be directed to inquire whether Senators and Representatives are included within the provisions of the Act prescribing the oath, and whether the Act is constitutional. Subsequently, he moved that the whole subject, including the resolution and the substitute, be referred to the Judiciary Committee, which, after debate, was rejected,—Yeas 15, Nays 26. The debate was continued, in the course of which Mr. Bayard, of Delaware, Mr. Reverdy Johnson, of Maryland, and Mr. Collamer, of Vermont, spoke at length.

January 25, 1864, Mr. Sumner spoke as follows.

MR. PRESIDENT,—There is a time for all things; but there are times when certain things are out of place; and this principle is especially applicable to the present debate. The question is on the adoption of a rule of the Senate to carry out an existing statute. It is not on the passage of the statute, or on its proposed repeal, but it is simply on its recognition as an existing statute, and the enforcement of its plain requirement. Considering the simplicity of the question, well may we be astonished at much that has been intruded into this debate.

The Senate is a branch of the legislative power, in conjunction with the House of Representatives and the President. Neither alone can make or unmake a law. The concurrence of all three is essential, whether in making or unmaking. So long as the law exists, there is no difference between the obligations of the Senate and the obligations of the humblest citizen, except, perhaps, that the Senate, which helped to make the law, is bound to set an example of obedience beyond any citizen. [Pg 278]

Therefore I put aside, as entirely irrelevant, much that we have heard against the proposed rule. This is not the time to say that the oath is unconstitutional, or that it is *ex post facto*. These are considerations properly arising on the passage of the statute, or on a proposition for its repeal. The Senator from Delaware [Mr. Bayard] and the Senator from Maryland [Mr. Johnson], who have argued these topics so exhaustively, were either too late or too early. The statute is already the law of the land, and there is no bill pending for its repeal.

On a former occasion I vindicated the constitutionality of the statute, and I now willingly leave that topic to the judgment of Senators, enlightened by the wisdom of the Senator from Vermont [Mr. Collamer], whose argument has not been answered. But I repeat that this objection is utterly out of place at this moment.

A Senator over the way [Mr. Hendricks] has gone so far as to introduce my course on a former occasion as an apology for not taking the oath.[290] Because I denounced an infamous statute, which was a scandal to civilization, as unconstitutional and utterly unworthy the support of virtuous citizens, it is argued that the Slave-Drivers, then in power, were more lenient to me than we are now to them. In other words, the Slave-Drivers required of me an oath to support a statute which I abhorred, and therefore we are wrong in requiring the proposed oath. But this argument confounds two cases which are wide apart as the poles. While denouncing an outrageous statute, and refusing to play the part of slave-hunter, I never joined in rebellion against my country, or uttered one word except in loyalty. But here are persons with bloody hands, in battle array, striking at all we hold dear,—or others who have acted with them. Such persons will be justly brought to the test of an oath, and they can claim no immunity from the example of those patriot citizens who, recognizing the crime of Slavery, refused to become in any way its tools. [Pg 279]

And another Senator [Mr. Johnson] has taken this occasion to arraign me for certain opinions on another question, and he complained that I place them under the protection of a judgment of the Supreme Court. This is not the time for the discussion of "Reconstruction." It has nothing to do with the matter before the Senate. I may think that the Government of the United States has *belligerent rights*, as well as *the right of sovereignty*, over the Rebel States,—that it is especially the duty of Congress to take care that these rights are so exercised as to crush the Rebellion, and to prevent its breaking out again,—and that, to this end, Congress must take all possible bonds for the future. These opinions, which the Senator chose to characterize harshly, may be wrong, but they have nothing to do with the business in hand. At a proper time I shall be ready to defend them. At present I choose not to be diverted from the issue before us. [Pg 280]

Putting aside irrelevant questions, and presenting the single point in issue, the case becomes too plain for argument. It is simply this: Will the Senate obey an existing statute? But here we must consider the meaning of the statute.

That the Senate will openly refuse obedience to an existing statute, recently enacted, in support of loyalty, is not to be supposed without impeachment of the loyalty of the Senate. Only because the question of obedience has been complicated with other questions has there been for a moment any doubt on this head. Clearly, the Senate will not disobey an existing statute. It is, then, on the statute alone, and nothing else, that any question can arise.

And here I ask leave to recall the Senate from the learned commentary and elaborate diversion of the Senator from Delaware. The actual question is one which may be treated without learning and without effort. It arises on the following words of the statute:—

> "Hereafter every person *elected* or appointed to any *office* of honor or profit under the Government of the United States, *either in the civil, military, or naval departments of the public service*, excepting the President of the United States, shall, before entering upon the duties of *such office*, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation [*here follows the oath*]; which said oath, so taken and signed, shall be preserved among the files of the Court, *House of Congress*, or Department to which the said office may appertain."[291] [Pg 281]

It cannot fail to be observed here that the language is plain rather than technical. Every person "elected" or "appointed" to any "office" in the "*civil*, military, or naval departments of the public service" must take the oath. What words could be broader than "departments" and "public service"?

Obviously, and beyond all question, a Senator is "elected." Therefore on this point there is no question.

The inquiry recurs, Is a Senator an "officer" in the "civil department of the public service"?

Is he an "officer"?

Is he in the “civil department”?

To raise these questions seems absurd. But I have not raised them. This is done by others. You might as well raise the question, if a man is a creature, and belongs to the human family.

Look now at these questions in their order.

1. Is a Senator an “officer”? Here please to consult the dictionary. I turn to Webster.

> “Office.—*Offices* are civil, judicial, ministerial, executive, *legislative*, political, municipal, diplomatic, military, ecclesiastical, &c.”

Thus, plainly, offices are *legislative*. But why summon the dictionary? And yet the zeal of the other side leaves no alternative.

Not content with the dictionary, I call attention to the use of the word in other authoritative places,—and pardon me, if I begin with the Constitution of Massachusetts, written originally by John Adams. [Pg 282]

In the Bill of Rights of this Constitution it is declared:—

> “All power residing originally in the people, and being derived from them, the several magistrates and *officers* of government, vested with authority, whether *legislative*, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.”[292]

Members of the *Legislature* are classed among *officers*, and thus this word received its interpretation.

In another part of the same Constitution it is provided:—

> “Any person chosen Governor, Lieutenant-Governor, Councillor, *Senator*, or *Representative*, and accepting the *trust*, shall, before he proceed to execute the duties of his *place* or *office*, make and subscribe the following declaration.”[293]

Here the *place* or *trust* of a *Senator* or *Representative* is called an *office*. And this same use of these terms, as synonymous, and applicable to the post of *Senator* or *Representative*, is continued:—

> “Every person chosen to either of the places or *offices* aforesaid [meaning the *offices* of Governor, Lieutenant-Governor, Councillor, *Senator*, or *Representative*] … shall, before he enters on the discharge of the business of his place or *office*, take and subscribe,”[294] &c.

The authority of New Hampshire is like that of Massachusetts. Her Constitution declares:—

> “All power residing originally in, and being derived from, the people, all the magistrates and *officers* of government are their substitutes and agents, and at all times accountable to them.”[295] [Pg 283]

Here the word “officers” obviously means the *substitutes* and *agents* of the people. But who are substitutes and agents of the people more than *Senators*?

Then again, in the same Constitution, it is declared:—

> “No *office* or place whatsoever in government shall be hereditary.”[296]

Here the word “office” is made synonymous with “place.”

The Constitution of Vermont testifies:—

> “All power being originally inherent in, and consequently derived from, the people, therefore all *officers* of government, whether *legislative* or executive, are their trustees and servants.”[297]

Thus, in Vermont, members of the Legislature are “officers.”

The old Constitution of New Jersey testifies also, in the clause prescribing the qualifications entitling a person to vote:—

> “For representatives in Council and Assembly, and also for all *other* public *officers* that shall be elected by the people of the county at large.”[298]

Here again members of the *Legislature* are treated as “public *officers*.”

The Constitution of Pennsylvania testifies:—

> “Members of the General Assembly, and *all officers*, executive and judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective *offices* with fidelity.”[299] [Pg 284]

Here members of the General Assembly are classed with those holding "offices."

The original Constitution of New York is more positive:—

> "The chancellor and judges of the Supreme Court shall not at the same time hold *any other office*, excepting that of Delegate to the General Congress upon special occasions; and the first judges of the county courts in the several counties shall not at the same time hold any other *office*, excepting that of *Senator* or Delegate to the General Congress."[300]

Here the post of Delegate to the General Congress, and also of "Senator," is treated as an "office."

Surely this is enough. The post of Senator is an office of honor or profit, and a "Senator" is an "officer."

2. But, assuming that the post of Senator is an "office," and that a Senator is an "officer," the question occurs, To what "department of the public service" does he belong?

Clearly he is not of the "military" or "naval" department. But if not "military" or "naval," he must be "civil." Here again consult the dictionary. I cite Webster.

> "*Civil.* It is distinguished from *ecclesiastical*, which respects the Church, and from *military*, which respects the army and navy.—This term is often employed in contrast with *military*: as, a *civil* hospital, the *civil* service, &c." [Pg 285]
>
> "*Civil List.* In England, formerly, a list of the entire expenses of the *civil* government; hence the officers of *civil* government, who are paid from the public treasury; also, the revenue appropriated to support the *civil* government."
>
> "*Civil State.* The whole body of the laity or citizens, not included under the military, maritime, and ecclesiastical states."

To say that a Senator is not included under this comprehensive, but distinctive term, is simply an absurdity.

It is evident that Congress adopted the words of the statute because they were comprehensive and distinctive. They obviously comprehended all "officers" in the "public service," whether "elected," like a Senator, or "appointed," like a judge. But, beyond their plainness, these words had this added advantage, that already for more than a generation they had received a practical interpretation from Congress.

Here is the familiar Blue Book. Its title-page begins:—

> "Register of *officers and agents*, *civil*, military, and naval, *in the service of the United States*."

Turning to the contents, we find in this list Members of Congress, including Senators and Representatives, with the "officers and agents" of the two Houses.

If we go back to the Blue Book for 1820, which is now in my hands, we find the same title, and the same enumeration of Senators and Representatives.

This Blue Book is still published, in pursuance of a joint resolution by Congress, originally adopted as long ago as 27th April, 1816, with the following title:—

> "Resolution requiring the Secretary of State to compile and print, once in every two years, *a register of all officers and agents*, *civil*, military, and naval, in the service of the United States." [Pg 286]

If Senators are properly included in such a register, it is only as belonging to the "*civil* department of the public service," which is precisely where they have been placed by the recent Act of Congress.

The only apology for the objection urged from the beginning of this debate with so much pertinacity is founded on the case of Mr. Blount, the Senator expelled and afterwards impeached, at the close of the last century. I shall not take time to consider this case. It has been amply done by others. On former occasions I have done it at length. And yet I will not leave it without protesting again that it is absolutely inapplicable to the present occasion. If that case were out of the way, nobody would have suggested that a "Senator" was not an "*officer* in the *civil* department of the public service." Now what did this case decide? Let another give the summary. I quote the words of Mr. Wharton, in the notes to his edition of the State Trials.

> "*In a legal point of view*, all that this case decides is, that a Senator of the United States, who has been expelled from his seat, is not, after such expulsion, subject to impeachment; and *perhaps* from this the broader proposition may be drawn, that none are liable to impeachment except officers of the government, in the technical sense, excluding thereby members of the National Legislature."[301]

The case of Mr. Blount has no application to the present question. It is not an interpretation of the statute, and so far as it illustrates the Constitution it simply concerns the liability to impeachment. But even this case has often been drawn into doubt. And if we look into the proceedings of the time, we find that the decision, such as it was, encountered an able and earnest opposition. [Pg 287]

Among those who took a distinguished part on that occasion was James A. Bayard,[302] of Delaware, the eminent Representative who conducted the impeachment as Manager on the part of the House of Representatives. In his effective argument he has set forth the true signification of the Constitution. From the argument of the Senator from Delaware [Mr. Bayard] in the present debate I confidently appeal to that of the earlier Mr. Bayard. Here is a passage.

> "I have submitted, in the course of my argument, that the sound principle of construction to be adopted, in relation to the construction of an instrument having in view the vast object of settling the powers of the Government and the rights of the people, is to give it such an interpretation as is best calculated to give effect generally to all its parts according to its true design. If I am supported in this principle, I shall be able to show, by strong cases under the Constitution, that its undeniable intention must be frustrated, if a Senator be not considered an officer of the United States.
>
> "I find it provided in the seventh clause of the third section of the first article, that conviction on impeachment disqualifies the party convicted from holding any *office* of honor, trust, or profit under the United States. If a seat in the Senate be not an office, the disqualification does not extend to it. And yet can it reasonably be contended that the policy which incapacitates a citizen, if convicted on impeachment, from holding an office the most mean and humble, does not apply to the case of a Senator? The wisdom of the Constitution, Sir, has considered a conviction as an evidence of moral unfitness for public trust. It never can happen but in the case of a great national offence. And shall such an offender, degraded from the capacity of even being doorkeeper of this Chamber, yet retain the capacity of being a member of a body of the most dignity, trust, and power in the country? This is a solecism in politics, an absurdity in reason, which I trust this honorable court will not willingly by their act attach to an instrument so highly and justly revered as the Constitution of our Government. [Pg 288]
>
> "I find also a provision in the seventh [eighth] clause of the ninth section of the first article, that 'no person holding any office of profit or trust under the United States shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.' If a Senator holds no office of profit or trust under the United States, it is *lawful* for him to accept a present, title, or office from any king or foreign state. Can it be possible that a public functionary, of all others the peculiar object of this jealous restriction, is, in fact, the sole object of exemption from its operation? Can it be imagined that a Senator, upon whom the Constitution has heaped the powers and trusts of legislator, judge, and executive magistrate, is the only person who is left exposed to the seductions of foreign influence? It can never be admitted that a situation which from its trust and importance most invites corruption is the only one which the Constitution has not guarded against. If, Sir, a Senator be not an officer under this clause, it might happen that the Senate of the United States might become a House of Lords. It would be in the power of any king in Europe to change our free government, and to convert one branch, at least, from a republican into an aristocratic form. You will not suffer an ensign in your army to accept the humble title of Chevalier, and yet you will allow an integral part of the Government to be composed of earls and dukes. And let me pray the honorable Court to remember, at the same time, that the Constitution has provided that a member of either House shall not be allowed to retain his seat and hold any commission, civil or military, under the United States. The President has no titles to grant, nor offices of great emolument to confer; and yet the chaste republicanism of the Constitution will not allow a Senator to feel the influence of his patronage; and yet, at the same time, he may *lawfully* be the pensioner or the titular noble of a foreign power. Such a doctrine is not simply absurd, but infinitely dangerous."[303] [Pg 289]

In view of these emphatic words, it is difficult to see how any person can insist that a "Senator" is not a "civil officer," even according to the text of the Constitution. Conceding to the judgment on the trial of impeachment all the authority which can belong to it, you cannot properly deduce from it any conclusion, except that a Senator already expelled is not a "civil officer" liable to impeachment: nothing beyond this.

But whatever the signification of this word in the Constitution, even conceding all that is claimed for it there, the instance is entirely inapplicable to the interpretation of the statute in question. If there be doubt on the Constitution, there is none on the statute. The latter is plain, and there are no associate words to interfere with its natural and unequivocal signification.

I conclude this branch of the subject as I began, by putting aside all irrelevant matter, all superfluous questions, all surplusage, all topics not properly germane to the debate. There is no question of the Constitution, no question of *ex post facto*, but a simple question on the meaning of a statute. [Pg 290]

The oath is prescribed by Congress. It is too late to debate its constitutionality thus incidentally. It only remains for us to take it, promptly, patriotically. The procrastination of this debate is of evil example. How can we expect the alacrity of loyalty among the people, if the Senate hesitates?

Another objection to the proposed rule has been brought forward by the Senator from Vermont [Mr. FOOT]. According to him, the statute is obligatory, and the oath must be taken by Senators, but a rule requiring the oath is superfluous and without precedent. The argument of the Senator is plausible, but it is answered by a simple statement of facts, in which, as presiding officer of the Senate, he bore a conspicuous part.

From this statement it will appear that the rule, or some equivalent action of the Senate, is not superfluous.

Here Mr. Sumner set forth the facts substantially as presented in the Introduction, showing the necessity of the proposed rule, and then proceeded.

The language of the Chair, when inviting Senators to take the oath, left a loophole through which they might avoid the oath. It was, "Such Senators present *as choose to do so* will come forward," and then "they will have *an opportunity to subscribe the oath*." In such terms Senators were invited to do as they pleased, thus making a discrimination between the earlier oath, which they were obliged to take in order to be qualified, and the additional oath, which they were free to neglect.

Such is a plain statement of facts, which I make in no spirit of personal criticism, but simply that you may see the occasion for the proposed rule. [Pg 291]

Had the Chair at the beginning proceeded to administer the additional oath, as the earlier oath, there would have been no occasion for a rule. Or had the Chair afterwards, when attention was called to the omission, administered the additional oath according to the requirement of the statute, there would have been no occasion for a rule.

The Chair did no such thing, but left the taking of the oath to the conscience or will of each Senator. And though the statute solemnly declares that "every person *elected* or appointed to any office of honor or profit under the Government of the United States … shall, *before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof*, take and subscribe" the oath in question, yet the Senator from Delaware [Mr. BAYARD] has not only "entered upon the duties" of his office as Senator, but he has continued to discharge these duties, and to draw his salary, although he has never taken and subscribed the oath.

Evidently something must be done to correct this incongruity, and to rehabilitate, if I may so say, the Act of Congress. I know no better way than by the proposed rule. But I have no partiality for this mode. I am ready for any other proposition which will lift the statute from the desuetude and neglect into which it was allowed to fall, and will secure its enforcement. In the events at hand this statute will be a safeguard of the Republic, and its enforcement here will secure its enforcement everywhere. To the traitor seeking office it will be a touchstone, while, with guardian force, it thrusts away from these Chambers all those brutal enemies, who, for the sake of Slavery, have helped to fill our land with mourning. [Pg 292]

On the Yeas and Nays, the vote stood, Yeas 28, Nays 11. So the resolution was adopted.

January 26th Mr. Bayard took the prescribed oath, and on the 29th resigned his seat in the Senate.

January 25th, Mr. Sumner asked, and by unanimous consent obtained, leave to bring in a bill supplementary to an Act entitled "An Act to prescribe an oath of office and for other purposes," approved July 2, 1862, which was read the first and second times by unanimous consent, and referred to the Committee on the Judiciary. It provided that no person should be admitted to the bar of the Supreme Court of the United States, or of any Circuit or District Court of the United States, or of the Court of Claims, as an attorney or counsellor of such court, or should be allowed to appear and be heard in any such court, by virtue of any previous admission or any special power of attorney, unless he should have first taken the oath prescribed by the Act of July 2, 1862.

June 28th, Mr. Trumbull, from the Judiciary Committee, reported adversely on this bill.

December 22d, on motion of Mr. Sumner, the Senate proceeded to consider this bill, and it was passed,—Yeas 27, Nays 4. January 23, 1865, it passed the House of Representatives, and January 24th was approved by the President.

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THE LATE HON. JOHN W. NOELL, REPRESENTATIVE OF MISSOURI.

Remarks in the Senate, on his Death, February 1, 1864.

MR. PRESIDENT,—The personal acquaintance which I had with Mr. Noell was very slight; but I honored him much, as a public servant who at a critical moment discerned clearly the path of duty and had the courage to tread it.

Born among slaves and living always under the shadow of Slavery, his character was not corrupted, nor was his judgment obscured. All of us, although born among freemen, and living far away from that influence so unhappily disturbing our country, might take counsel from his intelligent alacrity. While others hesitated, he was prompt. While others surrendered to procrastination, he grappled at once with the giant evil. Such a man was exceptional, and now that he is dead he deserves exceptional honors.

There are men in history who by a single effort fix public attention. A member of Parliament in the last century was known as "Single-Speech Hamilton." Others have become famous from the support of a single measure. Perhaps Mr. Noell may find place in this class. But no "Single-Speech Hamilton" could claim the homage which belongs to him.

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There have been many in Congress from the Slave States, but he was the first in our history inspired to bring in a bill for the abolition of Slavery in a State. Rejecting the palpable sophistries by which it was sought to postpone an act of unquestionable justice, and discarding the idea that wrong was to be dealt with tardily, gradually, or prospectively, he proposed Immediate Emancipation. Let it be spoken in his praise. Let it be carved on his tombstone. His bill passed the House. It was lost in the Senate.[304] But it was not lost to his fame. He died without beholding the fulfilment of his desires, but the cause with which his name is associated cannot die.

Among the human benefactors of Missouri, so rich in natural resources, he must always be numbered; and his memory will be appreciated there just in proportion as men discern what contributes most to the wealth, the character, and the true nobility of a State. Hereafter, when the present conflict is ended and peace once more blesses our wide-spread land, he will be mentioned gratefully with those who saw truly how this blessing was to be secured, and bravely strove for it. Better in that day to have been a doorkeeper in the house of Freedom than a dweller in the tents of the ungodly: and what ungodliness can compare with the ungodliness of Slavery, whether in the lash of the taskmaster or in the speech of its apologist?

[Pg 295]

RECONSTRUCTION AGAIN: GUARANTIES AND SAFEGUARDS AGAINST SLAVERY AND FOR PROTECTION OF FREEDMEN.

Resolutions in the Senate, February 8, 1864.

In the Senate, February 8, 1864, the following resolutions, submitted by Mr. Sumner, were read and ordered to be printed.

> Resolutions defining the character of the national contest, and protesting against any premature restoration of Rebel States, without proper guaranties and safeguards against Slavery and for the protection of Freedmen.

RESOLVED, That, in determining the duties of the National Government, it is of first importance that we should see and understand the real character of the contest forced upon the United States, for failure to appreciate this contest must end in failure of those proper efforts essential to the reëstablishment of unity and concord; that, recognizing the contest in its real character, as it must be recorded by history, it is apparent that it is not an ordinary rebellion or an ordinary war, but that it is absolutely without precedent, differing from every other rebellion and every other war, inasmuch as it is an audacious attempt, for the first time in history, to found a wicked power on the corner-stone of Slavery; and that such an attempt, having this single object,—whether regarded as rebellion or war,—is so completely penetrated and absorbed, so entirely filled and possessed by Slavery, that it can be regarded as nothing else than the huge [Pg 296] impersonation of this crime, at once rebel and belligerent, or, in other words, as *Slavery in arms*.

2. That, recognizing the identity of the Rebellion and Slavery, so that each is to the other as another self, it becomes plain that the Rebellion cannot be crushed without crushing Slavery, as Slavery cannot be crushed without crushing the Rebellion; that every forbearance to the one is forbearance to the other, and every blow at the one is a blow at the other; that all who tolerate Slavery tolerate the Rebellion, and all who strike at Slavery strike at the Rebellion; and that, therefore, it is our supreme duty, in which all other present duties are contained, to take care that the barbarism of Slavery, in which alone the Rebellion has its origin and life, is so utterly trampled out that it can never spring up again anywhere in the Rebel and belligerent region; for, leaving this duty undone, nothing is done, and all our blood and treasure are lavished in vain.

3. That, in dealing with the Rebel War, the National Government is invested with two classes of rights,—one the *Rights of Sovereignty*, inherent and indefeasible everywhere within the national limits, and the other the *Rights of War*, or belligerent rights, superinduced by the nature and extent of the contest; that, by virtue of the Rights of Sovereignty, the Rebel and belligerent region is now subject to the nation as its only rightful government, bound under the Constitution to all the duties of sovereignty, and by special mandate bound also to guaranty to every State a republican form of government, and to protect it against invasion; that, by virtue of the Rights of War, this same region is subject to all the conditions and incidents of war, according to the [Pg 297] established usages of Christian nations, out of which is derived the familiar maxim of public duty, "Indemnity for the past and security for the future."

4. That, in seeking restoration of the States to their proper places as members of the Republic, so that every State shall enjoy again its constitutional functions, and every star on the national flag shall represent a State in reality as well as in name, care must be taken that the Rebellion is not allowed, through any negligence or mistaken concession, to retain the least foothold for future activity, or the least germ of future life; that, whether proceeding by the exercise of sovereign rights or of belligerent rights, the same precautions must be exacted against future peril; that, therefore, any system of "Reconstruction" must be rejected which does not provide by irreversible guaranties against the continued existence or possible revival of Slavery, and that such guaranties can be primarily obtained only through the agency of the National Government, which to this end must assert a temporary supremacy, military or civil, throughout the Rebel and belligerent region, of sufficient duration to stamp upon this region the character of Freedom.

