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ON
CIVIL LIBERTY
AND
SELF-GOVERNMENT.

BY
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TO
HIS FORMER PUPILS,
THIS VOLUME
IS
INSCRIBED.
IN KIND REMEMBRANCE
BY THE AUTHOR.

TO MY FORMER PUPILS.

GENTLEMEN,

There are now in different portions of this country not far from a thousand citizens in the formation of whose minds I have had some share as a teacher. Many of you are in places of authority, and I consider myself more fortunate than the great founder of political science in this, that Aristotle taught a royal youth and future conqueror, and Athenians indeed, but at a period when the sun of Greece was setting, while my lot has been to instruct the future law-makers of a vast and growing commonwealth in the noblest branches that can be imparted to the minds of youths preparing themselves for the citizenship of a great republic. I have taught you in the early part of our history which God has destined to fill a fair page in the annals of man if we do our arduous duty. If not, our shame will be proportionate. He never holds out high rewards without corresponding penalties.

When you were members of this institution, I led you through the history of man, of rising and of ebbing civilization, of freedom, despotism and anarchy. I have taught you how men are destined to be producers and exchangers, how wealth is gathered and lost; and how without it, there can be no progress and no culture. I have studied with many of you, the ethics of states and of political man. You can bear me witness that I have endeavored to convince you of man's inextinguishable individuality and of the organic nature of society; that there is no right without a parallel duty, no honor without justice; no liberty without the supremacy of the law; no glory without freedom, and no high destiny without ear-

nest perseverance—that there can be no greatness of man and no grandeur of nations without self-denial.¹

Through you my life and name are linked to the republic, and it seems natural that I should dedicate to you a work intended to complete that part of my Political Ethics which touches more especially on liberty. You will take it as the gift of a friend, and will allow it kindly to remind you of that room where you were accustomed to sit before your teacher with the busts of Washington, Socrates, Shakspeare, and other laborers in the vineyard of humanity, looking down upon us.

The suffrages of your fellow-citizens have carried many of you into the legislative halls of our confederated states; a few of you are clothed with their chief authority, or have risen to the bench; others have seats in our congress; some have become teachers of the young; some labor in the church. Many of you are at home, and near at hand; some are on the shores of the Pacific, or in foreign lands. Wherever this book may reach you, in whatever sphere of duty it may find you occupied, receive it as a work earnestly intended to draw increased attention to the great argument of our times.

Our age has added new and startling commentaries to many subjects discussed in the Political Ethics, and things there spoken of as probably past all recurrence have since burst upon an

¹ For other readers it may be mentioned that the writer is professor of History and of Political Philosophy and Economy in the State College of South Carolina.—So far the note, which was written in the year 1853. In the year 1857, he was appointed Professor of History and Political Science in Columbia College, in the city of New York, and the number of his former pupils, both in the South and the North, has increased much beyond the limits indicated at the beginning of these dedicatory pages. He affectionately includes in this address to his former pupils all those, who, since it was written, have passed from his tuition into the practical life of the citizen. Much has happened, in our own country and abroad, since the first writing of these pages, that makes the author address the sentiments contained in them and throughout the work with still warmer earnestness; and with an increased consciousness of their claim to an honest attention, and of their importance to the country whose welfare, in part, lies in the hands of the author's former pupils—the country for which they will have to give an account before that tribunal where acts and omissions are not judged of by the standard of party, passion, vanity or success, and where the *prava negligentia* stands recorded as a deed, as much so as the *prava diligentia*.

amazed world. We would never have supposed that socialism and despotism, the fatal negations of freedom, could have been boldly proclaimed in this century as the defence and refuge of humanity. We could never have believed possible such a waste of national zeal within so short a period, as we have witnessed in Italy and Germany—countries that are endeared to every civilized man.

A large part of Europe is in a state of violence, either convulsive action or enforced repose, and one of the greatest nations has apparently once more sought refuge in the reminiscences of the saddest times of Rome. History often reaches our shores from that portion of the globe by entire chapters. We are necessarily affected by new events and new ideas, as we in turn influence Europe; for we are of kindred blood, of one christian faith, of similar pursuits and civilization; we have one science and the same arts; we have one common treasure of knowledge and power; our alphabet and our numeric signs are the same; and we are members of one family of advanced nations. In such times it behooves us to keep a steady eye on all the signs of the times. Let us be attentive; let us understand. Goethe says truly that we must learn to read occasionally between the lines of books in order to understand them. It is a remark which applies with still greater force to the pages of history and those that record the changes of our own days.

You live in an energetic age. Men are intently bent on bold and comprehensive ends, and mischief is pursued with similar activity. The calling of our inter-oceanic country is a solemn one; the youngest nation shall bind the old to the oldest, and the Pacific shall unite, though the narrow Bosphorus has long divided. Your institutions come from the freest nation of ancient and venerable Europe—and your duties are proportionate to the blessings you are enjoying. The period we live in, our country's position and youth, our abundance of land and food, our descent and our freedom—all call upon us, and warn us.

If this work then aid, in ever so slight a degree, in the discharge of these high duties; if it help to show that the political and national Know Thyself is as important as the individual; if it impress more forcibly upon your minds the advice of Pliny: *Habe ante oculos hanc esse terram quæ nobis miserit jura*, and give it a meaning far wider than that which the Roman could give to it; if it

prove an additional incentive to hold fast to our liberty and to cultivate it with fresh purity of purpose; if it increase our love of sterling action and disdain of self-praise; if it tend to confirm civil fortitude, that virtue which is acquired by the habit of at once obeying and insisting upon the laws of a free country, and shows itself most elevated when it resists alluring excitement; if, in some measure, it serve to restrain us from exaggeration and judging by plausibility—two faults that are rife in our age than they have been almost at any other period; if it steady the reader against that enthusiasm which Wesley designates as “the looking to the end without the means;” if it deepen our abhorrence of all absolutism, whether it be individual or collective, called by whatever name, monarchical or democratic, and founded upon whatever theory, whether on the *jus divinum* of a dynasty or the pretended universal suffrage of a *Cæsar*, or on the arrogance of a party and of its demagogue; and if it strengthen our conviction of the dignity of man, too feeble to wield unlimited power, and too noble to submit to it; if this book aid, in any degree, in the acknowledgment of St. Paul’s great command: “Honor all men,” in the wide sphere of political existence—then, indeed, I shall be richly rewarded, and shall not consider myself too bold if I point to you as Epaminondas, in his dying hour, pointed to Leuctra and Mantinea.¹

COLUMBIA, S. C., July, 1853.

L.

¹ General Minutes, appended to his edition of the Book of Common Prayer, for the American Methodists.

² Diodor. Sic. L. xv. c. 87, 6.

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APPENDIX.

APPENDIX I.

A PAPER ON ELECTIONS, ELECTION STATISTICS AND GENERAL VOTES OF YES OR NO.

CONSCIENTIOUS and well informed men may possibly differ in opinion as to the question whether Cromwell was at any time the freely accepted ruler of the English people; whether he was gladly supported by the people at large and readily acquiesced in by a small minority; whether he imposed himself upon the country by the army and allayed opposition by the wisdom of his statesmanship; or whether he chiefly ruled by armed fanaticism. But it may be asserted without hesitation, that there is neither Englishman nor American, substantially acquainted with elections, whose judgment on this subject could be influenced in any degree, one way or the other, were he informed that Cromwell had received an overwhelming majority of votes all over England confirming him in his absolutism, after he had passed his famous act of 1656, by which he divided the British territory into twelve districts, each presided over by a major-general with absolute power over the inhabitants, all existing laws to the contrary notwithstanding. There is not an American or Englishman, I think, who believes that such a confirmatory vote could have added to his right, or that, had such an event taken place, it could have kept Richard Cromwell on the protectorial throne, or retarded the return of Charles the Second, a single day. And the larger the majority for Cromwell should have been, the more we would now consider it as a proof of the activity exerted by the major-generals indeed, both in pressing and compressing, but no one of us would connect it in any way with a presumed popularity of Cromwell, or consider it as an index of the opinion which the people at large entertained of his repeated making and unmaking of parliaments.

A real or pretended result of such *ex post facto* votes may have a certain proclamatory value; it may be convenient to point to it

trality of the army in an election of the sort of which we now treat.

2. The election must be carried on by well organized election institutions, extending over small districts, because in that case alone can a really general voting be secured.

3. All elections must be superintended by election judges and officers independent of the executive or any other organized or unorganized power of government. The indecency as well as the absurdity and immorality of government recommending what is to be voted ought never to be permitted.

4. The election returns ought to be made so that they are not subject to any falsification. They must not be fingered by the government officers. This is especially important if the country labors under a stringent centralism in which every civil officer avowedly acknowledges, and is, according to command, bound to acknowledge, no principle or law above the direct command of his immediate superior; in which the host of executive, administrative, police and semi-military officers form a compact body receiving its impulse of action exclusively from one centre; in which publicity is no pervading element of acts relating to the public interest; and in which no habits have yet been formed nor customs settled concerning the whole comprehensive election business.

5. He, or that power, which passes under judgment, ought to be in a position that, should the judgment turn against him, he can be believed to abide by the judgment. If not, the whole is nothing but a farce.

6. There must be really two things to choose between. If this is not the case, the whole procedure amounts to no more than what we familiarly call "Hobson's choice," on a gigantic scale.

If there be any reader who should object to this rule that, since we speak of elections, it is evident that there must be two things at least to select from, and that therefore this rule borders on the ridiculous, I would only say that history shows people have not always adopted it. There may be something ridiculous somewhere, but it is not in the rule. It would be ridiculous to lay down the rule that, if people invite others to dinner, there ought to be something to eat, only so long as invitations to empty tables are assumed not actually to have taken place.

7. The power claiming the apparent judgment ought not to have committed a criminal act, and then, as the law expresses it, insist on deriving benefit from its own wrong. Nor ought he, who pretends to present himself for judgment, stand in the position of a trustee, disputing the validity of the power by which nevertheless he has acted, and under which he has accepted benefits. This is a common rule in all law, because it is common sense, and it is for the same reason a sound rule in politics.¹

In addition to these rules, I may remind the reader of a fundamental truth concerning all elections and votes—a truth which is simply prescribed by common sense, and yet has often been set aside. A majority having voted for a subject is of no earthly value, unless the subject be of such a character that there can be, at the time, a public opinion about it. If there were, in a company of men, different opinions as to the time of the day, we cannot solve the difficulty by putting the question: "All who are in favor of its being now six o'clock will say Aye; those who are of the contrary opinion will say No."² No majority of ever so vast a country can decide for me the chloroform question, or whether captain Ericsson's steam generator be or be not practical. And no majority, no matter how overwhelming, can be worth anything if there be not, in addition to a proper apparatus of evolving public opinion, of which we have spoken, already, also one by which the true majority can be ascertained. It is an utter and constantly recurring error into which those that are unacquainted with the nature and the economy of liberty fall, to believe that what liberty requires is the ascertainment of incoherent votes on every question sprung upon society separately and incoherently. A French paper recently said that under certain circumstances the emperor Napoleon the Third would put the question of war

¹ This has been well pointed out in the case of Louis Napoleon, by the Hon. A. P. Butler, United States senator for South Carolina.

² In the time of the late French so called republic, it occurred in the little commune Saint-André (department de Nord,) that in a new church one of three altars remained without a patron saint. There were three candidates: St. Joseph, St. Roch and St. Cecilia. The priest believed that the question had best be left to the people. All voted, even women and children of discretion. St. Cecilia carried the election by a majority of seventeen votes. The old Icelanders sometimes decided by vote whether Christ or the old gods should be worshipped.

to the universal suffrage of France. Of course I do not believe in the possibility of such an act, but I have mentioned the statement as an illustration. How can the French people at large decide on a question of war or peace, if France cannot debate the matter, cannot reflect on it? and what can a majority of votes on so grave a question mean, when the whole management of the vote, from first to last, is in the hands of that strongly concentrated government which puts the question?

I return to the seven requisites which I have pointed out.

If any one of these conditions be omitted, the whole election or voting is vitiated, and can in no way be depended upon. It will go with every experienced and truthful citizen, and pass with every serious historian, for nothing more than, possibly, for skillfully arranged deceptions of the unwary and very inexperienced. It is a question, indeed, whether these conditions can be frequently fulfilled, and whether it be possible in the nature of things to fulfil them at all, or any of them, in uninstitutional countries—in large countries enmeshed like a huge being by the close network of a bureaucratic mandarinism. They must, then, be resorted to as rarely as possible. In strictly organized police governments they have no value, except for the very purpose of deceiving, or of giving an apparently more firmly-based fulcrum for the lever of the power already existing.

Every one of my readers will agree with the necessity of the condition which has been stated as the first. There is the greatest difference between an accidental or momentary general opinion, and an organically-produced, well-settled, public opinion—the same difference which exists between a “decree of acclamation,” as those decrees in the first French revolution were called, which were proposed and forthwith adopted by a burst of feeling or a clamor of passions, and an extensive law which has first been discussed and rediscussed, called for and assailed in papers, pamphlets, meetings and institutions, and then, after long and patient debate, passed through the whole sifting and purposely retarding, repetitionary and revisionary parliamentary process. Real public opinion on public matters of a truly free people under an institutional government is generally the wisest master to which the freeman can bow; general opinion is worth nothing as a political truth. It may be correct; it may be vicious, as a thousand

rumors show, and public rumor is general opinion. This subject of public and merely general opinion has been largely discussed in the Political Ethics.

When Cromwell had dissolved parliament, and even dissolved the famous council of state, in spite of Bradshaw's opposition, we are informed that addresses of gratulation and thanks reached him from all parts of England, just as they were crowded upon L. N. Bonaparte after the second of December, 1851. We cannot judge whether they expressed the opinion of the majority; for in politics, as in common life, it is the noisy that are heard and make themselves observed, while the majority and more substantial people are silent and overlooked; but, for argument's sake, we will grant that those addresses to Cromwell expressed the opinions, the views, the feelings of the majority of the nation at the moment. Even in this case they expressed nothing more than the existing general feeling, not the public opinion of England, as successive events very soon proved.

To seize upon loud and demonstrative general opinion and feeling of a part of the people while compressing the public opinion of the whole, is a frequent means of successful tyranny. It was the way the first French convention frequently managed things, and Danton knew it well. He acknowledged it.

As to the second and subsequent conditions which have been enumerated, the following observations may prove of interest. Numerous and extensive inquiries, referring to the United States as well as to Europe, and some of which I propose to give to the reader, have proved to me certain instructive facts relating to the statistics of popular elections. I do not treat in this paper of the voting in assemblies of trustees, of representatives or boards.

I must also remark that I shall always use the term election for direct elections, in which the voter votes directly upon the question at issue, and not for a person who will have the ultimate right of the direct vote; either for a person or on a measure. The election of our presidents was intended to be a double election, and in form it continues to be such; for we elect electors. But it is well known that the election has long since become virtually a direct one, so far as the individual votes express the desire of the voters, because the persons voted for as electors declare beforehand for whom they shall vote in case they are made electors, and

after being elected electors they do not become members of a deliberative body in which the question of the presidential election is discussed.¹

Where the double election is introduced as an active principle, it deprives elections of much, and often of all interest, and is frequently resorted to for this very purpose, by governments which do not feel sufficiently strong to refuse the claims of the people to a share in the government, yet desire to defeat the reality of such a share.

The following, then, are the positions which experience seems fully to bear out :

The more exclusive the privilege of voting is, the smaller is the number of qualified voters who abstain from voting ; and the largest number of abstinents occurs where universal suffrage is freely left to itself, and not interfered with by the executive.

The smaller the number of qualified voters, the smaller is also the number of abstinents.

So soon as the number of qualified voters exceeds five or six hundred, the number of abstinents will be at least twenty-five per centum.

The larger the number of qualified voters, voting upon the same

¹ This knowledge of the vote which an elector will give does of course not affect the result. Each elector represents a majority and a minority, but his vote can only be cast for one candidate. Nevertheless, that which is called the popular vote indicates a proportion between the presidential candidates very different from that which appears from the official votes of the electors. For instance, the popular vote at the last presidential election stood:

For Pierce	1,504,471
“ Scott	1,288,174
“ Hale	148,851
and the votes of the electors stood	
For Pierce	254
“ Scott	42

So that the popular vote stood :

Pierce to Scott as 132 to 100.

But the votes of the electors :

Pierce to Scott as 605 to 100.

Such men as Benton, M'Duffie, Calhoun, Huger, Pickins, of N. Carolina, have recorded their opinion in favor of giving the election of the president to the people.

question or persons, and under one and the same electoral system, the larger is also the number of abstainers.

The larger the area over which one and the same election or voting extends, the larger is the proportion of abstainers.

When there are three fairly supported candidates, the total number of votes polled is larger than when there are but two candidates, all other things being equal.

The whole number of polled votes, compared to the number of qualified voters, does not necessarily indicate the interest a community may take in a measure or person. Whenever people feel perfectly sure of the issue, there are many who abstain because their votes will not defeat the opponent; and many others abstain, because their candidate will be elected at any rate.

If the number of qualified voters (voting exactly upon the same question or person) exceeds several thousands, one-half of it is generally a fair number for the actual voters; two-thirds show an animated state of things, and three-fourths are evidence of great excitement. It will be observed that the words: Voting exactly upon the same question or person—are a necessary qualification of these positions. Although an election all over England may turn upon free trade or protection, yet, if it be a parliamentary election, so that these questions appear only represented in the respective candidates, it is clear that this would not be an election extending over the area of England, in the sense in which the term is taken here, or in which we take it when we speak of our presidential election.

Voting upon men generally draws out more votes than voting upon measures themselves.

Popular votes upon measures to be expressed by *yes* or *no* are wholly fallacious, unless this vote be the last act of a long and organic process; for instance, if a new constitution has been prepared by a variety of successive acts, and is ultimately laid before the people with the question, Will you, or will you not have it?

Popular votes in a country with an ample bureaucracy of a centralized government, on questions concerning measures or persons in which the government takes a deep interest, and by elections the primary arrangements of which are under the direction of the government, that is, under the executive, must always be received with great suspicion. It is a fact well worthy of remembrance,

that the French people have never voted *no*, when a question similar to that which was settled, as it is called, by the election of December, 1851, was placed before them. In the year 1793, in the years III., VIII. and XIII. similar appeals were made, and the answer was always *yes*, by majorities even greater than that on which Louis Napoleon Bonaparte rests his absolutism. When a *senatus consultum* raised Napoleon the First to the imperial dignity, and the people were appealed to, there were in the city of Paris 70 noes and 120,947 ayes, and in all France 2,500 noes against 3,572,329 ayes. A vote of *yes* or *no* becomes especially unmeaning when the executive seizes the power by a military conspiracy, and then pretends to ask the people whether they approve of the act or not.

From the best authorities on the Athenian government, for instance Boeckh's *Political Economy of Athens*, and Tittman's *Political Constitutions of Greece*, under the head of Ostracism, we see that the common vote, polled by the Athenians, was about 5,000 (Thucydides viii. 72) out of from 20,000 to 25,000 qualified voters. Six thousand votes were considered the largest amount. They were required, therefore, for extraordinary cases, such as ostracism, or for anything that was against established law, or related to individuals only. Six thousand Athenian votes thus practically corresponded to our two-thirds of votes requisite for some peculiar cases, purposely removed beyond the pale of a simple majority, that is at least one more than one-half of the voters. Here, then, we have one-fourth of qualified voters, usually voting, although the voting took place in one and the same city by voters the great majority of whom lived in the city.

Some writers have doubted whether six thousand votes upon the whole, were necessary for ostracism and other peculiar cases, or six thousand votes in favor of the measure. I have no doubt that the first was the case. Plutarch distinctly says that one of the persons proposed was always ostracized, provided six thousand votes had been cast. (Aristides i. 7.) The same passage seems to prove that, if six thousand votes, altogether, had been cast, he who had the plurality of votes was banished; for, there were frequently several persons proposed for ostracism, or citizens knew that they were prominent, and therefore liable to fall within the ostracophory, and tried to prove that they did not possess the

feared influence. Ostracism was a purely political institution, resorted to by democratic absolutism to clip prominences, and keep the hedge on a level. It was no punishment, and until Hyperbolus, a low fellow, was ostracised, it added to the reputation of a citizen.

That there were many abstainers from voting in Athens, we know from the fact that on the one hand the *lexiarchi* sent their *toxotes* before them to mark with red-powdered cords the white garments of those who tarried, so that the thirty judges, presided over by the *lexiarchi*, might properly fine them. In this, then, the Athenians resembled the early inhabitants of New England, who punished abstaining from voting or *neglecting to send a written vote*.¹

On the other hand, we know that every Athenian of lawful age (*viz.* twenty or eighteen) received three oboli for attending a popular assembly. This reward was called *ecclesiasticon*.

Why there should have been at Athens so many more abstainers than generally in modern times, may be explained, probably, on the ground that many citizens were habitually absent as soldiers, and that Athens was a direct, untempered democracy. Where the democratic absolutism visibly appears every day in the market, people get tired of it. Besides, the reason which frequently induces so many of our best people to abstain from voting, the unwillingness to leave business, must have operated very strongly in Athens, when voting was so frequent and common. Let us imagine Boston or New York as an unmitigated democratic city-state, calling every other day for the meeting of the citizens; does any one believe that the most constant voters would come from the workshops and the ship-wharves rather than from the tipping shops and filthy lanes of vice?

I have stated already that I have directed my inquiries to election statistics for many years, and over a very large space. The reader will admit that I can give a few instances only.

In the year 1834, there were in France no more than 171,015 electors; yet 129,211 only were polled at the different electoral colleges, that is only 75 out of 100 qualified voters availed themselves of their privilege. So there were in 1837 in the same coun-

¹ See the *Laws of New Plymouth*, published by Authority, Boston, 1836, pp. 41 and 128.

try 198,836 qualified voters, and 151,720 votes were polled, which makes 76 of 100.

It will be remembered how small a number of citizens compared to the whole population were entitled to vote. The number of qualified voters at each electoral college was very restricted, and the voters formed a privileged class, compared to the other citizens.

The January number of the Edinburgh Review of 1852 contains a list of sixty-four English election districts, with the numbers of registered or qualified voters, and of the actually polled votes in each, at the last general election. The districts, whose qualified voters amount to less than one thousand, have been separated by me from those which possess more than one thousand. The average number of voters of the first class were 500, and 25 per centum on an average abstained from voting. The average number of qualified voters of the other class was between 2,000 and 3,000, and of them 42 per centum abstained. So that, if there be about 500 voters, only 75 in a hundred go to the poll; if there be about 2,500, only 58 in a hundred do so.

This is the more striking if it be considered that one thousand entitled voters is after all a very small number compared to those to which we are accustomed, and that far the greater part of the elections given in the mentioned table are town elections or elections with the most easily accessible polls.

After the chief part of this paper had been written, a very striking fact corroborated the results at which I had arrived. The Edinburgh Review for October, 1852, contains an article on Representative Reform, in which there is "A Table showing the Number of Counties and Boroughs in England, Wales and Scotland, in which Contested Elections have taken place in the year 1852." Where an election afterwards contested takes place, it will be allowed that generally there must be great excitement. All voters are brought up over whom the candidates or their agents have any influence. Yet it appears from this table "that the registered voters in all the contested places reached 507,192, while those who recorded their votes did not exceed 312,289, or about 60 per cent. of the whole." This is very remarkable, for out of 175 places or counties, whose elections were contested, 46 only numbered 3,000 qualified voters or more.

The whole election to which all these statistics refer was that between the adherents to the administration of Earl Derby, and those who considered it an incumbrance to the country. The contest was between Free Trade and Protection, and, I suppose, the English would plainly call it an excited election.

I pass over to instances not less striking, belonging to our own country.

According to detailed official documents, giving the number of qualified voters in every township in Massachusetts, and the number of votes actually polled during the election of the governor of that state in 1851, an election of unusual excitement, there were 182,542 persons entitled to vote, and 131,187 votes actually received. This gives less than three out of four qualified voters, or less than 75 in a hundred. If we consider that Massachusetts is no extensive country; that it is more densely peopled than France, having 127.40 inhabitants to the square mile, while France has only about 125; that the roads are good and numerous; that the people are well trained in the whole election business; and that, as it has been stated, the excitement was very great, it furnishes us with a striking piece of evidence that the electoral barometer will hardly ever rise above 75 in a hundred.¹

There cannot be a more deeply interesting election than that which took place in the year 1851, in South Carolina, in which the palpable question was, shall or shall not the state secede from the Union? The political existence of the state formed the issue. On that occasion 42,755 votes were polled, which, taking one-fourth of

¹ In Letter VIII. of Silas Steadfast (believed to have been George S. Hillard,) on the proposed change of the constitution of Massachusetts, it is said: "In point of fact, no governor of Massachusetts was ever chosen by a majority of all the existing votes."

In Nov. 1853, when great excitement about the new constitution existed in Massachusetts, the vote for governor (who was voted for at the same time) stood thus:

Whig	66,759
Freesoil Democrat	35,779
National Democrat	5,470
Freesoil	29,897
Scattering	224

138,129

which resembles closely the vote of 1851.

the white population as the number of qualified voters, would show that about two-thirds only of those who had a right to vote actually did vote, or that 66 out of a hundred went to the poll.

Connecticut, a small and densely peopled state, sent, at the very excited election of 1852, about 75 or 76 out of each hundred voters to the poll. The calculation has been made from the official election returns, and taking one-fourth of the population as entitled to vote, which I have found to be the average number, where universal suffrage exists.

These instances might be greatly multiplied from statistical materials collected by me. I may only add the proportion of abstainers from our presidential elections since 1828. I have estimated the number of qualified voters by calculating, for the election year, the white population, according to the annual increments given by Mr. Kennedy, the first superintendent of the United States Census for 1850, and dividing that number by four.¹ I have called the real voters in the table *volants*, and the qualified voters simply *voters*.¹

¹ In dividing by four I reduce the number of qualified voters in the United States too much, as will appear from the following table, abstracted from the American Census of 1850, and kindly furnished me by Mr. De Bow, at present superintendent of the census:

States.	Aggregate population.	Total males 20 years of age and over.	Ratio to the whole population.
Massachusetts	994,514	280,623	3.54
Rhode Island	147,545	40,563	3.63
Connecticut	370,792	104,855	3.53
Pennsylvania	2,311,786	572,284	4.04
Ohio	1,980,329	473,501	4.18

This gives an average ratio of 3.784. But this table shows the proportion of white males of twenty years and upwards, while a person acquires the right of voting with his twenty-first year only. It will be, therefore, pretty correct, if I take one-fourth of the whole white population. In several states colored persons go to the polls. If they were counted, it would reduce the proportion of actual voters to the number of qualified voters; but I am willing to take one-fourth only.

² I am aware that, apparently, *Votare* has not been used in Low Latin for voting. Du Cange says that *Votum* was used in the middle ages for suffrage, but *Votare* for *Vovere*, *Spondere*. As it is, however, no uncommon case in the English language to have a noun and an adjective which is not derived directly from the former but from an intermediate though "miss-

Years.	White population.	Number of votes cast.	Proportion of votants to voters.
1828	10,537,378	1,160,418	0.44
1832	11,169,616	1,290,468	0.46
1836	12,117,968	1,501,298	0.50
1840	14,189,895	2,402,659	0.67
1844	15,469,287	2,702,546	0.69
1848	17,154,551	2,874,712	0.67
1852	20,027,899	2,936,896	0.58

It is necessary to take into consideration that in the whole south of the United States voting is a right of a privileged class, and that the proportion of abstainers is probably much smaller than it would be otherwise.

Against this calculation, however, so uniform in England, here and in France in former times, we have the vote of seven millions and a half for Louis Bonaparte in 1852, when France was asked whether she approved of his breaking through oath and pledge, and of his proffered despotism, annihilating not only her constitution, which indeed was more than a frail one, but all the progress she had made in representative government, all her liberties, and all her civil dignity, and submitting her fortunes and all to a ruler who, never having been a soldier, tells civilized France that the history of armies is the history of nations, that responsible ministers are nothing but incumbrances, and that France desires a government which receives its whole impulse from one man.¹

The statement which the government of the president of France officially published regarding the election which surrendered everything to the unchecked sway of the despot was thus:

Voted Yes	7,439,216
Voted No	640,737
Annulled votes	36,820
Did not vote at all	372,599
	<hr/>
	8,489,372

ing" verb, which would be derived from the noun, did it exist, I feel sure the reader will permit me to use the term *Votant*, in a language in which brevity is often considered to cover logical and etymological sins.

¹ See the preamble to the constitution proclaimed by Louis Napoleon.

Whatever may be thought of the suspiciously small number of noes, I do not believe that there is a man living who knows anything of elections, and who is ready to accept the given number of abstinents as a correct statement. According to the official number, between three and four persons only in one hundred abstained from voting, or were prevented by illness, absence from home, old age, and the like, from doing so—a number utterly incredible, and which, it must be believed, would have been allowed to appear much larger had the officials who managed the business been acquainted with the usual number of abstinents. The minister of state, Mr. Persigny, stated himself, in a circular letter to the prefects at a later period, that there were about eight millions of voters in France. This agrees pretty well with the common rule of taking about one-fourth of the whole population as the number of qualified voters where universal suffrage exists. There must then have been a great deal of manipulation within that number. This is further proved when we consider that, according to the official reports of the commissioners, whom the chief of the French state sent into the departments to see who of the political prisoners might be pardoned, many thousands were actually in prison at the time of the general election. Colonel Espinasse reports that in the departments of the Lot and Garonne, and the Eastern Pyrenees, there were 30,000 affiliated socialists, and in the department of the Hérault 60,000. In three departments alone 90,000 disaffected persons. If they voted, they must have been forced by the police to vote for the coup d'état: if they did not vote, what becomes of the given number of abstinents? But there is another fact which shows the falsification of the statement, either by actually falsifying the numbers, or by forcing people to give the desired vote, or by both.

Algeria is not so directly under the influence of the police, nor could the statement concerning that colony be so easily falsified. Accordingly we have the following: Out of 68,000 voters (the army included) 50,000 abstained; 5,735 voted for L. N. Bonaparte, and 6,527 against him. Eighteen thousand only seem to have voted out of 68,000, not even 29 in 100.

I think this will sufficiently show how little reliance can be placed upon such a vote in a centralized country, and how futile it is to found any right or pretension upon it. Votes, without liberty of

the press, have no meaning; votes without liberty of the press, and with a vast standing army, itself possessing the right to vote, and considering itself above all law, have a sinister meaning; votes, without an unshackled press, with such an army, and with a compact body of officials, whose number, with those directly depending upon them, or upon government contracts, amounts to nearly a million, have no meaning, whether he who appeals to the people says that he leaves "the fate of France in the hands of the people," or not.

This paper was written, with the exception which I have mentioned, after the vote on the coup d'état had been given. Since then, the plebiscitum, making Louis Napoleon emperor, has been added.

The vote of the people on the question: Shall, or shall not, Louis Napoleon Bonaparte assume the imperial crown? is officially stated to have been thus:

The number of electors inscribed in the departments, is	9,843,076
The number of the land and naval forces	360,352
	<hr/>
Total of voters	10,203,428
This number is thus distributed:	
Having voted yes	7,824,189
Having voted no	253,115
Votes void on some account or other	63,326
Abstainers	2,062,798
	<hr/>
Total	10,203,428

This shows a very different result from the vote on the coup d'état. It gives twenty-five abstainers in a hundred; but there are other points not easily understood. Of thirty-one persons, one only voted no. This is a state of harmony to which people of the Anglican race, with all their calmer temper, we venture to say, have never yet attained. It is equally inexplicable how, of a population, which, in 1851, amounted to 35,781,628, there can be, in the year 1852, as many as 10,203,428 authorized to vote, or males above twenty-one years old. The fourth part of 35,781,628 is only 8,945,407; and, if a fourth part is correct, there would be 1,258,021 unaccounted for. Nor can we forget, here, the immense

number of persons, who, according to official reports, are at any given moment in the prisons of France. These, too, must be deducted.

I add, in conclusion, the statement of a Paris paper, which gives a different account, so far as that city is concerned.

In Paris, the number of abstinentes were :

In 1848, for the presidential election	0.25
In 1851, for the ratification of the the coup d'état, and the election of the president for ten years	0.20
In 1852, for the imperial crown	0.14

Only about one-half as many abstained from voting, when the empire was to be re-established, as abstained in the excited times of the republic, when there were several candidates.¹

I do not believe that direct money-bribery exists in France to any great extent. Universal suffrage, it would seem, would preclude the possibility. But indirect bribery, by promises of promotion, or allowing shares in profitable undertakings, and, above all, intimidation, positive or indirect, I believe to have existed in the largest possible extent. We may certainly assume that every government officer, or person connected in some way with government, is worth his four or five votes at least—which he will direct as he in turn is directed to do by his superiors, or he loses his place.² Then, we must take into account the influence of the

¹ On the 10th of December, 1848, when the first French president, for four years, was voted for:

There were polled	7,827,345
Of which: For Louis Napoleon	5,434,226
For General Cavaignac	1,448,107
“ Ledru Rollin	376,119
“ Lamartine	17,910
“ Changarnier	4,700
Lost Votes	12,600

France contained, in the year 1846, 35,400,486 inhabitants; consequently, in 1848, there were about 9,000,000 of authorized voters; and 7,827,345 having voted, about 80 in 100 went to the poll, according to this statement. Yet it must be supposed that the eagerness to go to the ballot-box was, in that year, much greater than after the coup d'état.

² The reader cannot fail to remember here the constitution proposed by Mad. de Stael for France, after the Restoration, and which was to consist of

priests in rural communities, or of the bishops in general. They openly exerted themselves, by word and letter, in favor of the present emperor. The influence of the prefects and sub-prefects on all occasions of election is uniform and perfectly well known, generally quite public, and the annoyance to which a man exposes himself by voting a ballot not agreeing with that which has been furnished by the government, is so great that no independence exists at French elections, except, in a limited degree, sometimes in Paris itself, on account of its dense and large population, although the influence of the court and government is there also the greatest on ordinary occasions.

two paragraphs only, namely, of one declaring all Frenchmen to be government officers, and of another, providing that every government officer should have a salary.

APPENDIX II.

A PAPER ON THE ABUSE OF THE PARDONING POWER.

THIS paper was originally a report. I had been appointed by a meeting of the Friends of Prison Discipline, without being present, the chairman of a committee, which was requested to report to the next meeting on "The Pardoning Privilege and its Abuse." The following was the result of this appointment. The legislature of the State of New York did me the honor of publishing it as a document; but it was printed so incorrectly, the subject is of such vital interest to a people who desire to live under the supremacy of the law, and the abuse continues in many parts of our country to so alarming an extent, that I do not hesitate here to reproduce the paper.

The pardoning privilege consists in the authority partially or wholly to remit the penalty which, in the due and regular course of justice, has been inflicted for some offence. A pardon is always an act of frustrating that common justice which has been established by law as the best means of protection; a nullification of legal justice. It is the only power in modern politics, in which the supremacy of the law is acknowledged as the primary condition of liberty, that can be compared in any degree to the veto of the ancient tribune.¹ It is an irregular power, depending upon irre-

¹ An inaccuracy of terms has in the case of the veto power created much confusion. The ancient tribune had the privilege of vetoing, and a so-called vetoing power being ascribed to the chief magistrate of modern constitutional states, people are apt to confound the two, and attack or defend them on common grounds. Yet the two differ materially. The Roman tribune had a complete veto. He could prohibit an entire law, or a single operation of it; he could stop the building of a public fabric, or veto an officer from doing his duty, or a general from leaving Rome for the army. But the modern veto has nothing to do with the law once passed; it amounts to

sponsible individual will. We ought, therefore, clearly to be convinced of its necessity; and if this can be proved, we ought to inquire whether so extraordinary a power must not be guarded by proper limitations, especially if it should be found that it is liable to be seriously and even alarmingly abused.

In order to understand more fully the whole subject, it will not be amiss if we endeavor to obtain a view of the origin of this power, and to see why it is that everywhere we find it as an attribute of the chief executive power; whether this fact must be attributed to any inherent characteristics, or to incidental circumstances.

When all government is yet mixed up with the family relations, and the individual views of the ruler alone prevail, he pardons, as a matter of course, whenever he sees proper and feels impelled so to do; but developed despotism over extensive states takes a different view. Fear of insecurity and suspicion of disobedience to the commands of the despot often lead the ruler to fence himself in with a strict prohibition of applications for pardon. That which a wise people does for virtuous purposes by a constitution, namely, the establishing, in calm times, of rules of action for impassioned periods, distrusting their own power of resisting undue impulses, and thus limiting their power, the despot does from fear of his own weakness, and therefore limits his own absolute power that he may not be entrapped into granting a pardon for disobedience. Chardin¹

nothing more than the withholding of one necessary ingredient to pass a bill into a law. In governments where the crown has the concurrent or sole initiative, either house, whose consent is necessary in order to make a law, may be said to have the veto power against the crown with the same propriety with which we call the power, in our president, of withholding his approval a vetoing power. The president can never interrupt the operation of a law once made a law. In the case of pardoning, however, the power actually amounts to a tribunal veto. There the executive, or whoever may possess the pardoning privilege, actually stops the ordinary operation of the law. A man has been laboriously tried and sentenced according to the course minutely laid down by the law, and another power steps in, not according to a prescribed course or process of law, but by a pure privilege left to his own individual judgment, and says: I prohibit; and the due and regular course of law is interrupted accordingly. This is vetoing power in its fullest sense. See on the Veto, in chap. xvii. pp. 203, 204, 205, of this work.

¹ Voyage en Perse. London, 1686—1715.

tells us that in his time it was, in Persia, highly penal to sue for pardon for one's self or for another person; the same was a capital offence under the Roman emperors—at least under the tyrants among them, who form the great majority of the fearful list. Still it is clear that the last and highest power, the real sovereign (not only the supreme) power, must include the power of pardoning. As in Athens the assembled people had the right of remitting penalties,¹ so does the civil law acknowledge the privilege in the emperor who was supposed to be the sovereign, and acknowledged as the source of all law. Christianity confirmed these views. The mercy of the Deity is one of its chief dogmas; mercy, therefore, came also to be considered as one of the choicest attributes of the ruler, who on the one hand was held to be the vicegerent of God, and on the other, the sovereign source of law and justice; nor can it be denied that, in times when laws were yet in a very disordered state, the attribute of mercy in the ruler, and the right of pardoning flowing from it, was of great importance, and, upon the whole, probably beneficial to the people. The fact that the pardoning power necessarily originated with the sovereign power, and that the rulers were considered the sovereigns, is the reason why, when jurists came to treat of the subject, they invariably presented it as an attribute indelibly inhering in the crown. The monarch alone was considered the indisputable dispenser of pardon; and this again is the historical reason why we have always granted the pardoning privilege to the chief executive, because he stands, if any one visibly does, in the place of the monarch of other nations, forgetting that the monarch had the pardoning power not because he is the chief executive, but because he was considered the sovereign—the self-sufficient power from which all other powers flow; while with us the governor or president has but a delegated power and limited sphere of action, which by no means implies that we must necessarily or naturally delegate, along with the executive power, also the pardoning authority.

Although the pardoning power has always existed, and has been abandoned by ultra-despotism for the sake of despotism itself, yet the abuse to which it easily leads, and the apparent incongruity which it involves, have induced many men of deep reflection, in ancient as well as in modern times, to raise their voices

¹ Demosthenes against Timocrates.

against it: of whom we may mention Plato and Cicero¹ among the ancients, and Pastoret,² Servin, Filangieri, and the benevolent Beccaria among the moderns. The latter, the pioneer of penal reform, and one of the benefactors of mankind, has the following remarkable passage:³

“As punishments become more mild, clemency and pardon are less necessary. Happy the nation in which they will be considered as dangerous! Clemency, which has often been deemed a sufficient substitute for every other virtue in sovereigns, should be excluded in a perfect legislation where punishments are mild, and the proceedings in criminal cases regular and expeditious. This truth may seem cruel to those who live in countries where, from the absurdity of the laws and the severity of punishments, pardons and the clemency of the prince are necessary. It is, indeed, one of the noblest prerogatives of the throne; but at the same time a tacit disapprobation of the laws. Clemency is a virtue which belongs to the legislator, and not to the executor of the laws; a virtue which ought to shine in the code, and not in private judgment. To show mankind that crimes are sometimes pardoned, and that punishment is not a necessary consequence, is to nourish the flattering hope of impunity, and is the cause of their considering every punishment inflicted as an act of injustice and oppression. The prince, in pardoning, gives up the public security in favor of an individual, and by ill-judged benevolence proclaims a public act of impunity. Let, then, the legislator be tender, indulgent, and humane.”

Among the truths of this passage there are some errors, the exhibition of which will at once lead us to the consideration whether the pardoning power, having already been admitted as an extraordinary and super-legal one, be necessary at all in a well and liberally constituted government, or ought to be suffered in a community which acknowledges the sovereignty of the law. Beccaria says that clemency should be excluded in a perfect legislation; and that pardon is a tacit disapprobation of the law. This is erroneous. No legislation can ever be perfect in the sense in which it is taken here, namely, operating in all cases, in the same manner

¹ Cicero in Verrem 7.

² Des Lois Penales.

³ Crimes and Punishments, chap. 46, on Pardons; English Translation, 1807.

toward exactly the same end, for which the legislator has enacted the law; because the practical cases to which the laws apply are complex, and often involve conflicting laws; because the legislator, though he were the wisest, is but a mortal with a finite mind, who cannot foresee every combination of cases; because the changes of society, things, and relations necessarily change the effect produced by the same laws; and because the law-maker cannot otherwise than cast the rules of action, which he prescribes, in human language, which of itself is ever but an imperfect approximation to that which is to be expressed.

Laws cannot, in the very nature of things, be made abstract mathematical rules; and so long as we live on this earth, where we do not see "face to face," where mind cannot commune with mind except through signs which have their inherent imperfections, cases must frequently occur in which the strict and formal application of the law operates against essential justice, so that we shall actually come to the conclusion that, in a country in which the *sovereignty* of the laws is justly acknowledged, we stand in need of a conciliatory power to protect ourselves against a *tyranny* of the law, which would resemble the bed of Procrustes, and would sometimes sacrifice essential justice as a bleeding victim at the shrine of unconditional and inexorable law itself. It is to these cases, among others, that the adage of the jurists themselves applies: *Summum jus, summa injuria*. We take it then for granted on all hands, that, justice being the great end of all civil government, and law the means to obtain it, the pardoning power is necessary in order to protect the citizen against the latter, whenever, in the peculiar combination of circumstances, it militates with the true end of the state, that is, with justice itself. But it is equally true that the supremacy of the law requires that the extraordinary power of pardoning be wielded in the spirit of justice, and not according to individual bias, personal weakness, arbitrary view, or interested consideration; a truth which is the more important in our country, because the same principles which make us bow before the law as our supreme earthly ruler, also bring the magistrate so near to the level of the citizen that he who is invested with the pardoning power is exposed to a variety of influences, individual and political, which have a powerful, and often, as practice shows, an irresistible effect, although there is no inherent connection between

them and the cases to which the pardon is applied—influences, therefore, which in this respect are arbitrary or accidental. All arbitrariness, however, is odious to sterling freedom in general, and the arbitrary use of the pardoning power and its frequency produce the most disastrous consequences in particular.

It unsettles the general and firm reliance on the law, an abiding confidence in its supremacy, and a loyal love of justice.

It destroys the certainty of punishment, which is one of the most important and efficacious elements in the whole punitory scheme; and it increases the hope of impunity, already great, in the criminally disposed, according to the nature of man and the necessary deficiency even of the best contrived penal systems.

It endangers the community, since it is perfectly true what the prince of poets, in his great wisdom, has said :

Mercy is not itself, that oft looks so;
Pardon is still the nurse of second wo.

It interferes most effectually with the wise objects of reform which our penitentiary systems aim at; for all men, practically acquainted with their operation, are agreed that reform never fairly begins in a convict before he has calmly made up his mind to submit to the punishment, and so long as a hope of pardon leads his thoughts from the prison cell to the anticipated enjoyment of undue enlargement—a phenomenon easily to be accounted for upon psychological grounds.

It induces large numbers of well-disposed persons, male and female, from a superficial feeling of pity, to meddle with cases of which they have no detailed knowledge, and with a subject the grave importance of which has never presented itself to their minds. At times it induces persons to seek for pardons on frivolous grounds and leads communities to trifle with law, justice and government.¹

It largely attracts to the community, in which the pardoning power is known to be abused, criminals from foreign parts where such an abuse does not exist; it imports crime.

¹ At the beginning of 1858 it appeared from certain documents published in California, that a petition to the governor, numerously signed by citizens of Monterey, to pardon one Jose Anastasia, under the sentence of death, claimed the pardon on the ground that Jose was the only fiddler in Monterey that understood properly to play for dancing.

It makes every sentence, not pardoned, an unjust one; for, in matters of state, every act should be founded on right and equal justice.¹ No one, therefore, has the right, whatever his power may be, to extend a favor to one without extending it to all equally situated, and, consequently, equally entitled to the favor. The doctrine of Dr. Paley, of "assigning capital punishment to many kinds of offences, but inflicting it only upon a few examples of each kind," which he actually calls one of the "two methods of administering penal justice," amounts to revolting monstrosity if practically viewed, and to an absurdity in a philosophical and scientific point of view.

It adds, with the very commonly annexed condition of expatriation, the flagrant abuse of saddling, in an inhuman, unchristian, and unstatesmanlike manner, neighboring communities with crime, to which the people, whose sacred and bounden duty it was to punish it, were too weak and negligent to mete out its proper reward.²

And it places an arbitrary power in the hands of a single individual, or several individuals, in states where all arbitrary power is disclaimed, and allows them by one irresponsible act to defeat the ends of toilsome, costly, and well-devised justice and legislation, putting the very objects of civil government to naught.

We do not theorize on this subject. All the disastrous effects of the abuse of the pardoning power, whether inherent in the power itself, when unlimited by proper restrictions, or arising out of a state of things peculiar to ourselves, have shown themselves among us in an alarming degree, and are in many parts of the country on the increase.

¹ Lord Mansfield is reported justly to have remarked to George III., who wished to save the Rev. Dr. Dodd from the gallows, to which he had been sentenced for forgery: "If Dr. Dodd does not suffer the just sentence of the law, the Perreaus may be said to have been murdered." Holliday's *Life of Lord Mansfield*, London, 1797, p. 149. The Perreaus were apothecaries of very high standing, but had been hanged for forgery, in spite of the most weighty petitions.

² This unhallowed abuse has been raised into a law by Sir George Grey's Expatriation Law, passed in 1847, according to which convicts who behave well shall be pardoned after the lapse of two-thirds of the imprisonment to which they had been originally sentenced, *provided* they will leave the country.

For the proof of this evil state of things we appeal to every one in our whole country who has made penal matters the subject of earnest inquiry ; we appeal to the fact that, for a long series of years, the official reports of persons connected with prisons and penitentiaries, and of legislative committees, have teemed with complaints of the mischievous effects of the pardoning power ; we appeal to the daily papers, near and far, and to recent occurrences in one of our most prominent states, where pardons have been granted to blood-stained criminals of the most dangerous, persevering, and resolute sort, without even the least indication of their reform, after a short time of imprisonment, which had already been substituted for capital punishment ; we appeal to the statistics, whenever they have been collected, from official documents, on this melancholy subject ; and, lastly, we appeal to the presentments of grand juries in several states of our Union, in which the frequency of pardons under some governors has been called by the severe yet merited name of nuisance.

So long ago as the year 1832, Messrs. de Beaumont and de Tocqueville showed, in their work on the penitentiary system in the United States,¹ by documents and statistical tables, the frightful abuse of the pardoning power in the United States in general, and the additional abuse, naturally resulting from the circumstances, that pardon is more liberally extended to those convicts who are sentenced to a long period of imprisonment, or for life, than to less criminal persons. We refer especially to the 2d part of the 16th note of the appendix, page 232 of the translation. We are aware that in some, perhaps in many states of the Union, the pardoning power has been used more sparingly since that time ; but it will be observed that there is no security against a return to the former state of things ; nor is the effect of pardoning, when it is rare, yet abused in a few glaring cases, which attract universal notice, less injurious ; for instance, when the member of a wealthy or distinguished family is pardoned, although guilty of a well-proven heinous crime, or when men are pardoned on political grounds, although they have committed infamous and revolting offences. Such cases have a peculiar tendency to loosen the necessary bonds of a law-abiding and law-relying community, which

¹ Translated, with many additions, by Francis Lieber, Philadelphia, 1833.

has nothing else, and is proud of having nothing else, to rely upon than the law.

Many years ago Mr. M. Carey said, in his *Thoughts on Penitentiaries and Prisons*: "The New York committee ascertained that there are men who make a regular trade of procuring pardons for convicts, by which they support themselves. They exert themselves to obtain signatures to recommendations to the executive authority to extend pardon to them by whom they are employed. And in this iniquitous traffic they are generally successful, through the facility with which respectable citizens lend their names, without any knowledge of the merits or demerits of the parties. Few men have the moral courage necessary to refuse their signatures when applied to by persons apparently decent and respectable, and few governors have the fortitude to refuse."

To this statement we have now to add the still more appalling fact, which we would pass over in silence if our duty permitted it, that but a short time ago the governor of a large state—a state amongst the foremost in prison discipline—was openly and widely accused of having taken money for his pardons. We have it not in our power to say whether this be true or not; but it is obvious that a state of things which allows suspicions and charges so degrading and so ruinous to a healthy condition of public opinion, ought not to be suffered.¹ It shows that, leaving the pardoning privilege, uncontrolled in any way, to a single individual, is contrary to a substantial government of law, and hostile to a sound commonwealth.²

¹ While these sheets are passing through the press, the papers report that the governor of a large state has pardoned thirty criminals, among whom were some of the worst character, at one stroke, on leaving the gubernatorial chair. What a legacy to the people! Lord Brougham said that the only aim of counsel for the prisoner was to get him clear, no matter what the consequences might be. If all the lawyers acted on this saying, and all the executives as the mentioned governor, Justice might as well shut up her halls, and the people save the expenses which they incur for the administration of justice. It is paying too dear for a farce, which is not even entertaining.

² In some of the worst governments, as those of Charles II., James II., and Louis XV., pardons were sold, but not by the pardoning ruler. It was the mistresses and courtiers who carried on the infamous traffic, though the monarchs knew about it.

A very interesting paper, relating to the subject of pardon, was furnished in the year 1846 by the secretary of state, of Massachusetts, and published by the house of representatives of that commonwealth. The paper is, of itself, of much interest to every penologist; but, when we consider that Massachusetts justly ranks amongst the best governed states of our Union, its value is much enhanced; for we may fairly suppose that the abuse of the pardoning power exists in many of the other states in no less a degree. In many, indeed, we actually know it to exist in a far greater and more appalling degree.

From this document,¹ we have arrived at the following results:

There were imprisoned in the state of Massachusetts, from the year 1807, inclusive, to the month of February, 1847, in the state prisons, convicted, 3,850.

Of these were pardoned, before the term of imprisonment expired, 460. So that of the whole were pardoned 12 per cent., or every eighth convict.

The average time of remaining in prison (of these 460,) compared to the time of their original sentence, amounted to 65 per cent. In other words, they remained in prison but two-thirds of the time of imprisonment imposed upon them by the law of the state.

Of the 460 pardoned convicts, there had been originally sentenced to the imprisonment of ten years, or more, the number of 49. And the time which these convicts had actually remained in prison, compared to the terms of their original conviction, amounts to 60 per cent.; so that a criminal sentenced to ten years, or more, had a better chance of having his imprisonment shortened, than those sentenced to a period less than ten years, in the proportion of about six to seven—in other words, while the less guilty was suffering a week's imprisonment, the prisoners of the darkest dye suffered six days only.

There were committed for life, by commutation of sentence, and still farther pardoned at a later period, from 1815 to 1844 inclusive, seventy-five. The average time they actually remained in prison was a fraction over seven years. So that, if we take twenty-five years as the average time of a sentence of imprisonment for life,

¹ House of Representatives, of Massachusetts, 1846, No. 63.

we find that they remained in prison but little over one-fourth of the time which had been allotted to them, in consequence of a first pardon, (twenty-five per cent.,) or the executive substituted seven years' imprisonment for death decreed by law. There were altogether, committed for life by commutation of sentence, fifteen. And, as we have seen that five of these were farther pardoned, we find that one-third of the whole were pardoned (thirty-three per cent.) It does not appear how many criminals were sentenced to death, and what proportion, therefore, had their sentences commuted to imprisonment for life.

The abuse of pardoning in the state of Massachusetts has, however, much decreased during the latter part of the period through which the mentioned report extends; for, according to a table published in the able and instructive third report of the New York Prison Association, 1847, page 41 of the report of the Prison Discipline Committee, we find that from 1835 to 1846, there was pardoned in Massachusetts one convict of 1,804; while our statement shows that in the period from 1807 to 1846 every eighth convict was pardoned.

We beg leave to copy the chief result of the table just mentioned.¹

¹ While the work was passing through the press, a document, published by the Massachusetts convention to amend the state constitution, reached the writer. It contains "A List of Pardons, Commutations and Remissions of Sentence, granted to Convicts by the Executive of the Commonwealth for the ten years including 1843 and 1852." Unfortunately this important paper, which contains the names of the persons, sentences, number of years sentenced, number of years remitted, and the crimes, does not give any classifications, summings-up or comparisons with the number of sentences and unremitted punishments. It only exhibits the following recapitulation for 10 years from 1843 to 1852:

Full Pardons	36
Remissions	319
Restorations	103
Commutations	35
Total	483

This paper will doubtless be made the basis of very instructive statistical calculations, and it is greatly to be desired that other states would follow. As it is, I am incapable of giving at this moment any other information. It would require other documents, which I have not about me. My remarks

Table showing the pardons in the following prisons in one or several years from 1845 to 1846.

Vermont,	one convict pardoned of	5.87	convicts.
Maine,	" "	20.74	"
New Hampshire,	" "	4.56	"
Connecticut,	" "	36.50	"
Massachusetts,	" "	18.04	"
Virginia,	" "	33.31	"
Maryland,	" "	41.00	"
Sing Sing,	" "	21.25	"
Auburn,	" "	17.83	"
Eastern Penitentiary,	" "	20.37	"
Western Penitentiary,	" "	6.43	"
Mississippi,	" "	10.81	"
Kentucky,	" "	8.50	"
District of Columbia,	" "	87.00	"
Ohio,	" "	11.31	"
Rhode Island,	" "	18.00	"

If we take the above list as a fair representation of the whole United States, we shall find that one convict of 26.33 is pardoned. But we fear that this would not be very correct; nor must it be believed that any average *number* fairly represents the average *mischief* of the abuse of pardoning. Although there be but very few convicts pardoned in a given community, yet incalculable mischief may be done by arbitrarily or wickedly pardoning a few prominent and deeply stained criminals, as the average temperature of a place may turn out very fair at the end of a year, while, nevertheless, a few blasting night-frosts may have ruined the whole crop.

are not intended to reflect on the gentleman who has drawn up the paper; for it appears that the convention ordered the paper on the 18th of June, and on July 5th it was handed in. There was then no time to collect the materials for comparisons such as I have alluded to. What is now most important to know is the sum total of what sentences for what crimes were chiefly remitted or pardoned; for what reasons, what proportion pardons, &c., bear to unremitted sentences; for what crimes and what duration these sentences were inflicted; of what countries the pardoned, &c., convicts were; and what proportion the pardoned, &c., short sentences bear to pardoned, &c., long sentences or death.

It ought to be kept in mind that, in all calculations of probability, averages must be taken with peculiar caution in all cycles of facts in which an exceptionally high or low state of things produces effects of its own, differing not only in degree but also in kind from the effects which result from the more ordinary state of things. In these cases averages indicate very partial truth only, or cannot be taken as an index of the desired truth at all. The effects of these maxima or minima are not distributive, and being effects of a distinct class there are no facts in the opposite direction to counteract them. This applies to moral as well as physical averages, and before we apply ourselves to averages at all we must distinctly know whether the elements we are going to use stand in the proper connection with the nature of the result at which we desire to arrive.¹

The abuse then exists, and exists in an alarming degree. How is it to be remedied?

In trying to answer this question, we would preface that we are well aware that, unfortunately, the pardoning power is in almost all states of our confederacy, determined by their constitutions, and cannot be changed without a change of these fundamental instruments. The object of the present paper, however, is not to propose any political measure. We shall treat the subject as a scientific one, and an open question, irrespective of what can or may be done in the different states in conformity with existing fundamental laws. It is necessary, before all, to know what is the most desira-

¹ A few examples may illustrate the truth too often forgotten: No farmer can determine the fitness of a given climate for the culture of a certain plant from the mean heat of the summer or the mean cold of the winter; for the mean heat does not indicate whether the weather is uniform or violently changeable; the mean interest at which money may have been obtainable in the course of the year does not indicate the truth, unless we know that it has not been peculiarly low at some periods and extraordinarily high at others; the general criminality of a community cannot be calculated from the percentage of crime, unless we know that there has not been a peculiarly disturbing cause: for instance, one man who has murdered half a dozen of people in a comparatively small community; and the mischief produced by pardons cannot be calculated by the average percentage alone, if we do not know that among these pardons there were no some peculiarly arbitrary or peculiarly hostile to the ends of justice. A wholesale pardon may be warranted by the truest principles, and a single arbitrary pardon may shock the whole community.

ble object to be obtained. After this has been done, it will be proper for every one concerned to adopt that practical course which best meets his own peculiar circumstances, and to settle how near his own means allow him to approach the desirable end.

Many vague things have been asserted of the pardoning power by writers otherwise distinguished for soundness of thought, because they were unable to rid themselves of certain undefined views and feelings concerning princes and crowns. Some have maintained that the pardoning privilege can be justified only in the monarchy, because the monarch combines the character of the legislator and executive, while Montesquien wishes to restrict the right to the constitutional monarch alone, because he does not himself perform the judicial functions. All these opinions appear to us unsubstantial. There is nothing mysterious, nothing transcendental in the pardoning power. The simple question for us is, Why ought it to exist? If it ought to exist, who ought to be vested with it? What are its abuses, and how may we protect ourselves against them?

We have already seen that doubtless the pardoning power ought to exist:

That there is no inherent necessity that it ought to exist in the executive, or in the executive alone:

That a wide-spread abuse of the pardoning power exists, and has existed at various periods:

That the abuse of the pardoning power produces calamitous effects:

That the executive in our country is so situated that, in the ordinary course of things, it cannot be expected of him that he will resist the abuse:

And that the chief abuse of the pardoning power consists in the substitution of an arbitrary use of power or of subjective views and individual feelings, for high, broad justice, and the unwavering operation of the law, which ought to be freed from all arbitrariness.

We know, moreover, that all our constitutions, as well as the laws of England, actually restrict the pardoning power in some cases; for instance, regarding impeachments, or fines to be paid to private parties; and in most of our states the executive is not invested with the right of pardoning treason, which can only be done

by the legislature.¹ In others, again, the governor has no authority to pardon capital punishment before the end of the session of that legislature which first meets after the sentence of death has been pronounced; and in other states he has only the power of respiting the capitally condemned criminal until the meeting of the legislature. It is obvious that no specific reason has induced our legislators to give the pardoning power to the executive. It was rather left where they happened to find it, or they placed it by analogy, and not in consideration of any intrinsic reasons.²

If it be true that pardon ought to be granted only in cases in which essential justice demands it *against* the law, or for very specific and peculiar reasons—for instance, if a convict, sentenced to a short imprisonment, is so feeble in health, that, no proper hospital existing, the incidental consequences of imprisonment would be infinitely severer than the law intended the punishment to be³ (and

¹ The Constitution of the late French Republic of 1848 has this provision:

“Art. 65. He (the president of the republic) shall possess the right of pardon, but he shall not have the power to exercise the right until after he has taken the advice of the council of state. Amnesties shall only be granted by an express law. The president of the republic, the ministers, as well as all other persons condemned by the high court of justice, can only be pardoned by the national assembly.”

I do not consider it desirable that the pardoning power be given or imposed upon a political body already existing for other purposes, as in this case to the council of state; but I have cited this provision to show that the French at that time did not consider the limitation of the pardoning power in the executive unfavorable to popular liberty.

² A remarkable proof of this fact seems to have been afforded by the late constituent assembly of the state of New York; for, so far as we are aware, there was no debate on the question whether the pardoning power ought to be left uncontrolled in the hands of the executive. We can very well imagine that, after a discussion of this subject, a majority might have decided, erroneously in our opinion, that the pardoning privilege ought to remain where it was; but we cannot imagine that a large number of men could have possibly been from the beginning so unanimous upon so important a subject, that not even a discussion was elicited, had the pardoning been made a subject of any reflection at all. This is impossible in the nature of things. Men will differ in opinion upon almost any point, and would certainly have differed upon so weighty and delicate a subject, had their minds been directed to it.

³ We certainly think that ill health, threatening disastrous consequences, should form a ground of release in cases of comparatively short sentences,

is not this also a case of essential justice against the law?)—or because strong suspicions of innocence have arisen after the trial, it is equally clear that pardon ought to be granted after due investigation only, and that this investigation ought to be insured by law.

The pardoning power might be transferred from the executive to the legislature, or to an assembly of judges. We are emphatically averse to either measure. The legislature is composed of members elected to represent a variety of interests and views, all of which ought to have a proportionate weight in the formation of laws; but neither the reasons why, nor the objects for which legislators are elected have any connection with deciding upon a question of pardon. If the decision were left at once to the whole assembly, it would be impossible to give that degree of attentive examination to the details of each case which its nature requires, and a party feeling would frequently warp a decision which could be justified only on the ground of the highest and of essential justice. If the case were first given to a committee (as we may imagine a standing committee of pardon), and the legislature were regularly to follow the decision of the committee, the latter step is useless; if the legislature, however, were not to follow implicitly this decision, we have the incongruities just indicated. As to the forming

if no good prison hospital exists. But, even where no hospital exists (which is undoubtedly a great deficiency), much caution must be exercised. An experienced and highly respectable prison physician in Massachusetts stated in his report, some years ago, that pardons on account of deficient health had a tendency to increase sickness in the prison, because many prisoners will seriously and perseveringly injure their health in the hope of obtaining thereby a pardon. A prison ought to have a hospital, and if, in spite of a good hospital, the consciousness of being imprisoned has of itself any bad consequences for the imprisoned patient, it must be taken as one of the many incidental but unavoidable consequences of all imprisonment. There are more serious consequences than this, which we are, nevertheless, unable to separate from punishment. Punishment ought always to be individual, and to strike no one but the evil doer: yet there is hardly ever an individual punished whose sentence does not at the same time entail moral or physical suffering upon others. Men are decreed to constitute societies, with concatenated weal and woe, and human judges cannot punish without indirectly inflicting suffering upon those who are unconnected with the crime, but connected with the criminal. If we were absolutely to follow out the first principle, that the offender alone should suffer, we could not punish a single convict.

a board of pardon of judges alone, we think the case would be equally incongruous. The business of the judge, his duty, and his habit of thinking, are strictly to apply the law. He is a valuable magistrate only so long as he is a faithful organ of the established law; but, in the case of pardon, the object is neither to make nor to apply a law, but to defeat its operation in a given and peculiar case.

In order to constitute a proper authority, to which the pardoning privilege can be safely intrusted, we ought to organize it so that the following points are well secured:

That a careful investigation of each case take place before pardon be granted:

That the authority be sufficiently strong to resist importunity:

That it contain a sufficient amount of knowledge of the law, its bearing, and object:

That it enjoy the full confidence of the community.

These great objects, it is believed, can be obtained by a board of pardon, consisting of a proper number of members—say nine (in the republic of Geneva it consists of this number), with one or two judges among them, to be appointed by the legislature, with a periodical partial renovation (one-third leaving every three years), and with these farther provisions:

That the board sit at certain portions of the year—say twice:

That certain and distinct grounds must be stated in every petition for pardon; and that, without them, all petitions, ever so respectably and numerous signed, be not received:

That pardon can be granted by the governor only when duly recommended by the board; and must be granted if the board recommend it a second time, after the governor has returned the recommendation with his reasons against it:

That no pardon be recommended without advertising in the county where the convict has lived previous to his imprisonment, and where he has committed his crime, that the board have in view to recommend him to pardon, and without giving proper time to act upon the advertisement:

That no pardon be granted without informing, likewise, the warden of the prison, or prisons, in which the subject of the intended pardon is, or has been, incarcerated, of the intention of the board:

That no pardon be granted without previous inquiry of the court which has sentenced the convict :

And that the reasons of the pardon, when granted, be published.

Without some such guarantees, the pardoning power will always be abused. The advertising of the intention of pardoning will not be mistaken for an extra-constitutional and illegal call upon the county to exercise functions which do not belong to it, and ought not to belong to it, as, in reality, the governor of Ohio (years ago) respite the execution of a criminal guilty of an atrocious murder, informing, at the same time, the people of the county whence the criminal came, that he was desirous of knowing whether they wished the criminal pardoned or not.¹

Nor must it be believed that, while we recommend to inform the warden of a prisoner that his pardon is contemplated, we are desirous of countenancing a system of pardon founded upon the good conduct of the convicts in the prison. We consider such a measure inadmissible, for many reasons. It has been tried in France, on a large scale; and the effect was so bad that its own author obtained its abolition, confessing his error.² What we desire is, that proper information be obtained before a convict be pardoned, and that no imposition take place. It frequently happens that a pardon is obtained by persons unacquainted with the culprit, and a dangerous and infamous man is returned to a community which had the deepest interest in seeing the law take its uninterrupted course.