5. That, in the exercise of this essential supremacy of the nation, a solemn duty is cast upon Congress to see that no Rebel State is prematurely restored to its constitutional functions until within its borders all proper safeguards are established, so that loyal citizens, including the new-made freedmen, cannot at any time be molested by evil-disposed persons, and especially that no man there may be made a slave; that this solemn duty belongs to Congress under the Constitution, whether in the exercise of Rights of Sovereignty or Rights of War, and that in its [Pg 298] performance that system of "Reconstruction" will be best, howsoever named, which promises most surely to accomplish the desired end, so that Slavery, which is the synonym of the Rebellion, shall absolutely cease throughout the whole Rebel and belligerent region, and the land it has maddened, impoverished, and degraded shall become safe, fertile, and glorious from assured Emancipation.

6. That, in the process of "Reconstruction," it is not enough to secure the death of Slavery throughout the Rebel and belligerent region only; that experience testifies against Slavery wherever it exists, not only as crime against humanity, but as disturber of the public peace and spoiler of the public liberties, including liberty of the press, liberty of speech, and liberty of travel

and transit; that, in the progress of civilization, it has become incompatible with good government, and especially with that “republican form of government” which the United States are bound to guaranty to every State; that from the outbreak of this Rebel war, even in States professing loyalty, it has been an open check upon patriotic duty and an open accessory to the Rebellion, so as to be a source of unquestionable weakness to the national cause; that the defiant pretensions of the master claiming control of his slave are in direct conflict with paramount rights of the nation; and that, therefore, it is the further duty of Congress, in the exercise of its double powers under the Constitution, as guardian of the national safety, to take all needful steps for the extinction of Slavery, even in States professing loyalty, so that this crime against humanity, this disturber of the public peace, and this spoiler of the public liberties shall no longer [Pg 299] exist anywhere to menace the general harmony, that civilization may be no longer shocked, that the constitutional guaranty of a republican form of government to every State may be fulfilled, that the Rebellion may be deprived of the traitorous aid and comfort Slavery has instinctively volunteered, and that the master claiming an unnatural property in human flesh may no longer defy the nation.

7. That, in addition to the guaranties stipulated by Congress, and as the cap-stone to its work of restoration and reconciliation, the Constitution itself must be so amended as to prohibit Slavery everywhere within the limits of the Republic; that such prohibition, leaving all personal claims, whether of slave or master, to the legislation of Congress and of the States, will be a sacred and inviolable guaranty, representing the collective will of the people of the United States, and placing Universal Emancipation under sanction of the Constitution, so that Freedom shall be engraved on every foot of the national soil and be woven into every star of the national flag, while it elevates and inspires our whole national existence, and the Constitution, so often invoked for Slavery, but at last in harmony with the Declaration of Independence, will become, according to the aspirations of its founders, sublime guardian of the inalienable right of every human being to life, liberty, and the pursuit of happiness: all of which must be done in the name of the Union, in duty to humanity, and for the sake of permanent peace.

[Pg 300]

PRAYER OF ONE HUNDRED THOUSAND.

Speech in the Senate, on presenting a Petition of the Women's National League, praying Universal Emancipation by Act of Congress, February 9, 1864.

MR. PRESIDENT,—I offer the petition now on the desk before me. It is too bulky for me to take up. I need not add that it is too bulky for any of our pages to carry.

This petition marks a stage of public opinion in the history of Slavery, and also in the suppression of the Rebellion. As it is short, I will read it.

"*To the Senate and House of Representatives of the United States*:—

> "The undersigned, women of the United States above the age of eighteen years, earnestly pray that your honorable body will pass, at the earliest practicable day, an act emancipating all persons of African descent held to involuntary service or labor in the United States."

There is also a duplicate of the petition, signed by "men above the age of eighteen years."

It will be perceived that the petition is in rolls. Each roll represents a State. For instance, here is New York with a list of seventeen thousand seven hundred and six names, Illinois with fifteen thousand three hundred and eighty, and Massachusetts with eleven thousand six hundred and forty-one. But I will read the abstract with which I have been furnished. [Pg 301]

State.	Men.	Women.	Total.
New York	6,519	11,187	17,706
Illinois	6,382	8,998	15,380
Massachusetts	4,249	7,392	11,641
Pennsylvania	2,259	6,366	8,625
Ohio	3,676	4,654	8,330
Michigan	1,741	4,441	6,182
Iowa	2,025	4,014	6,039
Maine	1,225	4,362	5,587
Wisconsin	1,639	2,391	4,030
Indiana	1,075	2,591	3,666
New Hampshire	393	2,261	2,654
New Jersey	824	1,709	2,533
Rhode Island	827	1,451	2,278
Vermont	375	1,183	1,558
Connecticut	393	1,162	1,555
Minnesota	396	1,094	1,490
West Virginia	82	100	182
Maryland	115	50	165
Kansas	84	74	158
Delaware	67	70	137
Nebraska	13	20	33
Kentucky	21	..	21
Louisiana	..	14	14
Citizens of the United States living in New Brunswick	19	17	36
	34,399	65,601	100,000

These several petitions are consolidated into one, being another illustration of the motto on our coin,—*E pluribus unum*.

This unprecedented petition is signed by one hundred thousand men and women, who unite in this unparalleled number to support its prayer. They are from all parts of the country, and from every condition of life: from the seaboard, fanned by the free airs of the ocean, and from the Mississippi and the prairies of the West, fanned by the free airs which vitalize that extensive region; from the families of the educated and uneducated, rich and poor, of every profession, business, and calling in life, representing every sentiment, thought, hope, passion, activity, intelligence, that inspires, strengthens, and adorns our social system. Here they are, a mighty army, one hundred thousand strong, without arms or banners, the advance-guard of a yet larger army. [Pg 302]

Though memorable for numbers, these petitioners are more memorable for the prayer in which they unite. They ask nothing less than Universal Emancipation; and this they ask directly at the hands of Congress. No reason is assigned. The prayer speaks. It is simple, positive. So far as it

proceeds from the women of the country, it is naturally a petition and not an argument. But I need not remind the Senate that there is no reason so strong as the reason of the heart. Do not all great thoughts come from the heart?

It is not for me at this moment to offer reasons which the one hundred thousand petitioners have forborne. But I may properly add, that, naturally and obviously, they all feel in their hearts, what reason and knowledge confirm, not only that Slavery *as a Unit*, one and indivisible, is the guilty origin of the Rebellion, but that its influence everywhere, even outside the Rebel States, is hostile to the Union, always impairing loyalty, and sometimes openly menacing the national cause. It requires no difficult logic to conclude that such a monster, wherever it shows its head, is a *National Enemy*, to be pursued and destroyed as such, or at least a nuisance to the national cause, to be abated as such.

The petitioners know well that Congress is the depository of those supreme powers by which rebellion, alike in its root and distant offshoots, may be surely crushed, while unity and peace are permanently assured. They know well that the action of Congress may be with the coöperation of the Slave-Masters, or even without their coöperation, under the overruling law of military necessity, or the commanding precept of the Constitution to guaranty a republican form of government. Above all, they know well that to save the country from peril, especially to save the national life, there is no power in the ample arsenal of self-defence which Congress may not grasp; for to Congress, under the Constitution, belongs the prerogative of the Roman Dictator, to see that the Republic receives no detriment. Therefore to Congress these petitioners appeal. [Pg 303]

I ask the reference of the petition to the Select Committee on Slavery and Freedmen.

An earnest debate ensued, which ended in the reference of the petition.

[Pg 304]

EQUAL PAY OF COLORED SOLDIERS.

Remarks in the Senate, on different Propositions, February 10, 29, and June 11, 1864.

February 3d, Mr. Wilson, of Massachusetts, reported a joint resolution to equalize the pay of soldiers in the United States army, which provided that all persons of color, who have been or may be mustered into the military service of the United States, shall receive the same uniform, clothing, arms, equipments, camp equipage, rations, medical and hospital attendance, pay and emoluments, other than bounty, as other soldiers of the regular or volunteer forces of the United States of like arm of service, during the whole term in which they shall be or shall have been in such service, and every person of color who shall hereafter be mustered into the service shall receive such sums in bounty as the President shall order in the different States and parts of the United States, not exceeding one hundred dollars.

February 4th, the Senate considered the joint resolution. Mr. Fessenden, of Maine, "wished to inquire what propriety there is in our going back and paying them this increase for services already rendered." Mr. Wilson thought, "as an act of justice, the bill should be retrospective,"—that "the gross injustice done by the country toward these men ought to be corrected." Mr. Fessenden was in favor, and had ever been in favor, of putting colored soldiers on a level with white, but he was opposed to paying men for services already rendered, unless the men were promised full pay by orders emanating from the War Department. Mr. Sumner, after stating that there were two classes of enlistments, first, under the statute of 1861, and, secondly, under the statute of 1862, insisted that under the former statute any person of African descent might be enlisted and entitled to the same pay as a white soldier. "There was no limitation in the statute. There was no color there. There was nothing against the enlistment of colored men under that statute, except a blind prejudice which we ought to forget." He concluded: "I wish to see our colored troops treated like white troops in every respect. But I would not [Pg 305] press this first principle by any retroactive proposition, unless where the faith of the Government is committed, and there I would not hesitate. The Treasury can bear any additional burden better than the country can bear to do an injustice."

February 10th, the subject being still under consideration, Mr. Sumner said:—

MR. PRESIDENT,—I am grateful to the Senator from Connecticut [Mr. Foster] for his admirable argument on this question; and yet it seems to me, if he will pardon me, that even in point of law he has not stated the case as strongly in favor of this obligation as it might be stated. It may be remembered, that, when this discussion was closing, the other day, I ventured to throw out the remark, that there were evidently two classes of cases: the first, where enlistments in good faith were made under the statute of 1861; and the second, where they were made under the statute of 1862.

In point of law, it seems obvious, if enlistments were made in good faith under the statute of 1861, and there was no legal objection to those enlistments, then the United States are bound. If, on the contrary, they were made under the subsequent statute, then it is simply a question of policy and expediency whether we shall make this payment. The whole subject is open to discussion,—first, in the light of sentiment, which may involve expediency and policy, and, secondly, in the light of law. I shall not say anything upon it in the first aspect, except to make one remark,—that our country at this moment can ill afford to take the responsibility of refusing justice to colored soldiers whom it has allowed to shed their blood in its cause. The soul repudiates any such sacrifice,—for sacrifice it will be, at once of honor and of interest. I do not [Pg 306] follow out this idea, but pass at once to the second aspect, which I called the question of law; and there I differ from my learned friend from Connecticut, when I say that there are certain colored regiments in the field who in point of law are entitled to the full wages of thirteen dollars a month.

Mr. Foster. If the Senator will pardon me, I insisted on that fact, and said they were enlisted, not under the law, but under instructions from the Department, authorizing the officers to enlist them on the same terms that white troops were enlisted, which would be thirteen dollars per month.

Mr. Sumner. Very well. I still understood the Senator to imply that perhaps in point of law there might be some doubt whether the Government was liable for the thirteen dollars a month. I propose to carry the argument a little further, and show, by calling attention for one moment to the statutes,—not at any great length,—that, under the statutes themselves, the Government is obliged to pay certain regiments thirteen dollars a month.

I begin with the Massachusetts fifty-fourth and fifty-fifth regiments; and these may be taken as examples. I have before me the actual order under which those two regiments were raised.

"War Department, Washington City,
January 26, 1863.

> "*Ordered*, That Governor Andrew, of Massachusetts, is authorized, until further orders, to raise such number of volunteer companies of artillery for duty in the forts of Massachusetts and elsewhere, and such corps of infantry for the volunteer military service, as he may find convenient; *such volunteers to be enlisted for three years*,"—

Mark, Sir, if you please, the period of service,—"for three years,"— [Pg 307]

> "or until sooner discharged, *and may include persons of African descent*, organized into separate corps. He will make the usual needful requisitions on the appropriate staff bureaus and officers for the proper transportation, organization, supplies, subsistence, arms, and equipments, of such

volunteers.

"EDWIN M. STANTON, *Secretary of War*."

Now, on the face of this order, the Governor of Massachusetts is empowered to raise certain regiments in the volunteer service of the United States for three years. Under what statute? Under no other, surely, than the statute of 1861, for it was under that statute that the organization for three years was authorized. If you come to the later statute—and to that I ask particular attention—of July 17, 1862, which contains a special provision with reference to African troops, you will find that it is to raise troops for nine months.

> "SEC. 3. *And be it further enacted*, That the President be, and he is hereby, authorized, in addition to the volunteer forces which he is now authorized by law to raise, to accept the services of any number of volunteers, not exceeding one hundred thousand, as infantry, for a period of nine months, unless sooner discharged."

And then, Sir, in section twelve of this same statute, the President is further empowered to employ persons of African descent. In section fifteen we come to the question of pay.

> "*And be it further enacted*, That all persons who have been or shall be hereafter enrolled in the service of the United States under this Act"—

"Under this Act,"—an Act authorizing enrolments for nine months, not for three years— [Pg 308]

> "shall receive the pay and rations now allowed by law to soldiers, according to their respective grades: *Provided*, That persons of African descent, *who under this law shall be employed*, shall receive ten dollars per month and one ration, three dollars of which monthly pay may be in clothing."

Now, Sir, you have the question precisely: Under what statute were these enlistments made? Were they under the nine months' statute, or under the three years' statute? To answer that question, look at the order of the War Department:—

> "*Ordered*, That Governor Andrew, of Massachusetts, is authorized, until further orders, to raise such number of volunteer companies of artillery for duty in the forts of Massachusetts and elsewhere, and such corps of infantry for the volunteer military service, as he may find convenient; *such volunteers to be enlisted for three years, or until sooner discharged*."

Here are no nine months' men. There is nobody under the second statute, but all are clearly under the first by the plain language of the order. And this is none the less so, even if the second statute, so far as Africans are concerned, may be interpreted to sanction a longer term of enlistment.

Mark well, that "all persons who have been or *shall be hereafter enrolled in the service of the United States* under this Act shall receive the pay and rations now allowed by law to soldiers." (§ 15.) But were not the soldiers of the fifty-fourth and fifty-fifth Massachusetts regiments "enrolled in the service of the United States"? Unquestionably, if troops ever were enrolled.

But it is the *proviso* that follows which causes the mischief. "Persons of African descent, *who under this law shall be employed*, shall receive ten dollars," &c. [Pg 309]

It is said that these colored soldiers were "employed,"—that is all,—not "enrolled," but "employed"; and on this distinction the promise of Governor Andrew in the name of the National Government, and the honest expectations of the soldiers, are set aside.

The order of the Secretary of War is for "volunteer companies of artillery," also for "corps of infantry," "*to be enlisted for three years*," "and may include persons of African descent." The persons of African descent are to be included in the artillery or infantry "enlisted." Such persons are in advance declared men to be *enlisted*. And yet the argument which denies them their well-earned wages asserts that they are only "employed," and not enlisted. But if they are "employed," then are the "corps of infantry" in which they are included "employed" also.

To me the conclusion seems irresistible, on the face of these facts, that these troops were enrolled or enlisted under the earlier statute. It is clear that Governor Andrew thought so at the time, and it is equally clear that the troops themselves thought so at the time.

But there remains behind another question. Is there anything in existing legislation to prevent the enlistment of a colored person under the statute of 1861? To this I answer positively in the negative, and I challenge contradiction. There is no color in that statute. There is no color in any statute raising troops for the army of the United States, nor any color in any statute raising sailors for the navy of the United States. Only in our militia statutes do you find the word "white." [Pg 310] In all our army and navy statutes there is no such limitation. The statute of 1861, therefore, in point of law embraced all persons, whether black or white, and it was entirely at the option of the President, before the passage of the statute of 1862, to organize or receive colored troops under that statute. He hesitated. I regretted at the time his hesitation. I thought it an error by which the country suffered. We endeavored to repair that error by the amendment introduced by the brave Senator from New York, who is no longer here [Mr. KING], which you will find in the statutes of 1862. But I doubt if any person at the time, who had given attention to the subject, supposed this

amendment necessary, except as an encouragement to a policy which the Government was too slow to adopt. For myself, I remember well my own feelings in voting for it. I accepted it as notice to the Administration that in the opinion of Congress the time had come when colored troops must be used. In point of law it was plain that it could not stand in the way of an enrolment under the earlier statute.

And the Secretary of War seems to have acted on this interpretation; for, in undertaking to raise colored troops, no allusion was made to the statute of 1862, but the language of his order in every particular pointed to the statute of 1861. Am I wrong, then, if I say that in point of law these colored troops have just the same right to the full pay of a soldier that any Senator on this floor has to his compensation? It is by just as good title, and as firm in the statute-book, as your own pay, Sir.

I suggested, the other day, that there were two classes of cases,—one where the enlistments had been made in good faith under the earlier statute, and a second class where they had been made under the later statute; and I suggested, that, if we were disposed to recognize the difference between these two classes, it might afford a solution to our present difficulties. I am not disposed, on any ground of sentiment, to impose an unnecessary tax upon the burdened treasury of my country, although there is no tax required by justice that I would hesitate to impose. If there are colored troops in our service, who, at the time they were mustered, had no reason to suppose that they were enlisted under the statute of 1861, who were led to believe that they came under the statute of 1862, that is, for the pay of ten dollars, I am not disposed to press for them any claim on ground of sentiment,—that is, for the past. I take the past as it is; but for the future I insist that they shall be put upon an equality. True equality in the past is for the National Government to redeem its pledges, whether direct or only implied,—whether there is an absolute promise, of which you have a record, or only an inference or understanding, founded, it may be, in misconception, but still embraced in good faith by innocent parties. On this ground, at a proper moment, I shall be ready to propose an amendment something like the following, to come in immediately after the word “service”:— [Pg 311]

> “*Provided*, That, with regard to all past service, it shall appear to the satisfaction of the Secretary of War that such persons, at the time of being mustered into service, were led to suppose that they were enlisted under the Act of Congress approved July 22, 1861, as volunteers in the army of the United States.”

Mr. Fessenden could not concur in Mr. Sumner’s construction of the Act of 1862. Mr. Lane, of Indiana, thought, “if we place colored troops hereafter on an equality with the white troops, it is surely as much as they can ask, either from the justice or the generosity of this Senate; for no man, in his sober senses, will say that their services are worth as much, or that they are as good soldiers.” Mr. Sumner replied:— [Pg 312]

Mr. President,—I hope the Senator from Indiana will pardon me, if I refer to him for one minute. He is so uniformly generous and just that I was the more surprised, when I listened to his remarks just now. I was surprised at his lack of generosity and his lack of justice—he will pardon me—toward these colored soldiers. I was surprised—he will pardon me—at his injustice to the State of Massachusetts. He spoke disparagingly of the colored soldiers. He thought they had been paid enough. He thought that the gallant blood shed on the parapets of Fort Wagner had been paid enough; and he failed to see that the men who died for us on that bloody night, and were buried in the same grave with the devoted colonel who led them, now stood alive in this presence to plead for the equality of their race. How can I help regret that the Senator was led into such remark?

Also, in the ardor of his utterance,—he will pardon me still further,—the Senator undertook to say, that, if we entered on this payment, we should charge the Treasury with some one or two hundred millions in addition to its present burden. Why, Sir, that is an entire mistake. Even if we pay everything contemplated by the resolution, I am told that the whole will be little more than a million: much, I admit, to charge unnecessarily upon the Treasury, but not the very large sum which seemed to fill the patriotic vision of the Senator.

Mr. Lane, of Indiana. The Senator misunderstood my statement altogether. My statement was, that, if we were called upon now to go back and increase the pay of the colored troops three dollars a month more than the law provided, with the same propriety we might be called upon to go back and increase the pay of our white soldiers because they thought that their pay had not been enough; and that would add to the burdens of the Treasury to a very large amount. [Pg 313]

Mr. Sumner. I accept the correction gladly. Certainly I have no disposition to press anything beyond the meaning of the Senator. But he will allow me to say that I was hardly mistaken in his argument. It was, that we should charge the Treasury with a burden it could ill bear. Now, if this money is due, let us charge the Treasury with the burden; and that brings me again to the direct question, Is not the money due? The Senator denies it; but he will pardon me again, if I say he hardly went into an argument on that head. I repeat, then, is the money due? I dislike to trouble the Senate by going over topics already too much discussed; but I trust they will excuse me, if I state the case yet once more. On many accounts I confess a special interest in it; not the least is that I would have my country above doing injustice, least of all injustice to people of a race too long crushed by injustice.

The argument need not be long. In the first place, the statute of 1861 contains no words which can be interpreted in any way to exclude the enrolment of persons of color under it. I challenge any Senator to mention a single word in that statute authorizing any such exclusion. You have,

then, the statute in the case. That is the first point. Then you have the order from the Secretary of War to Governor Andrew, authorizing an enrolment for three years, making no discrimination between persons of African descent and white soldiers. That is the second point. You have, in the third place, the open promises and pledges of Governor Andrew, under that order, and for the time being the agent of the United States, solemnly promising the full pay of thirteen dollars a month to these colored persons as soldiers of the United States. And, in the last place, you have the very terms of enlistment subscribed by these soldiers at the time of enlistment, which I read the other day, where it is expressly stated that they entered into service under the statute of 1861. [Pg 314]

These four points,—the statute of 1861, the order of the Secretary, the promise of Governor Andrew in behalf of the United States, and the terms of enlistment,—all these make a case by which, as it seems to me, the Government is bound. In face of these, how can it be said that these colored troops were "employed" under the statute of 1862? There is no ingenuity of interpretation which can place them there.

That I am not mistaken in the facts on which I found this argument is apparent from a letter which I hold in my hand, written by one of these soldiers, now on Morris Island. I content myself with a brief extract.

> "In the month of February, 1863, Governor John A. Andrew announced that he had permission from the War Department to raise a regiment of infantry to be composed of men of color. Enlisting began immediately, and the fifty-fourth regiment was filled to overflowing in three months. The only inducement he offered to these men was an acknowledgment of their manhood; for he promised that the United States Government would treat them, in *every* particular, the same as other volunteer regiments from the State of Massachusetts." [Pg 315]

Mr. Lane. Will the Senator pardon me a moment just there?

Mr. Sumner. Certainly.

Mr. Lane. They were to be treated in every respect as the volunteer troops from Massachusetts. Will the Senator contend that the commissioned officers of colored regiments might be drawn from the colored troops themselves, after the passage of the law of 1862? Was not that a disparity? Was that treating them like other troops?

Mr. Sumner. Of course the order is applicable simply to the enlisted men. It is not applicable to the officers.

The letter goes on to say,—

> "The enlistment rolls signed by these men bound them to obey the President," &c.

How?

> "In pursuance of the law passed in July, 1861, calling for volunteers."

Such was the understanding. By this lure you won these men to the field of sacrifice.

I have already said too much, but before I sit down I cannot forget that the Senator from Indiana, in his impetuous movement, brushed against the Commonwealth of Massachusetts. I do not remember his precise words, nor do I care to remember them. But he more than intimated that there was on the part of this State something else than a patriotic motive in pressing this obligation. I think he said this whole effort is to save the payment of this extra money. Does not the Senator know that Massachusetts has already provided for the payment of this sum, so far as its own two regiments are concerned, and that those regiments have refused to receive it? These colored troops declare that they were enlisted as soldiers of the United States, and as such are entitled to the pay of soldiers of the United States from the Government of the United States. If it be wrong to maintain their claim, then is Massachusetts wrong, then am I wrong. If the claim is maintained earnestly, it is because, both in law and in sentiment, and on every ground of policy or expediency, it commends itself to those who represent Massachusetts. And now, since this State has been called in question, I shall not content myself with merely giving my own opinions and arguments, but I ask you to listen to her honored Governor. [Pg 316]

In an official communication to the Legislature of Massachusetts, Governor Andrew has discussed this whole question with his accustomed lucidity and thoroughness. Here is something of what he says.