We think it proper that the executive, thus controlled on the one hand, and protected against importunities on the other, form a party to the pardon, because the actual release must go through his hands.

We doubt not that, if a board of pardoning were established, in a short time a series of fair principles and rules, somewhat like the rules of equity, would be settled by practice, and the pardoning would be far less exposed to arbitrary action.

Totally distinct, however, from the pardoning ought to be kept the *restitution* of a convict, when innocence has been proved after

¹ National Gazette, Philadelphia, October 10, 1833.

² De la Ville de Mirmont, Observations sur les Maisons Centrales de Detention de Paris, 1833, p. 55, and sequ.

conviction. It is a barbarous error to confound acknowledgment of wrong committed by society against an individual with the pardoning of a guilty person. Nothing can be pardoned where nothing is to be pardoned, or where the only pardoner is the convict. He is entitled to indemnity, and the process ought even to be called by a different name and differently to be provided for. Not long ago a person sentenced for forgery in England to transportation for a very long period or for life, we forget which, was pardoned after several years endurance of the sentence, because his innocence had been made patent. Some English papers justly remarked how incongruous a *pardon* is in such cases, where, in fact, the question is how a great and ruinous wrong committed by society against an individual may be repaired in some degree at least, and as far as it lies in human power. This is an important subject of its own, deserving the most serious attention of all civilized states, but does not fall within the province proper of pardoning.

FRANCIS LIEBER.

I append to this paper, besides the additional notes which the reader has seen, the following three items :

The official reports of the attorney-general of Massachusetts show that :

In 1850, prosecutions of crime cost in that state	\$66,589 36
1851, " " " "	71,078 18
1852, " " " "	63,900 68

To this must be added the cost of the courts, detective police, rewards, penitentiaries, prison support.

When we speak of the cost of crime in general, we must not only take into account the above items, but also the waste of property by criminals, and the loss of labor, for criminals by profession do not work, therefore do not produce.

The following extract of a speech by Lord Palmerston, secretary for the home department, June 1, 1853, in the commons, is very remarkable. *C'est tout comme chez nous.* I do not mean our quakers act thus, but women inconsiderately get up petitions, and are joined by busy religionists. Lord Palmerston said :

"That would be a very great evil, were any change of the law to bring it about. But let us see how the thing would work. Even

now, in cases of disputed rights of property, although it is generally matter of great scruple of conscience to depose to statements which are not consistent with truth, yet we frequently see evidence brought before courts of law not founded in fact. But in matters regarding life and liberty, I am sorry to say that benevolent individuals have very little conscience at all. (*'Hear!' and laughter.*) You may depend upon it that I have had too much experience of the truth of what I have stated. I get applications signed by great numbers of most respectable persons in favor of individuals with regard to whose guilt there can be no possible doubt, or any doubt that they have committed the most atrocious crimes. That is a matter of every-day occurrence. Not long ago, a member of the Society of Friends actually tried to bribe a witness to absent himself from the trial of a prisoner, in order to screen the man from punishment, of whose guilt no human being could doubt. If you had these second trials, you would have these pious frauds as frequently committed."

Lastly, I would put here a short newspaper paragraph—very simple yet very fearful.

"In the course of an editorial article, intended to show that it is the certainty, and not the severity, of punishment which is needed for the suppression of crime, the Pittsburg Commercial makes the following statement:—¹

"'In fifteen years, during which the annals of crime in this county have been stained by *more than fifty murders*, a single instance of hanging has been affirmed by the executive as the measure of extreme penalty due; and there justice was cheated of her victim by suicide!'"

¹ National Intelligencer, Washington, July 12, 1853.

APPENDIX III.

A PAPER ON SUBJECTS CONNECTED WITH THE INQUISITORIAL TRIAL AND THE LAWS OF EVIDENCE.

Few things, in my opinion, show more distinctly the early English character than the fact that, without vindictiveness or cruelty in the national character, the penal law inflicted death with a fearful disregard of human life, while at the same time the penal trial was carried on with great regard for individual rights and for the mode of ascertaining the truth. The English were from early times a peculiarly jural nation.

Those people who have the inquisitorial trial, on the other hand, were in some instances far less sanguinary in their punishments, but perfectly regardless of the trial, or, rather, the trial seemed to have been established chiefly for the prosecuting party. It aimed at knowing the truth; the means to arrive at it were little cared about. The rights of the prosecuted person appeared in a shadowy, undefined way. And all this continues to exist in many countries.

I do not speak here of the worst countries only. I do not mean to advert to the Austrian trial, as it was before the late revolutions. I refer, for instance, to the German penal trial; and mean by it the penal trial of the countries in which the common German law prevails, as well as those where, as in Prussia, a trial by statute law is introduced. The late revolutions have changed some items. The main ideas, however, remain, in many cases, the same.

Now, when a person accustomed to a regular and well-guarded penal trial reads such works as Feuerbach's *Criminal Cases*, or any detailed description of a penal trial, the laxity and incongruity of the procedure strike us among other things with reference to the following points:

1. The inquiring judge, that is, the judge who has been detailed, to use a military term, to lead the whole inquiry, and who has been day after day with the prisoner, and only one witness, viz. the secretary, and whose whole skill has been exerted to bring the prisoner

to confession, or to establish the crime, is also frequently the first sentencing judge, and always very powerfully influences the sentence. If there is a separate sentencing judge, all the "acts," that is, all that has been written down, is handed over to him, and from them he frames his sentence, upon which the other judges, if there are any, vote in plenary session. As a matter of course, they cannot know much about the subject, and must be guided by the report the sentencing judge makes.

2. The inquiring judge is, in many cases, what we would consider wholly unrestricted. He takes hearsay evidence, and all sorts of evidence, if he thinks proper. He is unrestricted as to time, and an accused person may be kept for years under trial. He is allowed to resort to all kinds of tricks, in order to work upon the imagination of the prisoner; for instance, calling him up at midnight, examining him and suddenly showing a skull to him. Every worthy and puerile motive to speak the truth, and confess the offence is resorted to.

3. There is no regular indictment, nor does the accused know in his examinations what is charged against him; at least the law does not demand that he shall know it.

4. The prisoner is constantly urged to confess; the whole trial assumes the act charged against the prisoner, and treats him accordingly. Indeed it may be said that, although not avowedly, yet virtually, the inquisitorial trial assumes in a very great degree the character of an accusation which the accused has to disprove, not one which the accuser is bound to prove. In some countries and in certain cases this is positively the case. Even the French penal trial is by no means wholly free from this serious fault.

5. There is no physical torture resorted to in order "to bring out" the truth, since the positive abolition of the torture, but the moral torture which is applied is immense, and the judge is authorized by law to punish with lashes or other physical means every contradiction or lie proved from the convict's own statements. That this can easily lead to all sorts of abuses is obvious.

6. There is no cross-examination of witnesses, and no stringent law to compel witnesses in favor of the prisoner to appear before the court.

7. Court and police frightfully mingle in their functions, in the first stages of the trial.

8. There is a most sorrowful defence, cautious, fearful of offending the judges upon whom the promotion of the defensor depends, and empowered to obtain certain points further cleared up only through the court, which is the prosecuting party. Besides, the defence only begins when the whole investigation by the court is at an end, that is to say, all the "acts" are handed over to the defensor. He studies them and writes the defence, which is given along with the "acts" to the sentencing judge.

No wonder that the Germans universally called for a total change of such a trial, and, as I stated before, some very important changes have taken place.

The chief incongruity in this inquisitorial trial, however, is that it admits of half proofs, two of which amount to a whole proof, with other logical flagrancies, as well as the legal flagrancy of "deficient proof," according to which a lighter punishment, but still a punishment, is inflicted.

It is hardly conceivable how an intelligent nation, advanced in the sciences, can have continued a logical absurdity of such crying character until the most recent times, and can continue it, in some parts of the country, to this day. It is reversing the order of things, and substituting evidence, the means of arriving at the fact, which is the thing to determine the punishment, for the criminal fact.

The principle from which we start in penal law is, that crime ought to be followed by evil, as a consequence of the crime. If crimes punished themselves, we should not want judges; if judges were omniscient, we should not want trials. The object of the trial is to prove that a crime has been committed, and that it has been committed by the indicted person. This is called establishing the fact, which means proving it—reproducing it, as it were, before the eyes of the judge; in one word, convincing him of the truth of the charge, of the fact, and the fact alone—the deed can be punishable. But the idea of a fact does not admit of degrees. There may, indeed, be every possible degree of belief in a judge from the first suspicion, from surmise, doubt, and belief, to the fullest conviction; but, if he metes out his punishments accordingly, he does not punish for facts done by others, but according to the degree of belief in himself. He substitutes his own subjective belief for the objective fact. Now, there cannot be half facts, or

three-fourths of facts. A man may, indeed, buy poison, to commit murder—he may add to this, the mixing of the poison with a soup; he may add to this, the carrying of the soup to the sick-room; and he may add to this again, the presenting of the soup to a patient, who finally consumes it; but all these successive acts are not parts of facts. Wherever the evil-minded man stopped, it was a fact; and, if it is punished, it is not punished as part of a crime, but the inchoate crime is a whole penal fact, and, as such, punished. Again, though four persons may, as witnesses, establish a fact, a truth, each witness does not prove, on that account, a fourth of the truth, which, like the fact, is one and indivisible. If they prove a chain which ultimately establishes a fact, they still prove but one fact, and each one proves for himself a whole truth, which, in connection with the other truths, establishes the ultimate truth.

If four not very creditable witnesses establish one fact, when I would not have believed either of them singly, because, in the assumed case, they corroborate one another, when no connivance can have taken place, they are in this case good witnesses, each one for himself, and not four witnesses, each one worth a fourth of a good witness. A thousand liars cannot, as liars, establish a truth, but they may testify under circumstances which deprive them of the character of liars, and thus be in the case good witnesses.

It is true; indeed, that man, conscious of his fallibility, and resolved severely to punish certain crimes, has laid down the rule that, to prove certain crimes in such a manner that the law shall consider them as proved, an amount of testimony shall be necessary which is not required for lighter offences. But this is only as a safeguard, so as to prevent, as far as in us lies, the unjust infliction of severe punishment. It has nothing to do with parts of truths, or parts of facts. It has nothing to do with logic. In barbarous times, however, it was actually conceived that logic itself is of a sliding character, as it were. The Ripuarian laws demanded seventy-two compurgators to absolve an incendiary, or murderer (*Leg. Ripuar.*, cap. vi. vii. and xi.) Here, the first error was to consider the accused as tainted, who must clear himself, and not as one accused, upon whom the deed must be proved. The second error was that the number of compurgators must rise to clear the tainted person, according to the *taint* (which, as yet, is nothing but accusation). The Koran prescribes, in certain cases, a number of

oaths—as though each oath, even of a person unworthy of belief, contained some truth, which, by repetition, could be accumulated, and ultimately form a whole truth. Not quite dissimilar is what we read in Gregory of Tours. When the chastity of a certain queen of France was suspected, three hundred knights swore, without hesitation, that the infant prince was truly begotten by her deceased husband. As if the oath of three hundred knights could have any weight, when none of them could know the fact. But, if people once fall into the error of demanding the proof of the negative to establish innocence, instead of demanding the proof positive of the charge, they must necessarily fall into all sorts of errors. The ecclesiastical law required, in a similar manner, or still requires, seventy witnesses to prove incontinency on a cardinal; and, in Spain, as Chancellor Livingston tells us, it required more witnesses to convict a nobleman than a commoner. This is pretty much the same logic which, as Captain Wilkes tells us, induces the Fijians to put more powder into the gun if they fire at a large man.

On the other hand, the idea of punishing according to the degree of conviction in the judge, namely, lightly, if light suspicion only has been existing, more severely, if belief has been created, and so on, would not have been wholly inconsistent in ancient times, when men had not yet succeeded in strictly separating the moral law from the law of nature, and when the punishment was considered as a sort of extinction of guilt—a neutralizing agent. This is a theory which actually some modern criminalists of prominence have endeavored to revive. According to them, the fact, not the deed, is punished—society has to wipe off the criminal fact which has occurred, and the punishment is like the minus put against the plus. But Aristotle already said, even the gods cannot make undone what has been done. The punishment would resemble the penitence which in early times kings had to undergo for great national calamities. If this unphilosophical view were true, it would be difficult to show why the criminal, who has committed the deed, is the one selected to re-establish the equilibrium or for the atonement. But the common sense of mankind has been in this case, as in a thousand others, sounder than theories of unpractical thinkers.

The judge who punishes half, because the evidence has sufficed to create half a conviction only, commits the same logical fault

which a navigator would commit who has seen but dimly something that may be a rock, and would go but half out of the way of the danger. I say he commits the same logical fault, although the effects would be the reverse.

Punishment, which is the intentional infliction of some sufferance as deserved sufferance (in which it differs from the infliction of pain by the surgeon), requires the establishment of the deed, and this is absolute. The various degrees of belief in the deed are only in the judge, not in the deed. The deed must determine the different degrees of infliction of pain or privation; all else is illogical.

If the reader has thought that I have dwelt too long on this topic, he must remember that millions are to this day subject to such legal logic as has been described.

It will be hardly necessary to refer in this place to the fact, that although the ascertainment of truth is the main object of the trial, it is not on that account allowed to resort to all and every means which may bring about this end. Sound sense and a due regard to the rights of individuals lead men to the conviction that a fixed law of evidence is necessary, and to prescribe rules according to which courts shall believe facts to be established, discarding all those means which may expose the accused to cruelty, which may be easily abused, which in turn may deceive, and whose effects in general would be worse than the good obtained. Truth, established according to those rules, is called legal truth. There can be but one truth, that is the conviction agreeing with fact, but truth may be established by various means, or by means agreeing with prescribed rules. There may be one witness who testifies that he has seen a man doing that, which, before the court can punish it, requires two witnesses. The judge may be thoroughly convinced that the witness speaks the truth; yet the truth would not be legally established—it would not be a legal truth. This, too, may appear unworthy of mention; but only to those who do not know how vehemently all persons hostile to liberty declaim against the dead letter of the law, the hollow formalism of the Anglican trial, and how anxious they are to substitute the subjective opinion of the judge for the positive and well-defined law. I may put it down here as a fact of historical interest that even so late as my early days I heard a criminalist of some distinction regret the abolition of "the question," *i. e.* the torture, and I speak gravely when I say

that, as times go, I should not be surprised if the re-establishment of the torture should once more be called for in some countries. Indeed, has the torture not been used? Mr. Gladstone's pamphlet on Neapolitan affairs tells us strange things.¹

¹ It would seem that the torture actually continues to exist in some parts of Europe. The following is taken from the London Spectator, of December 22d, 1849, which gives as its authority the well known Allgemeine Zeitung, published at Augsburg, and, consequently, not far from Switzerland.

"A strange circumstance, says the Allgemeine Zeitung, has just taken place at Herisau, the capital of Inner Appenzell, in Switzerland, showing how much, in these countries of old liberties, civilization is behindhand in some matters. A young girl of nineteen, some months back, assassinated her rival. Her lover was arrested with her, and, as she accused him of the crime, both were put to the torture. The girl yielded to the pain, and confessed her crime; the young man held firm in his denial: the former was condemned to death, and on the 7th of this month was decapitated with the sword, in the market-place of Herisau. This fact is itself a startling one, but the details are just as strange. For two hours the woman was able to struggle against four individuals charged with the execution. After the first hour the strength of the woman was still so great that the men were obliged to desist; the authorities were then consulted, but they declared that justice ought to follow its course. The struggle then recommenced, with greater intensity, and despair seemed to have redoubled the woman's force. At the end of another hour she was at last bound by the hair to a stake, and the sword of the executioner then carried the sentence into effect."

The author has touched upon the fact that, in our country, the abolition of trial by jury has been proposed, in the note appended to page 236. The topic is one of vital importance to our entire system of government and political existence. It is for this reason that he does not hesitate to direct the earnest student of law, and of government, to a German work of high merit—Mr. Mittermaier's *Legislation and Practice, with Reference to the Penal Trial, according to their recent Development*; Erlangen, 1856. The author had not become acquainted with this important work, when the page referred to, was printing; but the testimony given by the great criminalist, of the satisfactory results derived from trial by jury, even in countries where it has been recently established, has induced the author to append this note here, rather than leave his readers unacquainted with evidence of such weight in favor of so great an institution, considered by almost all friends of liberty as one of the substantial acquisitions obtained by our progressive race.

APPENDIX IV.

MAGNA CHARTA OF KING JOHN,

FIFTEENTH DAY OF JUNE, IN THE SEVENTEENTH YEAR OF THE KING'S
REIGN, A.D. 1215.

JOHN, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and earl of Anjou: to the archbishops, bishops, abbots, earls, barons, justiciaries of the forests, sheriffs, governors, officers, and to all bailiffs and other of his faithful subjects, greeting. Know ye, that we, in the presence of God, and for the health of our soul, and of the souls of our ancestors and heirs, and to the honor of God and the exaltation of holy church, and amendment of our kingdom, by advice of our venerable fathers, Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman church; Henry, archbishop of Dublin, William, bishop of London, Peter of Winchester, Jocelin, of Bath and Glastonbury, Hugh, of Lincoln, Walter, of Worcester, William, of Coventry, Benedict, of Rochester, bishops; and master Pandulph, the pope's subdeacon and ancient servant, brother Aymerrick, master of the temple in England, and the noble persons, William Marescall, earl of Pembroke, William, earl of Salisbury, William, earl of Warren, William, earl of Arundel, Alan de Galway, constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, and Hubert de Burghe, seneschal of Poitou, Hugo de Nevill, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip de Albine, Robert de Roppele, John Marescall, John Fitz Hugh, and others our liegemen; have, in the first place, granted to God, and by this our present charter confirmed for us and our heirs forever:

1. That the church of England shall be free, and enjoy her whole rights and liberties inviolable. And we will have them so to be observed; which appears from hence that the freedom of elections, which was reckoned most necessary for the church of England, of our own free will and pleasure we have granted and confirmed by our charter, and obtained the confirmation of from Pope Innocent

the Third, before the discord between us and our barons : which charter we shall observe, and do will it to be faithfully observed by our heirs forever.

II. We have also granted to all the freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to have and to hold to them and their heirs, of us and our heirs.

III. If any of our earls, or barons, or others who hold of us in chief, by military service, shall die, and at the time of his death his heir shall be of full age, and owe a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earl's barony, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and he that oweth less shall give less, according to the ancient custom of fees.

IV. But if the heir of any such shall be under age, and shall be in ward, when he comes of age he shall have his inheritance without relief or without fine.

V. The warden of the land of such heir, who shall be under age, shall take of the land of such heir only reasonable issues, reasonable customs, and reasonable services; and that without destruction or waste of the men or things; and if we shall commit the guardianship of those lands to the sheriff, or any other who is answerable to us for the issues of the land, and if he shall make destruction and waste upon the ward lands, we will compel him to give satisfaction, and the land shall be committed to two lawful and discreet tenants of that fee, who shall be answerable for the issues to us, or to him whom we shall assign. And if we shall give or sell the wardship of any such lands to any one, and he makes destruction or waste upon them, he shall lose the wardship, which shall be committed to two lawful and discreet tenants of that fee, who shall in like manner be answerable to us, as hath been said.

VI. But the warden, so long as he shall have the wardship of the land, shall keep up and maintain the houses, parks, warrens, ponds, mills and other things pertaining to the land, out of the issues of the same land; and shall restore to the heir, when he comes of full age, his whole land stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

VII. Heirs shall be married without disparagement, so as that before matrimony shall be contracted those who are nearest to the heir in blood shall be made acquainted with it.

VIII. A widow, after the death of her husband, shall forthwith, and without any difficulty, have her marriage and her inheritance; nor shall she give anything for her dower or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the capital messuage or mansion house of her husband, forty days after his death, within which term her dower shall be assigned.

IX. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband. But yet she shall give security that she will not marry without our assent, if she holds of us, or without the consent of the lord of whom she holds, if she holds of another.

X. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as there shall be chattels of the debtor's upon the premises, sufficient to pay the debt. Nor shall the sureties of the debtor be distrained, so long as the principal debtor is sufficient for the payment of the debt.

XI. And if the principal debtor fail in the payment of the debt, not having wherewithal to discharge it, then the sureties shall answer the debt; and if they will, they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid him; unless the principal debtor can show himself acquitted thereof, against the said sureties.

XII. If any one have borrowed anything of the Jews, more or less, and dies before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold. And if the debt falls into our hands, we will take only the chattel mentioned in the charter or instrument.

XIII. And if any one shall die indebted to the Jews, his wife shall have her dower, and pay nothing of that debt; and if the deceased left children under age, they shall have necessaries provided for them according to the tenement (or real estate) of the deceased; and out of the residue the debt shall be paid; saving, however, the service of the lords. In like manner let it be with debts due to other persons than the Jews.

XIV. No scutage or aid shall be imposed in our kingdom, un-

less by the common council of our kingdom, except to redeem our person, and make our eldest son a knight, and once to marry our eldest daughter; and for this there shall only be paid a reasonable aid.

XV. In like manner it shall be concerning the aids of the city of London; and the city of London shall have all its ancient liberties and free customs, as well by land as by water.

XVI. Furthermore, we will and grant that all other cities, and boroughs, and towns, and ports, shall have all their liberties and free customs; and shall have the common council of the kingdom, concerning the assessment of their aids, except in the three cases aforesaid.

XVII. And for the assessing of scutages we shall cause to be summoned the archbishops, bishops, abbots, earls, and great barons of the realm, singly by our letters.

XVIII. And furthermore we shall cause to be summoned in general by our sheriffs and bailiffs, all others who hold of us in chief, at a certain day, that is to say, forty days before the meeting, at least, to a certain place; and in all letters of such summons we will declare the cause of the summons.

XIX. And summons being thus made, the business shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

XX. We will not for the future grant to any one, that he may take aid from his own free tenants, unless to redeem his body, and to make his eldest son a knight and once to marry his eldest daughter; and for this there shall only be paid a reasonable aid.

XXI. No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence.

XXII. Common pleas shall not follow our court, but shall be holden in some certain place. Tryals upon the writs of novel disseisin, and of mort d'ancestor, and of darreine presentment, shall be taken but in their proper counties, and after this manner: We, or if we should be out of the realm, our chief justiciary, shall send two justiciaries through every county four times a year; who with the four knights chosen out of every shire by the people, shall hold the said assizes in the county, on the day and at the place appointed.

XXIII. And if any matters cannot be determined on the day appointed to hold the assizes in each county, so many of the

knights and freeholders as have been at the assizes aforesaid shall be appointed to decide them, as is necessary, according as there is more or less business.

XXIV. A freeman shall not be amerced for a small fault, but according to the degree of the fault; and for a great crime in proportion to the heinousness of it; saving to him his contenment, and after the same manner a merchant, saving to him his merchandise.

XXV. And a villain shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerциaments shall be assessed but by the oath of honest men of the neighborhood.

XXVI. Earls and barons shall not be amerced but by their peers, and according to the quality of the offence.

XXVII. No ecclesiastical person shall be amerced, but according to the proportion aforesaid, and not according to the value of his ecclesiastical benefice.

XXVIII. Neither a town or any person, shall be distrained to make bridges over rivers, unless that anciently and of right they are bound to do it.

XXIX. No sheriff, constable, coroners, or other our bailiffs, shall hold pleas of the crown.

XXX. All counties, hundreds, wapentakes and trethings shall stand at the old ferm, without any increase, except in our demesne lands.

XXXI. If any one that holds of us a lay fee dies, and the sheriff or our bailiff show our letters patents of summons concerning the debt due to us from the deceased, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the deceased found upon his lay fee, to the value of the debt, by the view of lawful men, so as nothing be removed until our whole debt be paid; and the rest shall be left to the executors to fulfil the will of the deceased; and if there be nothing due from him to us, all the chattels shall remain to the deceased, saving to his wife and children their reasonable shares.

XXXII. If any freeman dies intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by the view of the church, saving to every one his debts which the deceased owed.

XXXIII. No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently gives him money for it, or hath respite of payment from the seller.

XXXIV. No constable shall distrain any knight to give money for castle guard, if he himself shall do it in his own person, or by another able man, in case he shall be hindered by any reasonable cause.

XXXV. And if we shall lead him, or if we shall send him into the army, he shall be free from castle guard for the time he shall be in the army by our command.

XXXVI. No sheriff or bailiff of ours, or any other, shall take horses or carts of any for carriage.

XXXVII. Neither shall we, or our officers, or others, take any man's timber for our castles, or other uses, unless by the consent of the owner of the timber.

XXXVIII. We will retain the lands of those that are convicted of felony but one year and a day, and then they shall be delivered to the lord of the fee.

XXXIX. All weirs for the time to come shall be demolished in the rivers of Thames and Medway, and throughout all England, except upon the sea-coast.

XL. The writ which is called *præcipe* shall not for the future be granted to any one of any tenement whereby a free man may lose his cause.

XLI. There shall be one measure of wine and one of ale through our whole realm, and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth and russets and haberjects, that is to say, two ells within the list; and the weights shall be as the measures.

XLII. From henceforward nothing shall be given or taken for a writ of inquisition, from him that desires an inquisition of life or limb, but shall be granted gratis, and not denied.

XLIII. If any one holds of us by fee farm, or socage, or burgage, and holds lands of another by military service, we will not have the wardship of the heir or land, which belongs to another man's fee, by reason of what he holds of us by fee farm, socage, or burgage; nor will we have the wardship of the fee farm, socage, or burgage, unless the fee farm is bound to perform military service.

XLIV. We will not have the wardship of an heir, nor of any

land which he holds of another by military service, by reason of any petit-serjeanty he holds of us, as by the service of giving us arrows, daggers, or the like.

XLV. No bailiff for the future shall put any man to his law, upon his single accusation, without credible witnesses produced to prove it.

XLVI. No freeman shall be taken, or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed; nor will we pass upon him, or commit him to prison, unless by the legal judgment of his peers, or unless by the law of the land.

XLVII. We will sell to no man, we will deny no man, or defer right or justice.

XLVIII. All merchants shall have safe and secure conduct to go out of and to come into England, and to stay there, and to pass, as well by land as by water, to buy and sell by the ancient and allowed customs, without any evil toll, except in time of war, or when they shall be of any nation in war with us.

XLIX. And if there shall be found any such in our land in the beginning of a war, they shall be attached, without damage to their bodies or goods, until it may be known unto us, or our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, theirs shall be safe in our lands.

L. It shall be lawful for the time to come, for any one to go out of our kingdom, and return safely and securely by land or by water, saving his allegiance to us; unless in time of war, by short space, for the benefit of the kingdom, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be in such condition as is above mentioned.

LI. If any man holds of any escheat, as of the honor of Wallingford, Nottingham, Bologne, Lancaster, or of other escheats which are in our hands, and are baronies, and dies, his heir shall not give any other relief, or perform any other service to us than he would to the baron, if the barony were in possession of the baron; we will hold it after the same manner the baron held it.

LII. Those men who dwell without the forest, from henceforth shall not come before our justiciaries of the forest upon summons, but such as are impleaded or are pledges for any that were attached for something concerning the forest.

LIII. We will not make any justiciaries, constables, bailiffs or

sheriffs, but what are knowing in the laws of the realm, and are disposed duly to observe it.

LIV. All barons who are founders of abbies, and have charters of the kings of England for the advowson, or are entitled to it by ancient tenure, may have the custody of them, when void, as they ought to have.

LV. All woods that have been taken into the forests, in our own time, shall forthwith be laid out again, and the like shall be done with the rivers that have been taken or fenced in by us, during our reign.

LVI. All evil customs concerning forests, warrens, and foresters warreners, sheriffs and their officers, rivers and their keepers, shall forthwith be inquired into in each county, by twelve knights of the same shire, chosen by the most creditable persons in the same county, and upon oath; and within forty days after the said inquest be utterly abolished, so as never to be restored.

LVII. We will immediately give up all hostages and engagements, delivered unto us by our English subjects as securities for their keeping the peace, and yielding us faithful service.

LVIII. We will entirely remove from our bailiwicks the relations of Gerard de Athyes, so as that for the future they shall have no bailiwick in England. We will also remove Engelard de Cygony, Andrew, Peter, and Gyon de Canceles, Gyon de Cygony, Geoffrey de Martyn and his brothers, Philip Mark and his brothers, and his nephew Geoffrey, and their whole retinue.

LIX. And as soon as peace is restored, we will send out of the kingdom all foreign soldiers, crossbowmen and stipendiaries, who are come with horses and arms, to the injury of our people.

LX. If any one hath been dispossessed or deprived by us without the legal judgment of his peers, of his lands, castles, liberties or right, we will forthwith restore them to him; and if any dispute arises upon this head, let the matter be decided by the five and twenty barons hereafter mentioned, for the preservation of the peace.

LXI. As for all those things of which any person has without the legal judgment of his peers been dispossessed or deprived, either by king Henry, our father, or our brother, king Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the Croises; excepting those things

about which there is a suit depending, or whereof an inquest hath been made by our order, before we undertook the crusade. But when we return from our pilgrimage, or if we do not perform it, we will immediately cause full justice to be administered therein.

LXII. The same respite we shall have for disafforesting the forests, which Henry, our father, or our brother, Richard, have afforested; and for the wardship of lands which are in another's fee, in the same manner as we have hitherto enjoyed these wardships, by reason of a fee held of us by knight's service, and for the abbies founded in any other fee than our own, in which the lord of the fee claims a right; and when we return from our pilgrimage, or if we should not perform it, we will immediately do full justice to all the complainants in this behalf.

LXIII. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other man than her husband.

LXIV. All unjust and illegal fines, and all amerciaments, imposed unjustly and contrary to the law of the land, shall be entirely forgiven, or else left to the decision of the five and twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the foresaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall nevertheless go on without him; but so that if one or more of the five and twenty barons aforesaid be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room out of the said five and twenty, and sworn by the rest to decide that matter.

LXV. If we have disseised or dispossessed the Welsh of any lands, liberties, or other things, without the legal judgment of their peers, they shall be immediately restored to them. And if any dispute arises upon this head, the matter shall be determined in the Marches, by the judgment of their peers; for tenements in England, according to the law of England; for tenements in Wales, according to the law of Wales; for tenements in the Marches, according to the law of the Marches; the same shall the Welsh do to us and our subjects.

LXVI. As for all those things of which any Welshman hath, without the legal judgment of his peers, been disseised or deprived, by king Henry, our father, or our brother, king Richard,

and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the Croisaders; excepting those things, about which a suit is pending, or whereof an inquest has been made by our order, before we undertook the crusade. But when we return, or if we stay at home, and do not perform our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh, and of the parts aforementioned.

LXVII. We will without delay dismiss the son of Lewelin, and all the Welsh hostages, and release them from the engagements they entered into with us for the preservation of the peace.

LXVIII. We shall treat with Alexander, king of Scots, concerning the restoring of his sisters, and hostages, and rights and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the engagements which his father William, late king of Scots, hath entered into with us, it ought to be otherwise; and this shall be left to the determination of his peers in our court.

LXIX. All the aforesaid customs and liberties which we have granted to be holden in our kingdom, as much as it belongs to us towards our people, all our subjects, as well clergy as laity, shall observe, as far as they are concerned, towards their dependents.

LXX. And whereas, for the honor of God and the amendment of our kingdom, and for quieting the discord that has arisen between us and our barons, we have granted all the things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the following security, namely: that the barons may choose five and twenty barons of the kingdom, whom they shall think convenient, who shall take care with all their might to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present charter confirmed. So as that if we, our justiciary, our bailiffs, or any of our officers, shall in any case fail in the performance of them towards any person, or shall break through any of these articles of peace and security, and the offence is notified to four barons, chosen out of the five and twenty aforementioned, the said four barons shall repair to us, or to our justiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed without delay; and if it is not redressed by us, or, if we should chance to be out of the

realm, if it is not redressed by our justiciary within forty days, reckoning from the time it has been notified to us, or to our justiciary, if we should be out of the realm, the four barons aforesaid shall lay the cause before the rest of the five and twenty barons, and the said five and twenty barons, together with the community of the whole kingdom, shall distrein and distress us in all the ways possible; namely, by seising our castles, lands, possessions, and in any other manner they can, till the grievance is redressed to their pleasure, saving harmless our own person, and the persons of our queen and children; and when it is redressed, they shall obey us as before.

LXXI. And any person whatsoever in the kingdom may swear that he will obey the orders of the five and twenty barons aforesaid, in the execution of the premises, and that he will distress us jointly with them, to the utmost of his power; and we give public and free liberty to any one that will swear to them, and never shall hinder any person from taking the same oath.

LXXII. As for all those of our subjects, who will not of their own accord swear to join the five and twenty barons in distreining and distressing us, we will issue our order to make them take the same oath as aforesaid.

LXXIII. And if any one of the five and twenty barons dies, or goes out of the kingdom, or is hindered any other way from putting the things aforesaid in execution, the rest of the said five and twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest.