> "To my own mind, the right of these men, under the existing statutes, to the lawful pay and allowances of volunteers is demonstrably clear. But if it is doubtful, it is agreed, I believe, in all quarters, that it will be the duty and the pleasure of Congress to embrace an early opportunity to prevent by positive legislation the continuance of that doubt. Meantime I must embrace the earliest occasion to invoke the Legislature of Massachusetts to render justice to the men of these regiments beyond the possibility of a doubt, by the appropriation of the needful means out of our own treasury until the National Congress or the Executive Department shall correct the error."[305]

The Governor, after considering some details of the argument, proceeds as follows. [Pg 317]

> "I think there can be no proposition of law more clear than this, namely, that colored men are competent to be enlisted into the regular army of the United States, into the volunteer army of the United States, into the navy of the United States, and to be employed in any arm of either service.
>
> "The Military Enlistment Law of 1814 required only that the recruit shall be a 'free, effective, able-bodied man, between the ages of eighteen and fifty years.' (*See Act of December 10, 1814.*) It did not require a man to be under forty-five, nor a citizen, nor white, in which three respects it differs from the old Militia Act. The Naval Act of 1813 is not less clear."[306]

Such is the statement of the Governor on this question in point of law. At the time these regiments were mustered into the service he believed that he was acting legally under the statutes of the United States. He so instructed these men; and these men naturally believed him, and gave themselves, generously, nobly, beautifully, to the public service. Will the country now disown them? Will the country now fasten a ban upon them, and lead them to say in their hearts that they have been duped?

February 13th, the subject being still before the Senate, Mr. Sumner offered the proviso of which he had already given notice at the close of his first remarks; but, after debate, he withdrew it at the request of Mr. Wilson, who, seeing the opposition to the joint resolution, proposed to abandon all that part making it retroactive. In withdrawing it, Mr. Sumner again vindicated it, saying, in conclusion: "I am unwilling to [Pg 318] withdraw the proposition. I shall do it, if my colleague desires it. At any rate, I should rather, for my own satisfaction, have a vote upon it."

In the debate that ensued, Mr. Reverdy Johnson said: "If the Governor of Massachusetts has made a promise which the law did not authorize, if he has created, as between the Massachusetts soldiers and the Governor of Massachusetts, an obligation which ought to be redeemed, let Massachusetts redeem it." "They have passed a law to redeem it," said Mr. Fessenden, "but these regiments refuse to receive it from Massachusetts."

Mr. Wilson moved to insert words making the resolution applicable only "from and after the first day of January, 1864," which was agreed to. After debate, Mr. Sumner again moved his proviso, which was lost,—Yeas 16, Nays 21. Other amendments were moved, and the debate continued for days.

February 23d, Mr. Davis moved as a substitute three resolutions,—that all negroes and mulattoes, by whatever term designated, in the military service of the United States, be discharged and disarmed, and also providing for payment to loyal owners on account of slaves taken into the service. Lost,—Yeas 7, Nays 30.

Mr. Collamer, of Vermont, having moved an amendment providing for a certain class of cases, Mr. Sumner, February 25th, brought forward his amendment in the following terms:—

> "*Provided, also*, That all persons whose papers of enlistment shall show that they were enlisted under the Act of Congress of July, 1861, shall receive from the time of their enlistment the pay promised by that statute."

In proposing this again, he said: "I believe, if any persons have enlisted in the national service, and, through any ambiguity or misinterpretation of legislation, their rights have been drawn in question, it belongs to Congress, as guardian and conservator of the rights of every citizen, to see that they have the proper remedy." The amendment was adopted,—Yeas 19, Nays 18.

February 29th, Mr. Fessenden addressed the Senate in explanation of his position. He had been from the beginning in favor of placing colored soldiers on the same footing as white; but he objected to the attempt to provide for exceptional cases on this general bill, and he asked, "whether we should have had such an uproar throughout the country, if this amendment had been in regard to three or four or more white regiments, to go back and pay them an additional sum from the time of their enlistment, and the principle had been objected to."

Mr. Sumner, in reply, reviewed the case, and in conclusion said:—

From the question of law I pass to that other question which occupied the attention of the [Pg 319] Senator from Maine, as to when and where we should meet this obligation. He says, Bring in a separate bill. That was said the other day. I say, Meet it whenever it appears. It is in itself a case of such absolute and overwhelming justice that the Senate ought not to postpone it for a single day,—especially ought not to postpone it, when it has under consideration a bill so entirely germane as the present. If it were a bill concerning the Pacific Railroad or the sale of gold, it might be questionable whether the proposition should be ingrafted upon it; but, as it is a bill to put colored troops on an equality with other troops in the national service, I say that the pending proposition is perfectly germane, and, being in itself of commanding justice, ought not to be postponed. It is a common device of enemies to object to a measure on a particular bill. For myself, I wish it understood that I am for the proposition on any bill and at any time.

Then, on motion of Mr. Grimes, of Iowa, the joint resolution was recommitted to the Committee on Military Affairs.

March 2d, Mr. Wilson reported a new bill, in lieu of the original joint resolution so much discussed, which, besides the provision in the joint resolution, contained an additional section in substantial conformity with Mr. Sumner's proviso, giving to all persons of color enlisted and mustered into the service of the United States the pay allowed by law to other volunteers in the service, from the date of their muster, if it had been pledged or promised to them by any officer or person, who, in making such pledge or promise, acted by authority of the War Department; and the Secretary of War was to determine any question of fact arising under this provision.

March 8th, the bill being under consideration, Mr. Davis moved an additional section, giving to loyal owners of slaves taken into service compensation to be determined by commissioners appointed by the Circuit Court of the United States.

March 9th, Mr. Davis made an elaborate speech vindicating property in slaves. [Pg 320]

March 10th, after further debate, the additional section of Mr. Davis was rejected,—Yeas 6, Nays 31,—and also another amendment moved by him. The bill then passed the Senate,—Yeas 31, Nays 6. In the House of Representatives other matters were substituted for the provisions which had occupied the attention of the Senate, as the object was already accomplished in another way.

April 22d, the Army Appropriation Bill being under consideration, Mr. Wilson moved, as an amendment, the bill to equalize the pay of soldiers which had passed the Senate. Mr. Fessenden thought that "the measure ought to be passed, and passed at once." If the Senate would waive the objection to putting it on the Appropriation Bill, he would not object. The amendment was agreed to,—Yeas 31, Nays 5.

Then followed another series of struggles. The House of Representatives made amendments which were disagreed to by the Senate. Then came no less than three different Committees of Conference. The report of the last Committee, which was made June 10th, contained the following substitute for the Senate amendment:—

> "That all persons of color who were free on the nineteenth day of April, 1861, and who have been enlisted and mustered into the military service of the United States, shall, from the time of their enlistment, be entitled to receive the pay, bounty, and clothing allowed to such persons by the laws existing at the time of their enlistment. And the Attorney-General of the United States is hereby authorized to determine any question of law arising under this provision. And if the Attorney-General aforesaid shall determine that any of such enlisted persons are entitled to receive any pay, bounty, or clothing in addition to what they have already received, the Secretary of War shall make all necessary regulations to enable the pay department to make payment in accordance with such determination."

Mr. Sumner observed that the report did not seem to settle the question in issue; that, if he were merely looking after the interests of his own constituents and the regiments organized in Massachusetts, he might rest satisfied; but that he was unwilling to sanction a settlement which did not embrace all the colored troops. The debate extended into the next day, when Mr. Sumner remarked:—

I stated last night that in my opinion this report undertook to conclude something, but did not conclude it. On further consideration, I am satisfied that I was not much mistaken. It is a conclusion in which nothing is concluded. I may say, too, that it is not entirely creditable to [Pg 321] Congress, and, so far as I now accept the result, it will be with much reluctance. It would have better become Congress to recognize a solemn obligation toward those now baring their breasts for us in battle, and falling on the ramparts of the enemy, rather than question their title to pay as soldiers, which I believe as strong for them as for any white soldiers. I regret sincerely that their title has not been positively recognized in the text of a statute; but, after effort in both branches, and the appointment of several committees of conference, such recognition has failed. I despair of obtaining it, at least on the present bill. On that account I am induced to look critically at the proposition before us, to see whether this affords any measure of justice. In one sense it affords nothing; and I believe the Senator from Maine [Mr. Morrill], who was on the last committee, will not differ from me on that point; but it does distinctly and unequivocally refer the question to the judgment of the Attorney-General of the United States. Substantially Congress agrees to take his opinion. He has already given it. I have it in my hand, in a communication dated April 23, 1864, on a case submitted by the President.

> "I do not know that any rule of law, constitutional or statutory, ever prohibited the acceptance, organization, and muster of 'persons of African descent' into the military service of the United States as enlisted men or volunteers. But whatever doubt might have existed on the subject had been fully resolved before this order was issued, by the 11th section of the Act of July 17, 1862, chap. 195, which authorized the President to employ as many persons of African descent as he might deem necessary and proper for the suppression of the Rebellion, and for that purpose to organize and use them [Pg 322] in such manner as he might judge best for the public welfare."

And then again he says:—

> "I have already said that I knew of no provision of law, constitutional or statutory, which prohibited the acceptance of persons of African descent into the military service of the United States; and if they could be lawfully accepted as private soldiers, so also might they be lawfully accepted as commissioned officers, if otherwise qualified therefor. But the express power conferred on the President by the 11th section of the Act of July 17, 1862, chap. 195, before cited, to employ this class of persons for the suppression of the Rebellion as he may judge best for the public welfare, furnishes all needed sanction of law to the employment of a colored chaplain for a volunteer regiment of his own race."[307]

By the report before the Senate, it is declared as follows: "And the Attorney-General is hereby authorized to determine any question of law arising under this provision." In the full confidence that we shall at last, through the Attorney-General, obtain that justice which Congress has denied, I consent to give my vote for the report.

The report was concurred in.[308] The Attorney-General, Mr. Bates, as Mr. Sumner anticipated, affirmed the equal rights of the colored soldiers.[309]

OPENING OF THE STREET-CARS TO COLORED PERSONS. [Pg 323]

Speeches in the Senate, on various Propositions, February 10, March 17, June 21, 1864.

The opening of the street-cars in Washington constitutes a special chapter of effort, which, beyond its local influence, was important as an example to the country.

February 27, 1863, the Senate having under consideration the bill to authorize the Alexandria and Washington Railroad Company to extend their road across the Potomac River and through the city of Washington to the Baltimore and Ohio Railroad station, Mr. Sumner moved an amendment in the following words:—

> "*And provided, also*, That no person shall be excluded from the cars on account of color."

In making this motion, he called attention to what seemed to him a new illustration of the barbarism of Slavery. An aged colored person had been excluded from the cars and dropped in the mud. He thought the incident discreditable, and that it was the duty of Congress to interfere. The following dialogue then ensued.

> Mr. Howe (of Wisconsin). I should like to ask the Senator from Massachusetts, as a question of law, whether, if this railroad company, being common carriers, should drop any person or refuse to carry any person who offered them their fare, they would not be liable as the law now stands, without any express enactment?
>
> Mr. Sumner. If you ask me the question as a lawyer, I should say they would be liable; but the experience here, as I believe, is, that this liability is not recognized. The Senator knows well, that, under the influence of Slavery, human rights are disregarded, and those principles of law which he recognizes are set aside. Therefore it becomes the duty of Congress to interfere and specially declare them.
>
> Mr. Howe. Would the effect of the amendment be any more than a reënactment of the existing law?
>
> Mr. Sumner. That was said of the Wilmot Proviso, as the Senator will remember. [Pg 324]

The question being taken by yeas and nays, resulted, Yeas 19, Nays 18; so the amendment was agreed to. It was concurred in by the House, and approved by the President, March 3, 1863.

This provision, though applicable to a single road, seemed to decide the principle. But it was not so regarded by the other railroads in Washington, which continued to exclude colored persons, often under painful circumstances.

February 10, 1864, Mr. Sumner called attention to this subject by the following resolution:—

> "*Resolved*, That the Committee on the District of Columbia be directed to consider the expediency of further providing by law against the exclusion of colored persons from the equal enjoyment of all railroad privileges in the District of Columbia."

Mr. Sumner explained the resolution.

MR. PRESIDENT,—It is necessary that I should call attention to a recent outrage which has occurred in this District. I do it with great hesitation. At one moment I was inclined to keep silence, believing that the good name of our country required silence; but since it has already found its way into the journals, I cannot doubt that it ought to find its way into this Chamber.

An officer of the United States, with the commission of Major, with the national uniform, has been pushed from a car on Pennsylvania Avenue for no other offence than that he was black. Now, Sir, I desire to say openly that we had better give up railroads in the national capital, if we cannot have them without such an outrage upon humanity, and upon the national character. An incident like that, Sir, is worse at this moment than defeat in battle. It makes enemies for our cause abroad, and sows distrust. I hope, therefore, that the Committee on the District of [Pg 325] Columbia,—I know the disposition of my honorable friend, the Chairman of that Committee,—in the bills we are to consider relative to the railroads in this District, will take care that such safeguards are established as will prevent the repetition of any such wrong.

In reply to Mr. Hendricks, of Indiana, Mr. Sumner spoke again.

Mr. President,—I am sure that the Senator from Indiana [Mr. Hendricks] is mistaken in regard to the provision for colored people. There may be here and there, now and then, once in a long interval of time, a car which colored people may enter; but any person traversing the avenue will see that those cars appear very rarely; and if any person takes the trouble to acquaint himself with the actual condition of things, he will learn that there are great abuses and hardships, particularly among women, growing out of this outrage. I use plain language, Sir, for it is an outrage. It is a disgrace to this city, and a disgrace also to the National Government, which permits it under its eyes. It is a mere offshoot of the Slavery which, happily, we have banished from Washington.

Now go back to the facts on which I predicated my motion. The Senator from Iowa [Mr. Grimes] has referred to the colored officer. I have in my hand his letter, addressed to his military superior, making a report of the case, and, as it is very brief, I will read it.

"Washington, D. C., February 1, 1864.

"Sir,—I have the honor to report that I have been obstructed in getting to the Court this morning by the conductor of car No. 32 of the Fourteenth Street line of the city railway. [Pg 326]

"I started from my lodgings to go to the hospital I formerly had charge of, to get some notes of the case I was to give evidence in, and hailed the car at the corner of Fourteenth and I Streets. It was stopped for me, and, when I attempted to enter, the conductor pulled me back, and informed me that I must ride on the front with the driver, as it was against the rules for colored persons to ride inside. I told him I would not ride on the front, and he said I should not ride at all. He then ejected me from the platform, and at the same time gave orders to the driver to go on. I have, therefore, been compelled to walk the distance in the mud and rain, and have also been delayed in my attendance upon the Court.

"I therefore most respectfully request that the offender may be arrested and brought to punishment.

"I remain, Sir, your obedient servant,

"A. T. Augusta, M. B.,
"*Surgeon Seventh U. S. Colored Troops*.

"Captain C. W. Clippington, *Judge Advocate*."

In my opinion, the writer of this letter had just as much right in that car as the Senator from Indiana, and it was as great an outrage to eject him as it would be to eject that Senator. I go further, and I say—pardon the illustration—that the ejection of that Senator would not bring upon this capital half the shame that the ejection of this colored officer necessarily brings upon the capital. I do not mean, of course, to make the remark personal; but, as the Senator from Indiana has entered into this discussion, and chooses to vindicate this inhumanity, I allude to him personally.

The resolution was adopted,—Yeas 30, Nays 10.

February 24th, Mr. Willey, of West Virginia, from the Committee on the District of Columbia, made a report in the following terms. [Pg 327]

"That the Act entitled 'An Act to incorporate the Washington and Georgetown Railroad Company,' approved May 17, 1862, makes no distinction as to passengers over said road, or as to any of the privileges of said road, on account of the color of the passenger, and that, in the opinion of the Committee, colored persons are entitled to all the privileges of said road which any other persons have, and to all the remedies for any denial or breach of such privileges which belong to any other persons. The Committee, therefore, ask to be discharged from the further consideration of the premises."

February 25th, Mr. Sumner called attention to this report, and moved to reconsider the vote accepting it. Mr. Grimes stated that "the Committee hold that every person has a right to ride in the cars, and that a colored person has the same remedies open to him for any infringement of his rights by the Company as anybody else." Mr. Sumner then inquired, "whether it was the understanding of the Committee that the ejection of a colored person from a car was illegal." Mr. Grimes replied, "As I understood it." Mr. Sumner. "That the ejection was illegal?" Mr. Grimes. "Yes, Sir." Mr. Reverdy Johnson united in this conclusion. Mr. Willey said: "The law is now full and perfect in all its provisions and adaptations to secure the colored persons in the enjoyment of the privileges of this railroad." Mr. Wilson, of Massachusetts, said: "I think in law he is right, but in practice it is an undeniable fact that the spirit of the old law and the old practices still lingers to some extent here in the District." Mr. Saulsbury, of Delaware, followed: "I most heartily approve of the action of the officer on board that railroad-car. I think he deserved the thanks of the community. When these negroes go about sticking their heads into railroad-cars, and among white people, and into the Supreme Court Room, I think an officer is perfectly right in telling them they have no business there." Mr. Sumner remarked as follows.

After the declarations made to-day, I am, at least for the present, satisfied, and shall not proceed further with my motion. I was particularly grateful to the Senator from Maryland for his very explicit statement of the law. I do not doubt he is entirely right. It has always been my opinion. I am glad to have it confirmed by that distinguished Senator and lawyer. I am also grateful to the Senator from West Virginia, who made the report, and who has so explicitly stated [Pg 328] his own convictions, and, as I understand him, also the unanimous opinion of the Committee, to the effect that these people have legal rights precisely as white persons to the full enjoyment of all the privileges of the railroad in this District. If they have such legal rights, they are at this moment unquestionably exposed to what I must call outrage. If a white person were ejected from the cars on account of his skin, we should all feel that it was an outrage. Is it any less an outrage because the person ejected is simply guilty of a different skin? I confess, that, to my mind, it is a greater outrage, because obligations are greater in proportion to the humility and weakness of those with whom we deal.

But, Sir, I have no desire to proceed further in this question. I am for the present satisfied. My hope, however, is, that the railroad corporation will at once take notice, and act according to law.

Mr. Sumner then withdrew his motion.

In the face of this report, the exclusion of colored persons continued, often attended by intolerable outrage. Aged persons were thrust into the street. At last an opportunity occurred of bringing this question to a vote in

the Senate.

March 16, 1864, the Senate had under consideration a bill to incorporate the Metropolitan Railroad Company in the District of Columbia, sometimes known as the F Street Road, when Mr. Sumner moved the following amendment:—

> "*Provided*, That there shall be no regulation excluding any person from any car on account of color."

A debate ensued, in which Mr. Saulsbury, of Delaware, and Mr. Reverdy Johnson, of Maryland, earnestly opposed the amendment. March 17th, the latter, while acknowledging that there was nothing in the bill giving "authority to exclude passengers at all," insisted that colored persons so excluded should be remitted to the courts, and he did not see "why it is necessary to provide more special guaranties for the black man than are [Pg 329] provided for the white man"; "if the black man is improperly excluded from one of these cars, ... he has the right to go to the courts and seek his remedy there, and the white man has no greater right"; that Mr. Sumner "might just as well propose to pass a law providing that these black men and black women shall have the same right to visit the Presidential mansion on public occasions as the white men and the white women"; and he then discussed the questions of social and political equality, insisting that those just escaped from Slavery "are not the people to exercise the elective franchise, and to mix in society with the educated classes, of which and from which the public councils of the country should always be composed and taken."

Mr. Sumner replied:—

Mr. President,—The question before the Senate is very simple. It is plain as one of the Ten Commandments. But the Senator from Maryland, with that nimbleness of speech which belongs to him, while undertaking to discuss it, has ranged over a very extensive field. He has treated the Senate to a discourse on almost everything, and something else also,—the elective franchise, social privileges of the Presidential mansion, the equality of races, the intermarriage of races, the state of Slavery in Maryland, also in some other States, and then the state of Slavery generally. Now, Sir, I shall not follow him on any of those topics. My desire is to present the precise point in issue. The Senate will then be prepared to vote.

But the Senator from Maryland will allow me to remind him that he seems to exhibit a rare inconsistency,—first, in declaring the absolute right of colored people to a seat in the cars, and then arguing, that, on every consideration of social life and of principle, they ought not to be admitted to any such privilege. The two parts do not go together. If colored people have the legal right to enter these cars, why does the Senator argue that they ought not to have that right? I [Pg 330] agree with the Senator in the first point. They have the legal right to enter these cars, and the proprietors are trespassers, when they exclude them. Here I agreed with the Senator the other day. To my mind it is clear, because any other conclusion authorizes a corporation to establish a caste offensive to religion and humanity, injurious to a whole race now dwelling among us, and bringing shame upon our country.

The Senator asks, why, as I accept this conclusion, do I bring forward the present proposition? To this there are two answers, either of which is sufficient. The first is, that in the last railroad statute passed by Congress this provision was introduced, and I have heard of no complaint or trouble from it. In that now before us let us introduce the same provision, and make the two uniform. That is one reason. But the better reason is, that, while, beyond all question, colored persons have the legal right, even without this amendment, yet that legal right has been drawn in question. In point of fact, they are excluded from the cars. The Senator from Maryland refers to one case, because it has become well known. I am familiar with many other cases. They are brought to my attention almost daily. There is, then, at this moment, an existing abuse. Colored persons are kept out of their rights. But we cannot afford, at this crisis of our history, to sanction injustice. Every such act rises in judgment against us, and hangs on the movements of our armies, checking even the currents of victory.

The Senator admits their rights, but he says, Let them go to the courts. Sir, what is that for a poor, humble person, without means and without consideration? The Senator knows something of [Pg 331] the law's delay and the law's expense; and I ask him whether it is just to subject an oppressed people to this additional oppression, when, by a few words, Congress, now in session, can overturn the wrong.

Mr. Johnson. Will the Senator permit me to ask him a question by way of reply? Suppose the amendment is adopted; if it will not give them a greater right than they have now, and the Company refuse to let them enjoy the right, what is their remedy? They must go to the courts. I suppose there is no other remedy. You do not provide that the charter shall be forfeited at once.

Mr. Sumner. I know very well that they may, in the last resort, be obliged to go to the courts; but I know that it will be more difficult for the Company to exclude them in the face of a positive statute than when their rights are simply founded on *inference*. The positive words which I propose leave no loophole for doubt. They must be obeyed.

There is nothing more common in legislation than, in case of doubt as to the meaning of a statute, or of the Common Law, to remove it by what is well known as a "declaratory" statute. I have in my hands a work of authority, which the Senator knows well, Dwarris on Statutes, from which I read:—

> "And first of declaratory acts. These are made where the old custom of the kingdom is almost fallen into disuse or become disputable, in which case the Parliament has thought proper, *in perpetuum rei testimonium*, and for avoiding all doubts and difficulties, to declare what the Common Law is and ever hath been."[310]

Are not these words completely applicable to the case before us? What should be the custom is, according to these words, “almost fallen into disuse, or become disputable.” I say, therefore, again, following these words, “for avoiding all doubts and difficulties,” it is the duty of Congress “to declare” what the law of the land is. [Pg 332]

Again, in another place, this same authority, speaking still further of declaratory statutes, says:—

> “Acts to explain laws are properly acts of interpretation by legislative authority,—or, to borrow an expression from the writers on the Roman Law, they are acts of *authentic interpretation*.”[311]

I ask the attention of the Senator to the expression, “they are acts of *authentic interpretation*.” Now, Sir, what I desire is, that the Senate shall give an authentic interpretation to the law. To do this it is not needful to range over the whole field of history, of morals, or of politics, in imitation of the Senator, or to discuss the equality of races, or their fortunes in the future; but it is enough for us to become acquainted with the existing abuse, every day under our own eyes, in the streets of this capital, and then to apply the remedy. Beyond all question, there is an abuse. The remedy is simple, and I cannot doubt that it will be effective.

Listening to the objections which this measure has encountered, I am reminded of those so often brought against the Wilmot Proviso. Sometimes it was said that Slavery could not go into the Territories without positive statute, and that therefore the prohibition was unnecessary. But it generally happened that those who opposed the positive prohibition were indifferent to the great question. No, Sir; there can be but one true rule. It is this: the rights of colored persons must be placed under the protection of positive statute, warning their oppressors against continued outrage. [Pg 333]

The question being taken on Mr. Sumner’s amendment, it was adopted,—Yeas 19, Nays 17. The House concurred, and the President approved the bill.

Thus was another road brought within the sphere of this prohibition. But the exclusion was continued on the main road in Pennsylvania Avenue.

June 21st, the Senate having under consideration a bill to amend the charter of the Washington and Georgetown Railroad Company, Mr. Sumner moved the following amendment:—

> “*And provided, further*, That there shall be no exclusion of any person from any car on account of color.”