LXXIV. In all things that are committed to the charge of these five and twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, or some of them summoned will not, or cannot come, whatever is agreed upon or enjoyed by the major part of those who are present shall be reputed as firm and valid as if all the five and twenty had given their consent; and the foresaid five and twenty shall swear that all the premises they shall faithfully observe, and cause with all their power to be observed.

LXXV. And we will not, by ourselves or others, procure anything whereby any of these concessions and liberties be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other.

LXXVI. And all the ill-will, anger and malice that hath arisen between us and our subjects of the clergy and laity, from the first breaking out of the dissension between us, we do fully remit and forgive. Moreover, all trespasses occasioned by the said dissensions, from Easter, in the sixteenth year of our reign, till the restoration of peace and tranquillity, we hereby entirely remit to all, clergy as well as laity, and as far as in us lies, do fully forgive.

LXXVII. We have moreover granted them our letters patents testimonial of Stephen, lord-archbishop of Canterbury, of Henry, lord-archbishop of Dublin, and the bishops aforesaid, as also of master Pandulph, for the security and concessions aforesaid.

LXXVIII. Wherefore we will, and firmly enjoin, that the church of England be free, and that all men in our kingdom have and hold all the aforesaid liberties, rights and concessions, truly and peaceably, freely and quietly, fully and wholly, to themselves and their heirs, of us and our heirs, in all things and places forever, as is aforesaid.

LXXIX. It is also sworn, as well on our part as upon the part of the barons, that all the things aforesaid shall faithfully and sincerely be observed.

Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Runningmede, between Windelsore and Staines, the 17th day of June, in the 17th year of our reign.

[The great charter has been repeatedly amended and confirmed. I take the liberty of copying the following down to the end of page 201, from Mr. Creasy's Text-Book of the Constitution.¹]

¹ The Text-Book of the Constitution, Magna Charta, The Petition of Right and the Bill of Rights, with Historical Comments and Remarks on the Present Political Emergencies, by E. S. Creasy, M. A., Barrister-at-Law, Professor of History in University College, London, &c. London, 1848. A small work of 63 pages, excellent in its kind.

Since the first edition of the Civil Liberty was issued, Mr. Creasy has published *The Rise and Progress of the English Constitution*, London, 1853; the third edition of which was republished, in 1856, in New York, 12mo., 850 pages. It is the best book for the student to commence the study of the British Constitution, and preparatory for Hallam's *Constitutional History of England*. Throughout the present work it must have appeared that a knowledge of the English Constitution and of its history, is indispensable for a correct understanding of our own, and I recommend the work of Mr. Creasy, in this point of view, to every young American student.

MAGNA CHARTA,

THE GREAT CHARTER,

(TRANSLATED AS IN THE STATUTES AT LARGE,)

MADE IN THE NINTH YEAR OF KING HENRY THE THIRD, AND CONFIRMED BY KING EDWARD THE FIRST, IN THE FIVE AND TWENTIETH YEAR OF HIS REIGN.

Edward, by the grace of God king of England, lord of Ireland, and duke of Guyan : to all archbishops, bishops, &c. We have seen the great charter of the lord Henry, sometimes king of England, our father, of the liberties of England, in these words :

“Henry, by the grace of God king of England, lord of Ireland, duke of Normandy and Guyan, and earl of Anjou: to all archbishops, bishops, abbots, priors, earls, barons, sheriffs, provosts, and officers, and to all bailiffs and other our faithful subjects, which shall see this present charter, greeting : Know ye, that we, unto the honor of almighty God, and for the salvation of the souls of our progenitors and successors, kings of England, to the advancement of holy church and amendment of our realm, of our mere and free will, have given and granted to all archbishops, bishops, abbots, priors, earls, barons, and to all freemen of this our realm, these liberties following, to be kept in our kingdom of England forever.”

CHAPTER I.

A Confirmation of Liberties.

“First, we have granted to God, and by this our present charter have confirmed for us and our heirs forever, that the church of England shall be free, and shall have all her whole rights and liberties inviolable. We have granted, also, and given to all the freemen of our realm, for us and our heirs forever, these liberties underwritten, to have and to hold to them and their heirs, of us and our heirs forever.”

CHAPTER II.

The Relief of the King's Tenant of full Age.

[Same as 2d chapter of John's Charter.]

CHAPTER III.

The Wardship of the Heir within Age. The Heir a Knight.

[Similar to 3d chapter of John's Charter.]

CHAPTER IV.

No waste shall be made by a Guardian in waste lands.

[Same as 4th chapter of John's Charter.]

CHAPTER V.

*Guardians shall maintain the Inheritance of Wards. Of
Bishoprics, &c.*

[Similar to 5th chapter of John's Charter, with addition of like provisions against the waste of ecclesiastical possessions while in the king's hand during a vacancy in the see, &c.]

CHAPTER VI.

Heirs shall be Married without Disparagement.

[Similar to 6th chapter of John's Charter.]

CHAPTER VII.

*A Widow shall have her Marriage, Inheritance and Quarantine.
The King's Widow, &c.*

[Similar (with additions) to the 7th and 8th chapters of John's Charter.]

CHAPTER VIII.

How Sureties shall be charged to the King.

[Same as 9th chapter of John's Charter.]

CHAPTER IX.

The Liberties of London and other Cities and Towns confirmed.

[Same as 13th chapter of John's Charter.]

CHAPTER X.

None shall distrain for more Service than is due.

[Same as 16th chapter of John's Charter.]

CHAPTER XI.

Common Pleas shall not follow the King's Court.

[Same as 17th chapter of John's Charter.]

CHAPTERS XII. & XIII.

When and before whom Assizes shall be taken. Adjournment for Difficulty. Assizes of Darrein Presentment.

[Analogous to 18th and 19th chapters of John's Charter.]

CHAPTER XIV.

How Men of all sorts shall be amerced, and by whom.

[Same as 20th and 21st chapters of John's Charter.]

CHAPTERS XV. & XVI.

Making and defending of Bridges and Banks.

[Similar to 23d chapter of John's Charter.]

CHAPTER XVII.

Holding Pleas of the Crown.

[Same as 24th chapter of John's Charter.]

CHAPTER XVIII.

The King's Debtor dying, the King shall be first paid.

[Same as 26th chapter of John's Charter.]

CHAPTERS XIX., XX. & XXI.

Purveyors for a Castle. Doing of Castle-ward. Taking of Horses, Carts and Woods.

[Same as 28th, 29th, 30th and 31st chapters of John's Charter.]

CHAPTER XXII.

How long Felons' Lands shall be holden by the King.

[Same as 32d chapter of John's Charter.]

CHAPTER XXIII.

In what places Wears shall be put down.

[Same as 33d chapter of John's Charter.]

CHAPTER XXIV.

In what case a Præcipe in Capite is grantable.

[Same as 14th chapter of John's Charter.]

CHAPTER XXV.

There shall be but one Measure through the Realm.

[Same as 35th chapter of John's Charter.]

CHAPTER XXVI.

Inquisition of Life and Member.

[Same as 38th chapter of John's Charter.]

CHAPTER XXVII.

Tenure of the King in Socage, and of another by Knight's Service. Petit Serjeanty.

[Same as 37th chapter of John's Charter.]

CHAPTER XXVIII.

Wager of Law shall not be without witness.

[Same as 38th chapter of John's Charter.]

CHAPTER XXIX.

None shall be condemned without Trial. Justice shall not be sold or deferred.¹

"No freeman shall be taken, or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man, either justice or right."

CHAPTER XXX.

Merchant Strangers coming into this Realm shall be well used.

[Same as 41st chapter of John's Charter.]

CHAPTER XXXI.

Tenure of a Barony coming into the King's hands by Escheat.

[Same as 43d chapter of John's Charter.]

¹ See 39th and 40th chapters of John's Charter.

CHAPTER XXXII.

Lands shall not be Aliened to the Prejudice of the Lord's Service [i. e. Lord of the Fee].

CHAPTER XXXIII.

Patrons of Abbeys shall have the custody of them in time of Vacation.

[Same as 46th chapter of John's Charter.]

CHAPTER XXXIV.

In what cases only a Woman shall have an Appeal of Death.

[Same as 51st chapter of John's Charter.]

CHAPTER XXXV.

At what time shall be kept a County Court, a Sheriff's Term, and a Leet.

CHAPTER XXXVI.

No Land shall be given in Mortmain.

"It shall not be lawful from henceforth to any to give his lands to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom he received it: if any from henceforth give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee."

CHAPTER XXXVII.

A Subsidy in respect of this Charter and the Charter of the Forest granted to the King.

"Escuage from henceforth shall be taken like as it was wont to be in the time of king Henry, our grandfather; reserving to all archbishops, bishops, abbots, priors, templars, hospitalers, earls, barons, and all persons, as well spiritual as temporal, all their free liberties and free customs, which they have had in time past. And all these customs and liberties aforesaid, which we have granted to be holden within this our realm, as much as appertaineth to us and our heirs, we shall observe. And all men of this our realm, as

well spiritual as temporal (as much as in them is), shall observe the same against all persons in like wise. And for this our gift and grant of these liberties, and of others contained in our charter of liberties of our forest, the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and other our subjects, have given unto us the fifteenth part of all their moveables. And we have granted unto them, for us and our heirs, that neither we nor our heirs shall procure or do anything whereby the liberties in this charter contained shall be infringed or broken. And if anything be procured by any person contrary to the premises, it shall be had of no force nor effect. These being witnesses: Lord B., archbishop of Canterbury, E., bishop of London, I., bishop of Bath, P., of Winchester, H., of Lincoln, R., of Salisbury, W., of Rochester, W., of Worcester, J., of Ely, H., of Hereford, R., of Chichester, W., of Exeter, bishops; the abbot of St. Edmonds, the abbot of St. Albans, the abbot of Bello, the abbot of St. Augustine's in Canterbury, the abbot of Evesham, the abbot of Westminster, the abbot of Bourgh St. Peter, the abbot of Reding, the abbot of Abindon, the abbot of Malmsbury, the abbot of Winchcomb, the abbot of Hyde, the abbot of Certesy, the abbot of Sherburn, the abbot of Cerne, the abbot of Abbotebir, the abbot of Middleton, the abbot of Seleby, the abbot of Cirencester; H. de Burgh, justice, H., earl of Chester and Lincoln, W., earl of Salisbury, W., earl of Warren, G. de Clare, earl of Gloucester and Hereford, W. de Ferrars, earl of Derby, W. de Mandeville, earl of Essex, H. de Bygod, earl of Norfolk, W., earl of Albemarle, H., earl of Hereford, J., constable of Chester, R. de Ros, R. Fitzwalter, R. de Vyponste, W. de Bruer, R. de Muntefichet, P. Fitzherbert, W. de Aubenie, J. Gresly, F. de Breus, J. de Monemue, J. Fitzallen, H. de Mortimer, W. de Beauchamp, W. de St. John, P. de Mauly; Brian de Lisle, Thomas de Multon, R. de Argenteyn, G. de Nevil, W. Maudait, J. de Balun, and others."

We, ratifying and approving these gifts and grants aforesaid, confirm and make strong all the same for us and our heirs perpetually; and by the tenor of these presents do renew the same, willing and granting for us and our heirs that this charter, and all and singular its articles, forever shall be stedfastly, firmly and inviolably observed. Although some articles in the same charter contained yet hitherto peradventure have not been kept, we will

and, by authority royal, command from henceforth firmly they be observed. In witness whereof, we have caused these our letters patent to be made. T. Edward, our son, at Westminster, the twelfth day of October, in the twenty-fifth year of our reign.

Magna Charta, in this form, has been solemnly confirmed by our kings and parliaments upwards of thirty times; but in the twenty-fifth year of Edward I. much more than a simple confirmation of it was obtained for England. As has already been mentioned, the original charter of John forbade the levying of *escuage*, save by consent of the great council of the land; and although those important provisions were not repeated in Henry's charter, it is certain that they were respected. Henry's barons frequently refused him the subsidies which his prodigality was always demanding. Neither he nor any of his ministers seems ever to have claimed for the crown the prerogative of taxing the landholders at discretion; but the sovereign's right of levying money from his towns and cities, under the name of tallages or prises, was constantly exercised during Henry III.'s reign, and during the earlier portion of his son's. But, by the statute of Edward I. intituled *Confirmatio Chartarum*, all private property was secured from royal spoliation, and placed under the safeguard of the great council of all the realm. The material portions of that statute are as follows:

CONFIRMATIO CHARTARUM.

ANNO VICESIMO QUINTO EDV. I.

CAP. V.

And for so much as divers people of our realm are in fear that the aids and tasks which they have given to us beforetime, towards our wars and other business, of their own grant and good will (howsoever they were made), might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and likewise for the prises taken throughout the realm, in our name, by our ministers, we have granted for us and our heirs that we shall not draw such aids, tasks, nor prises, into a custom for anything that hath been done heretofore, be it by roll or any other precedent that may be founden.

CAP. VI.

Moreover, we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all the commonalty of the land, that for no business from thenceforth we *shall take such manner of aids, tasks, nor prises, but by the common assent of all the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.*

¹ "Par commun assent de tut le roiaume." The version in our statute-book omits the important word "All."

APPENDIX V.

THE PETITION OF RIGHT.¹

To the King's Most Excellent Majestie.

HUMBLY shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembled, that whereas it is declared and enacted by a Statute, made in the tyme of the Raigne of King Edward the first, commonly called "Statutum de Tallagio non concedendo," that no Tallage or Aide should be laid or levied, by the King or his heires, in this Realme; without the good-will and assent of the Arch Bishoppes, Bishoppes, Earles, Barons, Knights, Burgesses and other the freemen of the cominalty of this realme; And by Authority of Parliament houlden in the five and twentieth yere of the Raigne of King Edward the third, it is declared and enacted, that from thenceforth noe person should be compelled to make any loanes to the King against his will, because such loanes were against reason, and the franchise of the land; and by other lawes of this realme it is provided, that none should be charged by any charge or imposition, called a Benevolence, nor by such like charge, by which the Statuts before mentioned, and other the good lawes and statuts of this Realme, your Subjects have inherited this freedom, that they should not be compelled to contribute to any Tax, Tallage, Aide, or other like charge, not sett by common consent in Parliament.

Yet nevertheless of late, divers commissions, directed to sundrie commissioners in severall Counties, with instructions, have beer issued, by means whereof your People have bene in divers places assembled, and required to lend certaine sommes of money unto your Majestie, and many of them upon their refusall soe to doe have had an oath administered unto them, not warrantable by the

¹ This petition was drawn up by Sir Edward Coke. Coke, 207, edit. o. 1697.

Lawes or Statuts of this Realme, and have been constrained to become bound to make appearance, and give attendance before your Privie Councill, and in other places; and others of them have bene therefore imprisoned, confined, and sundrie other wayes molested and disquieted: And divers other charges have bene laid and leaved upon your People in severall Counties, by Lord Lieutenants, Deputie-Lieutenants, Commissioners for musters, Justices of peace and others, by commaunde or direction from your Majestie, or your Privie-Councill, against the lawes and free customes of the realme.

And whereas alsoe by the Statute called "The greate Charter of the Liberties of England," it is declared and enacted, that noe freeman may be taken or imprisoned, or be disseised of his freehold or liberties, or his free customes, or be outlawed or exiled, or in any manner destroyed, but by the lawfull judgment of his Peeres, or by the lawe of the land.

And in the eight and twentieth yere of the reigne of King Edward the third, it was declared and enacted by Authoritie of Parliament, that no man, of what estate or condition that he be, should be putt out of his lands or tenements, nor taken nor imprisoned, nor disherited, nor putt to death, without being brought to answer by due process of lawe.

Nevertheless against the tenour of the said Statutes, and other the good lawes and Statuts of your Realme, to that end provided, divers of your subjects have of late bene imprisoned without any cause showed; and when for their deliverance they were brought before your Justices, by your Majestie's Writ of Habeas Corpus, there to undergoe and receive, as the Court should order, and their Keepers commaunded to certify the causes of their detayner; noe cause was certified, but that they were detayned by your Majestie's special commaund, signified by the Lords of your Privie Councill, and yet were returned back to severall prisons, without being charged with any thynge to which they might make answeare according to the lawe.

And whereas of late, great companies of souldiers and marriners have bene dispersed into divers Counties of the Realme, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojorne, against the lawes and customes of this realme, and to the great grievance and vexation of the People.

And whereas alsoe, by authority of Parliament, in the 25th yere of the raigne of King Edward III., it is declared and enacted that noe man should be forejudged of life or lymbe, against the forme of the great Charter, and the lawe of the land, and by the said great Charter, and other the Laws and Statuts of this your Realme, no man ought to be adjudged to death, but by the lawes established in this your realme, either by the customes of the same realme, or by Acts of Parliament; And whereas noe offender, of what kind soever, is exempted from the proceedings to be used, and the punishments to be inflicted by the lawes and statutes of this your realme; nevertheless of late time, divers commissions under your Majestie's Greate Seale have issued forth, by which certaine persons have been assigned and appointed commissioners, with power and authoritie to proceed within the land, according to the justice of martiall lawe, against such soulders and mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felonie, meeting, or other outrage or misdemeanour, whatsoever; and by such summarie course and order as is agreeable to martiall lawe, and as is used in armies in tyme of war, to proceed to the tryal and condemnation of such offenders, and them to cause to be executed and putt to death, according to the lawe martiall.

By pretext whereof, some of your Majestie's Subjects have bene by some of the said commissioners put to death, when and where, if lawes and statuts of the land they had deserved death, by the same lawes and statuts alsoe they might, and by noe other ought, to have been judged and executed.

And alsoe sundrie grievous offenders, by colour thereof clayminge an exemption, have escaped the punishments due to them by the lawes and statuts of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders, according to the same lawes and statuts, upon pretence that the said offenders were punishable only by martiall lawe, and by authority of such commissions as aforesaid; which commissions, and all others of like nature, are wholly and directlie contrary to the said lawes and statuts of this your realme.

They doe therefore humbly pray your most excellent Majestie, That no man hereafter be compelled to make or yelde any guifte, loane, benevolence, tax, or such like charge, without common con-

sent by Act of Parliament; and that none be called to make answere, or take such oath, or to give attendance, or be confyned, or otherwise molested or disquieted concerning the same, or for refusal thereof: And that noe freeman, in any such manner as is before mentioned, be imprisoned or detayned: And that your Majestie would be pleased to remove the said souldiers and marriners, and that your People may not be soe burthened in the tyme to come: And that the aforesaid commissions for proceedinge by martiall lawe, may be revoaked and annulled: and that hereafter, noe commissions of like nature may issue forth to any person or persons whatsoever, to be executed as aforesaid, leas't by colour of them, any of your Majestie's subjects be destroyed, or putt to death, contrary to the lawes and franchise of the land.

All which they do most humbly pray of your most excellent Majestie, as their Rights and Liberties, according to the lawes and statuts of this Realme: And that your Majestie would also vouchsafe to declare, that the awardest, doeings, and proceedings, to the prejudice of your People, in any of the premisses, shall not be drawn hereafter into consequence or example: And that your Majestie would be alsoe graciously pleased, for the further comfort and safetie of your people, to declare your royal will and pleasure, That in the things aforesaid all your officers and ministers shall serve you, according to the lawes and statuts of this realme, as they tender the honour of your majestie, and the prosperity of this Kingdom.

The King's Answer to the Petition of Right.

The King willeth that Right be done, according to the laws and customs of the realme; and that the Statutes be put in due execution, that his subjects may have no cause to complain of any wrong or oppressions, contrary to their just Rights and Liberties, to the preservation whereof he holds himself in conscience as well obliged, as of his prerogative.

Petition of both Houses to the King, on 7th day of June, 1628, wherein a more full and satisfactory answer to the above Petition is prayed for.

May it please your most excellent Majestie, the Lords Spiritual and Temporal, and Commons in Parliament assembled, taking in consideration that the good intelligence between your Majestie and your People, doth much depend upon your Majestie's answer upon their Petition of Right, formerly presented; with unanimous consent do now become most humble suitors unto your Majestie, that you would be pleased to give a clear and satisfactory answer thereunto in full Parliament.

To which Petition the King replied :

The answer I have already given you was made with so good deliberation, and approved by the judgments of so many wise men, that I could not have imagined but that it would have given you full satisfaction: But to avoid all ambiguous interpretations, and to show you there is no doubleness in my meaning, I am willing to pleasure you as well in words as in substance: Read your petition, and you shall have an answer that I am sure will please you.

Here the petition was read, and the following answer was returned: "Soit Droit fait comme il est desiré." C. R.

Then said his Majesty :

This I am sure is full, yet no more than I granted you in my first answer, for the meaning of that, was to confirm your liberties, knowing according to your own protestations, that you neither mean nor can hurt my prerogative. And I assure you, my maxim is, that the People's liberties strengthen the King's Prerogative, and the King's Prerogative is to defend the People's Liberties.

You see how ready I have shown myself to satisfy your demand, so that I have done my part; wherefore if this parliament have not a happy conclusion, the sin is yours, I am free from it.

[The above is the Answer of the King in Parliament, and his Speech on that occasion, June 7th, 1628.]

APPENDIX VI.

AN ACT FOR THE BETTER SECURING THE LIBERTY, OF THE SUBJECT, AND FOR PREVENTION OF IMPRISONMENTS BEYOND THE SEAS, COMMONLY CALLED "THE HABEAS CORPUS ACT."¹

31 CH. 2. CH. 2, MAY, 1679.

WHEREAS great delays have been used by sheriffs, gaolers and other officers, to whose custody any of the king's subjects have been committed, for criminal or supposed criminal matters, in making returns of writs of habeas corpus, to them directed, by standing out on alias or pluries habeas corpus, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the king's subjects have been, and hereafter may be, long detained in prison, in such cases where by law they areailable, to their great charge and vexation :

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters ; (2) *Be it enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority thereof,* That whensoever any person or persons shall bring any *habeas corpus* directed unto any sheriff or sheriffs, gaoler, minister, or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof, as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and especially expressed in the warrant of commitment),

¹ Copied from the Statutes at Large, by Danby Pickering, Esq., edit. 1763, vol. 8, p. 432.

upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding 12 pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought, according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; (3) and bring, or cause to be brought, the body of the party so committed or restrained, unto or before the lord chancellor, or lord keeper of the great seal of England, for the time being, or the judges or barons of the said court, from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; (4) and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is, or shall be residing; and if beyond the distance of 20 miles, and not above 100 miles, then within the space of ten days, and if beyond the distance of 100 miles, then within the space of 20 days after such delivery aforesaid, and not longer.

III. And to the intent that no sheriff, gaoler or other officer may pretend ignorance of the import of any such writ; (2) Be it enacted by the authority aforesaid, that all such writs shall be marked in this manner: "Per statutum, tricesimo primo Caroli secundi Regis," and shall be signed by the person that awards the same; (3) and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason, plainly expressed in the warrant of commitment, in the vacation time and out of term it shall and may be lawful to and for the person or persons so committed or detained (other than persons convicted or in execution by legal process), or any one in his or their behalf, to appeal or complain to the lord chancellor or lord keeper, or any one of his majesty's justices, either of the one bench or of the other, or the barons of the exchequer of the degree of the coif; (4) and the said lord chancellor, lord keeper, justices or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person

or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an habeas corpus, under the seal of such court whereof he shall then be one of the judges, (5) to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable *immediate* before the said lord chancellor or lord keeper, or such justice, baron, or any other justice or baron of the degree of the coif, of any of the said courts; (6) and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy, in whose custody the party is so committed or detained, shall within the time respectively before limited, bring such prisoner or prisoners before the said lord chancellor, or lord keeper, or such justices, barons, or one of them, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ and the true causes of the commitment or detainer; (7) and thereupon, within two days after the party shall be brought before them, the said lord chancellor or lord keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and the nature of the offence, for his or their appearance in the court of king's bench the term following, or at the next assizes, sessions, or general gaol delivery, of or for such county, city or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances into the said court where such appearance is to be made; (8) unless it shall appear to the said lord chancellor, or lord keeper, or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for

such matters or offences for the which by the law the prisoner is not bailable.

IV. Provided always, and be it enacted, That if any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a habeas corpus for his enlargement, such person so wilfully neglecting shall not have any habeas corpus to be granted in vacation time, in pursuance of this act.

V. And be it further enacted, by the authority aforesaid, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand, shall not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly; all and every the head gaolers and keepers of such person, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of £100; (2) and for the second offence the sum of £200, and shall and is hereby made incapable to hold or execute his said office; (3) the said penalties to be recovered by the prisoner or party grieved, his executors and administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the king's courts at Westminster, wherein no essoin, protection, privilege, injunction, wager of law, or stay of prosecution by "Non vult ulterius prosequi," or otherwise, shall be admitted or allowed, or any more than one imparlance; (4) and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

VI. And for the prevention of unjust vexation by reiterated commitments for the same offence; (2) Be it enacted, by the authority aforesaid, That no person or persons, which shall be delivered or set at large upon any habeas corpus, shall at any time hereafter be

again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; (3) and if any other person or persons shall knowingly, contrary to this act recommit or imprison, or knowingly procure or cause to be recommit- ted or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of £500; any colorable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

VII. Provided always, and be it further enacted, That if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of oyer and terminer or general gaol delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer or general gaol delivery, after such commitment; it shall and may be lawful to and for the judges of the court of king's bench, and justices of oyer and terminer or general gaol delivery, and they are hereby required, upon motion to them made in open court the last day of the term, sessions or gaol delivery, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices, upon oath made, that the witnesses for the king could not be produced the same term, sessions or general gaol delivery; (2) and if any person or persons committed as aforesaid, upon his prayer or petition in open court the first week of the term or the first day of the sessions of oyer and terminer and general gaol delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer or general gaol delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

VIII. Provided always, That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law for such other suit.

IX. Provided always, and be it further enacted by the authority aforesaid, That if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers; (2) unless it be by habeas corpus or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer, to carry such prisoner to some common gaol; (3) or where any person is sent by order of any judge of assize, or justice of the peace, to any common workhouse or house of correction; (4) or where the prisoner is removed from one place or prison to another within the same county, in order to his or her trial or discharge in due course of law; (5) or in case of sudden fire or infection, or other necessity; (6) and if any person or persons shall, after such commitment aforesaid, make out and sign or countersign any warrant or warrants for such removal aforesaid, contrary to this act; as well he that makes or signs or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

X. Provided also, and be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their habeas corpus, as well out of the high court of chancery or court of exchequer as out of the courts of king's bench or common pleas, or either of them; (2) and if the said lord chancellor or lord keeper, or any judge or judges, baron or barons, for the time being, of the degree of the coif, of any of the courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of habeas corpus, by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved, the sum of £500, to be recovered in manner aforesaid.

XI. And be it declared and enacted by the authority aforesaid, That an habeas corpus, according to the true intent and meaning of this act, may be directed and run into any county Palatine, the

Cinque Ports, or other privileged places within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and the islands of Jersey or Guernsey; any law or usage to the contrary notwithstanding.

XII. And for preventing illegal imprisonments in prisons beyond the seas; (2) Be it further enacted by the authority aforesaid, That no subject of this realm, that now is or hereafter shall be an inhabitant or resiant of this kingdom of England, dominion of Wales, or town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands, or places, beyond the seas, which are or at any time hereafter shall be within or without the dominions of his majesty, his heirs or successors; (3) and that every such imprisonment is hereby enacted and adjudged to be illegal; (4) and that if any of the said subjects now is or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment maintain, by virtue of this act, an action or actions of false imprisonment, in any of his majesty's courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this act, and against all or any person or persons that shall frame, contrive, write, seal or countersign any warrant or writing for such commitment, detainer, imprisonment, or transportation, or shall be advising, aiding, or assisting in the same, or any of them; (5) and the plaintiff in every such action shall have judgment to recover his treble costs, besides damages, which damages so to be given shall not be less than £500; (6) in which action no delay, stay or stop of proceeding by rule, order or command, nor no injunction, protection or privilege whatsoever, nor any other than one imparlance, shall be allowed, excepting such rule of the court wherein such action shall depend, made in open court, as shall be thought in justice necessary for special cause to be expressed in said rule; (7) and the person or persons who shall knowingly frame, contrive, write, seal or countersign any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison, or transport any person or persons, contrary to this act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said

realm of England, dominion of Wales, or town of Berwick upon Tweed, or any of the islands, territories or dominions thereunto belonging; (8) and shall incur and sustain the pains, penalties and forfeitures limited, ordained and provided in and by the statute of provision and præmunire, made in the sixteenth year of king Richard the Second; (9) and be incapable of any pardon from the king, his heirs or successors, of the said forfeitures, losses or disabilities, or any of them.

XIII. Provided always, That nothing in this act shall extend to give benefit to any person who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.

XIV. Provided always, and be it enacted, That if any person or persons lawfully convicted of any felony, shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this act, or anything herein contained, to the contrary notwithstanding.

XV. Provided also, and be it enacted, That nothing herein contained shall be deemed, construed or taken to extend to the imprisonment of any person before the first day of June, one thousand six hundred and seventy-nine, or to anything advised, procured or otherwise done relating to such imprisonment; anything herein contained to the contrary notwithstanding.

XVI. Provided also, That if any person or persons at any time resident in this realm, shall have committed any capital offence in Scotland or in Ireland, or in any of the islands or foreign plantations of the king, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial in such manner as the same might have been used before the making of this act; anything herein contained to the contrary notwithstanding.

XVII. Provided also, and be it enacted, That no person or persons shall be sued, impleaded, molested or troubled for any offence against this act, unless the party offending be sued or impleaded for the same within two years at the most, after such time wherein the offence shall be committed, in case the party grieved

shall not be then in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

XVIII. And to the intent no person may avoid his trial at the assizes or general gaol delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there; (2) Be it enacted, that after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any habeas corpus granted in pursuance of this act, but upon any such habeas corpus shall be brought before the judge of assize in open court, who is thereupon to do what to justice shall appertain.

XIX. Provided nevertheless, That after the assizes are ended, any person or persons detained may have his or her habeas corpus according to the direction and intention of this act.

XX. And be it also enacted by the authority aforesaid, That if any information, suit or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit or action, and the same matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the same matter in bar, or discharge of such information, suit or action.

XXI. And because many times persons charged with petty treason or felony, or accessories thereunto, are committed upon suspicion only, whereupon they are bailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of the peace that committed the persons, and have the examination before them, or to other justices of the peace in the county; (2) Be it therefore enacted, That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory before the fact to any petty treason or felony, or upon suspicion thereof, or with

suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

APPENDIX VII.

BILL OF RIGHTS, PASSED 1 WILLIAM AND MARY, SESS. 2,
CH. 2, 1689.

AN ACT FOR DECLARING THE RIGHTS AND LIBERTIES OF THE SUBJECT, AND
SETTLING THE SUCCESSION OF THE CROWN.

1 W. & M. 1689.

WHEREAS the lords spiritual and temporal, and commons assembled at Westminster, lawfully, fully and freely representing all the estates of the people of this realm, did, upon the thirteenth day of February, in the year of our Lord one thousand six hundred and eighty-eight, present unto their majesties then called and known by the name and style of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said lords and commons, in the words following, viz. :

Whereas the late king James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavor to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom—

1. By assuming and exercising a power of dispensing with and suspending the laws, and the execution of laws, without consent of parliament.

2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

3. By issuing and causing to be executed a commission under the great seal for erecting a court called the court of commissioners for ecclesiastical causes.

4. By levying money for and to the use of the crown, by pretence of prerogative, for other time and in other manner than the same was granted by parliament.

5. By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

6. By causing several good subjects, being protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law.

7. By violating the freedom of election of members to serve in parliament.

8. By prosecutions in the court of king's bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.

9. And whereas of late years, partial, corrupt and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

11. And excessive fines have been imposed, and illegal and cruel punishments inflicted.

12. And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late king James the Second having abdicated the government, and the throne being thereby vacant, his highness the prince of Orange (whom it hath pleased almighty God to make the glorious instrument of delivering the kingdom from popery and arbitrary power) did (by the advice of the lords spiritual and temporal, and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being protestants, and other letters to the several counties, cities, universities, boroughs, and cinque-ports, for the choosing of such persons to represent them as were of right to be sent to parliament, to meet and sit at Westminster, upon the two and twentieth day of January, in this year one thousand six hundred eighty and eight, in order to such an establishment, as that their religion, laws and liberties might not again be in danger of being subverted: upon which letters, elections have been accordingly made;

And thereupon the said lords spiritual and temporal, and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do, in the first place (as their ancestors in like case have usually done), for the vindicating and asserting their ancient rights and liberties, declare—

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.
2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.
3. That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.
4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal.
5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.
6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.
7. That the subjects which are protestants may have arms for their defence suitable to their conditions, and as allowed by law.
8. That election of members of parliament ought to be free.
9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.
10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.
11. That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason, ought to be freeholders.
12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.
13. And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his highness the prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence, That his said highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights and liberties :

II. The said lords spiritual and temporal, and commons, assembled at Westminster, do resolve, That William and Mary, prince and princess of Orange, be, and be declared, king and queen of England, France and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said prince of Orange, in the names of the said prince and princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; and for default of such issue, to the princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of the said prince of Orange. And the lords spiritual and temporal, and commons, do pray the said prince and princess to accept the same accordingly.

III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

I, A. B., do sincerely promise and swear, That I will be faithful and bear true allegiance to their majesties, king William and queen Mary :

So help me God.

I, A. B., do swear, That I do from my heart abhor, detest and abjure, as impious and heretical, that damnable doctrine and position, That princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm :

So help me God.

IV. Upon which their said majesties did accept the crown and royal dignity of the kingdoms of England, France and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said lords and commons contained in the said declaration.

V. And thereupon their majesties were pleased, That the said lords spiritual and temporal, and commons, being the two houses of parliament, should continue to sit, and with their majesties' royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said lords spiritual and temporal, and commons, did agree and proceed to act accordingly.

VI. Now in pursuance of the premises, the said lords spiritual and temporal, and commons, in parliament assembled, for the ratifying, confirming and establishing the said declaration, and the articles, clauses, matters and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their majesties and their successors according to the same in all times to come.

Sections VII., VIII., IX., X., are irrelevant.

XI. All which their majesties are contented and pleased shall be declared, enacted and established by authority of this present

parliament, and shall stand, remain and be the law of this realm forever; and the same are by their said majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, declared, enacted and established accordingly.

XII. And be it further declared and enacted by the authority aforesaid, That from and after this present session of parliament no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed; but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

Section XIII. irrelevant.

APPENDIX VIII.

A DECLARATION BY THE REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a his-

tory of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world :

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained ; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature ; a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected ; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise ; the state remaining, in the meantime, exposed to all the danger of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States ; for that purpose, obstructing the laws for the naturalization of foreigners ; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined, with others, to subject us to a jurisdiction

foreign to our constitution, and unacknowledged by our laws ; giving his assent to their acts of pretended legislation :

For quartering large bodies of armed troops among us :

For protecting them, by a mock trial, from punishment, for any murders which they should commit on the inhabitants of these States :

For cutting off our trade with all parts of the world :

For imposing taxes on us without our consent :

For depriving us, in many cases, of the benefits of trial by jury :

For transporting us beyond the seas to be tried for pretended offences :

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies :

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the powers of our governments :

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us. •

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for re-

dress in the most humble terms ; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do in the name, and by the authority of the good people of these colonies; solemnly publish and declare, That these United Colonies are, and of right ought to be, free and independent States ; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain, is, and ought to be, totally dissolved ; and that, as free and independent States, 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. And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed and signed by the following members.

JOHN HANCOCK.

NEW HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.

Samuel Adams,
John Adams,
Robert Treat Paine.
Elbridge Gerry.

RHODE ISLAND.

Stephen Hopkins,
William Ellery,

CONNECTICUT.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

NEW YORK.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW JERSEY.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark,

PENNSYLVANIA.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.

Cæsar Rodney,
George Read,
Thomas M'Kean.

MARYLAND.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton.

VIRGINIA.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jun.,
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA.

William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.

Edward Rutledge,
Thomas Hayward, Jun.,
Thomas Lynch, Jun.,
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
George Walton.

Resolved, That copies of the Declaration be sent to the several assemblies, conventions, and committees, or councils of safety; and to the several commanding officers of the continental troops; that it be proclaimed in each of the United States, and at the head of the army.

APPENDIX IX.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES.

To all to whom these presents shall come, we, the undersigned Delegates of the States affixed to our names, send greeting: Whereas the Delegates of the United States of America in congress assembled, did, on the 15th day of November, in the year of our Lord 1777, and in the second year of the Independence of America, agree to certain 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, in the words following, viz :—

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.

ARTICLE I.

The style of this confederacy shall be "The United States of America."

ARTICLE II.

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.

ARTICLE III.

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 ; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states (paupers, vagabonds, and fugitives from justice excepted) shall be entitled to all privileges and immunities of free citizens in the several states ; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant ; provided, also, that no imposition, duties, or restriction, shall be laid by any state on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any state shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor, or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings, of the courts and magistrates of every other state.

ARTICLE V.

For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November in every year, with a power

reserved to each state to recall its delegates, or any of them at any time within the year, and to send others in their stead for the remainder of the year.

No state shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each state shall maintain its own delegates in any meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States, in congress assembled, each state shall have one vote.

Freedom of speech or debate in congress shall not be impeached or questioned in any court or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

ARTICLE VI.

No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation, or alliance, whatever between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts, or duties, which may interfere with any stipulations in treaties entered into by the United States in congress assembled, with any king, prince, or state, in pursu-

ance of any treaties already proposed by congress to the courts of France or Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in congress assembled for the defence of such state, or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as in the judgment of the United States in congress assembled shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide, and have constantly ready for use in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the United States in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom, or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in congress assembled shall determine otherwise.

ARTICLE VII

When land forces are raised by any state for the common defence, all officers of, or under the rank of colonel shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ARTICLE VIII.

All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state granted to, or surveyed for any person, as such land, and the buildings and improvements thereon, shall be estimated according to such mode as the United States in congress assembled shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in congress assembled.

ARTICLE IX.

The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the 6th article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise, between two or more states, concerning boundary, jurisdiction, or any other cause whatever—which authority shall always be exercised in the manner following: When-

ever the legislative or executive authority, or lawful agent, of any state in controversy with another shall present a petition to congress, stating the matter in question and praying for a hearing, notice thereof shall be given, by order of congress, to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but, if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one (the petitioners beginning,) until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and the sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall, nevertheless, proceed to pronounce sentence or judgment, which shall in like manner be final and decisive—the judgment, or sentence, and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned; provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, “well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward;” provided, also, that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions, as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated—establishing or regulating post-offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in congress assembled, shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon

the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in congress assembled: But if the United States, in congress assembled, shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled.

The United States in congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in congress assembled.

The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any

question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE X.

The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States in congress assembled, by the consent of nine states, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states, in the congress of the United States assembled, is requisite.

ARTICLE XI.

Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII.

All bills of credit emitted, moneys borrowed, and debts contracted by, or under the authority of congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

ARTICLE XIII.

Every state shall abide by the determinations of the United States in congress assembled, on all questions which by this confederation is submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislature of every state.

And whereas, it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union: Know Ye, that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In witness whereof we have hereunto set our hands in congress. Done at Philadelphia in the state of Pennsylvania, the ninth day of July in the year of our Lord 1778, and in the third year of the Independence of America.

On the part and behalf of the state of New Hampshire:

Josiah Bartlett,

John Wentworth, Jun.,

Aug. 8, 1778.

On the part and behalf of the state of Massachusetts Bay:

John Hancock,

Francis Dana,

Samuel Adams,

James Lovell,

Elbridge Gerry,

Samuel Holten.

On the part and behalf of the state of Rhode Island and Providence Plantations:

William Ellery,
Henry Marchant,

John Collins.

On the part and behalf of the state of Connecticut:

Roger Sherman,
Samuel Huntington,
Oliver Wolcott,

Titus Hosmer,
Andrew Adams.

On the part and behalf of the state of New York :

Jas. Duane,	William Duer,
Fras. Lewis,	Gouvr. Morris.

On the part and behalf of the state of New Jersey, November
26, 1778 :

Jno. Witherspoon,	Nathl. Scudder.
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On the part and behalf of the state of Pennsylvania :

Robt. Morris,	William Clingan,
Daniel Roberdeau,	Joseph Reed,
Jona. Bayard Smith,	22d July, 1778.

On the part and behalf of the state of Delaware :

Tho. M'Kean, Feb. 12, 1779,	Nicholas Van Dyke.
John Dickinson, May 5, 1779.	

On the part and behalf of the state of Maryland :

John Hanson,	Daniel Carroll,
March 1, 1781.	March 1, 1781.

On the part and behalf of the state of Virginia :

Richard Henry Lee,	Jno. Harvie,
John Banister,	Francis Lightfoot Lee.
Thomas Adams,	

On the part and behalf of the state of North Carolina :

John Penn,	Corns. Harnett,
July 21, 1778.	Jno. Williams.

On the part and behalf of the state of South Carolina :

Henry Laurens,	Richd. Hutson,
William Henry Drayton,	Thos. Hayward, Jun.
Jno. Mathews,	

On the part and behalf of the state of Georgia :

Jno. Walton,	Edwd. Telfair,
24th July, 1778.	Edwd. Langworthy.

APPENDIX X.

CONSTITUTION OF THE UNITED STATES OF AMERICA.

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.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each

state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker, and other officers; and shall have the sole power of impeachment.

SECTION 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof; for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of President of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in case of impeachment shall not extend further than

to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

SECTION 4. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of

the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return; in which case, it shall not be a law. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him; or, being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. The congress shall have power

To 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; but all duties, imposts, and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States :

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :

To provide for the punishment of counterfeiting the securities and current coin of the United States :

To establish post-offices and post-roads :

To 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 :

To constitute tribunals inferior to the supreme court :

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :

To provide and maintain a navy :

To make rules for the government and regulation of the land and naval forces :

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions :

To 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 :

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of the government of the United States, and to exercise 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

To 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.

SECTION 9. The migration or importation of such persons as any

of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them 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.

SECTION 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

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.

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, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows :—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[¹ The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.]

¹ This clause within brackets has been superseded and annulled by the 12th amendment, on pages 534-35.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president; and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice

and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The president, vice-president, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. 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.

SECTION 2. 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; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies, to which the United States shall be a party; to controversies between two or more states; between a state and

citizens of another state ; between citizens of different states ; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury ; and such trial shall be held in the state where the said crimes shall have been committed ; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason ; but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

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.

SECTION 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the Confederation.

This constitution, and the laws of the United States which shall

be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

DONE in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names,

GEO. WASHINGTON,

President and deputy from Virginia.

[Here follow the names of the signers from the different states. See next page for additions and amendments.]

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall

private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall

not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which list they shall sign and certify and transmit sealed to the seat of government of the United States, directed to the president of the senate; the president of the senate shall, in presence of the senate and house of representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member, or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

APPENDIX XI.

THE FRENCH CONSTITUTION, ADOPTED AND PROCLAIMED ON
THE TWENTY-FOURTH OF JUNE, 1793.

THE FIRST REPUBLICAN CONSTITUTION.

HAD the space permitted it, I would have given all the French constitutions, from the first in the first revolution, to that now called the constitution of the empire. As it is, I must restrict myself to the following selection.

I have copied the translation of the first republican constitution of France from a work by Mr. Bernard Roelker, of the New York bar, *The Constitutions of France, monarchical and Republican, together with Brief Historical Remarks, relating to their Origin, and the late Orleans Dynasty*, Boston, Mass. 1848.

DECLARATIONS OF THE RIGHTS OF MAN AND OF CITIZENS.

The French people, convinced that oblivion and contempt of the natural rights of man are the only causes of calamities in the world, has resolved to explain these sacred and inalienable rights in a solemn declaration, that all citizens, by comparing always the acts of the government with the whole social union, may never suffer themselves to be oppressed and dishonored by tyranny; that the people may always have before its eyes the fundamental pillars of its liberty and welfare, and the authorities the standard of their duties, and the legislator the object of his problem.

It accordingly makes, in the presence of the Highest Being, the following declaration of the rights of man and of the citizens.

1. The object of society is the general welfare. Government is instituted, to insure to man the free use of his natural and inalienable rights.

2. These rights are equality, liberty, security, property.

3. All men are equal by nature and before the law.

4. Law is the free and solemn proclamation of the general will; it is the same for all, be it protective or penal; it can command only what is just and beneficial to society, and prohibit only what is injurious to the same.

5. All citizens are equally admissible to all public offices. Free nations are in their elections guided by no other considerations than virtues and talents.

6. Freedom is the power, by which man can do what does not interfere with the rights of another; its basis is nature, its standard is justice; its protection is law; its moral boundary is the maxim: *Do not unto others what you do not wish they should do unto you.*

7. The right of communicating thoughts and opinions, either through the press, or in any other manner; the right of assembling peaceably; the free exercise of religion, cannot be prohibited.

The necessity publicly to claim these rights, presupposes the actual existence of despotism, or the fresh recollection of the same.

8. Security rests on the protection given by society to each of its members, for the preservation of his person, his rights and his property.

9. Law must protect the general and the individual liberty against the oppression of those who govern.

10. No one can be accused, arrested, or kept in close custody, except in the cases specified by law, and according to the prescribed forms; every citizen who, by virtue of the law, is summoned before court or arrested, must immediately obey; every refusal shows him to be guilty.

11. Every order against a person, in cases and forms not specified by law, is arbitrary and tyrannical; the person against whom such an order should be executed by force, has the right to resist it by force.

12. Those who cause, aid in, sign, execute or cause to be executed, such arbitrary acts, are culpable, and must be punished.

13. Since every man is deemed to be innocent, until he be proved guilty, if his condemnation will necessarily lead to arrest, every severity, not required for the forthcoming of his person, is strictly prohibited.

14. Only he who has been first heard or legally summoned, can be condemned and punished, and this only by a law promulgated before the commission of the crime. A law which would punish transgressions, committed before its publication, would be tyranny; and it would be a crime to give retrospective force to law.

15. Law shall order punishments only which are unavoidably necessary; the punishments shall be suitable to the crime, and beneficial to society.

16. The right of property is that by which every citizen can enjoy his goods and his income, the fruits of his labor and industry, and dispose of them at pleasure.

17. No kind of occupation, employment and trade can be prohibited to citizens.

18. Every one may dispose of his services and time at pleasure; but he can neither sell himself nor be sold. His person is inalienable property. The law does not recognize a state of servitude; an agreement only for services rendered and a compensation for them, can exist between him who labors and him who employs him.

19. Without his consent, no one can be deprived of the least part of his property, unless it be required by a general and legally specified necessity, and then only on condition of a just and previously fixed indemnity.

20. No tax can be laid except for the common welfare. All citizens have the right to have a voice in the laying of taxes, to watch over the application of them, and to have an account rendered thereof.

21. The public support of the poor is a sacred obligation. Society takes upon itself the support of needy citizens, either by giving work to them, or by giving subsistence to those who are unable to work.

22. Instruction is a want for all. Society shall further with all its power the progress of the public welfare, and regulate instruction according to the wants of all citizens.

23. Social guarantee rests on the activity of all to secure to each one the enjoyment and the preservation of his rights. This guarantee rests on the sovereignty of the people.

24. It cannot exist, if the boundaries of public administration be not definitely specified by law, and unless the responsibility of all public officers be secured.

25. Sovereignty belongs to the people. It is one and indivisible, imprescriptible and inalienable.

26. No single part of the people can exercise the power of the whole people; but every assembled section of the sovereign people enjoys the right to express its will with perfect freedom.

27. Every individual who would assume the sovereignty shall be at once condemned to death by the free men.

28. The people have the right to revise, amend, and alter their constitution. One generation cannot bind succeeding generations to its laws.

29. Every citizen has the right of taking part in the legislation, and of appointing his representatives or agents.

30. Public functions are in their nature temporary; they cannot be considered as distinctions, nor as rewards, but as obligations.

31. The offences of the representatives of the people and of its agents, shall not be unpunished. No one has the right to hold himself more inviolable than the other citizens.

32. The right of presenting petitions to the public authorities can in no case be interdicted, abolished or limited.

33. Resistance to oppression is the inference from the other rights of man.

34. It is oppression of the whole society, if but one of its members be oppressed. Oppression of every single member exists, when the whole of society is oppressed.

35. When government violates the rights of the people, insurrection of the people and of every single part of it, is the most sacred of its rights and the highest of its duties.

(Signed)

COLLOT D'HERBOIS, President.

DUBAND MAILLANE, DUCOS, MÉAULLE,

CHARLES DE LA CROIX, GOSSUIN, P. A. LALOT,

Secretaries.

CONSTITUTION

OF THE TWENTY-FOURTH OF JUNE, 1793.

OF THE REPUBLIC.

1. The French Republic is one and indivisible.

OF THE DIVISION OF THE PEOPLE.

2. The French people is, for the purpose of exercising its sovereignty, divided into primary assemblies according to cantons.
3. For the purpose of administration and justice, it is divided into departments, districts, and municipalities.

OF THE RIGHT OF CITIZENSHIP.

4. Every man born and living in France, of twenty-one years of age, and every alien, who has attained the age of twenty-one, and has been domiciled in France one year, and lives from his labor ;

- or has acquired property ;
- or has married a French woman ;
- or has adopted a child ;
- or supports an aged man ;

and finally every alien whom the legislative body has declared as one well deserving of the human race, are admitted to exercise the rights of a French citizen.

5. The right of exercising the rights of citizen is lost :
 - by being naturalized in a foreign state ;
 - by accepting offices of state, or favors which do not proceed from a democratic government ;
 - by being sentenced to dishonorable or corporal punishments, till reinstated in the former state.
6. The exercise of the rights of citizens is suspended :
 - by being in a state of accusation ;
 - by a sentence *in contumaciam*, so long as this sentence has not been rescinded.

OF THE SOVEREIGNTY OF THE PEOPLE.

7. The sovereign people embraces the whole of French citizens.
8. It chooses its deputies directly.
9. It delegates to electors the choice of administrators, public civil judges, penal judges, and judges of cassation.
10. It deliberates on laws.

OF THE PRIMARY ASSEMBLIES.

11. The primary assemblies are formed of the citizens who have resided six months in a canton.
12. They consist of no less than 200 and no more than 600 citizens, called together for the purpose of voting.
13. They are organized, after a president, secretaries and collectors of votes have been appointed.
14. They exercise their own police.
15. No one is allowed to appear there with arms.
16. The elections are made either by secret or loud voting, at the pleasure of each voter.
17. A primary meeting can in no case prescribe more than one manner of voting.
18. The collectors of votes note down the votes of those citizens who cannot write, and yet prefer to vote secretly.
19. The votes on laws are given by "Yes," and "No."
20. The elections of primary assemblies are published in the following manner :

The united citizens in the primary assembly at —, numbering — votes, vote for, or vote against, by a majority of —,

OF THE NATIONAL REPRESENTATION.

21. Population is the only basis of national representation.
22. For every 40,000 individuals, one deputy is chosen.
23. Every primary assembly which is formed of from 39,000 to 41,000 individuals, chooses directly a deputy.
24. The choice is effected by an absolute majority of votes.
25. Every assembly makes an abstract of the votes, and sends a commissioner to the appointed central place of general record.
26. If at the first voting, no absolute majority be effected, a

second meeting shall be held, and those two citizens who had the most votes, shall be voted for again.

27. In case of an equal division of votes, the oldest person has the preference, no matter whether he was voted for, or whether he was chosen without it. In case of an equality of age, the casting of lots shall decide.

28. Every Frenchman, who enjoys the rights of a citizen, is eligible throughout the whole republic.

29. Every deputy belongs to the whole nation.

30. In case of non-acceptance, of abdication, or expiration of office, or of the death of a deputy, the primary assembly which had chosen him shall choose a substitute.

31. A deputy who hands in his resignation, cannot leave his post till his successor shall have been appointed.

32. The French people assembles every year on the 1st of May for election.

33. It proceeds thereto, whatever the number of citizens [present] may be, who have a right to vote.

34. Extraordinary primary meetings are held at the demand of one-fifth of the eligible citizens.

35. The meeting is, in this case, called by the municipal authority of the usual place of assembly.

36. These extraordinary meetings can transact business only when at least more than one-half of the qualified voters are present.

OF THE ELECTORAL ASSEMBLIES.

37. The citizens, united in primary assemblies, nominate in proportion of 200 citizens, (they may be present or not,) one elector; two, for from 301 to 400; three, for from 501 to 600.

38. The holding of election meetings, and the manner of election, are the same as in the primary meetings.

OF THE LEGISLATIVE BODY.

39. The legislative body is one, indivisible and continual.

40. Its session lasts one year.

41. It assembles on the 1st of July.

42. The national assembly cannot be organized, unless at least one more than one-half of the deputies are present.

43. The deputies can, at no time, be held answerable, accused or condemned on account of opinions uttered within the legislative body.

44. In criminal cases; they may be arrested if caught in the act; but the warrant of arrest and the warrant of committal can be issued only by the legislative body.

MODE OF PROCEDURE OF THE LEGISLATIVE BODY.

45. The sessions of the national assembly are public.

46. The debates in their sessions shall be printed.

47. It cannot deliberate, unless it consist of 200 members.

48. It cannot refuse to members the floor, in the order in which they demand the same.

49. It decides by a majority of those present.

50. Fifty members have the right to demand a call by names.

51. It has the right of censorship on the conduct of the members in its midst.

52. It exercises the power of police at the place of its sessions, and within the whole extent of its environs.

OF THE FUNCTIONS OF THE LEGISLATIVE BODY.

53. The legislative body proposes laws, and issues decrees.

54. By the general name of *law*, are understood the provisions of the legislative body which concern :

the civil and penal legislation ;

the general administration of revenues and of the ordinary expenditures of the republic ;

the national domains ;

the inscription, alloy, stamp and names of coins ;

declaration of war ;

every new general division of the French territory ;

public instruction ;

public demonstrations of honor to the memory of great men.

55. By the particular name of decrees are understood those enactments of the legislative body, which concern :

the annual establishment of the land and marine forces ;

the permission or refusal of the marching of foreign troops through the French territory ;

the admission of foreign vessels of war into the ports of the republic ;
 the measures for the common peace and safety ;
 the distribution of annual and momentary relief and of public works ;
 the orders for the stamping of coins of every description ;
 the unforeseen and extraordinary expenses ;
 the local and particular orders for an administration, a commune, and any kind of public works ;
 the defence of the territory ;
 the ratification of treaties ;
 the nomination and removal of the commander-in-chief of the army ;
 the carrying into effect the responsibility of members of the executive council, and of public officers ;
 the accusation of discovered conspiracies against the common safety of the republic ;
 every alteration in the division of the French territory ;
 the national rewards.

OF THE MAKING OF LAWS.

56. A notice must precede the introduction of a bill.

57. Not till after a fortnight from the giving of notice can the debate begin, and the law be temporarily accepted.

58. The proposed law is printed and sent to all the communes of the republic, under the address of, *Proposed law*.

59. If, forty days after the sending in of the proposed law, of the absolute majority of departments, one-tenth of all the primary meetings, legally assembled by the departments, have not protested, the bill is accepted and becomes a law.

60. If protest be made, the legislative body calls together the primary meetings.

ON THE SUPERScription OF LAWS AND DECREES.

61. The laws, decrees, sentences, and all public transactions are superscribed :

In the name of the French people, in the ——— year of the French Republic.

OF THE EXECUTIVE POWER.

62. There shall be an executive council, consisting of twenty-four members.

63. The electoral assembly of each department nominates a candidate. The legislative body chooses from this general list the members of the executive council.

64. It shall be renewed each half session of every legislature, in the last months of its session.

65. The executive council has the management and supervision of the general administration. Its activity is limited to the execution of laws and decrees of the legislative body.

66. It appoints, but not out of its midst, the highest agents of the general administration of the republic.

67. The legislative body establishes the number of these agents, and their business.

68. These agents form no council. They are separated one from the other, and have no relation among themselves. They exercise no personal power.

69. The executive council chooses, but not from its midst, the foreign agents of the republic.

70. It negotiates treaties.

71. The members of the executive council, are, in case of violation of duties, accused by the legislative body.

72. The executive council is responsible for the non-execution of the laws and decrees, and the abuses, of which it does not give notice.

73. It recalls and substitutes the agents at pleasure.

74. It is obliged, if possible, to inform the judicial authorities regarding them.

OF THE MUTUAL RELATIONS BETWEEN THE EXECUTIVE COUNCIL,
AND THE LEGISLATIVE BODY.

75. The executive council shall have its seat near the legislative body. It shall have admittance to, and a special seat at the place of session.

76. It shall every time be heard, when it shall have to give account.

77. The legislative body shall call it into its midst, in whole or in part, when it is thought necessary.

OF THE ADMINISTRATIVE AUTHORITIES AND THE MUNICIPALITIES.

78. There shall be a municipal authority in each commune of the republic ; and in each district an intermediate administration ; and in each department a central administration.

79. The municipal officers are chosen by the assemblies of the commune.

80. The administrators are chosen by the electoral assemblies of the departments and of the district.

81. The municipalities and the administrative authorities are annually renewed one-half.

82. The administrative authorities and municipal officers have not a representative character. They can, in no case, limit the resolves of the legislative body, nor the execution of them.

83. The legislative body assigns the business of the municipal officers and of the administrative authorities, the rules regarding their subordination, and the punishments to which they may become liable.

84. The sessions of the municipalities and of the administrative authorities are held in public.

OF CIVIL JUSTICE.

85. The civil and penal code is the same for the whole republic.

86. No encroachment can be made upon the right of citizens, to have their matters in dispute decided on by arbitrators of their own choice.

87. The decision of these arbitrators is final, unless the citizens have reserved the right of protesting.

88. There shall be justices of the peace, chosen by the citizens of the districts, appointed by law.

89. They shall conciliate and hold court without fees.

90. Their number and extent of power shall be established by the legislative body.

91. There shall be public judges of arbitration, who are chosen by electoral assemblies.

92. Their number and districts are fixed by the legislative body.

93. They shall decide on matters in controversy, which have not been brought to a final decision by private arbitrators or by the justices of the peace.

94. They shall deliberate publicly.

They shall vote with loud voice.

They decide in the last resort on oral pleadings, or on a simple petition, without legal forms and without cost.

They shall assign the reasons of their decisions.

95. The justices of the peace and the public arbitrators are chosen annually.

OF CRIMINAL JUSTICE.

96. In criminal cases, no citizen can be put on trial, except a true bill of complaint be found by a jury, or by the legislative body.

The accused shall have advocates, either chosen by themselves, or appointed officially.

The proceedings are in public.

The state of facts and the intention are passed upon by a jury.

The punishment is executed by a criminal authority.

97. The criminal judges are chosen annually by the electoral assemblies.

OF THE COURT OF CASSATION.

98. There is a court of cassation for the whole republic.

99. This court takes no cognizance of the state of facts.

It decides on the violation of matters of form, and on transgressions expressed by law.

100. The members of this court are appointed annually through the electoral assemblies.

OF THE GENERAL TAXES.

101. No citizen is excluded from the honorable obligation to contribute towards the public expenses.

OF THE NATIONAL TREASURY.

102. The national treasury is the central point of the revenues and expenses of the republic.

103. It is managed by public accountants, whom the legislative body shall elect.

104. These agents are supervised by officers of account, whom the legislative body shall elect, but who cannot be taken from their own body: they are responsible for abuses of which they do not give legal notice to the courts.

OF THE RENDITION OF ACCOUNTS.

105. The accounts of the agents of the national treasury, and those of the administrators of public moneys are taken annually, by responsible commissioners appointed by the executive council.

106. Those persons appointed to revise the accounts are under the supervision of commissioners, who are elected by the legislative body, not out of their own number; and they are responsible for the frauds and mistakes of accounts, of which they do not give notice.

The legislative body preserves the accounts.

OF THE MILITARY FORCES OF THE REPUBLIC.

107. The general military power of the republic consists of the whole people.

108. The republic supports, also, in times of peace, a paid land and marine force.

109. All Frenchmen are soldiers; all shall be exercised in the use of arms.

110. There is no generalissimo.

111. The distinction of grade, the military marks of distinction and subordination, exist only in service and in time of its duration.

112. The general military force is used for the preservation of order and peace in the interior; it acts only on a written requisition of the constituted authorities.

113. The general military force against foreign enemies is under the command of the executive council.

114. No armed body can deliberate.

OF THE NATIONAL CONVENTION.

115. If of the absolute majority of departments, the tenth part of their regularly formed primary assemblies demand a revision of the constitution, or an alteration of some of its articles; the legislative body is obliged to call together all primary assemblies of the republic, in order to ascertain whether a national convention shall be called.

116. The national convention is formed in like manner as the legislatures, and unites in itself the highest power.

117. It is occupied, as regards the constitution, only with those subjects which caused its being called together.

OF THE RELATIONS OF THE FRENCH REPUBLIC TOWARDS FOREIGN NATIONS.

118. The French nation is the friend and natural ally of free nations.

119. It does not interfere with the affairs of government of other nations. It suffers no interference of other nations with its own.

120. It serves as a place of refuge for all who, on account of liberty, are banished from their native country.

These it refuses to deliver up to tyrants.

121. It concludes no peace with an enemy that holds possession of its territory.

OF THE GUARANTY OF RIGHTS.

122. The constitution guarantees to all Frenchmen equality, liberty, security, property, the public debt, free exercise of religion, general instruction, public assistance, absolute liberty of the press, the right of petition, the right to hold popular assemblies, and the enjoyment of all the rights of man.

123. The French republic respects loyalty, courage, age, filial love, misfortune. It places the constitution under the guaranty of all virtues.

124. The declaration of the rights of man and the constitution shall be engraven on tables, to be placed in the midst of the legislative body, and in public places.

(Signed)

COLLOT D'HERBOIS, President.

DURAND-MAILLANE, DUCOS, MÉAULLE,

CHARLES DE LA CROIX, GOSSUIN, P. A. LALOY,

Secretaries.

APPENDIX XII.

FRENCH CHARTER OF LOUIS XVIII. AND THAT ADOPTED IN THE YEAR 1830.

THE following is the charter of 1830, as I translated it in that year, for a work published in Boston, under the title of Events in Paris, during the 26th, 27th, 28th and 29th of July, translated from the French.

This charter of August 8, 1830, is in substance the charter of Louis XVIII. with such changes as the chambers adopted in favor of liberty. The new articles, or the amendments of the old ones, are printed in italics, and the old reading or suppressed articles are given in notes, so that the paper exhibits both the charters.

FRENCH CHARTER OF 1830.

The whole preamble of the ancient charter was suppressed, as containing the principle of concession and *octroi* (grant), incompatible with that of the acknowledgment of national sovereignty.

The following is the substitution of the preamble :

DECLARATION OF THE CHAMBER OF DEPUTIES.

The chamber of deputies, taking into consideration the imperious necessity which results from the events of the 26th, 27th, 28th and 29th of July, and the following days; and from the situation in which France is placed in consequence of the violation of the constitutional charter :

Considering, moreover, that by this violation, and the heroic resistance of the citizens of Paris, his majesty Charles X., his royal highness Louis-Antoine, dauphin, and all the members of the senior

branch of the royal house are leaving, at this moment, the French territory—

Declares that the throne is vacant *de facto et de jure*, and that it is necessary to fill it.

The chamber of deputies declares secondly, that according to the wish, and for the interest of the French people, the preamble of the constitutional charter is suppressed, as wounding the national dignity in appearing to grant to the French rights which essentially belong to them; and that the following articles of the same charter ought to be suppressed or modified in the following manner.

Louis Philippe, King of the French, to all to whom these presents shall come, greeting :

We have ordained and ordain, that the constitutional charter of 1814, as amended by the two chambers on the 7th August, and adopted by us on the 9th, be published anew in the following terms :

PUBLIC LAW OF THE FRENCH.

ART. 1. Frenchmen are equal before the law, whatever otherwise may be their titles or their rank.

ART. 2. They contribute in proportion to their fortunes to the charges of the state.

ART. 3. They are all equally admissible to civil and military employments.

ART. 4. Their individual liberty is equally guaranteed. No person can be either prosecuted or arrested, except in cases provided for by the law, and in the form which it prescribes.

ART. 5. Each one may profess his religion with equal liberty, and shall receive for his religious worship the same protection.

ART. 6. *The ministers of the catholic, apostolic, and Roman religion, professed by the majority of the French, and those of other christian worship, receive stipends from the public treasury.*¹

¹ This article 6 is substituted for the articles 6 and 7 of the old charter, which ran thus :

6. However, the catholic, apostolic and Roman religion, is the religion of the state.

7. The ministers of the catholic, apostolic and Roman religion, and those of other christian confessions, alone receive stipends from the public treasury.

ART. 7. Frenchmen have the right of publishing and causing to be printed their opinions, provided they conform themselves to the laws.

*The censorship can never be re-established.*¹

ART. 8. All property is inviolable, without exception of that which is called *national*, the law making no difference between them.

ART. 9. The state can exact the sacrifice of property for the good of the public, legally proved, but with a previous indemnity.

ART. 10. All examination into the opinions and votes given before the restoration are interdicted, and the same oblivion is commanded to be adopted by the tribunals and by the citizens.

ART. 11. The conscription is abolished. The method of recruiting the army for land and sea is to be determined by the law.

FORMS OF THE KING'S GOVERNMENT.

ART. 12. The person of the king is inviolable and sacred. His ministers are responsible. To the king alone belongs executive power.