Debate ensued. Mr. Sherman, of Ohio, thought “the amendment ought not to be adopted.” Mr. Hendricks, of Indiana, thought it tended to depreciate the value of investments made on the faith of former legislation. Mr. Willey, of West Virginia, declared his opposition, saying, “It is a matter to be regulated by the interests of the Company, the convenience of the people, and especially the tastes of the people.” Mr. Powell, of Kentucky, said: “If the Senator from Massachusetts is such a vehement friend of this down-trodden race, as he is a lawyer, why did he not undertake their case, and propose to argue it for them before the courts? That would have indicated that he really felt for the negro.... The Senator shows his devotion to this down-trodden race here, and only in words.... The Senator’s staple is this fanatical idea. He wants this little hobby to ride through Massachusetts on, and to feed a fanatical flame there. He can fool nobody here with this kind of thing. Take the negro out of the Senator’s vocabulary, and, rich as it is, it would be exceedingly barren.” Mr. Trumbull, of Illinois, also opposed the amendment. In the course of the debate, Mr. Sumner spoke as follows, especially in reply to Mr. Trumbull.

Mr. President,—The Senator from Illinois [Mr. Trumbull], in former days, was a sincere, intelligent, devoted supporter of the Wilmot Proviso. As I understand that Proviso, it was simply a prohibition of Slavery in the Territories. Now I know not whether the Senator held, as I did, that, even without that prohibition, yet, by a strict interpretation of the Constitution, Slavery could not go into the Territories. I presume he did; most of us did. For myself, I held it resolutely and sincerely. I always regarded the Wilmot Proviso, if the Constitution were properly interpreted, as mere surplusage, sheer supererogation; and yet I never hesitated, in season or out of season, to vindicate it; and I believe the Senator never hesitated, in season or out of season, to do the same. I remember that my earliest admiration of that Senator was founded on his brave and able support of that very prohibition. Not then was he deterred from a humane provision because without it, according to his interpretation of the Constitution, Slavery could not enter the Territories. Nor was he deterred because the provision might be offensive to persons of weak nerves. No, Sir; openly and courageously he maintained the principle that Slavery must be prohibited. And on the same principle—if I may pass from great things to smaller, I admit, but not small—I insist that this proviso should also be adopted. [Pg 334]

Our experience shows that the law as the Senator expounds it is not so accepted by this railroad corporation. He knows as well as I that colored persons are daily insulted. Some of these victims will compare in respectability of conduct with any whom I now have the honor to address. My colleague alluded to a colored clergyman whom he saw thrust out only the other day. We know of an officer of the United States, wearing the national uniform, thrust out; and the Senator from Illinois will allow all these things to be done, and not interfere. He tells us that it is contrary to law, and yet he allows it to proceed under the very eyes of the Senate. Sir, I insist that the Senate, when such outrage occurs, shall show that it has power, and is willing to exercise it on the side of justice. [Pg 335]

But the Senator reminds us that in other days the Fugitive Act was passed here, and made

especially offensive; and he pleads with us not to imitate that bad example, by introducing anything that may be offensive. I do not like the comparison of the Senator. Does he not know well that everything introduced into the Fugitive Slave Bill was in the interest of Slavery, and contrary to every sentiment of humanity, and that it was intended to give offence? The proposition now moved is opposite in character. It is to sustain the principles of humanity, to uphold human rights, to vindicate human equality, and with no purpose of offence,—none, not the least. The illustration of the Senator is entirely out of place. True it is that in those other days we were offended, and it was part of the hardships to which we were exposed. As, in the days which preceded our Revolution, the British officers said they would cram the stamps down the throats of the American people, so, in the same malignant spirit, the Slave-Masters insisted upon cramming Slavery down the throats of the Senate and the country. There was nothing but brutality then. Slavery in all its features is bad, but one of its most odious manifestations was the revolting insensibility to every sentiment of delicacy and humanity which it created in its supporters.

Sir, the Senator from Illinois knows well that it is in a very different spirit that propositions like the present are brought forward. It is always in the interest of human rights, and I need not say [Pg 336] to that Senator, so far as I am concerned, with no other purpose than that patent in the proposition itself, and with no idea of offending any human being,—on the contrary, with a desire to avoid offence, if I possibly can. In that spirit I wish to do my duty on this floor. I would never give offence to any one, here or elsewhere, if I knew how to avoid it, while in all things I faithfully discharge my public duty.

The debate continued, when Mr. Grimes, of Iowa, said he should like to have Mr. Sumner answer one question. “Suppose we pass this amendment and put it into the law, and the Company goes on and does exactly as it has been doing, excluding these men, what are these colored men going to do? Have they not got to go to law then? Will they not be compelled to enforce their rights in court? Will they not be compelled to employ lawyers? If that be so, what advantage will it be to them to adopt this amendment under the present condition of things?”

Mr. Sumner. I will answer. Because the Company will not dare to continue this outrage in the face and eyes of a positive provision of statute. That is the answer.

On the Yeas and Nays, the amendment was lost,—Yeas 14, Nays 16,—several Republicans uniting with the Democrats against it.

At the next stage of the bill, Mr. Sumner renewed his amendment, when it was adopted,—Yeas 17, Nays 16. The bill passed the Senate, and was the subject of conference between the two Houses, but it never became a law.

January 17, 1865, the Senate having under consideration the bill to incorporate the Baltimore and Washington Depot and Potomac Ferry Railway Company, Mr. Sumner moved the same amendment, which was adopted,—Yeas 24, Nays 6. This bill was passed by the Senate, but it never became a law.

February 4, 1865, the Senate having under consideration a bill to amend the charter of the Metropolitan Railroad Company, Mr. Sumner moved the following amendment:—

> “That the provision prohibiting any exclusion from any car on account of color, already applicable to the Metropolitan Railroad, is hereby extended to every other railroad in the District of Columbia.”

This amendment became necessary in order to reach the Washington and Georgetown Railroad Company. It [Pg 337] was opposed by Mr. Dixon, of Connecticut, Mr. Conness, of California, and Mr. Hale, of New Hampshire, the last regarding it in the nature of general legislation on a private act. Mr. Sumner replied, that it was needed, in order to bring the Metropolitan Railroad on an equality with the other roads, inasmuch as Congress had already imposed the prohibition upon that road; and, secondly, that it was germane, inasmuch as the Senate might engraft upon any railroad charter any proposition, special or general, concerning the subject-matter.

The amendment was lost,—Yeas 19, Nays 20.

At the next stage of the bill, Mr. Sumner renewed his amendment. February 6th, Mr. Dixon, Chairman of the Committee on the District of Columbia, withdrew his opposition, saying: “I opposed it on the ground that it seemed to conflict with the rights of another Company, not now before the Senate [the Washington and Georgetown Railroad Company]; but since that time I have seen the managers and controllers of that Company, and find that they are unwilling to contend on this subject with what they consider to be the public opinion. They therefore make no objection to it, and I shall make none.”

The amendment was adopted,—Yeas 26, Nays 10. The bill as amended passed the House and was approved by the President, so that it became illegal for any railroad in the District of Columbia to exclude any person from any car on account of color.

The Washington and Georgetown Railroad did not promptly recognize the law. Colored persons were excluded from their cars, when Mr. Sumner addressed a letter to the President of the road, calling attention to the contumacy of the Company, and announcing his purpose, if it continued, to move, at the next session of Congress, the forfeiture of the charter. At the same time he addressed a communication to the District Attorney, asking him to proceed against the Company. At last the law was recognized, and from that date all the street-cars of Washington have been open to colored persons.

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WRONG AND UNCONSTITUTIONALITY OF FUGITIVE SLAVE ACTS.

Report in the Senate of the Committee on Slavery and Freedmen, February 29, 1864.

February 29, 1864, Mr. Sumner reported from the Committee on Slavery and Freedmen a bill to repeal all acts for the rendition of fugitive slaves. Accompanying this bill was the following report, of which ten thousand extra copies were ordered to be printed for the use of the Senate, together with the views of the minority, by Mr. Buckalew.

The debate on this subject, and the final repeal of all Fugitive Slave Acts, appear at a later date.[312]

> The Select Committee on Slavery and the Treatment of Freedmen, to whom were referred sundry petitions asking for the repeal of the Fugitive Slave Act of 1850, and also asking for the repeal of all acts for the rendition of fugitive slaves, have had the same under consideration, and ask leave to make the following report.

Two Fugitive Slave Acts still exist unrepealed on our statute-book. The first, dated as long ago as 1793, was preceded by an official correspondence, supposed to show necessity for legislation.[313] The second, belonging to the compromises of 1850, was introduced by a report from Mr. Butler, of South Carolina, at that time Chairman of the Judiciary Committee of the [Pg 339] Senate.[314] In proposing the repeal of all legislation on the subject, it seems not improper to imitate the latter precedent by a report assigning briefly the reasons governing the Committee.

RELATION BETWEEN SLAVERY AND THE FUGITIVE SLAVE ACTS.

These Acts may be viewed as part of the system of Slavery, and therefore obnoxious to the judgment which Civilization is accumulating against this Barbarism; or they may be viewed as independent agencies. But it is difficult to consider them in the latter character alone; for if Slavery be the offence which it doubtless is, then must it infect all the agencies it employs. Especially at this moment, when, by common consent, Slavery is recognized as the origin and life of the Rebellion, must all its agencies be regarded with more than ordinary repugnance.

If in time of peace all Fugitive Slave Acts were offensive, as requiring what humanity and religion both condemn, they must at this moment be still more offensive, when Slavery, in whose behalf they were made, has risen in arms against the National Government. It is bad enough, at any time, to thrust an escaped slave back into bondage: it is absurd to thrust him back at a moment when Slavery is rallying all its forces for the conflict it has madly challenged. The crime of such a transaction is not diminished by its absurdity. A slave with courage and address to escape from his master has the qualities needed for a soldier of Freedom; but existing statutes require his arrest and sentence to bondage.

In annulling these statutes, Congress simply withdraws an irrational support from Slavery. It [Pg 340] does nothing against Slavery, but merely refuses to do anything for it. In this respect the present proposition differs from all preceding measures of Abolition, as refusal to help an offender on the highway differs from an attempt to take his life.

And yet it cannot be doubted that the withdrawal of Congressional support must contribute effectively to the abolition of Slavery: not that, at the present moment, Congressional support is of any considerable value, but because its withdrawal would be an encouragement to that universal public opinion which must soon sweep this Barbarism from our country. It is one of the felicities of our present position, that by repealing all acts for the restitution of slaves we may hasten the happy day of Freedom and of Peace.

Regarding this question in association with the broader question of Universal Emancipation, we find that every sentiment or reason or argument for the latter pleads for the repeal of these obnoxious statutes, but that the difficulties sometimes supposed to beset Emancipation do not touch the proposed repeal, so that we might well insist upon the latter, even if we hesitated with regard to the former. The Committee find new motive to the recommendation they now make, when they see how important its adoption must be in securing the extinction of Slavery.

It is not enough to consider the proposed measure in its relations to Emancipation. Even if Congress be not ready to make an end of Slavery, it cannot hesitate to make an end of all Fugitive Slave Acts. Against the latter there are cumulative arguments of Constitutional Law and [Pg 341] of duty, beyond any to be arrayed against Slavery itself. A man may even support Slavery, and yet reject the Fugitive Slave Acts.

THE FUGITIVE CLAUSE IN THE CONSTITUTION, AND THE RULES FOR ITS INTERPRETATION.

These Acts profess to be founded upon certain words of the Constitution. On this account we must consider these words with a certain degree of care. They are as follows.

> "*No person* held to service or labor in one State, under the laws thereof,

escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but *shall be delivered up on claim of the party to whom such service or labor may be due*."[315]

John Quincy Adams has already remarked that in this much debated clause the laws of grammar are violated in order to assert the claim of property in man; for the verb "shall be delivered up" has for nominative "no person," and thus the grammatical interpretation actually forbids the rendition. It is on this jumble and muddle of words that a superstructure of wrong is built. Even bad grammar may be disregarded, especially in behalf of human rights; but it is worthy of remark, that, in this clause of the Constitution, an outrage on human rights was begun by an outrage on language.

Assuming that the clause is not invalidated by bad grammar, it is often insisted, and here the Committee concur, that, according to authoritative rules of interpretation, it cannot be [Pg 342] considered applicable to fugitive slaves; since, whatever the intention of its authors, no words were employed positively describing fugitive slaves *and nobody else*. Obviously, this clause, on its face, is applicable to apprentices, and it is known historically that under it apprentices have been delivered up on the claim of the party to whom "such service or labor" was due. It is therefore only by discarding its primary signification, and adopting a secondary signification, that it can be made to embrace fugitive slaves. On any common occasion, not involving a question of human rights, such secondary signification might be supplied by intendment; but it cannot be supplied to limit or deny human rights, especially to defeat Liberty, without a violation of fundamental rules which constitute the glory of the law.

This principle is common to every system of civilized jurisprudence; but it has been nowhere expressed with more force than in the maxims of the Common Law and the decisions of its courts. It entered into the remarkable argument of Granville Sharp, which preceded the judgment extorted from Lord Mansfield, and led him to exclaim, in words strictly applicable to the Constitution of the United States, "The word *slaves*, or anything that can justify the enslaving of others, is not to be found, God be thanked," in the British Constitution.[316] It entered into the judgment pronounced at last by Lord Mansfield, under the benevolent pressure of Granville Sharp, in the renowned Somerset case, where this great magistrate grandly declared that Slavery could not exist in England. His words cannot be too often quoted as an illustration of the true rule of interpretation. "The state of Slavery," he said, "is of such a nature, that it is incapable [Pg 343] of being introduced on any reasons moral or political, *but only by positive law*.... It is so odious, that nothing can be suffered to support it *but positive law*."[317] Therefore the authority for Slavery cannot be derived from any words of doubtful import. Such words are not "positive." And clearly, by the same rule, *if the words are susceptible of two different significations, that must be adopted which is hostile to Slavery*. This same cardinal principle, thus announced by the Chief Justice of England, has been echoed by the Chief Justice of the United States, being none other than Marshall, speaking for our own Supreme Court, when he said, "*Where rights are infringed*, ... the legislative intention must be expressed with *irresistible clearness* to induce a court of justice to suppose a design to effect such objects."[318] In a clause capable of *two meanings* there can be no such "irresistible clearness" as would justify an infringement of human rights.

But Lord Mansfield and Chief Justice Marshall were simply giving practical application to those venerable maxims cherished in America as in England. It is not necessary to repeat them at length. They are substantially embodied in the words, *Angliæ jura in omni casu Libertati dant favorem*,—"The Laws of England, *in every case*, show favor to Liberty"; and also in those other vigorous words of Fortescue, *Impius et crudelis judicandus est qui Libertati non favet*,—"He is to be adjudged impious and cruel who does not favor Liberty."[319] By such lessons have all who administer justice been warned for centuries against the sacrifice of human rights. [Pg 344] Even Blackstone, whose personal sympathies were with power, was led to declare, in most suggestive words, worthy of a commentator on English Law, that "the law is always ready to catch at anything in favor of Liberty."[320] And Hallam, whose instincts were always for Freedom, has adopted and vindicated this rule of interpretation as a pole-star of Constitutional Liberty. "It was," says this great author, "by dwelling on all authorities in favor of Liberty, *and by setting aside those which made against it*, that our ancestors overthrew the claims of unbounded prerogative."[321] Nor can it be doubted that this conduct helped to build those great English safeguards of Freedom which have been an example to mankind.

This rule has never received plainer illustration than in the writings of Dr. Webster, the eminent lexicographer. In a tract bearing date 1795, long before the heats engendered by the Fugitive Slave Act, he used language which, if applied to our Constitution, must defeat every interpretation favorable to Slavery. "Where there are two constructions," he says, "the one favorable, the other odious, *that which is odious is always to be rejected*."[322] This principle, thus sententiously expressed by the American lexicographer, may be found also in the judgments of courts and the writings of civilians without number. It is one of the commonplaces of interpretation. Lord Coke, our master in English law, tells us, that, where words "may have a [Pg 345] double intendment, and the one standeth with law and right, and the other is wrongful and against law, the intendment that standeth with law shall be taken."[323] And Vattel, a master in International Law, says that "we should particularly regard the famous distinction of things *favorable* and things *odious*," and then he assumes that we must "consider as *odious* everything that in its own nature is rather hurtful than of use to the human race."[324] But the clause of the Constitution which has been made the apology of the Fugitive Slave Act is clearly open to "two constructions," according to the language of Dr. Webster, or "a double intendment," according to

the language of Lord Coke, or one “favorable” and the other “odious,” according to Vattel. Thus far in our history, under the malignant influence of Slavery, the odious construction or intendment has prevailed.

There is also another voice to be heard in determining the meaning of a doubtful clause. It is the Preamble, which, on the threshold, proclaims the spirit in which the Constitution was framed, and furnishes a rule of interpretation. To “*establish justice*, insure domestic tranquillity, provide for the common defence, *promote the general welfare, and secure the blessings of Liberty* to ourselves and our posterity”: such are the declared objects of the Constitution, which must be kept present to the mind as we read its various provisions. And every word must be so interpreted as best to uphold these objects. The Preamble would be powerless against any “positive” sanction of Slavery by unequivocal words; but, on the other hand, any attempted sanction of Slavery by words not “positive” and not unequivocal, must be powerless against the [Pg 346] Preamble, which, in this respect, is in harmony with the ancient maxims of the law.

ANALYSIS OF THE WORDS OF THE FUGITIVE CLAUSE.

Looking more minutely at the precise words of this clause, we see how completely it is stamped with equivocation from beginning to end. *Every descriptive word it contains is double in signification.* The clause may be seen, first, in what it does not contain; and, secondly, in what it does contain. It does not contain the word “slave” or “slavery,” which singly and exclusively denotes the idea of property in man. Had either of these fatal words been employed, there would have been no uncertainty or duplicity. But in abandoning these words, all idea of property in man was abandoned also. Other words were adopted, simply because they might mean something else, and therefore would not render the Constitution on its face “odious.” But the unquestionable fact that these words might mean something else makes it impossible for them to mean “slave” or “slavery,” unless in this behalf we set aside the most commanding rules of interpretation. It is clear that the authors of this clause attempted an impossibility. They wished to secure Slavery without plainly saying so; but such is Slavery that it cannot be secured without plainly saying so. Naturally and inevitably they failed, as if they had attempted to describe *black* by words which might mean *white*, or to authorize crime by words which naturally mean something that is not crime. The thing could not be done. The attempt to square the circle is not more absurd.

The clause begins with the descriptive words, “No *person* held to service or labor in one State [Pg 347] under the laws thereof.” Now a slave is not a “person,” with the rights of persons, but a *chattel* or *thing*. Such is the received definition of the Slave States, handed down from Aristotle. He is not “held to service or labor,” but he is held as property. The terms employed describe an apprentice, but not a slave. And he must be held “under the laws” of a State. Here again is the case of an apprentice, who is clearly held “under the laws” of a State. But we have the authority of Mr. Mason, recently of the Senate from Virginia, for saying that no proof can be produced that Slavery in any State “is established by *existing laws*.”[325] The person thus described shall not “be *discharged* from such service or labor.” Clearly an apprentice is discharged, but a slave is manumitted or emancipated. This undischarged person “shall be delivered up on *claim* of the party to whom such service or labor may be *due*.” But all these words imply *contract*, or at least *debt*, as in the case of an apprentice. The slave can *owe* no “service or labor” to his master. There is nothing in their relations out of which any such obligation can spring. The whole condition stands on force and nothing else. It is robbery tempered by the lash,—not merely robbery of all the fruits of industry, but robbery of wife and child. To such terrible assumption the language of *contract* or *debt* is totally inapplicable. Nothing can be “due” from slave to master, unless it be that “resistance to tyrants” which is “obedience to God.” It is absurd to say that “labor or service,” in any sense, whether of justice or of law, can be “due” from the slave. The same power [Pg 348] which takes wife and child may exact this further sacrifice, but not because it is “due.”

Such is the simple truth touching this much debated clause. At the touchstone of unquestioned rules of interpretation its *odious* character disappears, and astonishment prevails that the public mind for so long a period could have been perverted with regard to its true meaning. Nobody can doubt that this clause *may* be interpreted in favor of Freedom, so as to exclude all idea of property in man. But if it *may*, then such is the voice of Freedom that it *must*.

APPLICABLE TO INDENTED SERVANTS.

Here it is important to consider, that, besides apprentices, there was a class of “indented servants” embraced by this clause. From Bancroft we learn that this species of servitude, under indentures or covenants, had from the first existed in Virginia. According to the historian, “the servant stood to his master in the relation of a *debtor*,” which, be it observed, is not the condition of a slave. From the same authority we learn that “the supply of white servants became a regular business,”—that, “like negroes, they were to be purchased on shipboard, as men buy horses at a fair,”—that “in 1672 the average price in the Colonies, where five years of service were due, was about ten pounds, while a negro was worth twenty or twenty-five pounds.”[326] The Scots captured on the field of Dunbar, royalist prisoners of the Battle of Worcester, and companions of [Pg 349] Monmouth in his ill-starred insurrection were sent to the Colonies as a merchantable commodity, and there held in slavery for life or for years.

The other historian of our country, Hildreth, contributes to our knowledge of this class of servants. According to him, the importation of indented white persons, called “servants,” or

sometimes “redemptioners,” in contradistinction to negroes, known as slaves, was extensively carried on as late as 1750, especially in the Middle States; and he mentions, that the Colonial enactments for keeping them in order, and especially for preventing their escape, were often very harsh and severe. They were put, for the most part, on a level with slaves, but their case in other respects was different. Except in very young persons, the term of service seldom or never exceeded seven years, and in all cases it was limited by law.[327] Even during the Revolution these indented servants appear on the stage. Many were enlisted in the army, and, yielding to the earnest request of Washington, Congress relinquished a plan already adopted of stopping a portion of their pay for the benefit of their masters.[328]

An English Colonial official, Eddis, in a letter from America, dated September 20, 1770, describes four different denominations of persons “in a state of servitude”: first, the “negroes,” who are the entire property of their respective owners; secondly, “convicts,” transported from the mother country for a limited term; “indented servants,” engaged for five years previous to leaving England; and “free-willers,” supposed from their situation to possess superior advantages. These he proceeds to describe. Of the last class he says, they are received under [Pg 350] express condition, that, on arrival in America, they are to be allowed a number of days to dispose of themselves most to their advantage, but, in fact, they are rarely permitted to set foot on shore until they have bound themselves.[329]

If, happily, at the formation of the Constitution, these servants had diminished in number, or had ceased to exist as a class, the condition was not unknown. They were persons “held to service or labor,” and the provision of the Constitution was strictly applicable to them.

Rejecting the odious application involving the support of Slavery, we follow received rules and the undoubted genius of the Common Law. How anxiously judges seek to evade an obnoxious penal statute is illustrated by a curious case mentioned by Lord Campbell. It was proved that the defendant, being in a stubble-field with a pointer, fired his gun at a covey of partridges, and shot two, when the judge, disliking to enforce the Game Laws, objected that there was no evidence that the gun was loaded with shot, and advised the jury to conclude that the birds fell dead from fright.[330] But a clause for the rendition of fugitive slaves is entitled to as little respect as the Game Laws, and, when the words employed are applicable to others than slaves, they should not be applied to slaves.

NO LAPSE OF TIME CAN DEFEAT AN INTERPRETATION IN FAVOR OF LIBERTY. [Pg 351]

Against this interpretation, so overpowering in reason and authority, it is no objection that thus far Slavery has prevailed. There is no statute of limitation and no prescription against the undying claims of Liberty. Rejected or neglected in one generation, they revive in another; nor can they be impaired by any desuetude. This objection was impotent to prevent Lord Mansfield from declaring that Slavery could not exist in England, although practically, under a false interpretation of the British Constitution, sustained by the professional opinions of Talbot and Yorke, and by the judgment of the latter on the bench, under the name of Lord Hardwicke, African slaves were sold in the streets of London, and advertised for sale in English papers, for a period full as long as that which has witnessed the false interpretation of our Constitution. As length of time did not prevail against a true interpretation of the British Constitution in the case of Somerset, it ought not to prevail against a true interpretation of our Constitution now.