ART. 13. The king is the supreme head of the state; commands the forces by sea and by land; declares war, makes treaties of peace and alliance and of commerce; he appoints to all offices in public administration, and makes all regulations necessary for the execution of the laws, *without ever having power either to suspend the laws themselves, or dispense with their execution.*

*Nevertheless, no foreign troops can be admitted into the service of the state without an express law.*²

ART. 14. The legislative power is to be exercised collectively by the king, the chamber of peers, and the chamber of deputies.³

¹ Article 8 of the old charter:

The French have the right to publish and to cause to be published their opinions, conforming themselves to the laws, which shall prevent the abuse of this liberty.

² Article 14 of the old charter:

The king is the supreme head of the state, commands the forces by land and sea, declares war, makes treaties of peace, alliance and commerce, appoints to all offices of public administration, and makes rules and orders necessary for the execution of the laws and the safety of the state.

³ There was in article 15 of the old charter: and the chamber of deputies of the departments. These last three words have been suppressed.

ART. 15. *The proposition of the laws belong to the king, to the chamber of peers, and to the chamber of deputies.*

Nevertheless, all the laws of taxes are to be first voted by the chamber of deputies.¹

ART. 16. Every law to be discussed and freely voted by the majority of each of the two chambers.

ART. 17. *If a proposed law be rejected by one of the three powers, it cannot be brought forward again in the same session.²*

ART. 18. The king alone sanctions and promulgates the laws.

ART. 19. The civil list is to be fixed for the duration of the reign of the legislative assembly after the accession of the king.

OF THE CHAMBER OF PEERS:

ART. 20. The chamber of peers is to form an essential portion of the legislative power:

ART. 21. It is convoked by the king at the same time as the chamber of deputies. The session of one begins and ends at the same time as that of the other.

ART. 22. Any assembly of the chamber of peers, which should be held at a time which is not that of the session of the chamber of deputies, is illicit, and null of full right, *except only the case in which it is assembled as a court of justice, and then it can only exercise judicial functions.³*

¹ Art. 15 is in the place of art. 16 and 17 of the old charter, which were thus:

Art. 16. The king proposes the law.

Art. 17. The proposition of the law is carried, at the pleasure of the king, to the chamber of peers or that of the deputies, except the law of taxes, which is to be directed to the chamber of deputies.

² Art. 17 is substituted for articles 19, 20 and 21, suppressed as useless, after the preceding provisions. They were the following: ✓

Art. 19. The chambers have the right to petition the king to propose a law on any subject whatever, and to indicate what seems to them proper the law ought to contain.

Art. 20. This request may be made by each of the chambers, but after having been discussed in secret committee; it is not to be sent to the other chamber, by that which proposes, until after the elapse of ten days.

Art. 21. If the proposition is adopted by the other chamber, it is to be laid before the king; if it is rejected, it cannot be presented again in the same session.

³ This is article 26 of the old charter, augmented by this provision, which was not in the former, and the words following have been suppressed: or that it should be ordained by the king.

ART. 23. The nomination of the peers of France belongs to the king. Their number is unlimited; he can vary their dignities, and name them peers for life, or make them hereditary at his pleasure.

ART. 24. Peers can enter the chamber at twenty-five years of age, but have only a deliberative voice at the age of thirty years.

ART. 25. The chamber of peers is to be presided over by the chancellor of France; and in his absence, by a peer named by the king.

ART. 26. The princes of blood are to be peers by right of birth. They are to take their seats immediately behind the president.¹

ART. 27. *The sittings of the chamber of peers are public as that of the chamber of deputies.*²

ART. 28. The chamber of peers takes cognizance of high treason, and of attempts against the security of the state, which is to be defined by the law.

ART. 29. No peer can be arrested but by the authority of the chamber, or judged but by it in a criminal matter.

OF THE CHAMBER OF DEPUTIES.

ART. 30. The chamber of deputies will be composed of deputies elected by the electoral colleges; the organization of which is to be determined by law.³

ART. 31. The deputies are to be elected for five years.⁴

ART. 32. No deputy can be admitted into the chamber till he

¹ Art. 30 of the old charter :

The members of the royal family and the princes of the blood, are peers by the right of birth; they sit immediately behind the president; but they have no deliberative voice before their twenty-fifth year.

Art. 31, was thus :

The princes cannot take their seat in the chamber, but by order of the king, expressed for each session by a message, under penalty of rendering everything null which has been done in their presence. Suppressed.

² All deliberations of the chamber of peers are secret. Art. 32 of the old charter.

³ Art. 36 was thus :

Every department shall have the same number of deputies which it has previously had. Suppressed.

⁴ Art. 37 of the old charter :

The deputies shall be elected for five years, and in such a way that the chamber is renewed each year by a fifth.

has attained the age of *thirty years*, and if he does not possess, the other conditions prescribed by the law.¹

ART. 33. If, however, there should not be in the department fifty persons of the age specified *paying the amount of taxes fixed by law*, their number shall be completed from the persons who pay the greatest amount of taxes under the amount fixed by law.²

ART. 34. *No person can be an elector if he is under twenty-five years of age; and if he does not possess all the other conditions determined by the law.*³

ART. 35. The presidents of the electoral colleges are elected by the electors.⁴

ART. 36. The half at least of the deputies are to be chosen from those who have their political residence in the departments.

ART. 37. The president of the chamber of deputies is to be elected by the chamber itself at the opening of each session.⁵

ART. 38. The sittings of the chamber are to be public, but the request of *five* members will be sufficient that it forms itself into a secret committee.

ART. 39. The chamber divides itself into *bureaux* (committees) to discuss the projects of laws, which may have been presented from the king.

¹ Art. 38 of the old charter :

No deputy can be admitted into the chamber if he is not forty years old, and if he does not pay direct taxes of 1000 francs.

² Article 39 of the old charter :

If, nevertheless, there should not be in the department fifty persons of the indicated age, paying at least 1000 francs, direct taxes, their number will be completed by those who pay the highest taxes under 1000 francs; and these may be elected concurrently with the others.

³ Art. 40 of the old charter :

The electors who concur in electing the deputy, cannot have the right of suffrage, if they do not pay a direct tax of 300 francs; and if they are less than thirty years of age.

⁴ Art. 41 of the old charter :

The presidents of the electoral colleges shall be nominated by the king, and be, by right, members of the college.

⁵ Art. 43 of the old charter :

The president of the chamber of deputies is nominated by the king, from a list of five members, presented by the chamber.

⁶ In consequence of the initiative, art. 46 and 47 are suppressed, which were thus :

46. No amendment can be made to a law, if it has not been proposed or

ART. 40. *No tax can be established nor imposed, if it has not been consented to by the two chambers, and sanctioned by the king.*

ART. 41. The land and house tax can only be voted for one year. The indirect taxes may be voted for many years.

ART. 42. The king convokes every year the two chambers, he prorogues them, and may dissolve that of the deputies; but in this case he must convoke a new one within the period of three months.

ART. 43. No bodily restraint can be exercised against a member of the chamber during the session, nor for six weeks which precede or follow the session.

ART. 44. No member of the chamber can be, during the session, prosecuted or arrested in a criminal matter, except taken in the act, till after the chamber has permitted his arrest.

ART. 45. Every petition to either of the chambers must be made in writing. The law interdicts its being carried in person to the bar.

OF THE MINISTERS.

ART. 46. The ministers can be members of the chamber of peers or the chamber of deputies.

They have, moreover, their entrance into either chamber, and are entitled to be heard when they demand it.

ART. 47. The chamber of deputies has the right of impeaching the ministers, or of transferring them before the chamber of peers, which alone has the right to judge them.¹

JUDICIAL REGULATIONS.

ART. 48. All justice emanates from the king; it is administered in his name by the judges, whom he nominates, and whom he institutes.

consented to by the king, and if it has not been sent back and discussed by the bureaux.

47. The chamber of deputies receives all propositions of taxes; only after these have been consented to, they may be carried to the chamber of peers.

¹ Article 56 of the old charter is suppressed; it ran thus:

They cannot be accused except for treason or peculation. Particular laws will specify this kind of offences, and will determine how they are to be prosecuted.

ART. 49. The judges named by the king are immoveable.

ART. 50. The ordinary courts and tribunals existing are to be maintained, and there is to be no change but by virtue of a law.

ART. 51. The actual institution of the judges of commerce is preserved.

ART. 52. The office of justice of peace is equally preserved. The justices of peace, though named by the king, are not immoveable.

ART. 53. No one can be deprived of his natural judges.

ART. 54. There cannot, in consequence, be extraordinary committees and tribunals created, *under whatever title or denomination this ever might be.*¹

ART. 55. The debates will be public in criminal matters, at least when the publicity will not be dangerous to order and decency, and in that case the tribunal is to declare so by a distinct judgment.

ART. 56. The institution of juries is to be preserved; the changes which a longer experience may render necessary can only be effected by a law.

ART. 57. The punishment of confiscation of goods is abolished, and cannot be re-established.

ART. 58. The king has the right to pardon and to commute the punishment.

ART. 59. The civil code, and the actual laws existing that are not contrary to the present charter, will remain in full force until they shall be legally abrogated.

PARTICULAR RIGHTS GUARANTEED BY THE STATE.

ART. 60. The military in actual service, retired officers and soldiers, widows, officers and soldiers on pension, are to preserve their grades, honors and pensions.

ART. 61. The public debt is guaranteed. Every sort of engagement made by the state with its creditors is to be inviolable.

ART. 62. The old nobility retake their titles. The new preserve theirs. The king creates nobles at his pleasure; but he only grants

¹ Art. 63 of the old charter:

In consequence there cannot be created extraordinary committees and tribunals. The *juridictions prevotales*, if their re-establishment should be found necessary, are not comprised under this denomination.

to them rank and honors, without any exemption from the charges and duties of society.

ART. 63. The legion of honor is to be maintained. The king shall determine its internal regulations and the decorations.

ART. 64. The colonies are to be governed by *particular laws*.¹

ART. 65. The king and his successors shall swear, at their accession, *in presence of the two chambers*, to observe faithfully the present constitutional charter.²

ART. 66. *The present charter, and the rights it consecrates, shall be intrusted to the patriotism and courage of the national guard and all the citizens.*

ART. 67. *France resumes her colors. For the future there will be no other cockade than the tri-colored cockade.*³

ART. 68. All the creations of peers during the reign of Charles X. are declared null and void.

Article 23 of the charter will undergo a fresh examination during the session of 1831.

ART. 69. There will be provided successively by separate laws, and that with the shortest possible delay, for the following subjects:

1. The extension of the trial by jury to offences of the press, and political offences.
2. The responsibility of ministers and the secondary agents of government.
3. The re-election of deputies appointed to public functions with salaries.
4. The annual voting of the army estimates.
5. The organization of the national guards with the intervention of the national guards in the choice of their officers.

¹ Art. 73 of the old charter:

The colonies will be governed by particular laws and regulations.

² Art. 74 of the old charter:

The king and his successors shall swear at the coronation, to observe faithfully the present constitutional charter.

³ Arts. 75 and 76 of the old charter are suppressed; they ran thus:

75. The deputies of the departments of France who sat in the legislative body, at the last adjournment, will continue to sit in the chamber of deputies, until replaced.

76. The first renewal of the fifth of the chamber of deputies will take place the latest in the year 1816, according to the order established.

6. Provisions which insure, in a legal manner, the state of officers of each grade, by land and sea.

7. Departmental and municipal institutions founded upon an elective system.

8. Public instruction and the liberty of instruction.

9. The abolition of the double vote; the settling of the electoral conditions, and that of eligibility.

ART. 70. All laws and ordinances, inasmuch as they are contrary to the provisions adopted by the reform of the charter, are from this moment annulled and abrogated.

We give it in command to our courts and tribunals, administrative bodies, and all others, that they observe and maintain the present constitutional charter, cause it to be observed, followed and maintained, and in order to render it more known to all, they cause it to be published in all municipalities of the kingdom and everywhere, where it will be necessary, and in order that this be firm and stable for ever, we have caused our seal to be put to it.

Done at the Palais-Royal, at Paris, the 14th day of the month of August, in the year 1830.

Signed

LOUIS PHILIPPE.

By the king :

The Minister Secretary of the State for the department of the Interior.

Signed

GUIZOT.

Examined and sealed with the great seal :

The keeper of the seals, Minister Secretary of the State for the department of Justice.

Signed

DUPONT (de l'Éure).

APPENDIX XIII.

CONSTITUTION OF THE FRENCH REPUBLIC.

ADOPTED NOVEMBER, 1848.

In presence of God, and in the name of the French people, the National Assembly proclaims :

I. France has constituted herself a republic. In adopting that definite form of government, her proposed aim is to advance with greater freedom in the path of civilization and progress, to insure that the burdens and advantages of society shall be more and more equitably apportioned, to augment the comfort of every individual by the gradual reduction of the public expenses and taxes, and by the successive and constant action of her institutions and laws cause the whole body of citizens to attain, without farther commotion, a constantly increasing degree of morality, intelligence, and prosperity.

II. The French republic is democratic, one and indivisible.

III. It recognizes rights and duties anterior and superior to all positive laws.

IV. Its principles are Liberty, Equality, Fraternity.

Its basis is, Family, Labor, Property, and Public Order.

V. It respects the nationality of foreign states, as it causes its own to be respected. It undertakes no wars with a view of conquest, and never employs its power against the liberty of any people.

VI. Reciprocal duties bind the citizens to the republic and the republic to the citizens.

VII. It is the duty of the citizens to love their country, serve the republic, and defend it at the hazard of their lives; to participate in the expenses of the state, in proportion to their property; to secure to themselves, by their labor, the means of existence, and, by prudent forethought, provide resources for the future; to co-operate for the common welfare by fraternally aiding each other,

and in the preservation of general order by observing the moral and written laws which regulate society, families, and individuals.

VIII. It is the duty of the republic to protect the citizen in his person, his family, his religion, his property, and his labor, and to bring within the reach of all that education which is necessary to every man; it is also its duty, by fraternal assistance, to provide the means of existence to necessitous citizens, either by procuring employment for them, within the limits of its resources, or by giving relief to those who are unable to work and who have no relatives to help them.

For the fulfilment of all these duties, and for the guarantee of all these rights, the National Assembly, faithful to the traditions of the great Assemblies by whom the French revolution was inaugurated, decrees the constitution of the republic, as following :

CONSTITUTION.

CHAPTER I.

OF SOVEREIGNTY.

ART. 1. The sovereignty exists in the whole body of French citizens. It is inalienable and imprescriptible. No individual, no fraction of the people can arrogate to themselves its exercise.

CHAPTER II.

RIGHTS OF CITIZENS GUARANTEED BY THE CONSTITUTION.

ART. 2. No person can be arrested or detained, except as prescribed by law.

ART. 3. The dwelling of every person inhabiting the French territory is inviolable, and cannot be entered except according to the forms and in the cases provided against by law.

ART. 4. No one shall be removed from his rightful judges—no commissions or extraordinary tribunals can be created under any pretext, or by any denomination whatsoever.

ART. 5. The penalty of death for political offences is abolished.

ART. 6. Slavery cannot exist upon any French territory.

ART. 7. Every one may freely profess his own religion, and shall receive from the state equal protection in the exercise of his wor-

ship. The ministers of the religions at present recognized by law, as well as those which may be hereafter recognized, have the right to receive an allowance from the state.

ART. 8. Citizens have the right of associating together and assembling peaceably and unarmed, in order to petition or manifest their ideas by means of the press or otherwise. The exercise of these rights can only be limited by the rights or the liberty of others, or for the public security. The press cannot in any case be subjected to censorship.

ART. 9. Education is free. The liberty of teaching is to be exercised according to the capacity and morality determined by conditions of the laws, and under the supervision of the state. This superintendence is to be extended to all establishments of education and instruction, without any exception.

ART. 10. All citizens are equally admissible to all public employments, without other reason of preference than merit, and according to the conditions to be determined by law. All titles of nobility, all distinctions of birth, class or *caste*, are abolished forever.

ART. 11. All descriptions of property are inviolable; nevertheless, the state may demand the sacrifice of property for reasons of public utility, legally proved, and in consideration of a just and previous indemnity.

ART. 12. The confiscation of property can never be re-established.

ART. 13. The constitution guarantees to citizens the freedom of labor and of industry. Society favors and encourages the development of labor by gratuitous primary instruction, by professional education, by the equality of rights between the employer and the workman, by institutions for the deposit of savings and those of credit, by agricultural institutions; by voluntary associations, and the establishment by the state, the departments and the communes, of public works proper for the employment of unoccupied laborers. Society also will give aid to deserted children, to the sick, and to the destitute aged who are without relatives to support them.

ART. 14. The public debt is guaranteed. Every species of engagement made by the state with its creditors is inviolable.

ART. 15. All taxes are imposed for the common good. Every one is to contribute in proportion to his means and fortune.

ART. 16. No tax can be levied or collected except by virtue of the law.

ART. 17. Direct taxation is only awarded for one year. Indirect taxes may be awarded for several years.

CHAPTER III.

OF PUBLIC POWER.

ART. 18. All public powers, whatever they may be, emanate from the people. They cannot be delegated by hereditary descent.

ART. 19. The separation of powers is the first principle of a free government.

CHAPTER IV.

OF THE LEGISLATIVE POWER.

ART. 20. The French people delegate the legislative power to one sole assembly.

ART. 21. The total number of representatives of the people shall be 750, including the representatives from Algeria and the French colonies.

ART. 22. This number shall be increased to 900 for assemblies called together to revise the constitution.

ART. 23. Population is the basis for election.

ART. 24. Suffrage is direct and universal. The act of voting is by secret ballot.

ART. 25. All Frenchmen aged twenty-one, and in the enjoyment of their civil and political rights, are electors, without property qualifications of any kind.

ART. 26. All electors are eligible to be elected without reference to property qualifications or to place of abode, who are twenty-five years of age.

ART. 27. The electoral law will determine the causes which may deprive a French citizen of the right of electing or being elected. It will designate those citizens who, exercising or after having exercised official functions in a department or territory, cannot be elected there.

ART. 28. The holding of any remunerating public office is incompatible with the trust of a representative of the people. No member of the national assembly can be nominated or raised to public offices, receiving salary, the appointment to which is in the gift of the executive, during the continuance of the legislature. Exceptions to the

regulations contained in the two preceding paragraphs are to be settled by the organic electoral law.

ART. 29. The conditions of the preceding articles are not applicable to assemblies elected for the revision of the constitution.

ART. 30. The elections for representatives shall be by departments, and by ballot. The electors shall vote at the chief place of their district; nevertheless the district may be, from local causes, divided into several subdivisions, under the forms and in conformity with the conditions to be determined by the electoral law.

ART. 31. The national assembly is elected for the period of three years, to be then wholly renewed. Forty-five days at least before the term of the legislature, a law shall be passed to fix the period of the new elections. If no law is passed within the time prescribed by the preceding paragraph, the electors shall have full right to assemble and vote on the thirtieth day preceding the close of the legislature. The new assembly is convoked by full right for the day following that on which the trust of the preceding assembly expires.

ART. 32. The assembly is permanent; nevertheless it may adjourn to any period which it shall determine. During the continuance of the prorogation, a commission, composed of members of committees, and twenty-five representatives appointed by the assembly, by ballot, having an absolute majority, will have the right to convoke the assembly, in cases of emergency. The president of the republic has also the right to convoke the assembly. The national assembly will determine the place where it shall hold its sessions, and will direct the number and description of the military forces which shall be appointed for its security, and have them at its order.

ART. 33. Representatives may be re-elected.

ART. 34. The members of the national assembly are the representatives, not of the department which nominates them, but of the whole of France.

ART. 35. They cannot receive imperative instructions.

ART. 36. The persons of the representatives of the people are inviolable. They cannot be pursued, accused, nor condemned, at any time, for opinions uttered within the assembly.

ART. 37. They cannot be arrested for criminal offences, excepting when taken in the very fact, nor prosecuted, until after permission granted for such purpose by the assembly. In case of an

arrest in the very fact, the matter shall immediately be referred to the assembly, which shall authorize or refuse the continuation of the prosecution. The above regulation to apply also to the case of citizens imprisoned at the time of being named representatives.

ART. 38. Every representative of the people is to receive a remuneration, which he is not at liberty to renounce.

ART. 39. The sittings of the assembly are to be public. Nevertheless, the assembly may form itself into a secret committee, on the requisition of a number of representatives, as settled by the rules. Each representative has the right of initiating parliamentary measures, which he will do according to the forms determined by the regulations.

ART. 40. The presence of half the members, and also one over, is necessary to vote on any law.

ART. 41. No bill (except in cases of urgency) shall be passed till after it has undergone three readings, at intervals of not less than five days between each reading.

ART. 42. Every proposition, the object of which is to declare the urgency of a measure, must be preceded by an explanation of motives. If the assembly is of opinion to accede to the proposition, it will fix the time when the report upon the necessity of the case shall be represented. On this report, if the assembly admit the urgency of the case, it will declare it, and fix the time of the debate. If it decides against the urgency of the case, the motion will have to go through the usual course.

CHAPTER V.

OF THE EXECUTIVE POWER.

ART. 43. The French people delegates the executive power to a citizen, who shall receive the title of president of the republic.

ART. 44. The president must be born a Frenchman, thirty years of age at least, and must never have lost the quality of Frenchman.

ART. 45. The president of the republic shall be elected for four years, and shall not be eligible for re-election until after an interval of four years. Neither shall the vice-president, nor any of his relations or kindred of the president, to the sixth degree inclusive, be eligible for re-election after him, within the same interval of time.

ART. 46. The election shall take place on the second Sunday in the month of May. If, in the event of death or resignation, or

from any other cause, a president be elected at any other period, his power shall expire on the second Sunday of the month of May, in the fourth year following his election. The president shall be elected by secret ballot, and by an absolute majority of votes, by the direct suffrage of all the electors of the French departments and of Algeria.

ART. 47. The records of the electoral operations shall be transmitted immediately to the national assembly, which shall determine without delay upon the validity of the election, and shall proclaim the president of the republic. If no candidate shall have obtained more than one-half of the votes given, and at the least two millions of votes, or if the conditions required by article 44 are not fulfilled, the national assembly shall elect the president of the republic by an absolute majority, and by ballot, from among the five candidates eligible who shall have obtained the greatest number of votes.

ART. 48. Before entering upon his functions, the president of the republic shall, in the presence of the assembly, take an oath of the tenor following: "In presence of God, and before the French people, represented by the national assembly, I swear to remain faithful to the democratic republic, one and indivisible, and to fulfil all the duties which the constitution imposes upon me."

ART. 49. He shall have the right of presenting bills through the ministers in the national assembly. He shall watch over and secure the execution of the laws.

ART. 50. He shall have the disposal of the armed force, without ever being allowed to command it in person.

ART. 51. He cannot cede any portion of the territory, nor dissolve or prorogue the national assembly, nor suspend the operation of the constitution and the laws.

ART. 52. He shall annually present, by a message to the national assembly, an exposition of the general state of the affairs of the republic.

ART. 53. He shall negotiate and ratify treaties. No treaty shall be definitive until after it has been approved by the national assembly.

ART. 54. He shall watch over the defence of the state, but he shall not undertake any war without the consent of the national assembly.

ART. 55. He shall possess the right of pardon; but he shall not have the power to exercise this right until after he has taken

the advice of the council of state. Amnesties shall only be granted by an express law. The president of the republic, the ministers, as well as all other persons condemned by the high court of justice, can only be pardoned by the national assembly.

ART. 56. The president of the republic shall promulgate the laws in the name of the French people.

ART. 57. Laws of emergency shall be promulgated three days after, and other laws one month after their passing, counting from the day on which they were passed by the national assembly.

ART. 58. Previous to the day fixed for the promulgation, the president may, by a message assigning reasons therefor, demand a reconsideration of the law. The assembly shall then reconsider it, its resolution becomes definitive, and shall be transmitted to the president of the republic. In such a case, the promulgation shall be made within the delay allowed to laws of emergency.

ART. 59. In default of the promulgation of laws by the president, within the period fixed by the preceding articles, the president of the assembly shall provide for their due promulgation.

ART. 60. The credentials of envoys and ambassadors from foreign powers shall be addressed to the president of the republic.

ART. 61. He shall preside at all national solemnities.

ART. 62. He shall be furnished with a residence at the expense of the republic, and shall receive an allowance of six hundred thousand francs per annum.

ART. 63. He shall reside in the place in which the national assembly holds its sessions, and may not leave the continental territory of the republic without being authorized by law so to do.

ART. 64. The president of the republic shall have power to appoint and revoke the appointment of the ministers. He shall appoint and revoke, in a council of ministers, the diplomatic agents, commanders-in-chief of the armies of the republic by sea and land, prefects and the chief commandant of the national guards of the Seine, the governors of Algeria and the other colonies, the attorney-general and all other functionaries of superior rank. He shall appoint and dismiss, at the suggestion of the competent minister, according to the terms and conditions fixed by law, all other officers and functionaries of the government of secondary rank.

ART. 65. He shall have the right of suspending, for a period not exceeding three months, the agents of the executive power

electd by the people. He shall not be able to dismiss them unless by the advice of the council of the state. The law will determine the case in which agents, having been dismissed, may be declared not to be eligible again for the same office. Such a declaration of ineligibility can only be pronounced by a formal judgment.

ART. 66. The number of ministers and their several powers, duties and emoluments shall be settled by the legislative power.

ART. 67. The acts of the president, excepting those by which he appoints or dismisses the ministers of the republic, shall be of no effect, unless countersigned by a minister.

ART. 68. The president of the republic, the ministers, the agents, and all the other depositaries of public authority, shall be responsible, each in so far as he is concerned, for all the acts of the government and of the administration. Every measure by which the president of the republic shall dissolve or prorogue the assembly, or interpose any obstacle to the exercise of its public trust, shall be deemed a crime of high treason. By this sole act, the president becomes divested of his functions, and the people are bound not to yield obedience to him; the executive power is thereby transferred in full authority to the national assembly. The judges of the high court of justice shall immediately assemble, on pain of forfeiture of their offices. They shall call together a jury, in some place to be by them designated, in order to proceed to trial and judgment upon the president and his accomplices; and they shall themselves appoint a magistrate to be charged with the functions of state attorney. A law shall determine the other cases of responsibility, as well as the forms and conditions of the prosecution of them.

ART. 69. The ministers shall have admission into the national assembly, and shall be heard whenever they require it, and they may also obtain the assistance of commissioners, who shall have been appointed by a decree of the president of the republic.

ART. 70. There shall be a vice-president of the republic, to be appointed by the national assembly, from a list of three candidates presented by the president within the month succeeding his election. The vice-president shall take the same oath as the president. The vice-president shall not be appointed from among the relations or kindred of the president to the sixth degree inclusive. Should the president by any cause be prevented from officiating, the vice-

president will represent him for the time being. If the presidency shall become vacant by the death of the president, his dismissal from office, or from other causes, a new election for president shall take place within a month.

CHAPTER VI.

OF THE COUNCIL OF STATE.

ART. 71. There shall be a council of state, of which the vice-president of the republic shall of right be the president.

ART. 72. The members of this council shall be appointed for six years by the national assembly. The half of this council shall be renewed in the first two months of each new legislature, by secret ballot, and by an absolute majority. They shall be indefinitely re-eligible.

ART. 73. Such of the members of the council of state, who shall have been appointed from among the members of the assembly, shall be immediately replaced as representatives of the people.

ART. 74. The members of the council of state cannot be dismissed, except by the national assembly and at the suggestion of the president.

ART. 75. The council of state shall be consulted upon all bills or laws proposed by the government, which, according to law, must be presented for their previous examination; and also upon parliamentary bills which the assembly may send to them for their examination. It shall prepare the rules of public administration, and will alone make those regulations with regard to which the national assembly have given it a special delegation. It shall exercise over the public administrations all the powers of control and of superintendence which are conferred upon it by law. The law will determine the other powers and duties of the council.

CHAPTER VII.

OF THE INTERIOR ADMINISTRATION.

ART. 76. The division of the territory into departments, arrondissements, districts and communes shall be maintained. Their present limits shall not be changed, except by law.

ART. 77. There shall be—1. In each department an administration composed of a prefect, a general council, and a council of

prefecture. 2. In each *arrondissement*, a sub-prefect. 3. In each district, a district-council; nevertheless, only a single district-council shall be established in any city which is divided into several districts. 4. In each *commune*, an administration, composed of a mayor, his assistants, and a municipal council.

ART. 78. A law shall determine the composition and duties of the general councils, the district councils, and the municipal councils, as well as, also, the manner of appointing the mayors and their assistants.

ART. 79. The general councils and the municipal councils shall be elected by the direct vote of all citizens living in the department or district; each district shall elect one member of the general council; a special law shall regulate the forms of election in the department of the Seine, in the city of Paris and in cities containing a population of more than twenty thousand souls.

ART. 80. The general councils, the district councils, and the municipal councils may be dissolved by the president of the republic, with the advice of the council of state; the law will fix the period within which a new election shall be held.

CHAPTER VIII.

OF THE JUDICIARY POWER.

ART. 81. Justice shall be awarded, gratuitously, in the name of the French people. The proceedings shall be public, except in cases where publicity may be detrimental either to the public order or public morals, in which case the court shall declare the same by a formal judgment.

ART. 82. Trial by jury shall be continued in criminal cases.

ART. 83. The decision upon all political offences, and upon all offences committed by means of the press, appertains exclusively to the jury. The organic laws shall determine the tribunal and powers in relation to offences and defamation against private individuals.

ART. 84. The jury alone shall decide upon the question of damages claimed on account of offences by the press.

ART. 85. The justices of peace and their assistants, the judges of the first instance and of appeal, the members of the court of cassation and of the court of accounts, shall be appointed by the president of the republic, according to a system of candidateship on conditions which shall be regulated by the organic laws.

ART. 86. The magistrates shall be appointed by the president of the republic.

ART. 87. The judges of the first instance and of appeal, the members of the court of cassation and of the court of accounts shall be appointed for life. They shall not be dismissed or suspended; except after judgment, nor retire with a pension, except for causes, and according to proceedings appointed by law.

ART. 88. The councils of war and of revision of the armies by sea and land, the maritime tribunals, the tribunals of commerce, the *prud'hommes*, and other special tribunals, shall retain their present organization and their present functions, until the law shall decide otherwise.

ART. 89. Conflicts of privileges and duties between the administrative and the judicial authority shall be regulated by a special tribunal, composed of members of the court of cassation and of counsellors of state, to be appointed, every three years, in equal number, by the respective bodies to which they belong. This tribunal shall be presided over by the minister of justice.

ART. 90. Appeals for incompetence, or excess of power against the decrees of the court of accounts, shall be carried before the tribunal of conflictive jurisdiction.

ART. 91. A high court of justice shall decide, without appeal, demur, or recourse of annulment, in all accusations made by the national assembly against the president of the republic or the ministers. It shall likewise, in the same way, try all cases of persons accused of crimes, attempts, or plots against the internal and external safety of the state, which the assembly may have sent before it. Except in the case provided for in article 68, it shall not be called together unless by decree of the national assembly, which shall also designate the city in which the court shall hold its sittings.

ART. 92. The high court shall be composed of five judges and of thirty-six jurymen. Every year, in the first fifteen days of the month of November, the court of cassation shall appoint from among its members, by secret ballot and an absolute majority, the judges of the high court, the number to be five judges and two supplementary judges. The five judges, who are thus called upon to sit, will themselves select their president. The magistrates performing the functions of the public ministry shall be designated by

the president of the republic, and, in the event of the accusation of the president or his ministers, by the national assembly. The jury, to the number of thirty-six, and four supplementary jurymen, shall be taken from among the members of the general councils of the departments. Representatives of the people shall not be competent to form part of these juries.

ART. 93. When a decree of the national assembly shall have ordered the formation of the high court of justice as also in the cases provided for in the 68th article, on the requisition of the president or of one of the judges, the president of the court of appeal, and in default of that court, the president of the tribunal of the first instance of the chief judiciary court of the department, shall draw lots in public assembly for the name of a member of the general council.

ART. 94. On the day appointed for the trial, if there are less than sixty jurymen present, the number shall be filled up by supplementary jurymen, drawn by lot by the president of the high court of justice, from among the names of the members of the general council of the department in which the court holds its sitting.

ART. 95. Those jurymen who shall not have given an adequate excuse for absence, shall be condemned to a fine of not less than one thousand francs, and not exceeding ten thousand, and to be deprived of their political rights during five years at the utmost.

ART. 96. Both the accused and the public accuser shall have the right to challenge, as in ordinary cases.

ART. 97. The verdict of the jury pronouncing the accused guilty cannot be rendered except by a majority of two-thirds.

ART. 98. In all cases regarding the responsibility of the ministers, the national assembly may, according to the circumstances, send the accused minister to be tried either before the high court of justice or by the ordinary tribunals for civil indemnities (or damages).

ART. 99. The national assembly and the president of the republic may, in all cases, transmit the examination of the acts of any functionary (except of the president himself) to the council of state, whose report shall be made public.

ART. 100. The president of the republic can only be brought to trial before the high court of justice. Except as is provided for by article 68, he cannot be tried unless upon accusation brought

against him by the national assembly, and for crimes and misdemeanors, which shall be determined by law.

CHAPTER IX.

OF THE PUBLIC FORCES.

ART. 101. The public force is instituted for the purpose of defending the state against enemies from without, and to insure, internally, the maintenance of order, and the execution of the laws. It is composed of the national guard and of the army by sea and by land.

ART. 102. Every Frenchman, save in exceptions determined by the law, owes to his country his services in the army and in the national guard. The privilege of every citizen to free himself from personal military service shall be regulated by the law of recruitment.

ART. 103. The organization of the national guard, and the constitution of the army, shall be regulated by law.

ART. 104. The public force is essentially obedient. No armed force can deliberate.

ART. 105. The public force employed to maintain order in the interior can only act upon the requisition of the constituted authorities, according to the regulations prescribed by the legislative power.

ART. 106. A law shall determine those cases in which the state of siege shall be declared, and shall regulate the forms and determine the effects of such a measure.

ART. 107. No foreign troops can be introduced into the French territory without the previous assent of the national assembly.

CHAPTER X.

SPECIAL REGULATIONS.

ART. 108. The legion of honor is maintained; its statutes shall be revised, and made to accord with the constitution.

ART. 109. The territory of Algeria, and of the colonies, is declared to be French territory, and shall be governed by their separate laws until a special law shall place them under the provisions of the present constitution.

ART. 110. The national assembly confides the trust of this pre-

sent constitution, and the rights it consecrates, to the guardianship and patriotism of every Frenchman.

CHAPTER XI.

OF THE REVISION OF THE CONSTITUTION.

ART. 111. Whenever, in the last year of a legislature, the national assembly shall have expressed the wish that the constitution should be modified, in whole or in part, this revision shall be entered upon in the following manner : The wish expressed by the assembly shall not be converted into a definitive resolution until after three successive deliberations held upon the subject, at the interval of one month between each deliberation, and the measure shall only be carried by a vote of three-fourths of the assembly. The number of votes must be five hundred at the least. The assembly for revision shall only be appointed for three months. It shall only engage in the special revision for which it has been assembled ; nevertheless, in cases of emergency, it may provide for legislative necessities.

CHAPTER XII.

TRANSITORY ARRANGEMENTS.

ART. 112. The provisions of the codes, laws, and regulations, now in force, and which are not in contradiction with the present constitution, shall remain in force until otherwise provided by law.

ART. 113. All the authorities constituted by the present laws shall continue in the exercise of their present duties until the promulgation of the organic laws which relate to them.

ART. 114. The law of judiciary organization will determine the particular mode for the appointment and first composition of the new tribunals.

ART. 115. After the vote upon the constitution, the constituent national assembly shall proceed to draw up the organic laws, which shall be determined by a special law for that purpose.

ART. 116. The first election of a president of the republic shall take place in conformity with the special law, passed by the national assembly on the 28th of October, 1848.

APPENDIX XIV.

THE PRESENT CONSTITUTION OF FRANCE.

WHEN I wrote the article Constitution for the Encyclopædia Americana, which was before the French revolution of 1830, I classed constitutions under three general heads: 1. Those established by the sovereign power, real or so-called. These were subdivided into constitutions established by a sovereign people for their own government, as ours are; and into such as are granted, theoretically at least, by the plenary power of an absolute monarch; such as the then existing French charter was, a fundamental law called by the French octroyed. 2. Constitutions formed by contracts between nations and certain individuals whom they accept as rulers on distinct conditions. 3. Constitutions forming a compact between a number of states. The present constitution of France is not included in either of these classes. Its genesis, as the reader well knows, was that, first, an individual acquired absolute power by a conspiracy or coup d'état, then caused the people to vote whether they would grant him plenary power to prescribe a constitution; he received the power by above seven millions of votes, and issued the following document, copied from the constitution which Napoleon the First had prescribed at the beginning of this century. If, then, the reader insists upon calling this a constitution—we certainly do not call France at present a constitutional country—we may call it a constitution per saltum, for it was in former times one of the different ways of electing a pope, or the head of a great society, such as the Templars, to elect one individual with the right of appointing the chief, and this was called electing per saltum, by a leap. I also divided constitutions into cumulative constitutions, such as the constitution of England, or that of ancient Rome, and into enacted (or written) constitutions, such as ours are. The present constitution of France can again be classed neither under the one nor the other head. It may, perhaps, be called decreed, or by

any name the reader prefers. It is difficult to find an appropriate name for a thing which is the result of a confused mixture of ideas, of absolutism, popular sovereignty, violence, of breaking of oaths and prescribing of others, of coup d'état, and ratification by those whose work was destroyed by the soldiery, and by the idea of the "incarnation" of popular absolute power in one person. Louis Napoleon has been called the incarnation of a great principle. I do not pretend to find a philosophical name for this product. Probably the whole constitution belongs to the "Napoleonic ideas," of which we read so much at this moment; or we may call it in future an imperial or Cæsarean constitution.

The following, then, is the present French Constitution, as it appeared in the official paper, the *Moniteur*, of January 15, 1852, preceded by the proclamation of Louis Napoleon.

LOUIS NAPOLEON,

PRESIDENT OF THE REPUBLIC.

*In the name of the French People.*¹

FRENCHMEN! When, in my proclamation of the 2d of December, I stated to you in all sincerity what were, according to my ideas, the vital conditions of government in France, I had not the pretension, so common in our days, of substituting a personal theory for the experience of ages. On the contrary, I sought in the past what were the best examples to follow, what men had given them, and what benefit had resulted therefrom.

Having done so, I considered it only logical to prefer the precepts of genius to the specious doctrines of men of abstract ideas. I took as model the political institutions which already, at the beginning of the present century, in analogous circumstances, strengthened society when tottering, and raised France to a high degree of prosperity and grandeur.

I selected as model those institutions which, in place of disappearing at the first breath of popular agitations, were overturned only by all Europe being coalesced against us.

¹ The reader will find, on a subsequent page, that the whole of this constitution was retained under the empire with the exception of a few passages, relating to the hereditary part of the empire.

In a word, I said to myself, since France has existed for the last fifty years only in virtue of the administration, military, judicial, religious, and financial organization of the consulate and the empire, why should we not adopt likewise the political institutions of that period? As they were created by the same mind, they ought to bear in themselves the same character of nationality and practical utility.

In fact, as I stated in my proclamation, our present society, it is essential to declare, is nothing else than France regenerated by the revolution of '89 and organized by the emperor. Nothing remains of the old régime but great reminiscences and great benefits. But all that was then organized was destroyed by the revolution, and all that has been organized since the revolution, and which still exists, was done by Napoleon.

We have no longer either provinces, or *pays d'état*, or parliaments, or intendants, or farmers general, or feudal rights, or privileged classes in exclusive possession of civil and military employments, or different religious jurisdiction.

In so many things incompatible with itself had the revolution effected a radical reform, but without founding anything definitive. The first consul alone re-established the unity, the various ranks, and the veritable principles of government. They are still in vigor.

Thus, the administration of France was intrusted to prefects, sub-prefects, and mayors, who substituted unity for the commissions of the directory; and, on the contrary, the decision of business given to councils from the commune to the department. Thus, the magistracy was strengthened by the immovability of the judges, by the various ranks of the tribunals; justice was rendered more easy by the delimitation of attributions, from the justice of peace to the court of cassation. All that is still existing.

In the same way our admirable financial system, the bank of France, the establishment of budgets, the court of accounts, the organization of police, and our military regulations, date from the same period.

For fifty years it is the code Napoleon which had regulated the interests of citizens amongst themselves; and it is still the concordat which regulates the relations between the state and the church.

In fine, the greatest part of the measures which concern the pro-

gress of manufactures, commerce, letters, sciences, and the arts, from the regulations of the *Theâtre Française* to those of the Institute—from the institution of the *prud'hommes* to the creation of the legion of honor, were fixed by decrees of that time.

It may then be affirmed that the framework of our social edifice is the work of the emperor, and that it has resisted his fall and three revolutions.

Why, with the same origin, should not the political institutions have the same chances of success ?

My conviction was long formed on the point, and it is on that account that I submit to your judgment the principal bases of a constitution, borrowed from that of the year 8. When approved by you, they will become the foundation of our political constitution.

Let us examine what the spirit of them is.

In our country, monarchical as it has been for eight hundred years, the central power has always gone on augmenting. The royalty destroyed the great vassals; the revolutions themselves swept away the obstacles which opposed the rapid and uniform exercise of authority. In this country of centralization, public opinion has unceasingly attributed to the head of the government benefits as well as evils. And so, to write at the head of a charter that that chief is irresponsible, is to be against the public feeling—is to want to establish a fiction, which has three times vanished at the noise of revolutions.

The present constitution, on the contrary, declares that the chief whom you have elected is responsible before you; and that he has always the right to appeal to your judgment, in order that, in solemn circumstances, you may continue to him your confidence, or withdraw it.

Being responsible, his action ought to be free and unshackled. Thence the obligation of his having ministers who may be the honored and puissant auxiliaries of his thought, but who no longer form a responsible council, composed of mutually responsible members, a daily obstacle to the particular impulse of the head of the state, the expression of a policy emanating from the chambers, and by that very circumstance exposed to frequent changes, which prevent all spirit of unity and all application of a regular system.

Nevertheless, the higher a man is placed the more independent

he is, and the greater confidence the people have placed in him the more he has need of enlightened and conscientious councils. Thence the creation of a council of state, henceforward a veritable council of the government, first wheel in our organization, a collection of practical men, elaborating bills in special commissions, discussing them with closed doors, without oratorical ostentation in general assembly, and presenting them afterwards for acceptance to the legislative body.

Thus, the government is free in its movements and enlightened in what it does.

What is now to be the control exercised by the assemblies?

A chamber, which takes the title of legislative body, votes the laws and the taxes. It is elected by the universal suffrage, without *scrutin de liste*. The people, selecting each candidate separately, can more easily appreciate the merits of each.

The chamber is not to be any longer composed of more than about 260 members. That is a first guaranty of the calm of the deliberations, for only too often the inconsistency and ardor of passions have been seen to increase in assemblies in proportion to their number.

The report of the sittings, which is intended to inform the nation of what is going on, is no longer, as formerly, delivered to the party spirit of each journal; an official publication, drawn up by the care of the president of the chamber, will be alone permitted.

The legislative body discusses freely each law, and adopts or rejects it. But it cannot introduce all of a sudden those amendments which often disarrange the whole economy of a system and the ensemble of the original project. Still more, it does not possess that parliamentary initiative which was the source of such grave abuses, and which allowed each deputy to substitute himself at every turn for the government, by presenting projects the least carefully studied and inquired into.

The chamber being no longer in presence of the ministers, and the various bills being supported by speakers belonging to the council of state, time is not lost in vain interpellations and passionate debates, the only object of which was to overturn the ministers, in order to place others in their stead.

Thus, then, the deliberations of the legislative body will be independent, but the causes of sterile agitations will have been sup-

pressed, and proper time and deliberation given to each modification of the law. The representatives of the nation will, in fact, maturely perform their serious functions.

Another assembly takes the name of senate. It will be composed of the elements which, throughout the whole country, create legitimate influences—an illustrious name, fortune, talent, and services rendered.

The senate is no longer, like the chamber of peers, the pale reflection of the chamber of deputies, repeating, at some days' interval, the same discussion in another tone. It is the depository of the fundamental compact, and of the liberties compatible with the constitution; and it is only with respect to the grand principles on which our society is based that it examines all the laws, and proposes new ones to the executive power. It intervenes, whether to resolve every grave difficulty which might arise during the absence of the legislative body, or to explain the text of the constitution, or to insure what is necessary for its being acted on. It has the right to annul every arbitrary and illegal act, and, thus enjoying that consideration which belongs to a body exclusively occupied with the examination of great interests, or the application of grand principles, it occupies in the state the independent, salutary and conservative position of the ancient parliaments.

The senate will not be, like the chamber of peers, transformed into a court of justice; it will preserve its character of supreme moderator; for disfavor always reaches political bodies, when the sanctuary of the legislators become a criminal tribunal. The impartiality of the judge is often called in doubt, and he loses a portion of his prestige in public opinion, which sometimes goes the length of accusing him of being the instrument of passion or of hatred.

A high court of justice, chosen from amongst the higher magistrates, having for jurymen members of the councils-general throughout all France, will alone decide in cases of *attentats* against the head of the state and public safety.

The emperor used to say to the council of state: "A constitution is the work of time; and too large a margin cannot be left to ameliorations." Consequently, the present constitution has fixed only what it was impossible to leave uncertain. It has not inclosed within an impassable circle the destinies of a great people; it has

left to change a margin sufficiently wide to allow, in great crises, other means of safety to be employed than the disastrous expedient of revolutions.

The senate can, in concert with the government, modify all that is not fundamental in the constitution; but as to the modifications effected in its primary bases, sanctioned by your suffrages, they cannot become definitive until after they have received your ratification.

Thus the people remains always master of its destiny, as nothing fundamental can be effected independently of its will.

Such are the ideas and principles which you have authorized me to carry into application. May the constitution confer on our country calm and prosperous days! May it prevent the return of those intestine struggles, in which the victory, however legitimate it may be, is always dearly purchased! May the sanction, which you have bestowed on my efforts, receive the benediction of heaven! In that case, peace will be insured at home and abroad, my prayers will be granted, and my mission accomplished!

LOUIS NAPOLEON BONAPARTE.

Palace of the Tuileries, January 14, 1852.

Constitution made in virtue of the powers delegated by the French People to Louis Napoleon Bonaparte, by the vote of the 20th and 21st of December, 1851.

The president of the republic—

Considering that the French people has been called on to pronounce its opinion on the following resolution:

The people wish for the maintenance of the authority of Louis Napoleon Bonaparte, and give him the powers necessary to make a constitution, according to the bases laid down in his proclamation of the 2d December.

Considering that the bases proposed to the acceptance of the people were:

1. A responsible chief appointed for ten years.
2. Ministers dependent on the executive power alone.

3. A council of state, formed of the most distinguished men, to prepare the laws and support the discussion of them before the legislative body.

4. A legislative body, to discuss and vote the laws, elected by universal suffrage, without *scrutin de liste*, which falsifies the election.

5. A second assembly, formed of the most illustrious men of the country, as an equipoising power (*pouvoir ponderateur*), guardian of the fundamental compact and of public liberties.

Considering that the people have replied affirmatively by seven millions five hundred thousand votes,

Promulgates the constitution, the tenor of which is as follows :

CHAPTER I.

ART. 1. The constitution admits, confirms, and guarantees the great principles proclaimed in 1789, and which are the bases of the public right of Frenchmen.

CHAPTER II.

FORMS OF THE GOVERNMENT OF THE REPUBLIC.

ART. 2. The government of the French Republic is confided for ten years to Prince Louis Napoleon Bonaparte, the actual president of the republic.

ART. 3. The president of the republic governs by means of ministers, of the council of state, of the senate, and of the legislative body.

ART. 4. The legislative power is exercised collectively by the president of the republic, the senate, and the legislative body.

CHAPTER III.

OF THE PRESIDENT OF THE REPUBLIC.

ART. 5. The president of the republic is responsible to the French people, to whom he has always the right to make an appeal.

ART. 6. The president of the republic is the chief of the state ; he commands the land and sea forces, declares war, makes treaties of peace, alliance, and commerce, appoints to all employs, and makes the regulations and decrees necessary for the execution of the laws.

ART. 7. Justice is rendered in his name.

ART. 8. He alone has the initiative of laws.

ART. 9. He has the right of granting pardon.

ART. 10. He sanctions and promulgates the laws and the *senatus consultum*.

ART. 11. He presents every year to the senate, and to the legislative body, by a message, the state of the affairs of the republic.

ART. 12. He has the right to declare the state of siege in one or several departments, on condition of referring it to the senate within the shortest possible delay. The consequences of the state of siege are regulated by law.

ART. 13. The ministers depend only on the chief of the state—they are only responsible for the acts of the government as far as they are individually concerned in them; there is no joint responsibility among them, and they can only be impeached by the senate.

ART. 14. The ministers, the members of the senate, of the legislative body, and of the council of state, the officers of the land and sea forces, the magistrates and public functionaries, take the following oath: *I swear obedience to the constitution and fidelity to the president.*

ART. 15. A *senatus consultum* fixes the sum allowed annually to the president of the republic during the whole continuance of his functions.

ART. 16. If the president of the republic dies before the expiration of his term of office, the senate is to convoke the nation, in order to proceed to a fresh election.

ART. 17. The chief of the state has the right, by a secret act deposited in the archives of the senate, to point out to the people the name of the citizens whom he recommends to the interest of France to the confidence of the people and to their suffrages.

ART. 18. Until the election of the new president of the republic, the president of the senate governs with the co-operation of the ministers in functions, who form themselves into a council of government, and deliberate by a majority of votes.

CHAPTER IV.

OF THE SENATE.

ART. 19. The number of senators shall not exceed 150; it is fixed for the first year at 80.

ART. 20. The senate is composed : 1, of cardinals, marshals, and admirals; 2, of citizens whom the president of the republic may think proper to raise to the dignity of senators.

ART. 21. The senators are appointed for life.

ART. 22. The functions of senator are gratuitous; nevertheless, the president of the republic may grant to senators, on account of services rendered, or of their position with regard to fortune, a personal donation, which cannot exceed 30,000 francs per annum.

ART. 23. The president and the vice-presidents of the senate are named by the president of the republic, and chosen from among the senators. They are appointed for one year. The salary of the president of the senate is fixed by a decree.

ART. 24. The president of the republic convokes and prorogues the senate. He fixes the duration of its sessions by a decree. The sittings of the senate are not public.

ART. 25. The senate is the guardian of the fundamental compact and of public liberties. No law can be promulgated without being submitted to it.

ART. 26. The senate may oppose the promulgation :

1. Of laws which may be contrary to, or be an attack on, the constitution, on religion, on morals, on freedom of worship, on individual liberty, on the equality of citizens in the eye of the law, on the inviolability of property, and on the principle of the immovability of the magistracy.

2. Of those which may comprise the defence of the territory.

ART. 27. The senate regulates by a *senatus consultum* :

1. The constitution of the colonies and of Algeria.

2. All that has not been provided for by the constitution, and which is necessary for its march.

3. The sense of the articles of the constitution which give rise to different interpretations.

ART. 28. These *senatus consulta* will be submitted to the sanction of the president of the republic, and promulgated by him.

ART. 29. The senate maintains or annuls all the acts which are referred to it as unconstitutional by the government, or denounced for the same cause by the petitions of citizens.

ART. 30. The senate may, in a report addressed to the president of the republic, lay down the bases of bills of great national interest.

ART. 31. It may also propose modifications in the constitution. If the proposition is adopted by the executive power, it must be stated by a *senatus consultum*.

ART. 32. Nevertheless, all modifications in the fundamental basis of the constitution, such as they were laid down in the proclamation of the 2d December, and adopted by the French people, shall be submitted to universal suffrage.

ART. 33. In case of the dissolution of the legislative body, and until a new convocation, the senate, on the proposition of the president of the republic, shall provide by measures of urgency for all that is necessary for the progress of the government.

CHAPTER V.

OF THE LEGISLATIVE BODY.

ART. 34. The election has for its basis the number of the population.

ART. 35. There shall be one deputy to the legislative body for every 35,000 electors.

ART. 36. The deputies are to be elected by universal suffrage, without *scrutin de liste*.

ART. 37. They will not receive any payment.

ART. 38. They are named for six years.

ART. 39. The legislative body discusses and votes bills and taxes.

ART. 40. Any amendment adopted by the committee charged to examine a bill shall be sent back without discussion to the council of state by the president of the legislative body. If the amendment is not adopted by the council of state, it cannot be submitted to the discussion of the legislative body.

ART. 41. The ordinary sessions of the legislative body last three months; its sittings are public; but, at the demand of five members, it may form itself into a secret committee.

ART. 42. The report of the sittings of the legislative body by the journals, or by any other means of publication, shall only consist in the reproduction of the minutes of the sitting, drawn up at its conclusion under the direction of the president of the legislative body.

ART. 43. The president and vice-presidents of the legislative

body are named by the president of the republic for one year; they are to be chosen from among the deputies. The salary of the president of the legislative body will be fixed by a decree.

ART. 44. The ministers cannot be members of the legislative body.

ART. 45. The right of petition can only be exercised as regards the senate. No petition can be addressed to the legislative body.

ART. 46. The president of the republic convokes, adjourns, prorogues, and dissolves the legislative body. In the event of its being dissolved, the president of the republic must convoke a new one within a delay of six months.

CHAPTER VI.

OF THE COUNCIL OF STATE.

ART. 47. The number of councillors of state in ordinary service is from forty to fifty.

ART. 48. The councillors of state are named by the president of the republic, and may be dismissed by him.

ART. 49. The council of state is presided over by the president of the republic, and in his absence by the person whom he appoints as vice-president of the council of state.

ART. 50. The council of state is charged, under the direction of the president of the republic, to draw up bills and the regulations of public administration, and to solve the difficulties which may arise in administrative matters.

ART. 51. It supports, in the name of the government, the discussion of bills before the senate and legislative body. The councillors of state charged to speak in the name of the government are to be named by the president of the republic.

ART. 52. The salary of each councillor of state is 25,000 francs.

ART. 53. The ministers have rank, sitting, and deliberative votes in the council of state.

CHAPTER VII.

OF THE HIGH COURT OF JUSTICE.

ART. 54. A high court of justice shall try, without appeal, or without recourse to cassation, all persons who may be sent before it charged with crime, *attentats*, or conspiracies against the presi-

dent of the republic, and against the internal and external safety of the state. It can only be formed in virtue of a decree of the president of the republic.

ART. 55. A *senatus consultum* will determine the organization of this high court.

CHAPTER VIII.

GENERAL AND TRANSITORY CLAUSES.

ART. 56. The provisions of the codes, laws and regulations, which are not contrary to the present constitution, remain in vigor until they shall have been legally revoked.

ART. 57. The municipal organization shall be determined by law. The mayors shall be named by the executive power, and may be chosen from those not belonging to the municipal council.

ART. 58. The present constitution will be in vigor from the day on which the great bodies of the state shall have been constituted. The decrees issued by the president of the republic, from the 2d December up to that period, shall have the force of law.

Given at the Palace of the Tuileries, this 14th day of January, 1852.

LOUIS NAPOLEON.

Sealed with the great seal.

The reader must remember that all the decrees, which were issued after the *coup d'état*, and before its "ratification" by the people, were considered as ratified likewise; for instance, the still existing law by which the government transports members of secret political societies, without trial, and by authority of which many other persons deemed dangerous were transported to Cayenne. The same is to be said of the stringent law of the press according to which every paper exists at the will of the government, with regulations which may become utterly ruinous for the editor and publisher. The minute regulations of the coats and trowsers of the senators and members of the legislative corps need not probably be mentioned here as organic laws; but on March 22d, 1852, appeared the following important decree:

Louis Napoléon, President of the French Republic:

Considering article 4 of the constitution, and seeing that at the moment when the senate and legislative body are about to enter on

their first session, it is important to regulate their relations with the president of the republic and the council of state, and to establish, according to the constitution, the organic conditions of their works, decrees :

THIRD DIVISION.—OF THE LEGISLATIVE BODY.

CHAPTER I.

MEETING OF THE LEGISLATIVE BODY, FORMATION AND ORGANIZATION OF THE BUREAUS, AND VERIFICATION OF THE POWERS.

ART. 41. The legislative body is to meet on the day named by the decree of convocation.

ART. 42. At the opening of the first sitting the president of the legislative body, assisted by the four youngest members present, who will fill the functions of secretaries during the session, will proceed to form the assembly into seven bureaus, drawn by lot.

ART. 43. These seven bureaus, named for the whole of the session, will each be presided over by the oldest member, the youngest performing the office of secretary.

ART. 44. They will immediately proceed to the examination of the minutes of the election of the members distributed by the president of the legislative body, appointing one or several of their members to bring up a report thereof in a public sitting.

ART. 45. The assembly examines these reports ; if the election be declared valid, the member when present immediately takes the oath prescribed by article 14 of the constitution ; if absent, at his first appearance, after which the president of the legislative body pronounces his admission, and the deputy, who has not taken the oath within fifteen days of his election, is considered as dismissed. In case of absence the oath may be taken by writing, and in this case must be addressed by the deputy to the president of the legislative body, within the delay above mentioned.

ART. 46. After the verification of the returns, and without waiting for the decision on contested or adjourned elections, the president of the legislative body shall make known to the president of the republic that the legislative body is constituted.

CHAPTER II.

PRESENTATION, DISCUSSION, AND VOTE OF BILLS.

ART. 47. Bills presented by the president of the republic are to be presented and read to the legislative body by councillors of state appointed for that purpose, or transmitted, by order of the president of the republic, by the minister of state to the president of the legislative body, who causes them to be read at the public sitting. These bills will be printed, distributed, and placed on the order of the day of the bureaus, which will discuss them and name by ballot, and by a simple majority, a committee of seven members to report on them.

ART. 48. Any amendment arising from the initiative of one or more members, must be handed to the president, and be by him transmitted to the committee. No amendment can, however, be received after the report shall have been presented at the public sitting.

ART. 49. The authors of the amendment have a right to be heard before the committee.

ART. 50. If the amendment is adopted by the committee, it transmits the tenor of it to the president of the legislative body, who sends it to the council of state, and the report of the committee is suspended until the council of state has pronounced its opinion on it.

ART. 51. If the opinion of the council of state, transmitted to the committee through the president of the legislative body, is favorable, or a new wording proposed by the council of state be adopted by the committee, the text of the bill to be discussed in public sitting shall be modified conformably to the new wording adopted. If the opinion, on the contrary, is unfavorable, or if the new wording proposed by the council of state is not adopted by the committee, the amendment will be considered as not having been offered.

ART. 52. The report of the committee on the bill examined by it shall be read in a public sitting, and printed and distributed at least twenty-four hours before the discussion.

ART. 53. At the sitting fixed by the order of the day, the discussion shall open on the ensemble of the bill, and afterwards on

the different articles or chapters, if it be a law on finance. There is never any occasion to deliberate on the question of deciding if the discussion of the articles is to be passed to, as they are successively put to the vote by the president. The vote takes place by *assis et levé*, and if the result is doubtful, a ballot is proceeded to.

ART. 54. If any article is rejected, it is sent back to the committee for examination. Each deputy then, in the form specified in articles 48 and 49 of the present decree, presents such amendments as he pleases. Should the committee be of opinion that a new proposition ought to be made, it transmits the tenor of it to the president of the legislative body, who forwards it to the council of state. The matter is then proceeded on in conformity with articles 51, 52, and 53 of the present decree, and the public vote which then takes place is definitive.

ART. 55. After the vote on the articles, a public vote on the ensemble of the bill takes place by the absolute majority. The presence of the majority of the deputies is necessary to make the vote valid. Should less than that number be present, the vote must be recommenced. Bills of local interest are voted by *assis et levé*, unless the ballot be called for by ten members at least.

ART. 56. The legislative body assigns no reasons for its decisions, which are expressed in the following form: "The legislative body has adopted;" or "The legislative body has not adopted."

ART. 57. The minute of the bill adopted by the legislative body is signed by the presidents and secretaries, and deposited in the archives. A copy of the same, similarly signed, is transmitted to the president of the republic.

CHAPTER III.

MESSAGES AND PROCLAMATIONS ADDRESSED TO THE LEGISLATIVE BODY BY THE PRESIDENT OF THE REPUBLIC.

ART. 58. These are brought up and read in open sitting by the ministers or councillors of state named for that purpose. These messages or proclamations cannot be discussed or voted upon unless they contain a proposition to that effect.

ART. 59. The proclamations of the president of the republic, adjourning, proroguing, or dissolving the legislative body, are to

be read in public sitting, all other business being suspended, and the members are immediately afterwards to separate.

ART. 60. The president of the legislative body announces the opening and closing of each sitting. At the end of each sitting, after having consulted the members, he names the hour of sitting for the following day, and the order of the day, which are posted up in the assembly. This order of the day is immediately forwarded to the minister of state, the president of the legislative body being responsible for all notices and communications being duly forwarded to him.

ART. 61. No member can speak without having asked and obtained leave of the president, and then only from his place.

ART. 62. The members of the council of state appointed in the name of the government to support the discussion of the laws are not subject to the formality of speaking in their turn, but whenever they require it.

ART. 63. The member called to order for having interrupted cannot be allowed to speak. If the speaker wanders from the question, the president may call him back to it. The president cannot allow any one to speak on the call to the question. If the speaker twice called to the question in the same speech shall continue to wander from it, the president consults the assembly to ascertain whether the right of speaking shall not be interdicted to the speaker for the rest of the sitting on the same question. The decision takes place by *assis et levé* without debate.

ART. 64. The president alone calls to order the speaker who may interrupt it. The right to speak is accorded to him who, on being called to order, submits and demands to justify himself; he alone obtains the right to speak. When a speaker has been twice called to order in the same speech, the president, after having allowed him to speak to justify himself, if he demands it, consults the assembly to know if the right of speaking shall not be interdicted to the speaker for the rest of the sitting on the same question. The decision is taken by *assis et levé* without debate.

ART. 65. All personalities and all signs of approbation or disapprobation are interdicted.

ART. 66. If a member of the legislative body disturbs order, he is called to order by name by the president; if he persists, the president orders the call to order to be inscribed in the minutes.

In case of resistance, the assembly, on the proposition of the president, pronounces, without debate exclusion from the house for a period which cannot exceed five days. The placarding of this decision in the department in which the member whom it concerns was elected may be ordered.

ART. 67. If the assembly becomes tumultuous, and if the president cannot calm it, he puts on his hat. If the disorder continues, he announces that he will suspend the sitting. If calm be not then re-established, he suspends the sitting during an hour, during which the deputies assemble in their respective bureaux. On the expiration of the hour the sitting is resumed; but, if the tumult recommences, the president breaks up the sitting and postpones it to the next day.

ART. 68. The demands for the order of the day, for priority, and for an appeal to the standing orders, have the preference over the principal question, and suspend the discussion of it. Orders of the day are never *motivés*. The previous question—that is to say, that there is no ground for deliberation—is put to the vote before the principal question. It cannot be demanded on propositions made by the president of the republic.

ART. 69. The demands for secret sittings, authorized by article 14 of the constitution, are signed by the members who make them, and placed in the hands of the president, who reads them, causes them to be executed, and mentioned in the minutes.

ART. 70. When the authorization, required by article 11 of the law of the 2d February, 1852, shall be demanded, the president shall only indicate the object of the demand, and immediately refer it to the bureaux, which shall nominate a committee to examine whether there be grounds for authorizing a prosecution.

CHAPTER IV.

MINUTES.

ART. 71. The drawing up of the minutes of the sittings is placed under the high direction of the president of the legislative body, and confided to special clerks nominated by him, and liable to dismissal by him. The minutes contain the names of the members who have spoken and the *résumé* of their opinions.

ART. 72. The minutes are signed by the president, read by one

of the secretaries at the following sitting, and copied on two registers, signed also by the president.

ART. 73. The president of the legislative body regulates, by special order, the mode of communicating the minutes to the newspapers, in conformity with article 42 of the constitution.

ART. 74. Any member may, after having obtained the authorization of the assembly, cause to be printed and distributed at his own cost, the speech he may have delivered. An unauthorized printing and distribution shall be punished by a fine of from 500f. to 5,000f. against the printers, and of from 5f. to 500f. against the distributors.

We read in the Constitutionnel : "It is, as already stated, at the Tuileries, in the Salle des Maréchaux, that the sitting of the senate and legislative body on the 29th will be held. The prince-president, surrounded by his aides-de-camp, his orderly officers, his ministers, and the council of state, will be placed on a raised platform ; opposite the president of the republic will be, on one side the senate, and on the other the legislative body. The prince-president will deliver a speech. A form of an oath will then be read, and each member of the senate and of the legislative body, on his name being called over, will pronounce from his place the words *Je le jure!* The clergy, the magistracy, and the diplomatic body will be represented at this solemnity. A small number of places will be reserved in an upper gallery for persons receiving invitations."

APPENDIX XV.

REPORT OF THE FRENCH SENATORIAL COMMITTEE ON THE PETITIONS TO CHANGE THE REPUBLIC INTO AN EMPIRE, IN NOVEMBER, 1852,¹ AND THE SENATUS CONSULTUM ADOPTED IN CONFORMITY WITH IT.

MESSIEURS LES SENATEURS : France, attentive and excited, now demands from you a great political act—to put an end to her anxieties and to secure her future.