There is no chemistry in time to transmute wrong into right. Therefore the whole question on the Constitution is still open, as on the day of its adoption. The cases of misinterpretation are of no value,—at least they cannot settle the question against Liberty. Such was the noble declaration of Charles James Fox in the British Parliament, when, in words strictly pertinent now, he said: “Wherever any usage appeared subversive of the Constitution, if it had lasted for one or [Pg 352] for two hundred years, *it was not a precedent, but an usurpation*.”[331] And such is the character of every instance in which our Constitution has been perverted to sanction Slavery.

PERVERSIONS WITH REGARD TO ORIGIN OF THE FUGITIVE CLAUSE.

A slight examination will show prevailing perversions with regard to the origin and history of this clause. Not content with imparting to it a meaning which it cannot bear, the partisans of Slavery have given to this clause an origin and history having no foundation in truth.

It is common to assert that the clause was intended to remove or counteract some difficulty which had occurred anterior to the Convention. But there is no evidence of any such difficulty. There was no complaint. Not a single voice was raised in advance to ask any such security.

It is also asserted, with peculiar confidence, that this clause, interpreted to require the rendition of fugitive slaves, constituted one of the original compromises of the Constitution, without which the Union could not have been formed. This pretension makes an asserted stipulation for the rendition of fugitive slaves one of the corner-stones of the Union. To this discreditable imputation upon the fathers of the Republic the Supreme Court seems to have lent sanction, when it declared, in the famous Prigg case, not only that “the object of this clause was [Pg 353] to secure to the citizens of the slaveholding States the complete right and title of ownership in their slaves *as property* in every State in the Union into which they might escape,” but that “the full recognition of this right and title … was so vital to the preservation of their domestic

interests and institutions, that it cannot be doubted *that it constituted a fundamental article, without the adoption of which the Union could not have been formed.*"[332] Mark the way in which this extraordinary statement is ushered in,—"It cannot be doubted"! But it is doubted, and more too. Chief Justice Taney, at a later day, put forth the statement, that, during the Revolution, it was an accepted truth that colored men "had no rights which the white man was bound to respect,"[333]—and this statement was said to stand on authentic history; but it is now exploded, and the other statement must share the same fate. A careful inquiry shows that it is utterly without support in the records of the Convention, where the real compromises are revealed; nor is there a single contemporary pamphlet, speech, article, or published letter, out of which any such thing can be inferred. Surely, had this provision been of such controlling importance, it could not have escaped notice, at least, in the "Federalist," when its writers undertook to describe and group the powers of Congress "which provide for the harmony and proper intercourse among the States";[334] but the "Federalist" is entirely silent with regard to it. And yet we are gravely told "it cannot be doubted" that this provision "constituted a fundamental article, without the adoption of which the Union could not have been formed." Frequent repetition has caused the common belief that this was history, instead of fable.

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The actual compromises of the Constitution are well known. They were three in number. One established the equality of all the States in the Union, by securing equal representation in the Senate for the small States and large States. Another allowed representatives to the Slave States according to the whole number of free persons and "three fifths of all other persons," in consideration that direct taxes should be apportioned in the same way. Another was the toleration of the slave-trade for twenty years, in consideration of commercial concessions to the "Eastern members." Such are the actual compromises of the Constitution, with regard to which there is evidence. But imagination or falsehood is the only authority for adding the rendition of fugitive slaves to this list.

TRUE ORIGIN OF THE FUGITIVE CLAUSE.

The debates of the Convention attest the little contemporary interest in this clause. In all the general propositions or plans successively brought forward, from the meeting on the 25th of May, 1787, there was no allusion to fugitive slaves; nor was there any allusion to them, even in debate, till as late as the 28th of August, when, as the Convention was drawing to a close, they were incidentally mentioned in a discussion on another subject. The question was on the article providing for the privileges of citizens in different States. Here is the authentic report by Mr. Madison of what was said.

> "General [Charles Cotesworth] Pinckney was not satisfied with it. *He seemed to wish some provision should be included in favor of property in slaves.*"[335]

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But he made no proposition. Mark the modesty of the suggestion. Here was no offer of compromise,—not even a complaint, much less a suggestion of corner-stone. The next article under discussion provided for the surrender of fugitives from justice. Mr. Butler and Mr. Charles Pinckney, both from South Carolina, now moved openly, but without any offer of compromise, to require "fugitive slaves and servants to be delivered up like criminals." But the very boldness of the proposition drew attention and aroused opposition. Mr. Wilson, of Pennsylvania, afterwards the eminent judge and lecturer on Law, promptly remarked: "This would oblige the executive of the State to do it, *at the public expense*." Mr. Sherman, of Connecticut, followed in apt words, saying that he "saw no more propriety in the public seizing and surrendering a slave or servant than a horse." Under this proper pressure the offensive proposition was withdrawn. The article for the surrender of criminals was then adopted. On the next day, August 29th, Mr. Butler showed that the lovers of Liberty had not spoken in vain. Abandoning the idea of any proposition openly requiring the surrender of fugitive slaves, he moved an *equivocal* clause, substantially like that now found in the Constitution, which, without debate or opposition of any kind, was unanimously adopted,—or, according to the report of Mr. Madison, *nem. con.*[336] What could not be done directly was attempted indirectly; and the partisans of Slavery contented themselves, according to the teachings of old Polonius, with language which only "by indirections finds directions out." But no "indirection" can find Slavery out. The language which sanctions such a wrong must be "direct." Therefore, at the moment of seeming triumph, the partisans of Slavery failed.

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Such is the indubitable origin of a clause latterly declared a compromise of the Constitution and a corner-stone of the Republic. That a clause for the hunting of slaves was recognized at the time as compromise or corner-stone is an absurdity disowned alike by history and by reason. That the clause was adopted, *nem. con.*, with the idea, that, *according to any received rules of interpretation*, it could authorize the hunting of slaves, it is difficult to believe. The very statement that it was adopted *nem. con.* shows that it must have been regarded, *according to received rules of interpretation*, as having no "positive" character; for there were eminent members of the Convention whose declared opinions must have prevented them from consenting to any such proposition, if it were supposed for a moment to turn the Republic which they were then organizing into a mighty Slave-Hunter. There sat Gouverneur Morris, who only a short time before exclaimed in the Convention: "*He never would concur in upholding domestic Slavery.* It was a nefarious institution. It was the curse of Heaven on the States where it prevailed."[337] There sat Oliver Ellsworth, afterwards Chief Justice, who said, in words which strike at all support of Slavery by the National Government: "The morality or wisdom of Slavery are

considerations belonging to the States themselves."[338] There sat Elbridge Gerry, afterwards Vice-President, who openly declared that "we had nothing to do with the conduct of the States as [Pg 357] to slaves, *but ought to be careful not to give any sanction to it.*"[339] There sat Roger Sherman, who avowed that he was "opposed to a tax on slaves imported, as making the matter worse, *because it implied they were property.*"[340] And, greatest of all, there sat Benjamin Franklin, who, by character and conviction, in every fibre of his moral and intellectual being, was pledged against any sanction of Slavery. Who can suppose that these wise and illustrious patriarchs of Liberty all consented, *nem. con.*, not only to sanction Slavery and to recognize property in man, but to put a kennel of bloodhounds into the Constitution, ready to hunt the flying bondman? They did no such thing; or, if it is insisted, *contrary to received rules of interpretation*, that such must be the signification of their language, clearly they did not understand it so. Doubtless there were members of the Convention who, in passion for Slavery, cheered themselves with the delusion that they had adequately described, in "positive" terms, the pretension they hoped to embody in the Constitution; but the *legal meaning* of this provision must be determined, not by the passion of such members, but by the actual language employed, according to received rules of interpretation, from which there is no appeal. Other rules may be set aside as inapplicable; but the rule, which, in presence of any doubtful phrase, any indirect language, or any word capable of a double sense, requires that the interpretation shall be *in favor of Liberty*, is the most commanding of all.

Thus, when this clause took its place in the Constitution, *nem. con.*, it was clearly a cipher. It [Pg 358] meant nothing, or at least nothing "odious." This conclusion becomes still more apparent in the light of two special incidents, which cannot be forgotten in determining the validity of any claim for Slavery under equivocal words. The first is the saying of Mr. Madison, which he has recorded in the report of the Convention, that it was "wrong to admit in the Constitution the idea that there could be property in men."[341] Admirable words, constituting a binding rule of interpretation. And yet, in the face of this declaration, it is insisted that the "idea that there could be property in men" is embodied in the double-faced words of the fugitive clause. But as the words are susceptible of two meanings, clearly they should be interpreted so as to exclude what is "wrong." The other incident furnishes the same lesson in a manner more pointed still. It appears that on the 13th of September, 1787, a fortnight after the fugitive clause was adopted in its earliest form, and while the Convention was considering the report of its committee on style and arrangement, "On motion of Mr. Randolph, the word '*servitude*' was struck out and '*service*' unanimously inserted, the former being thought to express the condition of slaves, *and the latter the obligations of free persons.*"[342] Thus the word "service" ceases even to be equivocal, for it was unanimously adopted as expressing "the obligations of free persons." And such it would have continued to express always, if Slavery had not unhappily triumphed over the National Government in all departments, executive, legislative, and judicial.

It is not doubted that at home in the Slave States the fugitive clause was interpreted as [Pg 359] embracing slaves, and that this asserted license was at times mentioned as a reason for the adoption of the Constitution. Even Mr. Madison, who had declared in the National Convention that it was "wrong to admit in the Constitution the idea that there could be property in men," argued afterwards, in the Virginia Convention, that "this clause was expressly inserted to enable owners of slaves to reclaim them,"[343]—all of which was doubtless true, but the question still occurs as to the constitutional efficacy of the clause. Mr. Iredell, who was not a member of the National Convention, undertook, in the North Carolina Convention, to explain what it had done. Announcing that the clause was intended to include slaves, he added: "The Northern delegates, *owing to their particular scruples* on the subject of Slavery, did not choose the word *slave* to be mentioned,"[344]—so that, on the very statement of this expositor, the question naturally arose whether slaves were really included. In the South Carolina Convention, General Pinckney, who in the National Convention first started the idea of "some provision in favor of property in slaves," boasted that this had been obtained; but he added, in suggestive words, "We have made the best terms for the security of this species of property it was in our power to make. *We would have made better, if we could.*"[345] True enough. The Slave-Masters got all they could: if possible, they would have got more. But the question still recurs, whether in this equivocal provision they got anything. In the National Convention they adopted a clause which was only another illustration of [Pg 360] "Mr. Facing-both-ways." At home, in their local conventions, they courageously insisted that it faced only one way. Without dwelling on old sayings about "a villain outwitting himself," and wit failing when "upon an ill employ," clearly the wit of the Slave-Masters was "upon an ill employ" when it sought to foist Slavery into the text of the Constitution; and it is easy to see that all who engaged in the work were like "a villain outwitting himself." Whatever they may have thought or boasted, the thing was not done.

From the origin of the fugitive clause, and the circumstances attending its adoption, it is apparent that it has been the occasion of infinite exaggeration and misrepresentation. Like a Pagan idol, it has been worshipped and covered with gifts; but the prevailing superstition which sustained the imposture has at last disappeared, and we see nothing but a vulgar image of painted wood.

LEGISLATION FOR RENDITION OF FUGITIVE SLAVES.

From the clause in the Constitution, the Committee pass to a consideration of the legislation founded upon it. Of course, if the clause is misunderstood, no legislation can derive any validity from it. *Nothing can come out of nothing*; and since there is nothing in the Constitution positively

requiring rendition of fugitive slaves by the National Government, there can be no authority for any legislation by Congress on the subject. Therefore the argument against the existing statutes is complete. But, since it is proposed to reverse an early policy of the Government, the Committee are unwilling to stop here. These statutes must be considered in their history and character. [Pg 361]

As early as 1793, while Congress was sitting in Philadelphia, provisions for the surrender of fugitive slaves were fastened upon a bill for the surrender of fugitives from justice, and the whole was adopted, apparently with little consideration. Thus, accidentally, Congress assumed the *odious* power to organize slave-hunting. But the Act was scarcely passed, before the conscience of people, not only at the North, but even in Maryland, began to be aroused. Granville Sharp, who in England so bravely maintained the national cause as well as the cause of the slave, addressed a letter to the "Maryland Society for Promoting the Abolition of Slavery and the Relief of Free Negroes and others unlawfully held in Bondage," where he set forth elaborately those binding rules of interpretation, which, according to English law, require a court to incline always in favor of Liberty. This letter purports to have been published, as a pamphlet, by order of the Society, and to have been printed at "Baltimore, in Calvert Street, near the Court-House, by D. Graham, L. Yundt, and W. Patton," in 1793. In a brief preface, the Maryland Society thus reveals the trials attending the new Fugitive Slave Act:—

> "Still Slavery exists, and, *in the case of slaves escaping from their masters*, the friends of Universal Liberty are often embarrassed in their conduct by a conflict between their principles and *the obligations imposed by unwise and perhaps unconstitutional laws*."

Such is a contemporary record of sensibilities in a Slave State; and let it be mentioned to the honor of Maryland. But it is reasonable to suppose that sensibilities in States further north were touched still more. Mr. Quincy, whose living memory embraces this early period, reports, that, when an enforcement of this Act was attempted in Boston, the crowd thronging the room of the magistrate quietly and spontaneously opened a lane for the fugitive, who was thus enabled to save himself from Slavery, and also save the country from the dishonor of such a sacrifice. Almost at the same time, in patriotic Vermont, a judge of the Supreme Court of the State, on application for the surrender of an alleged slave, accompanied by documentary evidence, refused to comply, *unless the master could show a bill of sale from the Almighty*. Such was the popular feeling which this earlier legislation encountered. [Pg 362]

There is authentic evidence that this popular feeling was recognized by President Washington as a proper guide, where he was personally interested. A slave of Mrs. Washington had escaped to New Hampshire. The President, in an autograph letter, which has been produced in the Senate,[346] addressed to Mr. Whipple, the collector at Portsmouth, and dated at Philadelphia, November 28, 1796, after expressing the desire of "her mistress" for the return of the slave, lays down the following rule of conduct:—

> "I do not mean, however, by this request, that *such violent measures* should be used as *would excite* a mob or riot, which might be the case, if she has adherents, *or even uneasy sensations in the minds of well-disposed citizens*. Rather than either of these should happen, I would forego her services altogether,—and the example, also, which is of infinite more importance."

The fugitive never was returned, but survived to a good old age, down to a recent period,—a living witness to that public opinion which made even the mildest of Fugitive Slave Acts a dead letter. [Pg 363]

At last, in 1850, after the subject of Slavery had been agitated in Congress without interruption for nearly twenty years, a series of propositions was adopted, and solemnly declared to be *compromises*, by which all the questions concerning Slavery were permanently settled, so as never again to vex the country,—as if any question could be permanently settled except on principles of justice. But the "gruel" was made, and among its ingredients "for a charm of powerful trouble" was a new Fugitive Slave Act, first reported from the Committee on the Judiciary by Mr. Butler, of South Carolina, but afterwards amended by a substitute from Mr. Mason, of Virginia, so as to become substantially his measure. It is needless to mention its details. Suffice it to say, that in these, as in general conception, it was harsh, cruel, and vindictive. Few statutes in history have been so utterly inhuman, not excepting even those British statutes for the oppression of the Irish Catholics, which are pictured by Edmund Burke in words strictly applicable to the monstrosity of our country:—

> "That truly barbarous system, where almost all the parts were outrages on the rights of humanity and the laws of Nature,"—"a machine of wise and elaborate contrivance, and as well fitted for the oppression, impoverishment, and degradation of a people, and the debasement in them of human nature itself, as ever proceeded from the perverted ingenuity of man."[347]

Such, unquestionably, was the Fugitive Slave Act of 1850, which is still allowed to remain on the statute-book, a blot upon our country and age. [Pg 364]

Where a measure is so plainly repugnant to reason and authority, and on its face has so little foundation in the Constitution, any elaborate argument seems superfluous, especially at this moment, when Slavery everywhere is yielding to Freedom. The general conscience condemns the

inhuman statute, and this is enough.

But it is important to show how the country has been deceived. Therefore, briefly, the Committee call attention to the constitutional objections.

UNCONSTITUTIONAL USURPATION OF POWER BY CONGRESS.

Forgetting, then, for the moment, the Preamble of the Constitution, which speaks always for Justice and Liberty,—forgetting, also, the venerable maxim of the law, that "we must incline always in favor of Freedom," and likewise that other maxim, that "he is impious and cruel who does not favor Freedom,"—refusing, according to the requirement of law, "to catch at anything in favor of Liberty," and, in spite of all received rules of interpretation, assuming that the words of the fugitive clause adequately define fugitive slaves,—the question then arises, if this clause, thus defiantly interpreted, confers any power upon Congress.

Clearly not.

Search the Constitution, and you will find no grant, general or special, conferring upon Congress power to legislate with regard to fugitives from service or labor. In the general catalogue of powers this is not mentioned; nor does it appear in any special grant. There is [Pg 365] nothing in the clause itself, there is nothing in any other clause, applicable to this pretended power. The whole subject is left to stand on a clause which, whatever its meaning otherwise, plainly on its face is only a *compact*, and not a grant of power. And in this respect it differs on its face from other provisions of the Constitution. For instance, Congress is expressly empowered "*to establish an uniform rule* of naturalization, and *uniform laws* on the subject of bankruptcies, *throughout the United States*." Without this grant, these two important subjects would have fallen within the control of the States, the nation having no power *to establish a uniform rule* thereupon. Now, instead of the existing compact on fugitives from service or labor, it would have been easy, had any such desire prevailed, to add this case to the provision on naturalization and bankruptcy, and empowered Congress *to establish a uniform rule for the surrender of fugitives from service or labor throughout the United States*. Then would Congress have had unquestionable jurisdiction. But nobody in the Convention, not one of the hardiest partisans of Slavery, presumed to make this proposition. Had it been made, it is easy to see that it must have been most unceremoniously dismissed.

The genius of the Common Law, to which our ancestors were devoted, cried out against any such concession. If we refer to its great master, Lord Coke, from whose teachings in that day there was no appeal, we find its living voice. In the Third Institute he thus expresses himself: "It [Pg 366] is holden, and so it hath been resolved, *that divided kingdoms, under several kings in league one with another, are sanctuaries for servants* or subjects flying for safety from one kingdom to another, and, upon demand made by them, are not, *by the laws and liberties of kingdoms*, to be delivered."[348] Unquestionably, if such "sanctuaries" may be overturned, it can be only in a manner consistent with "laws and liberties" of the States where the fugitive is found, and not through the exercise of a domineering prerogative by Congress.

Whatever the real meaning of the clause in other respects, plainly it is a *compact*, with a *prohibition* on the States, *conferring no power on the nation*. In natural signification it is a compact. According to examples of other countries and principles of jurisprudence, it is a compact. All arrangements for surrender of fugitives are customarily compacts. Except under express obligations of treaty, no nation is bound to surrender fugitives. Especially has this been the case with fugitives for Freedom. Bodin asserted the freedom of all foreign slaves just so soon as they crossed into France.[349] In mediæval Europe cities set up the same immunity, even against claimants under the same national government. In 1531, while the Netherlands and Spain were united under Charles the Fifth, the supreme council of Mechlin rejected an application from Spain for the surrender of a fugitive slave. By express compact alone could this be secured. But the provision of the Constitution was borrowed from the Ordinance of the Northwestern Territory, which is expressly declared to be a "compact,"[350] and this Ordinance, [Pg 367] finally drawn by Nathan Dane, of Massachusetts, was again borrowed, in some of its distinctive features, from the early institutions of Massachusetts, among which, as far back as 1643, was a compact of like nature with other New England States. Thus this provision is a compact in language, a compact in nature, and a compact in its whole history; as we have already seen, it is a compact according to the intentions of our fathers and the genius of our institutions.

There are two instances in history of compacts which illustrate the present words. The first is found in a treaty of peace between Leo the Sixth, Greek Emperor of Constantinople, and Oleg, Regent of Russia, in the year of the Christian era 906, as follows:—

> "If a Russian slave take flight, or even if he is carried away under pretence of having been bought, his master can pursue him and take him wherever he shall find him, and any man who shall oppose him in his search *shall be deemed guilty*."[351]

This compact, made in the unequivocal language of a barbarous age, has long since ceased to exist; and now, in our own day, Russia disdains to own a slave.

The other instance is the compact between the New England colonies in 1643, being one of the "Articles of Confederation between the Plantations under the Government of the Massachusetts,

the Plantations under the Government of New Plymouth, the Plantations under the Government of Connecticut and the Government of New Haven, with the Plantations in combination therewith." Here it is:—

> "*It is also agreed*, That, if any servant run away from his master into any other of these confederated jurisdictions, that in such case, upon the certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant *shall be delivered* either to his master or any other that pursues and brings such certificate or proof."[352] [Pg 368]

Here, by words of *agreement*, less frank and unequivocal than those of the earlier time, fugitives are restored. But this compact, like its Russian prototype, long since ceased to exist.

Unquestionably the fugitive clause of the Constitution, whether applicable to fugitive slaves or not, was never intended to confer power upon Congress, but was simply a *compact*, to receive such interpretation as the States where it was enforced might choose to adopt.

AUTHORITIES AGAINST THE POWER OF CONGRESS.

The Committee do not leave this conclusion to rest merely on unanswerable reason. Authorities add to the testimony.

Here is the judgment of Chancellor Walworth, of New York, pronounced in 1835, before this subject had become the occasion of political strife. The testimony of the learned Chancellor is the more important, when it is considered that he has always acted politically with the Democracy, which has been the support of Slavery.

> "I have looked in vain among the powers delegated to Congress by the Constitution for any general authority to that body to legislate on this subject. It certainly is not contained in any express grant of power, and it does not appear to be embraced in the general grant of incidental powers contained in the last clause of the Constitution relative to the powers of Congress. The law of the United States respecting fugitives from justice and fugitive slaves is not a law to carry into effect any of the powers expressly granted to Congress, 'or any other power vested by the Constitution in the Government of the United States, or any department or officer thereof.'"[353] [Pg 369]

Here, also, is the judgment of Chief Justice Hornblower, of New Jersey, pronounced in 1836. Having shown that the clause in question confers no power on Congress, he proceeds as follows.

> "In short, if the power of legislation upon this subject is not given to Congress in the second section of the fourth article of the Constitution, it cannot, I think, be found in that instrument. The last clause of the eighth section of the first article gives to Congress a right to make all laws which shall be necessary and proper for carrying into execution *all the powers* vested by the Constitution in the Government of the United States, or in any department or officer thereof. But the provisions of the second section of the fourth article of the Constitution cover no grant to, confide no trust, and vest *no powers* in, the Government of the United States. The language of the whole of that section is to establish certain principles and rules of action by which the contracting parties are to be governed in certain specified cases. The stipulations respecting the rights of citizenship, and the delivery of persons fleeing from justice or escaping from bondage, *are not grants of power* to the General Government, to be executed by it in derogation of State authority, but they are in the nature of treaty stipulations, resting for their fulfilment upon the enlightened patriotism and good faith of the several States. The argument in favor of Congressional legislation, founded on the suggestion that some of the States might refuse a compliance with these constitutional provisions, or neglect to pass any laws to carry them into effect, *is entitled to no weight*."[354] [Pg 370]

Afterwards, in a published letter of 1852, the Chief Justice says:—

> "Be assured, my dear Sir, my judgment, whatever it may be worth, has been for years, and now is, in perfect accordance with yours in relation to the unconstitutionality of the Fugitive Slave Laws of 1793 and 1850."[355]

Other judicial opinions might be adduced; but, as they have been pronounced since controversy on this question, they would be less regarded.

There are opinions, pronounced in the Senate, which, from the characters of their authors, are entitled to peculiar consideration.

It will be remembered that Mr. Webster gave his support to the Fugitive Slave Act of 1850; but, whatever may have been his vote, so far as his personal authority could go, *he condemned the Act as unconstitutional*. Here is his opinion, in the famous speech of the 7th March, 1850.

> "I have always thought that the Constitution addressed itself to the Legislatures of the States, or to the States themselves. It says that those

> persons escaping to other States 'shall be delivered up,' and I confess I have always been of the opinion that it was an injunction upon the States themselves. When it is said that a person escaping into another State, and coming, therefore, within the jurisdiction of that State, shall be delivered up, [Pg 371] *it seems to me the import of the clause is, that the State itself, in obedience to the Constitution, shall cause him to be delivered up. That is my judgment. I have always entertained that opinion, and I entertain it now.*"[356]

"I have always entertained that opinion, and I entertain it now." Such are the emphatic words by which Mr. Webster declares his judgment of the unconstitutionality of this Act.