But this act, however serious it may be, does not meet with any of those capital difficulties which hold in suspense the wisdom of legislators. You know the wishes expressed by the councils general, the councils of arrondissement, and the addresses of the communes of France : wishes for stability in the government of Louis Napoleon, and for return to a political form which has struck the world by the majesty of its power and by the wisdom of its laws. You have heard that immense petition of a whole people rushing on the steps of its liberator, and those enthusiastic cries, which we may almost call a plebiscite by anticipation, proceeding from the hearts of thousands of agriculturists and workmen, manufacturers and tradesmen. Such manifestations simplify the task of statesmen. There are circumstances in which fatal necessities prevent the firmest legislator from acting in accordance with public opinion and with his own reason ; there are others where he requires a long consideration in order to solve questions on which the country has not sufficiently decided. You, gentlemen, are not

¹ This report was read by Mr. Troplong, chairman of the committee. It is universally ascribed to him, and Mr. Troplong is now president of the senate. Whether this remarkable paper be considered as a political creed or confiteor, or as a piece of attempted logic to connect certain occurrences and account for surprising turns, or as a high state paper of singular shallowness—in whatever light it may be viewed, it will be allowed on all hands that it fully deserves preservation.

exposed either to this constraint or to this embarrassment. The national will presses and supplicates you, and your exalted experience tells you that in yielding to her entreaties you will contribute to replace France in the paths which are suitable to her interests, to her grandeur, and to the imperious necessities of her situation. All this is in fact explained by the events which take place before you.

After great political agitations, it always happens that nations throw themselves with joy into the arms of the strong man whom Providence sends to them. It was the fatigue of civil wars which made a monarch of the conqueror of Actium; it was the horror of revolutionary excesses, as much as the glory of Marengo, which raised the imperial throne. In the midst of the recent dangers of the country, this strong man showed himself, on the 10th of December, 1848, and on the 2d of December, 1851, and France confided to him her standard, which was ready to perish. If she has declared her will to confide it to him forever in this memorable journey, which was only one suite of triumphs, it is because, by his courage and by his prudence, the man has shown himself equal to the task; it is because, when a nation feels herself tormented by the agitations of a stormy government, a necessary reaction leads it towards him who can best secure order, stability and repose.

Louis Napoleon, therefore, is in this wonderful situation, that he alone holds in his hands these inestimable gifts. He has in the eyes of France, his immense services, the magic of his popularity, the souvenirs of his race, the imperishable remembrance of order, of organization, and of heroism, which make the hearts of all Frenchmen beat. He again revives in the eyes of Europe the greatest name of modern days, no more for the military triumphs for which his history is so rich, but for chaining down the political and social tempests, for endowing France with the conquests of peace, and for strengthening and fertilizing the good relations of states. Both at home and abroad it is to him that is attached a vast future of pacific labor and of civilization. That future must not be delivered to the chance of events and to the surprise of factions.

That is why France demands the monarchy of the emperor; that is to say, order in revolution, and rule in democracy. She wished it on the 10th December, when the artifices of an inimical consti-

tution prevented the people from expressing their opinion. She wished it again on December 20, when the moderation of a noble character prevented its being demanded. But now the public sentiment overflows like a torrent; there are moments when enthusiasm has also the right of solving questions. For some time past visible signs announced what must be the mission of Louis Napoleon, and the foreseeing reason of statesmen put itself in accordance with the popular instinct in order to fix the character of it. After the bitter sarcasm which put the heir to a crown at the head of the republic, it was evident that France, still democratic from her habits, never ceased to be monarchical in her instincts, and that she wished for the re-establishment of the monarchy in the person of the prince who revealed himself to her as the conciliator of two ages and of two minds, the line of union of the government and of the people, the monarchical symbol of organized democracy.

At the end of the last century, the preponderance of the democratic element gave rise to a belief in speculative or ardent minds that France ought to mark the new era into which she had entered by a divorce between her government and the monarchical form. The republic was borrowed from the souvenirs of antiquity. But in France political imitations seldom succeed. Our country, although taxed with frivolity, is invincibly attached to certain national ideas and to certain traditional habits, by which it preserves the originality of which it is proud. The republic could not acclimatize itself on the French soil. It perished from its own excesses, and it only went into those excesses because it was not in the instincts of the nation. It was but an interval, brilliant abroad, and terrible at home, between two monarchies.

At that period, glory had raised to power one of those men who found dynasties and who traverse ages. It is on that new stem that France saw flourish a monarchy suitable to modern times, and which yielded to no other in its grandeur and in its power. Was it not a great lesson to see a similar fortune reserved, fifty years after, for a second trial of the republican form? Is it not a striking example of the perseverance of the French mind in things which are like the substance of her political life? Is not the proof complete and decisive?

It will be the more so, as the imperial monarchy has all the ad-

vantages of the republic without its dangers. The other monarchical régimes (the illustrious services of which we will not depreciate) have been accused of having placed the throne too far from the people, and the republic, boasting of its popular origin, skilfully entrenched itself against them in the masses, who believed themselves to be forgotten and overlooked. But the empire, stronger than the republic on democratic grounds, removes that objection. It was the government the most energetically supported, and the most deeply regretted by the people. It is the people who have again found it in their memory to oppose it to the dreams of ideologists, and to the attempts of perturbators. On the one hand, it is the only one which can glorify itself in the right recognized by the old monarchy, "that it is to the French nation that it belongs to choose its king;" on the other, it is the only one which has not had quarrels to settle with the people. When it disappeared in 1814, it was not by a struggle of the nation against its government. The chances of an unequal foreign war brought about that violent divorce. But the people have never ceased to see in the empire its emanation and its work; and they placed it in their affections far above the republic—an anonymous and tumultuous government, which they remember much more by the violence of its proconsuls than by the victories which were the price of French valor.

That is why the Napoleonic monarchy absorbed the republic a first time, and must absorb it a second time. The republic is virtually in the empire, on account of the contract-like character of the institution, and of the communication and express delegation of power by the people. But the empire is superior to the republic, because it is also the monarchy; that is to say, the government of all confided to the moderating action of one, with hereditary succession as a condition, and stability as its consequence. Monarchy has the excellent quality of yielding admirably to all the progress of civilization: by turns feudal, absolutist and mixed; always old and always modern, it only remains to it to reopen the era of its democratic transformation, which was inaugurated by the emperor. That is what France now wishes; it is what is asked of you by a country fatigued with utopian ideas, incredulous with respect to political abstractions, and whose genius, a union of sound sense and poesy, is so constituted that it only believes in power under the figure of a hero or a prince.

Even if the love of Frenchmen for monarchy be only a prejudice, it must be respected; a people can only be governed in accordance with its ideas. But it must in particular be respected, because it is inspired by the most essential wants and the most legitimate interests of the country.

France is a great state which wishes to preserve at home and abroad the force which a vast territory and thirty-five millions of inhabitants give. She is both agricultural and commercial. Notwithstanding the fertility of her soil, she would be poor if manufactures were not to add immense personal to real capital, and if the tastes for polite enjoyments and moderate luxury did not give to labor an aliment always new. But labor, in order to arrive at the result of its enterprises, should be seconded by so many advances of funds, and such a persevering continuance of efforts, that all success would escape it if it were interrupted or troubled by the storms of disquieting and subversive policy. It demands, therefore, stability of institutions, as the source of confidence and the mother of credit.

All these conditions of a regular and prosperous life the monarchy procures to France; any other form can only compromise them.

Monarchy is the government of great states, to which institutions made for duration are marvellously suitable, as the most solid foundations are required for a vast edifice. The republic, on the contrary, is only the government of small states, if we except the United States of America, which, by their geographical position, form an exception to all rules, and which, besides, are only a federation; a republic has never been able to establish itself except in small nations, in which the embarrassments of that difficult and complicated form of government are corrected by the small extent of territory and population.

Ancient Rome, so far from contradicting this rule, fully confirms it. The republic was only in the city and for the city. Beyond it there were only avaricious masters and oppressed subjects. If ever France can be said to have had a sort of neighborhood with the republic, it was in the middle ages, when the republican spirit, extinguished from the time of the Cæsars, had become awakened in a part of Europe; when France was only a chess-board of almost independent provinces; and when the feudal principalities were in

all parts menaced by the communal movement. But since that movement all the interior action of France has removed her from the republican form. She, in particular, separated from it, when she gave herself a united territory and thirty-five millions of inhabitants living under the same laws, in the same country, and united by an infinite chain of dependent interests, which the same movement of circulation causes to terminate in a sole centre. Such a people is not to be shaken, as were the citizens of a single city, even if called Athens or Rome. A country which lives by its labor, and not by the labor of slaves and presents from the state, cannot be occupied with speeches of the forum, with the permanent agitation of comitia, with the anxieties of politics always in ebullition. This fever, to which democratic republics give the name of political life, cannot with impunity be communicated to a nation whose splendor particularly consists in the pacific development of its wealth, and in the regular and intelligent activity of its private interests.

Our fathers learned these truths in the rude school of public and private misfortunes. They compose all the interior policy of the commencement of this century.¹ Why should incorrigible innovators have in these latter times inflicted the too palpable demonstration of them upon us? We have seen altars raised to instability and to periodical convulsions—the two plagues of the social body; we have seen laws made to reduce to solemn precepts the febrile and terrible crisis which may ruin a people; we have seen the vessel of the state launched on an unknown sea, without a fixed point to guide itself by, without an anchor to cast out, and no one can say what would have become of the future of France, if Providence, watching over her, had not raised up the man of intrepid heart who extended his hand to her.

France, with full knowledge of what she is doing, intends to return to her natural state; she longs to again find her real position and to resume her equilibrium. The French people, in its admirable common sense, is not so infatuated with its superior qualities that it is not aware of its weak points. It feels itself variable in its impressions, prompt to be worked on, and easy to be led away. And because it distrusts the rapidity of a first movement, it seeks

¹ See the speeches delivered in the Tribunal on the return to monarchy in 1804.

a fixed point in its institutions, and desires to be retained on a stable and solid basis. The French democracy has sometimes been compared to that of Athens. We have no objection to the comparison as far as politeness and elegance of mind are concerned, but we in all other respects utterly disclaim the similitude. The Greek democracies were nothing but a perpetual flux and reflux, never accepting the corrective of their levity. They were, besides, idle and grasping, living on the civic oboli and distributions of food. On the other hand, the French democracy, of a more masculine and more haughty character, does not look to the state for the care of its well-being; it depends on its own efforts for support, and most joyfully submits to the eternal law of God—daily labor. Its speculations comprise the whole world; it cultivates the earth with its free hands; it furrows the mighty deep with its vessels; it multiplies its industrial creations, engenders capital, and renders the future tributary to its able and immense combinations. When a nation thus founds its enterprises on credit and durability, when sometimes not less than half a century is necessary to it to reap the benefit of its operations, it is not the institutions of a day that can give it any hope of their success. It would be senseless if it did not desire to make the moving sphere of its interests turn round the motionless axis of a monarchy.

It is true that in France equality is an object of absolute worship, and a monarchy has, at its very first condition, the privileged existence of these grand and rare individualities which God raises above their fellows to form dynasties, and which are less human beings than the personification of a people and the concentrated radiation of a civilization. But equality, such as we conceive it in France, admits without jealousy those providential grandeurs, rendered legitimate by state reasons, below which it finds its level. At Rome and Athens equality consisted in rendering each citizen admissible to the supreme authority; and it is therefore that men considered all equality at an end when Augustus had converted the republic into a monarchy.¹ In France we considered it as saved and confirmed forever, under the reign of the emperor. The reason is, that in this country of equality there is nothing that is less supported than the government of one's equals; because equality is

¹ Tacitus: "Omnes, exutà equalitate, jussa principis adspectare."—*Annal. I. 4.*

there fully satisfied in holding everything in its grasp, places, credit, wealth, and renown, and in having a wide and open road before it to arrive at everything except that extreme point of power, that inaccessible summit, which the care of the public tranquillity has placed high above all private competition. By that the democracy wonderfully agrees with the monarchy, and that union is so much the more solid that common sense unites with the habits of the people in cementing it.

But should cavilling minds, believing themselves more wise than the whole country, bring forward as an objection to the desire expressed for the hereditary empire, the inconveniences which minorities and bad princes may, at certain intervals, produce in monarchical states, we would reply that all human institutions contain within themselves certain defects and weaknesses. The monarchy has not the privilege of perfection; it has simply, for France, the merit of an incontestible superiority over the system of perpetual election, which only offers an eternal series of struggles and hazards, and which solves one difficulty only for the purpose of immediately leaving another in suspense.

Some ancient states, believing that they were improving on the monarchical system, had placed in sovereign and immoveable assemblies that element of stability which dynasties represent. But have not such assemblies also had their moments of weakness? Does not their history exhibit melancholy instances of venality or tyranny? Has not their baseness given them insolent and seditious guardians? And in the point of view of moral responsibility, which is one of the great checks on the conscience, there is not the slightest comparison between a man and an assembly. In assemblies, the responsibility of the body effaces that of the individuals; and as a collective responsibility is very nearly illusory, it comes to pass that that irresponsibility, which sometimes constitutes the force and independence of assemblies, is also the cause of their excesses. In a prince, on the contrary, the responsibility is undivided and inevitable, and presses with all its weight on the side of duty. In fine, when evil creeps into a sovereign political body, it continues there as a precedent, increases as a tradition, and the thing itself can only be kept up by keeping up the evil. On the contrary, if evil glides to the throne, it causes alarm only by temporary and intermittent perils, which are, besides, extenuated by the institutions and the

modifications which are more easily effected in the case of a man than in that of an assembly. The feeble Louis XIII. was followed by the grand Louis XIV.; and, besides, Louis XIII. is, in the eyes of posterity, covered by his minister, Richelieu.

The general considerations appear to us to prove sufficiently that the national sentiment which addresses itself to you, gentlemen, as to sage mediators between the people and the prince, is neither a frivolous caprice nor a fleeting infatuation. Behind the fascination of a great name, and above the gratitude which is felt for the acts of a noble and patriotic courage, there are grand thoughts, powerful interests, and an admirable intuitive perception of the public wants. France, gentlemen, desires to have the life of a great nation, and not that precarious and sickly existence which wastes away the social body. During the last four years, whilst subjected to perilous experiments, she has known how to correct by her good sense the evils of a deplorable situation. But it is necessary that such a situation should be brought to a close. Up to the present time, she had been able to find, in the midst of the tempests which assailed her, only transitory gleams of safety, on which no future prosperity could possibly be based. At present, she is about to enter the port, to found, by means of the fortunate pilot whom she greets with joy, the edifice of her prosperity on the solid ground of monarchy.

Let us now look to the details of the draft of the *senatus consultum*.

Louis Napoleon will take the name of Napoleon III. It is that name which re-echoed in the acclamations of the people; it is the name which was inscribed on the triumphal arches and trophies. We do not specially select it; we merely accept it from a natural and spontaneous election. It has, besides, that profound good sense which is always to be met with in the wonderful instincts of the people. It is a homage to Napoleon I., whom the people never forgets; and it is a pious remembrance for his youthful son, who was constitutionally proclaimed emperor of the French, and whose reign, short as it was, has not been effaced by the obscure existence of the exile. It solves for the future the question of succession, and signifies that the empire will be hereditary after Louis Napoleon, as it has been for himself. In fine, it connects the political phase to which we owe our safety with the glorious name which was also the safety of past times.

And yet, by the side of the traditional element, contemporary events preserve their proper value and their peculiar signification. If Louis Napoleon is called on at present to resume the work of his uncle, it is not merely because he is the heir of the emperor, but because he deserves to be so; it is on account of his devotedness to France, and of that spontaneous and personal action which has rescued the country from the horrors of anarchy. It is not sufficient for him to be the heir of the emperor; he must be again elected, for the third time, by the people. Thus the succession and the election will be in accord to double his force, the modern fact rendering the old one young and vigorous by the puissance of a reiterated consent and a second contract.

The *senatus consultum* next invests Louis Napoleon with the right to adopt an heir, in default of a direct successor. Adoption, which is a common right in private families, cannot be an exception in dynastic families; for, when no natural heir exists, it is a principle in public law that the choice of the monarch belongs to the people. But that rule is that of ordinary times, and cannot suit in an absolute manner an order of things which again resumes a new course after a long interruption, and in the midst of the most extraordinary circumstances.

Louis Napoleon, the depository of the confidence of the people, charged by it to draw up a constitution, can, on infinitely stronger grounds, receive the mandate to provide for certain eventualities, and to prevent certain crises in which that constitution might perish. The strokes of nature have been often terrible in reigning families, and have set at naught the councils of wisdom. The French people will not imagine that it makes too great a sacrifice of its rights in abandoning itself once more to the prudence of the prince whom it has made the arbiter of its destinies. This provision, besides, is borrowed from the imperial constitution. The empire which revives ought not to be less powerful in its means than was the empire at its commencement. And in order to remain within the letter and the spirit of that precedent, the *senatus consultum* proposes to you not to admit of such adoption, except for the male descendants, natural and legitimate, of the brothers of Napoleon I. The right of unlimited adoption would be in manifest contradiction with the popular wish for the re-establishment of the empire, which is the guiding star of our delibe-

rations. In fact, the empire is inseparable from the name of Bonaparte; and cannot be conceived without a member of that family with which the new form of the monarchy was stipulated in France. Everything ought to remain consistent in the work which we are considering.

But above that combination, solely of a political character, France places a hope which more than anything constitutes her faith in the future; and that is, that, at no distant period, a wife will take her place on the throne which is about to be raised and will give to the emperor scions worthy of his great name and of this great country. That debt was imposed on the prince on the day when the cries of "Vive l'Empereur" hailed him on his passage; and he will accept it virtually but necessarily the day when the crown will be placed on his head. For, since the empire is established with a view to the future, it ought to carry with it all the legitimate consequences which preserve that future from uncertainty and shocks.

In default of the direct line and of the adoptive line, the case of succession in the collateral line must be provided for. On that point we propose to you a clause, by which the people should confer on Louis Napoleon the right of regulating by an organic decree that order of succession in the Bonaparte family. By that means, our *senatus consultum* will remain more perfectly in accord with the popular wish, which in its unlimited confidence has placed in Louis Napoleon's hands the destinies of the country; it will likewise be more in conformity with the political changes which France has entered into since 2d December. The greatest political genius of Italy, in the sixteenth century, was accustomed to say, in those rare and solemn moments in which the question is to found a new state, that the will of a single man was indispensable. (1.) That is what the nation comprehended so admirably when it remitted to Louis Napoleon the task of drawing up the constitution which governs us. At present, that a capital modification is taking place in one of the very foundations of that constitution, it appears natural and logical to again confer on Louis Napoleon a portion of the constituent power, in order that, in the special point which concerns most intimately the interests of the dynasty of which the nation declares him the head, he may fix on such provisions as appear to him best appropriated to the public interest

and the interest of the monarch. For his family, as well as for the country, Louis Napoleon is the man of an exceptional situation, and no fear must be entertained of adding to his power, in order that, with the assent of all, he may settle it by the authority of a single person. We, therefore, propose to you, after a conference with the organs of the government, which has led to unanimity of opinion, an article thus worded: "Art. 4. Louis Napoleon Bonaparte regulates, by an organic decree addressed to the senate and deposited in the archives, the order of succession to the throne in the Bonaparte family, in case he should not leave any direct or adopted heir."

It is not necessary for us to say to you that in this system the formula to be submitted to the French people ought to contain an express mention of that delegation. It will be necessary, according to the constitution, that the French people be called on to declare whether it desires or not to invest Louis Napoleon with the power which we conceive ought to be conferred on him.

After having thus spoken of the succession to the imperial crown, the *senatus consultum* carries the attention to the condition of the family of the emperor. It divides it into two parts: 1, the imperial family, properly so called, composed of the persons who may by possibility be called to the throne, and of their descendants of both sexes; and 2, of the other members of the Bonaparte family.

The situation of the princes and princesses of the imperial family is to be regulated by *senatus consulta*; and they cannot marry without the emperor's consent. Art. 6 pronounces for any infraction of this regulation of public interest the penalty of losing all right to the succession, with the proviso, however, that in case of the dissolution of the marriage by the death of the wife, without issue, the right is at once recovered.

As to the other members of the Bonaparte family, who compose the civil family, it is to the emperor, and not any longer to *senatus consulta*, that it appertains to fix by statutes their titles and situation. It is useless to insist on this distinction, as it is explained by the difference which exists between the civil family and that uniting in itself the double character of civil family and political family.

We have also to request your special attention to the final para-

graph of article six, which confers on the emperor full and entire authority over all the members of his family. These special powers are called for by the gravest considerations, and belong to the right generally instituted for reigning families. Princes are placed in so elevated a position by public right and national interest, that they are, in many respects, out of the pale of the common law. The greater their privileges are, the more their duties are immense towards the country. Montesquieu has said: "It is not for the reigning family that the order of succession is established, but because it is for the interest of the state that there should be a reigning family." They belong, therefore, to the state by stricter ties than other citizens, and on account even of their very greatness must be retained in a sort of perpetual ward-dom, under the guardianship of the emperor, the defender of their dignity, the appreciator of their actions, and serving to them as father as much as guardian, in order to preserve to the nation this patrimony in fact.

If these reasons do not apply in all their extent to the members of the private family, there are others of not less importance, which are drawn from the conjoint responsibility imposed by a name which is the property of the nation, as much as of the persons who have the honor of bearing it.

Besides, several of these persons have the privilege of being the only ones in the state that the emperor can place by adoption in the rank of the persons who may succeed to the crown. But there is no public privilege which ought not to be paid for by duties specially created to justify its necessity, and to co-operate in the object of its establishment.

There is another point which it is sufficient for us to remind you of—the maintenance of the Salic law in the imperial dynasty. In France, the Salic law is, so to speak, incorporated with the monarchy, and, although its origin goes back to the remotest periods, it has so completely penetrated into our way of thinking, and is so completely in accord with the rules of French policy, that it is inseparable from all transformations in the monarchical principle.

Finally, gentlemen, the *senatus consultum* provides for the case in which the throne should be vacant; "if ever the nation should be so unfortunate as to experience this affliction," (to use the language of the celebrated edict of July, 1717,) "it would be for the

nation itself to repair it." Article 5 formally recognizes this fundamental, essential, and inalienable right. At the same time it provides for the means of preparing a choice worthy of the French people, by its prudence and maturity. In consequence, an organic *senatus consultum*, proposed to the senate by the ministers formed into a council of government, with the addition of the president of the senate, the president of the legislative body, and the president of the council of state, shall be submitted to the free acceptance of the people, and will give to France a new emperor.

Such, gentlemen, are the principal provisions of the *senatus consultum*, now submitted to you for consideration, and which will prepare the august contract of the nation with its chief. Should you adopt it, you will order by a concluding article, in virtue of the constitution, that the people be consulted concerning the re-establishment of the imperial dignity in the person of Louis Napoleon, with the succession of which we have just explained to you the combinations. But, gentlemen, we may affirm, whilst bending at present before a public will which only asks for an occasion to burst forth afresh, that the empire is accomplished. And that empire, the dawn of which has lighted up the path of Louis Napoleon in the departments of the south, rises over France, surrounded by the most auspicious auguries. Everywhere hope revives in men's minds; everywhere capital, restrained by the uncertainty of the future, rushes with ardor into the channels of business; and everywhere the national sap circulates, and vivifies to produce the most abundant fruits.

This reign, gentlemen, will not be cradled in the midst of arms and in the camp of insurgent prætorian guards. It is the work of the national feeling, most spontaneously expressed; it has been produced in our commercial towns, in our ports, in the most peaceful centres of agriculture and manufactures, and in the midst of the joy of an affectionate people; it will consequently be the *Empire of Peace*—that is to say, the revolution of '89, without its revolutionary ideas, religion without intolerance, equality without the follies of equality, love for the people without socialist charlatanism, and national honor without the calamities of war. Ah! if the great shade of the emperor should cast a glance at this France which he loved so much, it would thrill with joy at beholding the gloomy predictions of St. Helena, at one moment so

near being realized, totally disproved. No; Europe will not be delivered up to disorder and anarchy! No; France will not lose the grandeur of her institutions, and it is the ideas of Napoleon directed towards peace by a generous-minded prince, which will be the safeguard of civilization.

SENATUS CONSULTUM.

In the month of November, 1852, the senate adopted the following senatus consultum :

SENATUS CONSULTUM.

Proposition to modify the Constitution, in conformity with Articles 31 and 32.

ART. 1. The imperial dignity is re-established. Louis Napoleon Bonaparte is emperor, under the name of Napoleon III.

ART. 2. The imperial dignity is hereditary in the direct and legitimate issue of Louis Napoleon Bonaparte, from male to male in the order of primogeniture, and with perpetual exclusion of women and their descendants.

ART. 3. Louis Napoleon Bonaparte, in default of a male child, may adopt the children and legitimate descendants in the male line of the brothers of Napoleon I.

The forms of adoption shall be regulated by a senatus consultum.

If, after the adoption, male children of Louis Napoleon shall be born, his adoptive sons cannot succeed him, except after his own legitimate descendants.

The successors of Louis Napoleon, and their descendants, cannot adopt.

ART. 4. Louis Napoleon regulates, by an organic decree addressed to the senate and deposited in its archives, the order of succession on the throne in the Bonaparte family, in case he should not leave any direct legitimate or adopted heir.

ART. 5. In default of any legitimate or adoptive heir of Louis Napoleon Bonaparte, and of successors in collateral line who may derive their right from the organic decree above mentioned, a senatus consultum, proposed to the senate by the ministers, formed into a council of government, with the addition of the actual

presidents of the senate, the legislative corps, and of the council of state, and submitted for adoption to the people, appoints the emperor, and regulates in his family the hereditary order from male to male, to the perpetual exclusion of women and their descendants.

Until the election of the new emperor shall be consummated, the affairs of the state are governed by the actual ministers, who shall form themselves into a council of government and deliberate by a majority of votes.

ART. 6. The members of the family of Louis Napoleon eventually called to succeed him, and their descendants of both sexes, form a part of the imperial family. A senatus consultum regulates their position. They cannot marry without the authorization of the emperor. Their marriage without this authorization deprives of the right of inheritance as well him who contracts the marriage as his descendants.

Nevertheless, if there are no children of such a marriage, and the wife dies, the prince having contracted such a marriage recovers his right of inheritance.

Louis Napoleon fixes the titles and the condition of the other members of his family.

The emperor has plenary authority over all the members of his family. He regulates their duties and their obligations by statutes which have the force of laws.

ART. 7. The constitution of the 15th of January, 1852, is maintained in all those dispositions which are not contrary to the present senatus consultum; it cannot be modified except in the forms and by the means there prescribed.

ART. 8. The following proposition shall be presented for the acceptance of the people in the forms determined by the decrees of the 2d and 4th of December, 1851:

"The people wills the re-establishment of the imperial dignity in the person of Louis Napoleon Bonaparte, with inheritance in direct legitimate or adoptive descendants, and gives him the right to regulate the order of succession to the throne in the Bonaparte family in the manner described in the senatus consultum of the 7th of November, 1852."

The senate adopted this *senatus consultum* by eighty-six votes of eighty-seven senators.

More than eight millions of people voted *yes*, according to the official publications.

"All Frenchmen of the age of twenty-one, in possession of their civil and political rights," were called upon to vote by a decree of some length, of November 7th, 1852.

The paper on elections, the first of this appendix, contains the details of this and other votes, as well as the view of the author regarding them.

In addition to the papers here given, it ought to be remembered that the senate can decree organic laws, and thus a *senatus consultum* has been passed, according to which the legislative corps (already so denuded of power and influence) is deprived of the right to vote on the single items of the budget. It must adopt or reject the budgets of each ministry as a whole. This means, of course, that it must adopt the whole—for government would necessarily be brought to a stop if the entire budget of a ministry were rejected; and the executive government would simply order again the soldiery to clear the legislative hall, assume the dictatorial power, and make the people rectify the coup.

APPENDIX XVI.

LETTER OF THE FRENCH MINISTER OF THE INTERIOR, MR. DE MORNAY, ADDRESSED TO THE PREFECTS OF THE DEPARTMENTS IN THE YEAR 1852.

THE minister of the interior addressed the following circular to the prefects of the departments :

“MONSIEUR LE PREFET: You will shortly have to proceed to the elections of the legislative body. It is a grave operation, which will be either a corollary or a contradiction of the vote of the 20th December, according to the employment which you make of your legitimate influence. Bear well in mind that universal suffrage is a new and unknown element, easy for a glorious name to make the conquest of, unique in history, representing in the eyes of the populations authority and power, but very difficult to fix on secondary individualities; consequently, it is not by following former errors that you will succeed. I desire to inform you of the views of the head of the state. You perceive that the constitution has aimed at avoiding all the theatrical and dramatic part of the assemblies, by interdicting the publication of the speeches delivered; in that way the members of those assemblies, not being occupied with the effect which their words in the tribune are to produce, will think more of carrying on seriously the affairs of their country. The electoral law will pronounce on the incompatibilities. The situation of public functionaries in a political assembly is always a very delicate matter, as in voting with the government they lower their proper character, and in voting against it they weaken the principle of authority. The exclusion of functionaries, and the suppression of all indemnity, must necessarily limit, in a country where fortunes are so divided as in ours, the number of men who will be willing and able to fulfil such duties. Nevertheless, as the

government is firmly decided never to make use of corruption, direct or indirect, and to respect the conscience of every man, the best means of preserving to the legislative body the confidence of the populations is to call to it men perfectly independent by their situation and character. When a man has made his fortune by labor, manufactures, or agriculture, if he has been occupied in improving the position of his workmen, if he has rendered himself popular by a noble use of his property, he is preferable to what is conventionally called a political man, for he will bring to the preparation of the laws a practical mind, and will second the government in its work of pacification and re-edification. As soon as you shall have intimated to me, in the conditions indicated above, the candidates who shall appear to you to have the most chance of obtaining a majority of votes, the government will not hesitate to recommend them openly to the choice of the electors. Hitherto, it has been the custom in France to form electoral committees and meetings of delegates. That system was very useful when the vote took place *au scrutin de liste*. The *scrutin de liste* created such confusion, and such a necessity for coming to an understanding, that the action of a committee was indispensable; but now these kind of meetings would be attended with no advantage, since the election will only bear on one name; it would only have the inconvenience of creating premature bonds, and appearances of acquired rights which would only embarrass the people, and deprive them of all liberty. You will, therefore, dissuade the partisans of the government from organizing electoral committees. Formerly, when the suffrage was restricted, when the electoral influence was divided among a few families, the abuse of this influence was most shameful. A few crosses, little merited, and a few places, could always secure the success of an election in a small college. It was very natural that this abuse should cause great dissatisfaction, and that the government should be called on to abstain from any ostensible interference. Its action and its preferences were then occult, and for that very reason compromised its dignity and its authority. But by what favors could the government be now supposed capable of influencing the immense body of the electors? By places? The whole government of France has not establishments vast enough to contain the population of one canton. By money? Without

speaking of the honorable susceptibilities of the electors, the whole public treasury would not be sufficient for such a purpose. You will remember to what the result of the efforts of the government was reduced on the 10th December, 1848, in favor of the candidate to the presidency who was then in power. With universal suffrage there is but one powerful spring, which no human hand can restrain or turn from the current in which it is directed, and that is public opinion; that imperceptible and indefinable sentiment which abandons or accompanies governments, without their being able to account for it, but which is rarely wrong in doing so; nothing escapes it, nothing is indifferent to it; it appreciates not only acts, but divines tendencies; it forgets nothing, it pardons nothing, because it has, and can have, but one moving power—the self-interest of each; it is alive to all, from the great policy which emanates from the chief of the state to the most trivial proceedings of the local authorities, and the political opinion of a department depends more than is generally believed on the spirit and conduct of its administration. For a long time past the local administrations have been subordinate to parliamentary exigencies; they occupied themselves more in pleasing some influential men in Paris than in satisfying the legitimate interests of the communes and the people. These days are happily, it may be said, at an end. Make all functionaries thoroughly understand that they must carefully occupy themselves with the interests of all, and that he who must be treated with the greatest zeal and kindness is the humblest and the weakest. The best of policies is that of kindness to persons, and facility for interests—and that functionaries shall not suppose themselves created for purposes of objection, embarrassment, and delay, when they are so for the sake of dispatch and regularity. If I attach so much importance to these details, it is because I have remarked that inferior agents often believe that they increase their importance by difficulties and embarrassments. They do not know what maledictions and unpopularity they bring down on the central government. This administrative spirit must be inflexibly modified; that depends on you; enter firmly on that path. Be assured that then, instead of seeing enemies in the government and local administration, the people will only consider them a support and help. And when afterwards you, in the name of this loyal and paternal govern-

ment, recommend a candidate to the choice of the electors, they will listen to your voice and follow your counsel. All the old accusations of oppositions will fall before this new and simple line of policy, and people in France will end by understanding that order, labor, and security can only be established in a durable manner in a country under a government listened to and respected.

“Accept, &c.

“A. DE MORNY.”

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