He was not alone. Mr. Mason, the actual author of the Act of Congress, exposed its unconstitutionality in the very speech by which he introduced it.

> "In my reading of these clauses of the Constitution for extradition of fugitives of both classes, *I advance the confident opinion* that it devolves upon the States the duty of providing by law both for their capture and delivery.... I say, then, Sir, that the true intent of the Constitution was to devolve it upon the States, as a federal duty, to enforce, by their own laws, within their respective limits, both these clauses of extradition."[357]

And Mr. Butler, of South Carolina, at a later day, said:—

> "Under the Constitution, each State of itself ought to provide for the rendition of all fugitives from labor to their masters. *This was certainly the design of the Constitution.*"[358]

Such are some of the authorities, judicial and political, by which Congressional power over this subject is denied. And yet, in the face of all authority, and in defiance of reason, Congress assumed this power. It was done at the demand of Slavery, and for the protection of Slavery. Of [Pg 372] course, such an assumption of undelegated power was a usurpation at the time, and is a usurpation still,—doubly hateful, when it is considered that it is a usurpation in the name of Slavery. It is hard to think that Congress was driven to unconstitutional assumption in such a cause, and that, contrary to sovereign rules of interpretation, it leaned to Slavery rather than to Freedom. But the time has come at last when it may recover the attitude belonging to it under the Constitution.

In advising the repeal of the Fugitive Slave Act, it is enough to show that it is founded on usurpation by Congress of power not granted by the Constitution. But, even admitting the power, a slight examination will show that it has been executed in defiance of the Constitution.

The constitutional objections to the Fugitive Slave Act are abundant. It is not too much to say, that in every section and at every point it is repugnant to admitted principles of Constitutional Law.

UNCONSTITUTIONAL DENIAL OF TRIAL BY JURY.

Foremost among these objections it is proper to put the denial of trial by jury to the fugitive whose liberty is in question. It is well known that Judge Story, who pronounced the opinion of the Supreme Court affirming the constitutionality of the early Fugitive Slave Act, declared that the necessity of a trial by jury had not been argued before the Court, and that in his opinion this was still "an open question."[359] It has never been argued since; but it is difficult to say that it is still [Pg 373] "an open question." The battles of Freedom are never lost, and the longer this right is denied the more its justice has become apparent, until at last it shines resplendent beyond all contradiction. Even if there were doubt of the obligation of Congress, there can be no doubt of the power. Nobody denies that Congress, if it legislates on this matter, *may* allow trial by jury. But here again, if it *may*, so overwhelming is the claim of justice, it MUST.

The text of the Constitution leaves the case beyond question. And here, on the threshold, two necessary incidents of the delivery are observed: first, it must be made in the State where the fugitive is found; and, secondly, it restores to the claimant complete control over the person, so that the victim may be conveyed to any part of the country where it is possible to hold a slave, or he may be sold on the way. The proceedings, therefore, cannot be regarded, in any just sense, as preliminary or auxiliary to some future formal trial, as in the case of a fugitive from justice, but as complete in themselves, final and conclusive.

It is because of the contempt with which, under the teachings of Slavery, to the shame of our country, men have thus far regarded the rights of colored persons, that courts have been willing for a moment to recognize the constitutional right to hurl a human being into bondage without trial by jury. Had the victims been white, it is easy to see that the rule would have been different. But it is obvious, that, under the Constitution, the rule must be the same for all, whether black or white.

On the one side is a question of property; on the other side is the vital question of Human [Pg 374] Freedom in its most transcendent form,—not merely Freedom for a day or a year, but for life, and the freedom of generations that shall succeed so long as Slavery endures. Whether viewed as a question of property or a question of Human Freedom, the requirement of the Constitution is equally explicit, and it becomes more explicit as we examine its history. It is well known, that, at

the close of the National Convention, Elbridge Gerry refused to sign the Constitution, because, among other things, it sanctioned the establishment of "a tribunal *without juries*,—a Star-Chamber as to civil cases."[360] Many united in this opposition, and on the recommendation of the First Congress an additional safeguard was added in the following words: "In *suits at Common Law*, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved*." Words cannot be more positive.

Three conditions, according to this Amendment, are necessary. *First*, there must be "a suit." But the Supreme Court, in the case of *Cohens* v. *Virginia*, have defined a suit to be "the prosecution, or pursuit, of some *claim*, demand, or request,"[361]—thus affirming that the "claim" for a fugitive is "a suit." *Secondly*, there must be a suit "at Common Law." But here again the Supreme Court, in the case of *Parsons* v. *Bedford*, while considering this very clause, has declared that "in a just sense the Amendment may well be construed to embrace all suits which [Pg 375] are not of Equity and Admiralty jurisdiction, *whatever may be the peculiar form which they may assume to settle legal rights*";[362] and clearly, since the claim for a fugitive is not a suit in Equity or Admiralty, but a suit to settle what are culled "legal rights," it must, of course, be "a suit at Common Law." *Thirdly*, the value in controversy must "exceed twenty dollars." But here again the Supreme Court, in the case of *Lee* v. *Lee*, on a question as to jurisdiction, founded on "the value in controversy," has declared that the freedom of the petitioners, which was the matter in dispute, was "not susceptible of a pecuniary valuation,"[363]—showing, that, since Liberty is above price, the claim to a fugitive always necessarily presumes that "the value in controversy exceeds twenty dollars."

Thus, by a series of separate decisions of the Supreme Court on the three points involved in the interpretation of this clause, it is clear beyond question that the claim to a fugitive is, first, "a suit,"—secondly, "at Common Law,"—thirdly, "where the value in controversy exceeds twenty dollars": so that trial by jury is expressly secured.

Even if the Supreme Court had been silent on this question, the argument from the old books of the Common Law would be unanswerable. We are told that there is nothing new under the sun. Certainly, long before our Constitution, the claim for a fugitive slave was known to the Common Law. In early history, and down even to a late period, the slave in England was generally called *villein*, though in the original Latin judicial forms *nativus*, implying slavery by birth. Of course, then as now, he sometimes ventured to *escape* from his master; but the Common Law supplied the appropriate remedy. The claim was prosecuted by "a suit at Common Law," to which, as to [Pg 376] every suit at Common Law, the trial by jury was necessarily attached. Blackstone, in his Commentaries, in words which must have been known to all the lawyers of the Convention, said of *villeins*: "They could not leave their lord without his permission, but, *if they ran away*, or were purloined from him, *might be claimed and recovered by action, like beasts or other chattels*."[364] But this word "action" of itself implies "a suit at Common Law," with trial by jury.

The forms of proceeding in such cases are carefully preserved in those books which constitute the authoritative precedents of the Common Law. There are writs, counts, pleadings, and judgments, all ending in trial by jury. They will be found in Fitzherbert's "Natura Brevium."[365] The Year Books and Books of Entries are full of them. Clearly and indisputably, in England, where the Common Law has its origin, a claim for a fugitive slave was "a suit at Common Law," recognized as such among its old and settled proceedings, as much as a writ of replevin for a horse or a writ of right for land. It follows, then, that the requirement of the Constitution, read in the illumination of the Common Law, naturally and necessarily embraces proceedings for the recovery of fugitive slaves, *so far as any such are instituted or allowed under the Constitution*.

And this irresistible conclusion had the support of a Senator from South Carolina in an earlier period of our history, before passion had obscured reason and conspiracy against the Union had blotted out all loyalty to truth. In reply to a proposition, in 1818, to refer the claim of the master to a judge without a jury, Mr. Smith, speaking solely in the interests of property, thus expressed [Pg 377] himself:—

> "This would give a judge the sole power of deciding *the right of property the master claims in his slave, instead of trying that right by a jury, as prescribed by the Constitution*. He would be judge of matters of law and matters of fact,—clothed with all the powers of a jury, as well as the powers of a court. Such a principle is unknown in your system of jurisprudence. *Your Constitution has forbid it.* It preserves the right of trial by jury in all cases where the value in controversy exceeds twenty dollars."[366]

Thus, in those days, a partisan of Slavery, while asserting its divine origin, and vindicating the rendition of fugitive slaves, recognized the claim of the master as "a suit at Common Law," to be tried by a jury; and this he *insisted* was prescribed by the Constitution. But if this Senator could claim trial by jury for the protection of his pretended property, with much greater reason might the fugitive claim trial by jury for the protection of his liberty. Surely, now, when Liberty is regaining her lost foothold, this protection will not be denied.

OBJECTIONS TO TRIAL BY JURY.

To this array of reason and authority there are but two attempts at reply, so far as the Committee is informed.

(1.) The first asserts that the rendition of the slave under the Act of Congress is a "preliminary" proceeding, in the nature of *extradition*, which does not establish any right between the parties, but simply hands the slave over to the local jurisdiction from which he escaped, and therefore [Pg 378] trial by jury is unnecessary. But this pretension is founded on a plain misapprehension. It forgets, in the first place, that by ancient authority a "claim" for a fugitive slave is unquestionably a "suit at Common Law," to be determined by a jury *before the judgment of rendition*. And it forgets, in the second place, that the proceedings are in no respect "preliminary"; that they do not contemplate any other trial between the parties, but that they fix absolutely the relations of the parties, making one of them master and the other slave; that the certificate of rendition is absolute and unimpeachable by any human tribunal, so that the claimant, from the moment of its issue, may assert unqualified ownership over the fugitive; that, under this certificate, he may proceed at once to demand service and labor, and enforce his demand by the lash; and that, instead of returning the victim to that local jurisdiction from which he is alleged to have escaped, the claimant may hurry him, chained and manacled, to some distant plantation, where the only judge will be an overseer, and the only jury the creatures who aid in enforcing a terrible power. And the argument forgets, also, that this cruel judgment may be inflicted upon a freeman, who, perhaps, has never left his Northern home, but whose fate will be fixed beyond appeal by the mere certificate of a commissioner. Surely this simple statement is enough.

The very word "preliminary" suggests the inquiry, To what? *Preliminary* is not an adjective that supports itself. It requires an adjunct, or an abutment on which to rest. It is the beginning or introduction to some further proceeding. It is something incomplete or unfinished. If it be [Pg 379] judicial, it contemplates necessarily some further judicial proceeding. The judge who pronounces a preliminary judgment must necessarily have in mind the judgment to follow, and must recognize his relation to it. But if there is no judgment to follow, if there is no contemplation of any further judicial proceeding, if the actual proceeding is complete and finished, if it is not the beginning or introduction to any further proceeding, if there is nothing on which the adjective "preliminary" can rest, it is absurd to call the proceeding by this name. Such proceeding is essentially final, and this is the unquestionable character of that under the Fugitive Slave Act. To call it "preliminary," and on this ground set up apology for denial of trial by jury, is only another illustration of devices employed by Slavery to baffle the demands of Freedom.

But it is still said that there may be another trial in the State whither the slave is conveyed. On this assumption it has been well remarked, that, if, contrary to general principles of law attaching to the decision of a competent tribunal a conclusive force as to the same right between the same parties, there could be any trial in the Slave State, then it is *another trial*, and in no respect a continuation and completion of the proceedings before the commissioner. The only trial possible would be an original suit by the alleged slave against his *actual* master, whosoever he might be; for the claimant may have already sold him to another. But there can be no legal connection between the two proceedings. Each is original, and must be decided on its own merits. In the one case, the *actual* claimant, whosoever he may be, is plaintiff, and the slave is defendant; and in the other case the slave is plaintiff, and the *actual* master, whosoever he may be, is defendant. And [Pg 380] the first proceeding is preliminary to the other only as an illegal imprisonment is preliminary to a suit for damages. The whole pretension is lost in its absurdity.

(2.) The second attempt at reply to the argument for trial by jury may be given in the words of the author of the Fugitive Slave Act himself. In the debate which occurred on its passage, Mr. Mason thus expressed himself:—

> "If you pass a law which shall require a trial by jury, not one man in twenty whose slave escapes will incur the risks or expense of going after the fugitive. It proposes a trial according to all the forms of the court. *A trial by jury necessarily carries with it a trial of the whole right*, and a trial of the right to service will be gone into according to all the forms of the court in determining upon any other fact.... This involves the detention of the fugitive in the mean time,—a detention that is purely informal; and whether the jury should or should not render a righteous verdict in the end is a matter I will not inquire into, for it is perfectly immaterial, *as the delay itself would effectually defeat the right of reclamation*."[367]

Thus, in a question of Human Freedom, the delay incident to trial by jury was unblushingly asserted as a sufficient reason for denial of the right. On a pretension so repulsive, it is enough to say that its feebleness is exceeded only by its audacity.

The Committee, therefore, put aside the attempts at reply, and confidently rest in the conclusion that the denial of trial by jury to a person claimed as slave is an unquestionable violation of the Constitution.

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UNCONSTITUTIONAL DELEGATION OF JUDICIAL POWER TO COMMISSIONERS WHO ARE NOT JUDGES.

There is still another objection from unconstitutionality, which may be treated more briefly; but it is not less decisive than the two objections already considered. It is founded on the character of the magistrate to whom is committed the adjudication of the great question of Human Freedom, than which none greater is known to the law.

If it were a question merely of property above twenty dollars,—if it were a question of crime,

involving imprisonment under the laws of the United States,—especially if it were a question involving life,—the trial must be before a judge duly appointed by the President by and with the advice and consent of the Senate, holding office during good behavior, receiving for his services a fixed compensation, and bound by solemn oath of office. But this great question of Human Freedom is committed to the unaided judgment of a petty magistrate, called a commissioner, appointed by the Court instead of the President, holding his office during the will of the Court instead of during good behavior, paid by fees according to each individual case, instead of receiving for his services a fixed compensation, and not bound by any oath of office.

A claim for the rendition of a fugitive from service or labor, constituting as it does "a suit at Common Law," and also "a case arising under the Constitution," must be determined by a *judicial tribunal*. But a commissioner is not a judicial tribunal, nor is he in any sense a judge; so that he is not entitled, under the Constitution, to exercise this extraordinary jurisdiction. [Pg 382]

As "a suit at Common Law," the claim must be tried by the tribunal which has jurisdiction of such suits. But a commissioner can have no such jurisdiction.

As "a case arising under the Constitution," it falls under the judicial power of the United States. But a commissioner is no part of this power.

Two provisions of the Constitution place this conclusion beyond question. *First*, by article three, section one, it is declared that "*the judicial power of the United States* shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office." *Secondly*, by article three, section two, it is declared 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." Here it appears, first, who are the judges constituting the judicial power of the United States, and, secondly, what is the extent of this power. But a commissioner clearly is not a judge, or any part of the judicial power. Therefore, by inevitable conclusion, he cannot have jurisdiction of any "case arising under the Constitution." But the Supreme Court has expressly decided that the proceeding by a claimant for the delivery of an alleged slave "constitutes in the [Pg 383] strictest sense a controversy between the parties, and *a case arising under the Constitution* of the United States, within the express delegation of judicial power given by that instrument."[368]

And yet a commissioner, dressed in the smallest and briefest authority, is put forward to determine this great case under the Constitution, and his judgment is declared final, and even without appeal. The Fugitive Slave Act proclaims expressly that he "shall have *concurrent jurisdiction* with the judges of the Circuit and District Courts of the United States"; that he shall "hear and determine the case of the claimant in a summary manner"; and that his certificate "shall be conclusive of the right of the person or persons in whose favor granted to remove such fugitive to the State or Territory from which he escaped, *and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever*."[369] Such are the plenary powers conferred upon the commissioner, together with an eminent jurisdiction concurrent with judges of the Circuit and District Courts. This Act, as originally introduced by Mr. Butler, before the substitute of Mr. Mason, intrusted this *concurrent jurisdiction* to the whole army of postmasters; but a trumpery commissioner, appointed by a court, is as little entitled to exercise it as a postmaster. It is not doubted, that, under existing statutes, a commissioner may be appointed to take depositions and acknowledgments of bail, and also to arrest, examine, and detain offenders for trial. Thus much a court may authorize; *but a court cannot delegate to a commissioner the power of trying a cause*, whether "a suit at Common Law," or "a case arising under the Constitution"; *nor can Congress authorize a court to delegate* [Pg 384] *this power*. The whole pretension is a discredit to the jurisprudence of the country.

Such are three principal objections to the constitutionality of this Act. One alone is enough. The three together are more than enough.

OTHER OBJECTIONS TO THE FUGITIVE SLAVE ACT.

But there are other objections, to which the Committee merely allude.

The offensive Act, defying the whole Law of Evidence, authorizes a judgment which despoils a man of his liberty on *ex parte* testimony, by affidavit, without the sanction of cross-examination.

It practically denies the writ of *Habeas Corpus*, ever known as the palladium of the citizen.

Contrary to the purposes declared by the framers of the Constitution, it sends the fugitive back "at the public expense."[370]

Adding meanness to violation of the Constitution, it bribes the commissioner by a double fee to pronounce against Freedom. If he dooms a man to Slavery, the reward is ten dollars; but saving him to Freedom, his dole is five dollars.

As it is for the public weal that there should be an end of suits, so, by the consent of civilized nations, these must be instituted within fixed limitations of time; but the Fugitive Act, exalting Slavery above even this practical principle of universal justice, ordains proceedings against Freedom without reference to lapse of time.

Careless of the feelings and conscientious convictions of good men who cannot help the work of thrusting a fellow-being back into bondage, this Act declares that "all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law";[371] and this injunction is addressed to all alike, not excepting those who religiously believe that the Divine mandate is as binding now as when it was first given to the Hebrews of old: "THOU SHALT NOT DELIVER *unto his master the servant which is escaped from his master unto thee*: he shall dwell with thee, even among you, in that place which he shall choose, in one of thy gates where it liketh him best: thou shalt not oppress him."[372] The thunder of Sinai is silent, and the ancient judgments have ceased; but an Act of Congress, which, besides its direct violation of this early law, offends every sentiment of Christianity, must expect the judgments of men, even if it escapes those of Heaven. Perhaps the sorrows and funerals of this war are so many warnings to do justice. [Pg 385]

But this Act is to be seen not merely in its open defiance of the Constitution, and of all legislative decencies; it must be considered, also, in two other aspects: first, in its consequences; and, secondly, in the character of its authors. The time has come, at last, when each of these may be exposed.

CONSEQUENCES OF THE FUGITIVE SLAVE ACT.

And, first, as to its consequences. In the history of the African race these can never be forgotten. Since the first authorization of the slave-trade, nothing so terrible had fallen upon this unhappy people, whether we contemplate its cruelty to individuals or the wide-spread proscription which it launched against all whose skins were not white. [Pg 386]

It is sad to know of suffering anywhere, even by a single lowly person. But our feelings are enhanced, when individual sorrows are multiplied, and the blow descends upon a whole race. History, too, takes up the grief. The Jews expelled from Spain by merciless decree, the Huguenots driven from France by the revocation of the Edict of Nantes, our own Puritan fathers compelled to exile for religious Freedom,—all these receive a gushing sympathy, and we detest the tyrants. These were persecutions for religion, in days of religious bigotry and darkness. But an American Congress, in this age of Christian light, not in the fanaticism of religion, but in the fanaticism of Slavery, did a deed that finds companionship only with these enormities of the past. The Fugitive Slave Act carried distress and terror to every person with African blood in the Free States. All were fluttered, as the arbitrary edict commenced its swoop over the land. The very rumor that a slave-hunter was in town so shook the nerves of a sensitive freeman on whom was the ban of color, that he died. To large numbers the Act was a decree of instant expulsion from the Republic, under penalty of Slavery to them and their posterity forever. Driven by despair, as many as six thousand Christian men and women, meritorious persons,—a larger band than that of the escaping Puritans,—precipitately fled from homes they had established, opportunities of usefulness they had found, and the regard of fellow-citizens, until, at last, in an unwelcome Northern climate, beneath the British flag, with glad voices of Freedom on their lips, though with the yearnings of exile in their hearts, they were happy in swelling the chant, "God save the Queen!" [Pg 387]

Such an injustice cannot be restricted in influence. Everywhere it is an extension of Slavery, with all the wrong, violence, and brutality which are the natural outgrowth of Slavery. The Free States became little better than a huge outlying plantation quivering under the lash of the overseer; or rather, they were a diversified hunting-ground for the flying bondmen, resounding always with the "halloo" of the huntsman. There seemed no rest. The chase was hardly over at Boston before it was started at Philadelphia, Syracuse, or Buffalo, and then again raged furiously across the prairies of the West. Not an instance occurred which did not shock the conscience of the country and sting it with anger. Records of the time attest the accuracy of this statement. Perhaps there is no example in history where human passion showed itself in grander forms, or eloquence lent all her gifts more completely to the demands of Liberty, than the speech of an eminent character, now dead and buried in a foreign land,[373] denouncing the capture of Thomas Sims at Boston, and invoking the judgment of God and man upon the agents in this wickedness. In the history of Humanity this great effort cannot be forgotten. But every case pleaded with an eloquence of its own, until, at last, occurred one of those tragedies darkening the heavens and crying out with a voice that will be heard. It was the voice of a mother standing over her murdered child. Margaret Garner escaped from Slavery with three children, but was overtaken at Cincinnati. Unwilling to behold her offspring returned to the shambles of the South, this unhappy person, described in the testimony as "a womanly, amiable, affectionate mother," determined to save them in the only way within her power. With a butcher-knife, coolly and deliberately, she took the life of one of the children, "almost white, and a little girl of rare beauty," and attempted, without success, to take the life of the other two. To the preacher who interrogated her she exclaimed: "The child was my own, given me of God to do the best a mother could in its behalf. I have done the best I could; I would have done more and better for the rest; I knew it was better for them to go home to God than back to Slavery." But she was restrained in her purpose. The Fugitive Slave Act triumphed, and, after the determination of sundry questions of jurisdiction, this devoted historic mother, with the two children remaining to her, and the dead body of the little one just emancipated, under a national escort of armed men, was hurried to the doom of Slavery. Her case did not end with this revolting sacrifice. So long as the human heart is moved by human suffering, the story of this mother will be read with alternate anger and grief, while it is studied as a perpetual witness to the slaveholding tyranny which then ruled the Republic with [Pg 388]

execrable exactions, destined at last to break out in war,—as the sacrifice of Virginia by her father is a perpetual witness to the decemviral tyranny which ruled Rome.

But Liberty is always priceless. There are other instances, less known, where kindred wrong has been done. Every case is a tragedy, under the forms of law. Worse than poisoned bowl or [Pg 389] dagger was the certificate of a commissioner, allowed, without interruption, to continue his dreadful trade. Even since the Rebellion has raged in blood, the pretension of returning slaves to their masters is not abandoned. The piety of Abraham, who offered up Isaac as a sacrifice to Jehovah, is imitated, and the country continues to offer up fugitive bondmen as a sacrifice to Slavery. It is reported on good authority, that among slaves thus sacrificed was one who by communications to the Government had been the means of saving upwards of one hundred thousand dollars. Here in Washington, since the beneficent Act of Emancipation, even in sight of the flag floating from the National Capitol, the Fugitive Slave Act has been made a scourge and a terror to innocent men and women.

If all these pains and sorrows had redounded in any respect to the honor of the country, or had contributed in any way to the strength of the Union, then we might confess, perhaps, that something at least had been gained. But, alas! there has been nothing but unmixed evil. The country has suffered in good name, while foreign nations have pointed with scorn to a republic which could legalize such indecencies. Not a case occurred which was not greedily chronicled in Europe, and circulated there by the enemies of liberal institutions. Even since the Rebellion began in the name of Slavery, the existence of this odious enactment unrepealed on our statute-book has been quoted abroad to show that the supporters of the Union are as little deserving of sympathy as Rebel Slavemongers. By the enforcement of this odious Act the Union has suffered from the beginning; for not a slave is thrust back into bondage without weakening those patriotic [Pg 390] sympathies, North and South, which are its best support. The natural irritation of the North, as it beheld all safeguards of Freedom overthrown and Slavery triumphant in its very streets, was answered by savage exultation in the South, which seemed to dance about its victims. Each instance was the occasion of new exasperations on both sides, which were skilfully employed by wicked conspirators “to fire the Southern heart.”

AUTHORS OF THE FUGITIVE SLAVE ACT.

Such are some of the consequences of this ill-fated measure. But the duty of the Committee cannot be performed without glancing at its authors also. By an easy transition we pass from one to the other, for the two are in natural harmony. Each may be read in the light of the other.

And who were the authors of this Fugitive Slave Act? The answer may be general or special.

If general, it may be said that its authors were the representatives of Slavery, constituting that same Oligarchy, or Slave Power, which has madly plunged this country into civil war. Some of them, even at the time of its enactment, were already engaged in treasonable conspiracy against the Union. They thought little of any pretended interests in property; but they were occupied with two controlling ideas: first, how to unite their own people at home; and, secondly, how to insult and subjugate the Free States. The Fugitive Slave Act furnished a convenient agency for this double purpose, and was naturally adopted by men who had lost the power of blushing as well as the power of feeling.

Unquestionable facts show how little real occasion there was for this barbarous statute. It is [Pg 391] now established by the report of the census in 1860, that the loss of slaves by escape was trivial. According to this document, “the whole annual loss to the Southern States from this cause bears less proportion to the amount of capital involved than the daily variations which, in ordinary times, occur in the fluctuations of State or Government securities in the city of New York alone.”[374] Such a statement is most suggestive. Official tables furnish confirmatory details. From these it appears that during the year ending June 1, 1860, out of 3,949,557 slaves, only 803 were able to escape, being one to about five thousand, or at the rate of one fiftieth of one per cent. Then again, out of more than one million of slaves in the Border States in 1860, fewer than five hundred escaped. Such are authentic facts. Nor is this all. The slave who succeeded in escaping, even when reënslaved, was never afterwards regarded as good property. All the work he could do would not compensate for his bad example. Jefferson Davis, in the frankness of an address to his constituents at home in Mississippi, on the 11th July, 1851, said openly that he did not want any fugitive slaves sent into his State; that “such stock would be a curse to the land,—for, with the knowledge they had gained, they would ruin the rest of the slaves, and very probably give rise to the most dreadful consequences”; and he concluded by announcing, that “he would not have in his quarters a negro brought from the North on any account whatever.”[375] And yet, in face of such authentic facts, showing how few escaped, and in face of an instinctive repugnance to any [Pg 392] commingling with other slaves by those who had once tasted Liberty, this atrocious statute was enacted, and its enforcement was maintained at the point of the bayonet, while Jefferson Davis was Secretary of War.

There have been wars of *pretext*; but here was an act of legislation, which, whenever enforced, was a *Petty War*, and its origin was a pretext. It was nothing but a pretext, through which the representatives of Slavery sought to enforce a flagitious power. The pretext was worthy of the legislation, and both pretext and legislation were in harmony with the authors, who drew their motives of conduct from Slavery and nothing else. The same spirit which triumphed in this Fugitive Slave Act, on a pretext, has at last broken forth in rebellion, on a pretext also. Each was

under pretext of maintaining Slavery, and each proceeded from the same influence.

Speaking, then, in general terms, the authors of the Fugitive Slave Act were the authors of the Rebellion. The one and the other have the same paternity, as unquestionably they have a family likeness.

If, however, we go still further, and seek the individual authors of this odious measure, the forerunner of the Rebellion, it is easy to point them out.

The bill was reported to the Senate by Mr. Butler, of South Carolina, so that in origin it may be traced directly to the hot-house of nullification, treason, and rebellion. But Mr. Mason, of Virginia, subsequently moved a substitute, which, being adopted, became the existing statute, and this enormity stalked into life under the patronage of a Senator from Virginia. Public report, which is entitled to belief, attributes this substitute to the cunning hand of Mr. Faulkner, also of [Pg 393] Virginia; but, on moving it in the Senate, Mr. Mason made it his own, and pressed it with untiring pertinacity, as the "Globe" amply attests, until it became the law of the land, so far as such a measure can in any just sense be "law."

But whether its authors be found in States or individuals, there is in it the same pernicious virus, which, breaking out first in South Carolina, inoculated Virginia, like the Rebellion itself. A Senator from Virginia took from South Carolina the final responsibility, as an aged madman from Virginia asked and obtained permission to point the first gun at Fort Sumter. Nor are the two events unlike in character. The Fugitive Slave Act was levelled at the Union hardly less than the batteries at Charleston, when they opened upon Fort Sumter.

Such are the authors, general and special, of this wickedness. The Senator from South Carolina is dead; but the representatives of Slavery still live, and so also do the two madmen from Virginia. Thus the representatives of Slavery, though now in open rebellion, continue, through unrepealed statute, to insult the loyal States, to degrade the Republic, and to rule the country which they tried to ruin. And thus two audacious Rebels, one the pretended Minister of the Rebellion at London, and the other an officer in the Rebel forces, still exert among us a malignant power, while, with a long arm not yet amputated, they reach even into the streets of Washington, and fasten the chains of the slave.

CONCLUSION. [Pg 394]

To all this there is one simple answer, and Congress must make it.

A clause of the Constitution, contrary to all commanding rules of jurisprudence, has been interpreted to sanction the hunting of slaves; and the same clause, thus interpreted, has been declared, contrary to all testimony of history, to have been an original compromise of the Constitution and a corner-stone of the Union. On this clause, thus misinterpreted and thus misrepresented, an Act of Congress is founded, which, even assuming that the clause is strictly applicable to fugitive slaves, is many times unconstitutional, but especially in three several particulars: (1.) as a usurpation by Congress of powers not granted by the Constitution; (2.) as a denial of trial by jury in a case of personal liberty and a suit at Common Law; and (3.) as a concession of the case of personal liberty to the unaided judgment of a single petty magistrate, without any oath of office, constituting no part of the judicial power,—appointed, not by the President with the consent of the Senate, but by the court,—holding office, not during good behavior, but merely during the will of the court,—and receiving, not a regular salary, but fees according to each individual case. But even if this Act were strictly constitutional in all respects, yet, regarding it in its painful consequences and in its Rebel authors, it is none the less offensive; for from the beginning it was a scourge to the African race and a grievance to the whole country, a scandal abroad and a dead-weight upon the Union at home, while it was the arch contrivance of men who at the time were rebel at heart and are now in open rebellion, devised as an insult to [Pg 395] the Free States and as a badge of subjugation. Such a statute, thus utterly unconstitutional in every respect, and utterly mischievous in all its consequences and influences, while peculiarly obnoxious in its well-known authors, ought to be repealed without delay. If possible to parliamentary usage, it ought to be torn from the volumes of the law, so that there should be no record of such an abuse and such a shame.

Unhappily, the statute must always remain in the pages of our history. But every day of delay in its repeal is hurtful to the national cause and to the national name. Would you put down the Rebellion? Would you uphold our fame abroad? Would you save the Constitution from outrage? Would you extinguish Slavery? Above all, would you follow the Constitution and establish justice? Then repeal the statute at once.

FOOTNOTES

[1] This Introduction is copied from the pamphlet edition published in New York by the Young Men's Republican Union.

[2] Speech on the King's Message relative to the Affairs of Portugal, December 12, 1826: Speeches, Vol. VI. p. 79.

[3] Papers relating to Foreign Affairs, 1861, p. 84: Executive Documents, 37th Cong. 2d Sess., Senate, No. 1.

[4] Debate on the Queen's Proclamation, May 16, 1861: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXII. col. 2084.

[5] The cynical frankness of Earl Russell reveals the prominence of this consideration. In autobiographical comments, at a later day, he says: "During the discussion of the questions relating to the Alabama and the Shenandoah, it was the great object of the British Government to preserve for the subject the security of Trial by Jury, *and for the nation the legitimate and lucrative trade of ship-building.*"—*Selections from Speeches of Earl Russell, 1817 to 1841, and from Despatches, 1859 to 1865*, with Introductions by Earl Russell, Vol. II. p. 266.

[6] "Apud Agathiam legimus, hostem esse qui faciat quod hosti placet."—GROTIUS, *De Jure Belli ac Pacis*, Lib. III. cap. xvii. § 3, 2.

[7] Mr. Seward to Mr. Adams: Executive Documents, 37th Cong. 2d Sess., Senate, No. 8, pp. 2, 3.

[8] Lord Lyons to Mr. Seward, October 14, 1861: Papers relating to Foreign Affairs, 1861, p. 169: Executive Documents, 37th Cong. 2d Sess., Senate, No. 1.

[9] Hansard's Parliamentary Debates, 3d Ser., Vol. C. col. 714.

[10] Spectator, January 4, 1862, p. 17.

[11] Sir Walter Scott, in correspondence with his friend Ellis, undertook to explain how a whole edition of Godwin's Life of Chaucer had vanished, by conjecturing, that, "as the heaviest materials to be come at, they have been sent on the secret expedition, planned by Mr. Phillips and adopted by our sapient Government, for blocking up the mouth of our enemy's harbors."—*Letter to George Ellis, Esq., March 19, 1804*: Lockhart's Life of Scott, Vol. I. p. 414.

[12] Letter to Lord Mulgrave, April 3, 1809: Autobiography of a Seaman, Vol. I. pp. 363, 364.

[13] Earl of Malmesbury, Speech in the House of Lords, February 5, 1863: Hansard's Parliamentary Debates, 3d Ser., Vol. CLIX. col. 53.

[14] Hansard's Parliamentary Debates, Vol. X. col. 695.

[15] Letter of January 17, 1863: Correspondence relating to the Civil War in the United States, pp. 51, 52: Parliamentary Papers, 1863, Vol. LXXII.

[16] Earl Russell to Mr. Stuart, October 10, 1862: Correspondence respecting Instructions given to Naval Officers of the United States in regard to Neutral Vessels and Mails, p. 5: Parliamentary Papers, 1863, Vol. LXXII.

[17] See, *post*, Appendix, p. 490.

[18] Earl Russell to Lord Lyons, April 24, 1863: Correspondence respecting Trade with Matamoras, p. 1: Parliamentary Papers, 1863, Vol. LXXII.

[19] Wicquefort, L'Ambassadeur et ses Fonctions, Liv. II. sec. 11.

[20] "La neutralité n'existe plus dès qu'elle n'est pas parfaite."—*Réponse du Comte de Bernstorff à M. Hailes, Envoyé Britannique à Copenhague, le 28 Juillet, 1793*: Cussy, Phases et Causes Célèbres du Droit Maritime des Nations, Tom. II. p. 177.

[21] Speech on the Repeal of the Foreign Enlistment Bill, April 16, 1823: Hansard's Parliamentary Debates, 2d Ser., Vol. VIII. col. 1036.

[22] The Ways and Means whereby an Equal and Lasting Commonwealth may be suddenly introduced and perfectly founded, with the free Consent and actual Confirmation of the Whole People of England. Feb. 6, 1659. First printed at London 1660. Harrington, Oceana and other Works, (London, 1747,) pp. 539, 540, xlv.

[23] De Rerum Natura, Lib. II. 6.

[24] "Homo sum: humani nihil a me alienum puto."

TERENCE, *Heaut.*, Act I. Sc. i. 25.

[25] The recent British Foreign Enlistment Act, passed August 9, 1870, entitled "An Act to regulate the conduct of her Majesty's subjects during the existence of hostilities between foreign states with which her Majesty is at peace," makes it illegal, if any person within her Majesty's dominions "builds, or agrees to build, or causes to be built, any ship, *with intent, or knowledge, or having reasonable cause to believe* that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state." (Papers relating to the Foreign Relations of the United States, transmitted to Congress December 5, 1870, p. 159.) Lord Westbury, an ex-Chancellor, said in the House

of Lords, March 27, 1868, "It was not a question whether armed ships had actually left our shores, but it was a question whether ships *with a view to war* had been built in our ports by one of two belligerents."—Hansard's Parliamentary Debates, 3d Ser., Vol. CXCI. col. 346.

[26] United States *v.* Quincy, 6 Peters, S. C. R., 465, 466.

[27] The Gran Para, 7 Wheaton, R., 471; also four other cases in same volume.

[28] Speech on Repeal of the Foreign Enlistment Bill, April 16, 1823: Speeches, Vol. V. p. 51.

[29] American State Papers, Foreign Relations, Vol. I. p. 22.

[30] Mr. Jefferson to M. Ternant, May 15, 1793: Ibid., p. 148.

[31] Wharton's State Trials, p. 50.

[32] Acts 3d Cong. Ch. 37, June 5, 1794: Statutes at Large, Vol. I. p. 381.

[33] Acts 15th Cong. 1st Sess. Ch. 88, April 20, 1818: Statutes at Large, Vol. III. p. 447.

[34] Hansard's Parliamentary Debates, Vol. XL. col. 369, 907, May 13, June 3, 1819.

[35] Ibid., 2d Ser. Vol. VIII. col. 1056, April 16, 1823.

[36] Mr. Forsyth to Mr. Fox, January 5, 1838: Executive Documents, 25th Cong. 2d Sess., H. of R., No. 74, p. 28. President's Message, January 5, 1838: Ibid., No. 64. Hansard's Parliamentary Debates, 3d Ser., Vol. XL. col. 716, February 2, 1838. Acts 25th Cong. 2d Sess. Ch. 31, March 10, 1838: United States Statutes at Large, Vol. V. p. 212.

[37] Mr. Crampton to Mr. Marcy, April 21, 1854; Count de Sartiges to Mr. Marcy, April 28, 1854: Executive Documents, 33d Cong. 1st Sess., H. of R., No. 103, pp. 2, 4.

[38] Treaty of 1794, Art. 21: United States Statutes at Large, Vol. VIII. p. 127.

[39] Speech on the Consolidated Fund Bill, July 23, 1863: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXXII. col. 1270.

[40] Earl Russell to Mr. Adams, April 16, 1863: Correspondence respecting Enlistment of British Subjects in the Federal Army, p. 2: Parliamentary Papers, 1863, Vol. LXXII.

[41] Treaty of 1794, Art. 7.

[42] Twee Gebroeders, 3 Robinson, R., 165.

[43] Burlamaqui, Principles of Natural and Politic Law, tr. Nugent (London, 1763): Politic Law, Part IV. ch. 3, §§ 21, 22, pp. 255, 256.

[44] Commentaries upon International Law (London, 1854), Vol. I. p. 231.

[45] Lord Lyons to Earl Russell, January 13, 1863: Correspondence relating to the Civil War in the United States, p. 53: Parliamentary Papers, 1863, Vol. LXXII.

[46] M. Prévost-Paradol, the eminent writer, and afterwards Minister of France at Washington, justifies this statement. "If the civil war," says he, "had not broken out, or if the French Government had foreseen the final victory of the North and the reconstruction of the American power, never would the idea of founding a throne in Mexico by European arms have entered into its head.... The fall of the American Republic was, from the beginning of this great trouble, among the aspirations of the French Government, and its most accredited organs made no mystery of it." Attributing to England the same desire and the same judgment on the probable issue of the war, the distinguished writer says the English Government simply waited events, "in a malevolent neutrality towards the North."—Kératry, *L'Elévation et la Chute de l'Empereur Maximilien*: Préface de Prévost-Paradol.

[47] See, *ante*, p. 309.

[48] Barbé-Marbois, Histoire de la Louisiane, p. 335.

[49] From a despatch of Mr. Benjamin, the Rebel Secretary of State, it seems that the French Emperor embraced Texas in his Mexican plot. (Lawrence, Commentaire sur les Éléments du Droit International, Tom. II. p. 360, Part. II. ch. 1.) In European diplomatic circles it was reported that he had tried to seduce a prince of Portugal by tender of the throne of Mexico with the promise of Texas.

[50] Flassan, Histoire de la Diplomatie Française, Tom. VII. p 125.

[51] The Mexican crown was voted to the Archduke Maximilian by the Assembly of Notables, 10th July, 1863, and formally tendered to him at Miramar, 3d October, twenty-three days after this speech, but he did not enter the City of Mexico till 12th June, 1864. The new Empire was acknowledged by all the European powers. The United States refused to acknowledge it. The suppression of our Rebellion was followed by the withdrawal of the French troops, and the execution of Maximilian, who was condemned to death and shot by the Mexicans, 19th June, 1867.

[52] Wicquefort, L'Ambassadeur et ses Fonctions, Liv. II. sec. 11.

[53] Speech on the Treaty of Peace with America, April 11, 1815: Hansard's Parliamentary Debates, Vol. XXX. col. 525.

[54] L'Ambassadeur et ses Fonctions, Liv. II. sec. 4.

[55] Vol. I. pp. 51-55.

[56] Guizot, History of Oliver Cromwell (London, 1854), Vol. II. p. 210.

[57] Martens, Causes Célèbres (2me édit.), Tom. II. pp. 40-51.

[58] History of the Rebellion (Oxford, 1826), Book X. Vol. V. p. 409.

[59] Parliamentary History of England, Vol. XV. p. 51 (London, 1763). Journals of the House of Commons, Vol. IV. pp. 622, 623, 624, July 22, 1646.

[60] Burnet, History of his Own Time, Vol. I. p. 81.

[61] Letters of State,—The Protector to Charles Gustavus, and to the Consuls and Senators of Breme, October 26, 1654: Milton's Prose Works (ed. Symmons), Vol. IV. pp. 375-377.

[62] Secretary Thurloe to Mr. Pell, May 11, 1655: Vaughan's Protectorate, Vol. I. p. 176.

[63] Letters of State,—The Protector to the Duke of Savoy, May, 1655: Milton's Prose Works (ed. Symmons), Vol. IV. p. 379.

[64] The Protector to Charles Gustavus: Ibid., p. 383.

[65] Morland, History of the Evangelical Churches of the Valleys of Piemont (London, 1658), p. 575. Guizot, History of Oliver Cromwell (London, 1854), Vol. II. p. 219.

[66] Merlin, Répertoire Universel et Raisonné de Jurisprudence, art. Ministre Public, Sect. II. xii.

[67] Martens, Causes Célèbres (2me édit.), Tom. III. p. 196.

[68] Hints for a Memorial to be delivered to Monsieur de M. M.: Works (London, 1801), Vol. VII. pp. 3-5.

[69] Speech of General Fitzpatrick in the House of Commons, March 17, 1794: Hansard, Parliamentary History, Vol. XXXI. col. 37, 38. See also Vol. XXXII. col. 1348 seqq.

[70] Garden, Histoire des Traités de Paix, Tom. VIII. pp. 21-23.

[71] Phillimore's International Law, Vol. III. pp. 757, 760, 763.

[72] Speech on Intervention in Portugal, June 11, 1847: Hansard's Parliamentary Debates, 3d Ser., Vol. XCIII. col. 466.

[73] Viscount Palmerston to Sir Hamilton Seymour, February 16, 1847: Correspondence relating to the Affairs of Portugal, p. 192: Parliamentary Papers, 1847, Vol. LXVIII.

[74] Phillimore, International Law, Vol. II. p. 676.

[75] Ibid., p. 448.

[76] Ibid., p. 676.

[77] Annual Register for 1856, pp. 236], 237].

[78] Ibid., p. 219].

[79] Montgomery, The West Indies, Part I. 1-4.

[80] Osler's Life of Exmouth, pp. 298, 333, 432.

[81] Wheaton, History of the Law of Nations, p. 605.

[82] Speech on the Treaty with Spain, February 9, 1818: Hansard's Parliamentary Debates, Vol. XXXVII. col. 248.

[83] Congrès de Vérone (2me édit.), Tom. I. p. 78.

[84] Martens et Cussy, Recueil de Traités, Conventions, etc., Tom. V. p. 440.

[85] Cussy, Phases et Causes Célèbres, Tom. I. p. 157; Tom. II. pp. 362, 363.

[86] Report from Select Committee of the House of Lords on the African Slave-Trade, July 23, 1849: Parliamentary Papers, 1850, Vol. IX. pp. 370-373.

[87] Parliamentary Papers, 1841, Vol. XXX.: Correspondence relating to the Slave-Trade, Class B, Nos. 41, 178, 201; Class C, No. 45; Class D, No. 25.

[88] Parliamentary Papers, 1841, Vol. XXX.: Correspondence relating to the Slave-Trade, Class A, No. 143.

[89] Ibid.: Correspondence, Class B, No. 116.

[90] Ibid.: Correspondence, Class A, No. 143.

[91] Parliamentary Papers, 1842, Vol. XLIII.: Correspondence relating to the Slave-Trade, Class B, Nos. 525, 526.

[92] Ibid.: Correspondence, Class B, No. 120.

[93] Parliamentary Papers, 1842, Vol. XLIII.: Correspondence relating to the Slave-Trade, Class B, No. 47; Vol. XLIV., Class C, Nos. 17-27.

[94] Ibid., Vol. XLIV.: Correspondence, Class D, No. 90.

[95] Parliamentary Papers, 1841, Vol. XXX.: Correspondence relating to the Slave-Trade, Class D, No. 30; 1842, Vol. XLIV., Class D, No. 94.

[96] Ibid., 1841, Vol. XXX.: Correspondence, Class D, No. 27.

[97] Speech in the House of Commons, on the Sugar Duties, May 18, 1841: Hansard's Parliamentary Debates, 3d Ser., Vol. LVIII. col. 654, 655.

[98] Life and Times of Charles James Fox, Vol. I. p. 365.

[99] Speech on the Sugar Duties, February 26, 1845: Speeches (London, 1854), p. 351.

[100] To the United States of North America.

[101] Speech on the Address in Reply to the King's Speech, February 3, 1825: Hansard's Parliamentary Debates, 2d Ser., Vol. XII. col. 77, 78.

[102] Art. VI. VII.: United States Statutes at Large, Vol. VIII. p. 16.

[103] Martens, Causes Célèbres, Tom. III. pp. 171, 172.

[104] Speech in the House of Lords, March 15, 1824: Hansard's Parliamentary Debates, 2d Ser., Vol. X. col. 999.

[105] Speech in the House of Commons, June 15, 1824: Miscellaneous Works (London, 1846), Vol. III. pp. 462, 463.

[106] Art. I. sec. 9.

[107] Art. IV. sec. 3.

[108] Speech at Savannah, March 21, 1861: Rebellion Record, Vol. I., Diary, p. 19, Doc. 48. See, also, A Constitutional View of the Late War between the States, by Alexander H. Stephens, Vol. II. pp. 85, 521, 522.

[109] Message of Governor Bonham: Rebellion Record, Vol. VI. Doc. 157.

[110] "Juris consensu et utilitatis communione sociatus."—*De Republica*, Lib. I. c. 25.

[111] De Republica, cited by Augustine, De Civitate Dei, Lib. II. cap. xxi. § 2. See also De Republica, Lib. III. c. 31.

[112] De Jure Belli ac Pacis, Lib. I. Cap. I. § xiv. 1.

[113] Ibid., Lib. III. Cap. III. § ii. 1, 3.

[114] International Law, Vol. I. p. 79.

[115] Amedie, 1 Acton, R., 250.

[116] La Jeune Eugénie, 2 Mason, R., 451.

[117] Life and Letters of Joseph Story, Vol. I. pp. 357, 359.

[118] "Lex est ratio summa, insita in natura, quæ jubet ea quæ facienda sunt, prohibetque contraria."—*De Legibus*, Lib. I. c. 6.

[119] System des heutigen Römischen Rechts, B. I. c. 2, § 11.

[120] De Jure Belli ac Pacis, Lib. II. Cap. XV. § ix. 10.

[121] Ibid., § xi. 3.

[122] Sallust, Fragm., Lib. IV.: *Rex Mithridates Regi Arsaci*.

[123] 2 Chron., xix. 2.

[124] Molloy, De Jure Maritimo et Navali (6th edit.), Book I. ch. 4, § 4. Phillimore, International Law, Vol. I. p. 80.

[125] Wicquefort, L'Ambassadeur et ses Fonctions, Liv. I. sec. 3.

[126] Thoughts on French Affairs, 1791: Works (London, 1801), Vol. VII. pp. 11, 12.

[127] Speech on the Address of Thanks, December 14, 1792: Hansard's Parliamentary History, Vol. XXX. col. 72.

[128] Works, Vol. VI. p. 86.

[129] Miscellaneous Works (London, 1846), Vol. III. pp. 476, 477.

[130] Note Verbale en Réponse au Memorandum sur les Colonies Espagnoles en Amérique du 24 Novembre, 1822: Congrès de Vérone (2me édit.), Tom. I. p. 93.

[131] Le Droit des Gens, Liv. II. ch. 5, § 70.

[132] Ibid.

[133] Le Droit des Gens, Liv. II. ch. 4, § 56.

[134] Ibid.

[135] Ibid., ch. 12, § 162.

[136] Forbes *v.* Cochrane et al., 2 Barnwall and Creswell, R., 448, 471.

[137] Wilkie, The Epigoniad, Book I. 403, 404.

[138] Odyssey, tr. Pope, Book IX. 329-332.

[139] Odyssey, tr. Pope, Book X. 133.

Other verses, by Richard Owen Cambridge, the satirist, and contemporary of Dr. Johnson, picture this Slavemonger Government:—

"Polypheme was a cannibal,
And most voracious glutton;
Poor shipwrecked tars he smoused for fish,
And munched marines for mutton."

[140] Regicide Peace, Second Letter: Works (London, 1801), Vol. VIII. p. 161.

[141] Deuteronomy, xxviii. 65-67. See, *ante*, Vol. V. pp. 304, 305, where the fate of the Flying Dutchman is predicted for our Disunionists. The remarkable story of Peter Rugg, always on the road, driving furiously, but unable to find his way to Boston, illustrates the same blasted condition. Chaucer foreshadows a similar doom:—

"And breakers of the law, soth to saine,
... after that they been dede,
Shall whirle about the world, alway in paine,
Till many a world be passed out of drede."

The Assembly of Foules, 78-81.

[142] Letter to the Sheriffs of Bristol: Works (London, 1801), Vol. III. p. 144.

[143] Bas *v.* Tingy, Dallas, R., Vol. IV. pp. 43-45, Chase, J., and Paterson, J.

[144] Despatch, October 12, 1825,—quoted in Speech of Lord John Russell, on the Blockade of Southern Ports, May 6, 1861: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXII. col. 1566.

[145] Statutes at Large, ed. Pickering, Vol. III. p. 20.

[146] American State Papers, Foreign Relations, Vol. I. p. 494.

[147] Des Droits et des Devoirs des Nations Neutres, Tom. III. pp. 299, 323, 352.

[148] Le Droit Maritime International, Tom. I. pp. 65, 66.

[149] Wheaton's Elements of International Law, ed. Lawrence, p. 1024.

[150] Speech in the House of Commons, May 6, 1861: Hansard's Parliamentary Debates, Vol. CLXII. col. 1566. At a later day, in a communication to Mr. Adams, on the seizure of the steamer Georgia by a United States steamer, Earl Russell said, that "her Majesty's Government of course expects that a vessel seized under the British flag and claimed by British owners will be brought, with as little delay as possible, *for adjudication into the proper Prize Court*, in which the claim of one of her Majesty's subjects will be tried according to those recognized principles of International Law which govern the relations of the belligerent toward the neutral."—*Earl Russell to Mr. Adams, September 6, 1864*: Papers relating to Foreign Affairs, Part II. p. 298: Executive Documents, 38th Cong. 2d Sess., H. of R., No. 1.

[151] The Winter's Tale, Act III. Scene 3: "*A Desert Country near the Sea*."

"Our ship hath touched upon
The deserts of Bohemia?"

[152] Phillimore, International Law, Vol. I. pp. 400, 401.

[153] Speech in the House of Lords, May 16, 1861: Hansard's Parliamentary Debates, 3d Ser., Vol. CLXII. col. 2084.

[154] Hargrave's State Trials, Vol. V. col. 314, 315.

[155] Annual Message, December 3, 1805: American State Papers, Foreign Affairs, Vol. I. p. 66.

[156] Le Droit des Gens, Liv. IV. ch. 5, § 60.

[157] Proclamation, January 1, 1863: Statutes at Large, Vol. XII., Appendix, p. 1269.

[158] Jeremiah, xlvi. 9.

[159] Herodotus, Book III. ch. 114.

[160] "Pax est tranquilla libertas; servitus postremum malorum omnium, non modo bello, sed morte etiam repellendum."—Cicero, *Orat. Philipp. II.* c. 44.

[161] Papers relating to Foreign Affairs, 1862-63, Part I. pp. 361, 362: Executive Documents, 38th Cong. 1st Sess., H. of R. No. 1.

[162] Ibid., p. 412.

[163] Ibid., p. 414.

[164] Ibid., p. 418.

[165] Papers relating to Foreign Affairs, 1862-63, Part I. pp. 416, 417.

[166] Charles C. Beaman, Jr., The National and Private Alabama Claims, p. 165.

[167] Papers relating to Foreign Affairs, 1862-63, Part I. p. 419.

[168] Papers relating to Foreign Affairs, 1862-63, Part I., Supplement, p. iv.

[169] On Foreign Jurisdiction and the Extradition of Criminals, p. 65.

[170] Ibid., pp. 59, 60.

[171] Ibid., pp. 66, 73.

[172] *Ante*, p. 457.

[173] See, also, Hansard's Parliamentary Debates, 3d Ser., Vol. CLXXI. col. 882, 883.

[174] Papers relating to Foreign Affairs, 1862-63, Part I. p. 434.

[175] Act of March 2, 1867: Statutes at Large, Vol. XIV. pp. 428, 429.

[176] Writings, Vol. VIII. p. 5.

[177] Constitutional History of England (London, 1850), Vol. I. p. 668.

[178] Oliver Cromwell's Letters and Speeches, Part IX. May 28, 1655.

[179] Memoirs of Edmund Ludlow (London, 1751), p. 213.

[180] Ibid., p. 221.

[181] Ibid., pp. 221, 222.

[182] Commentaries on American Law (6th edit., 1848), Vol. I. p. 92, note *a*.

[183] Journal of the Assembly of New York, July 21, 1782.

[184] August 1, 1786: Writings of Washington, ed. Sparks, Vol. IX. pp. 187, 188.

[185] Elliot's Debates (2d edit.), Vol. III. p. 22.

[186] Elliot's Debates (2d edit.), Vol. III. p. 44.

[187] Ibid., p. 29.

[188] Yates's Minutes, June 29, 1787: Ibid., Vol. I. p. 461.

[189] Yates's Minutes, June 29, 1787: Elliot's Debates (2d edit.), Vol. I. p. 464.

[190] Letter to Edmund Randolph, April 8, 1787: Madison Papers, Vol. II. p. 631.

[191] Yates's Minutes, June 30, 1787: Elliot's Debates, Vol. I. p. 467.

[192] Rushworth's Historical Collections, Vol. I. p. 562.

[193] Abridgment of American Law, Appendix to Vol. IX. p. 10.

[194] Whitelocke, Notes upon the King's Writ for Choosing Members of Parliament, ed. Morton, Ch. 96.

[195] Sir William Jones, Ode in Imitation of Alcæus: Works, Vol. X. p. 389.

[196] Act II. Scene 2.

[197] Commentaries upon International Law, Vol. I. p. 147.

[198] Appeal from the New to the Old Whigs: Works (London, 1801), Vol. VI. pp. 210, 211.

[199] Commentaries, Vol. IV. p. 382.

[200] Commons' Journals, Vol. X. p. 14, Jan. 28, 1688-9. Lords' Journals, Vol. XIV. p. 119, Feb. 6, 1688-9.

[201] Speeches, p. 455.

[202] History of England (3d edit., London, 1849), Vol. II. p. 630.

[203] Notes of Debates in the Continental Congress in 1775 and 1776: Works of John Adams, Vol. II. pp. 489, 490.

[204] Autobiography of John Adams: Works, Vol. III. pp. 17, 18, 44, 46.

[205] The Rhode Island Government: Works, Vol. VI. pp. 225-231.

[206] Gorgias, tr. Cary, c. 64.

[207] American Insurance Company *v.* Canter, 1 Peters, S. C. R., p. 542.

[208] Democracy in America (ed. Bowen, Cambridge, 1863), Vol. II. ch. 26, p. 353, note.

[209] Congressional Globe, 37th Cong. 2d Sess., p. 1808, April 24, 1862.—The paper here quoted, entitled "Notes on the Confederacy," has since appeared in a collection, in four volumes, of Letters and other Writings of Madison, published in 1865 by order of Congress. See Vol. I. pp. 320-328.

[210] Frontinus, De Controversiis, ed. Blume, etc., (Berlin, 1848,) Lib. I. p. 20. Grotius says the same thing: "Et hæc non minus probabilis videtur nominis territorii origo *a terrendis hostibus*."—*De Jure Belli ac Pacis*, Lib. III. cap. vi. § 4, 2.

[211] Speech on the Confiscation Bill, May 2, 1862: Congressional Globe, 37th Cong. 2d Sess., p. 1923.

[212] Congressional Globe, 37th Cong. 2d Sess., March 20, 1862, p. 1301.

[213] Ibid., April 10, 1862, pp. 1604, 1605.

[214] Acts of 37th Cong. 2d Sess., Ch. 190, sec. 3: Statutes at Large, Vol. XII. p. 590.

[215] Ibid., Ch. 128: Statutes at Large, Vol. XII. p. 502.

[216] See, *ante*, Vol. VII. p. 327.

[217] Speeches of Henry Lord Brougham upon Questions relating to Public Rights, Duties,

and Interests (Edinburgh, 1838), Vol. II. pp. 233, 234.

[218] Gigantomachia, ver. 32.

[219] Notes and Queries, Vol. IV. p. 443, Dec. 6, 1851.

[220] Ibid., Vol. V. p. 17, Jan. 3, 1852.

[221] Ibid.

[222] Hon. Edward Everett.

[223] Lib. I. 104.

[224] Works of Franklin, Vol. VIII. pp. 537, 538, note.

[225] Notes and Queries, Vol. V. p. 549, June 5, 1852.

[226] Ibid., Vol. V. p. 140. See, also, Ibid., Vol. V. p. 571; Vol. VI. p. 88; Dublin Review for March, 1847, p. 212, note; Quarterly Review for June, 1850, Vol. LXXXVII. p. 17.

[227] Œuvres (Paris, 1808-10), Tom. IX. p. 140.

[228] Œuvres, ed. O'Connor et Arago, (Paris, 1847,) Tom. V. p. 162.

[229] Sparks, Works of Franklin, Vol. VIII. p. 537, note; Mignet, Portraits et Notices Historiques et Littéraires (2me édit.), Tom. II. p. 449, note.

[230] Cabanis, Œuvres Posthumes, Tom. V. p. 220.

[231] Letters to Horace Walpole (London, 1810), Vol. III. p. 215.

[232] Ibid., p. 348, 22 Mars, 1778.

[233] Histoire de France pendant le Dix-huitième Siècle (5me édit.), Tom. V. pp. 84, 86.

[234] Œuvres, éd. O'Connor et Arago, Tom. III. pp. 406, 407.

[235] Capefigue, Louis XVI., Tom. II. pp. 12, 13, 42, 49, 50.

[236] Moore's Diary of the American Revolution, Vol. I. p. 387, note, February 1, 1777.

[237] Ibid., pp. 503, 504, October 2, 1777.

[238] New Jersey Gazette, December 31, 1777: Ibid.

[239] Moore's Diary of the American Revolution, Vol. II. p. 5, January 3, 1778.

[240] Anecdotes of Dr. Franklin: Jefferson's Writings, Vol. VIII. p. 498, note.

[241] Mignet, Portraits et Notices Historiques et Littéraires (2me édit.), Tom. II. p. 400.

[242] La Gazette Secrète, 15 Jan., 1777. Capefigue, Louis XVI., Tom. II. p. 15.

[243] Discours sur les Progrès successifs de l'Esprit Humain: Œuvres, Tom. II. p. 66.

[244] Mémoire sur la manière dont la France et l'Espagne devoient envisager les suites de la querelle entre la Grande-Bretagne et ses Colonies, 6 Avril, 1776: Œuvres, Tom. VIII. p. 496.

[245] Correspondance (2de édit.), Tom. X. p. 96.

[246] Ibid., p. 197.

[247] Mémoires et Correspondance de Madame D'Épinay (3me édit.), Tom. III. p. 431.

[248] Lettre à Madame D'Épinay, 25 Juillet, 1778: Correspondance, Tom. II. p. 280.

[249] Ibid., p. 203. See, also, Grimm, Correspondance, Oct., 1776, Tom. IX. p. 285.

[250] Tom. XII. p. 9 (Londres, 1780).

[251] The dictionaries of Michaud and Didot concur in the date of her death; but there is reason to suppose that they are both mistaken.

[252] "Haï du Dieu d'Amour, cher an Dieu des Combats,
Il inonda de sang l'Europe et sa patrie:
Cent mille hommes par lui reçurent le trépas,
Et pas un n'en reçut la vie."

Biographie Universelle, Tom. XLVII. p. 67, note, art. Turgot.

[253] See Quérard, La France Littéraire, art. La Rochefoucauld-Liancourt.

[254] Mémoires de Condorcet, Tom. I. pp. 165-167.

[255] Œuvres de Turgot, Tom. I. p. 416.

[256] Franklin's Works, ed. Sparks, Vol. V. pp. 123, 124.

[257] Œuvres de Turgot, Tom. I. p. 414; Tom. IX. p. 416. Œuvres de Condorcet, Tom. V. p. 163.

[258] Cabanis, Notice sur Benjamin Franklin: Œuvres Posthumes, Tom. V. p. 261. Mignet, Portraits et Notices (2me édit.), Tom. II. p. 442. See, also, Morellet, Mémoires, Tom. I. p. 291.

[259] The triumph of the Republic since this article was written makes this magnificent

library National instead of Imperial.

[260] Letter to Miss Lucy Cranch, September 5, 1784: Letters of Mrs. Adams (2d edit.), Vol. II. pp. 55, 56.

[261] Tom. II. p. 83. See, also, p. 337.

[262] Tom. II. p. 465.

[263] Chambelland, Vie du Prince de Bourbon-Condé, Tom. I. p. 376.

[264] Capefigue, Louis XVI., Tom. II. p. 49.

[265] Lacretelle, Histoire de France pendant le 18me Siècle (2me édit.), Tom. V. p. 85. The historian errs in putting this success in 1777, before the date of the Treaty; and he errs also with regard to the Court, if he meant to embrace the King and Queen.

[266] Gazette d'Amiens, Avril, 1780: Moore's Diary of the American Revolution, Vol. II. p. 283.

[267] The account of this unique *fête*, with the verses, was reprinted in America, and is in the collection of the Zenger Club, of New York. Parton, Life and Times of Benjamin Franklin, Vol. II. pp. 430-434.

[268] Chastellux, Travels in North America, Vol. II. p. 372, January 12, 1783.

[269] Mémoires sur la Vie privée de Marie Antoinette, par Madame Campan, Tom. I. p. 234.

[270] Bulletin de l'Alliance des Arts, 10 Octobre, 1843. See, also, Goncourt, Histoire de Marie Antoinette, p. 221.

[271] Grimm, Correspondance, Tom. XVI. pp. 427, 428.

[272] Louis Blanc, Histoire de la Révolution Française, Tom. VI. p. 316.

[273] Notice sur Benjamin Franklin: Œuvres Posthumes, Tom. V. p. 220.

[274] Morellet, Mémoires, Tom. I. p. 290. Nothing but Franklin's eminence could have obtained the place he has in the spiteful work, "Histoire d'un Pou Français, ou l'Espion d'une nouvelle Espèce, tant en France qu'en Angleterre, contenant les Portraits des Personnages intéressans de ces deux Royaumes," which appeared at Paris in 1781. See Chapters VIII. and XIV.

[275] Le Temple du Goût, 1, 11, 12: Œuvres (édit. 1784), Tom. XII. p. 141.

[276] L'Anti-Lucrèce, traduit par M. de Bougainville, (Paris, 1754,) Épistre Dédicatoire, Discours Préliminaire, pp. 2, 16, 91.

[277] Anti-Lucretius, Lib. I. 95-98.

[278] Lib. I. v. 104. *Tonandi* is sometimes changed to *tonantis*, and also *tonanti*.

[279] Works of Franklin, ed. Sparks, Vol. VIII. p. 538, note.

[280] Ibid., p. 537.

[281] Works of Franklin, ed. Sparks, Vol. VIII. p. 539, note.

[282] Œuvres de Turgot, Tom. IX. p. 140.

[283] Works of Franklin, ed. Sparks, Vol. VIII. p. 539, note.

[284] Ibid.

[285] Mémoires de l'Abbé Morellet, Ch. XV. Tom. I. pp. 286 seqq. This chapter was translated some years ago for a Philadelphia periodical, "The Bizarre," by William Duane, great-grandson of Franklin, and is preserved by Parton, in his "Life and Times of Benjamin Franklin," Vol. II. pp. 422-429.

[286] Julius, Nordamerikas Sittliche Zustände, Band I. p. 98.

[287] Mr. Slidell never returned to the United States. On his death, in Europe, July, 1871, the London "Daily Telegraph" of August 2d recognized the parallel with Franklin. After remarking that "during the whole of 1862, and the first six months of 1863, it was the general belief of the most far-seeing statesmen in Europe—among them Lord Palmerston and the ex-Emperor of the French—that the Confederate States would succeed in establishing their independence," this journal proceeds to say: "Mr. Mason and Mr. Slidell were therefore invested, during these brief and halcyon days of Secession's prosperity, with something of the diplomatic influence which between 1776 and 1783 attached to Benjamin Franklin, when accredited by our insurgent North American Colonies to the French Court."

[288] Afterwards modified according to the text in the Introduction to these Remarks. *Ante*, p. 42.

[289] Statutes at Large, Vol. XII. p. 502.

[290] Only a few days before, Mr. Davis, of Kentucky, had touched the same key. After alluding to the aid supplied by the President in enforcing the Fugitive Slave Act, he said: "It matters not who did the deed. It was a noble one, and I only wish the Senator from Massachusetts could even approximate to the true loyalty of such deeds." Mr. Sumner. "I hope I never shall." Mr. Davis. "Yes, Sir; and yet you advance to that seat [the seat of the President of the Senate], and, with that treason in your heart and upon your lips, you take the oath to support the Constitution of the United States."—*Congressional Globe*, 38th Cong. 1st Sess., p. 179, January 13, 1864.

[291] Statutes at Large, Vol. XII. p. 502.

[292] Art. V.

[293] Ch. VI. § 1.

[294] Ibid.

[295] Bill of Rights, Art. VIII.

[296] Ibid., Art. IX.

[297] Declaration of Rights, Art. VI.

[298] Art. IV.

[299] Art. VIII.

[300] Art. XXV.

[301] State Trials of the United States during the Administrations of Washington and Adams, p. 317, note.

[302] Father of Mr. Bayard, Senator of Delaware, who took part in this debate.

[303] Annals of Congress, 5th Cong., col. 2259, 2260, January 3, 1799.

[304] *Ante*, Vol. VII. p. 266.

[305] Address to the two Branches of the Legislature, November 11, 1863: Senate Documents, Extra Session, 1863, No. 1, pp. 16, 17.

[306] Address to the two Branches of the Legislature, November 11, 1863: Senate Documents, Extra Session, 1863, No. 1, pp. 18, 19.

[307] Opinions of the Attorneys-General, Vol. XI. pp. 38-40.

[308] See Acts of 38th Cong. 1st Sess., Ch. 124, Sec. 4: Statutes at Large, Vol. XIII. p. 129.

[309] Opinions of the Attorneys-General, Vol. XI. p. 53, July 14, 1864.

[310] Treatise on Statutes (2d edit.), Part II. p. 473.

[311] Dwarris, Treatise on Statutes (2d edit.), Part II. p. 478.

[312] *Post*, pp. 403-418.

[313] American State Papers, Miscellaneous, Vol. I. pp. 38-43.

[314] Senate Reports, 31st Cong. 1st Sess., No. 12.

[315] Art. IV. Sec. 2, Par. 3.

[316] Hoare's Memoirs of Sharp, p. 38.

[317] Howell's State Trials, Vol. XX. col. 82.

[318] Fisher *v.* Blight, 2 Cranch, S. C. R., 390.

[319] De Laudibus Legum Angliæ, Cap. XLII.

[320] Commentaries, Vol. II. p. 94.

[321] Constitutional History of England (London, 1829), Ch. XVI. Vol. III. p. 380.

[322] Vindication of the Treaty with Great Britain, No. 2: Papers on Political, Literary, and Moral Subjects, p. 185.

[323] Coke upon Littleton, 42. b.

[324] Law of Nations, Book II. ch. 17, §§ 300, 302.

[325] Congressional Globe, 31st Cong. 1st Sess., Appendix, pp. 1583, 1584, August 19, 1850.

[326] Bancroft, History of the United States, Vol. I. p. 175.

[327] Hildreth, History of the United States, Vol. II. p. 428.

[328] Ibid., Vol. III. p. 190.

[329] Letters from America, Historical and Descriptive, comprising Occurrences from 1769 to 1777, inclusive, by William Eddis, late Surveyor of the Customs, &c., at Annapolis, in Maryland, (London, 1792,) pp. 63, 64, 71, 72, 74.

[330] Lives of the Chief Justices, Vol. II. p. 515, note. See, also, Atcheson *v.* Everitt, Cowper, R., 382.

[331] Speech, December 23, 1790: Speeches in the House of Commons, Vol. IV. p. 131.

[332] Prigg *v.* The Commonwealth of Pennsylvania, 16 Peters, S. C. R., 611.

[333] Dred Scott *v.* Sandford, 19 Howard, S. C. R., 407.

[334] No. XLII.

[335] Debates in the Federal Convention: Madison Papers, p. 1447.

[336] Debates in the Federal Convention: Madison Papers, pp. 1447, 1448, 1456.

[337] Debates in the Federal Convention, August 8, 1787: Madison Papers, p. 1263.

[338] Ibid., August 21, p. 1389.

[339] Debates in the Federal Convention, August 22, 1787: Madison Papers, p. 1394.

[340] Ibid., p. 1396.

[341] Debates in the Federal Convention, August 25, 1787: Madison Papers, pp. 1429, 1430.

[342] Ibid., p. 1569.

[343] Elliot's Debates (2d edit.), Vol. III. p. 453.

[344] Ibid., Vol. IV. p. 176.

[345] Ibid., p. 286.

[346] See, *ante*, Vol. III. p. 178.

[347] Letter to a Peer of Ireland on the Penal Laws against Irish Catholics; and Letter to Sir Hercules Langrishe on the Subject of the Roman Catholics of Ireland: Works (London, 1801), Vol. VI. pp. 292, 375.

[348] Third Part of the Institutes of the Laws of England, p. 180.

[349] "Servi peregrini, ut primum Galliæ fines penetraverunt, eodem momento liberi fiunt."—*De Republica.* Lib. I. cap. 5, p. 41 C.

[350] Preamble to Articles of Ordinance.

[351] Karamsin, Histoire de l'Empire de Russie, traduite par MM. St.-Thomas et Jauffret, Tom. I. p. 172.

[352] Art. VIII. [VII.]: Records of the Colony of New Plymouth, Vol. IX. pp. 6, 7. See, also, Charters and General Laws of the Colony and Province of Massachusetts Bay, p. 724.

[353] Jack *v.* Martin, 14 Wendell, R., 525, 526.

[354] Opinion of Chief Justice Hornblower on the Fugitive Slave Law: The State *v.* The Sheriff of Burlington, in *Habeas Corpus*, New Jersey Superior Court, February Term, 1836, p. 5.

[355] Ibid., p. 7.

[356] Works, Vol. V. p. 354.

[357] Congressional Globe, 31st Cong. 1st Sess., pp. 234, 235, January 28, 1850.

[358] New York Daily Times, June 27, 1854. Congressional Globe, 33d Cong. 1st Sess., p. 1516.

[359] Story's Life and Letters, Vol. II. p. 396.

[360] Debates in the Federal Convention, September 15, 1787: Madison Papers, Vol. III. p. 1595.

[361] 6 Wheaton, R., 407.

[362] 3 Peters, S. C. R., 447.

[363] 8 Ibid., 48.

[364] Vol. II. p. 93.

[365] Pp. 77-79.

[366] Annals of Congress, 15th Cong. 1st Sess., col. 232, March 6, 1818.

[367] Congressional Globe, 31st Cong. 1st Sess., Appendix, p. 1584, August 19, 1850.

[368] Prigg *v.* The Commonwealth of Pennsylvania, 16 Peters, S. C. R., 616.

[369] Act of September 18, 1850, Sections 4, 6.

[370] Debates in the Federal Convention, August 28, 1787: Madison Papers, Vol. III. p. 1447.

[371] Act of September 18, 1850, Sec. 5.

[372] Deuteronomy, xxiii. 15, 16.

[373] Rev. Theodore Parker, buried in the Protestant Cemetery at Florence.

[374] Preliminary Report on the Eighth Census, 1860, p. 12.

[375] Southern Press, August 8, 1851.

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