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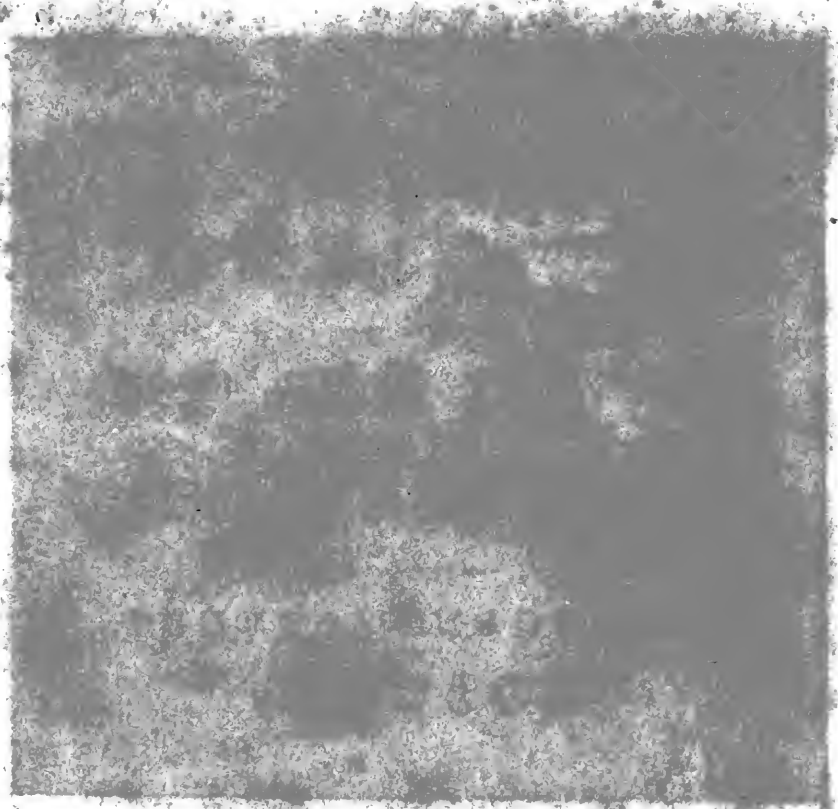

Charles Hale

DISCUSSIONS

ON

THE CONSTITUTION

PROPOSED TO THE

PEOPLE OF MASSACHUSETTS

BY

THE CONVENTION OF 1853.

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It has been deemed desirable to preserve, in addition to the Debates in the Convention of 1853, some of the Discussions that followed the presentation by that body of the Constitution which they proposed to the people of Massachusetts. These Discussions are here printed, in the order in which they were originally published, and as they have been found in the perishable records of the period that produced them, with the exception of Governor Morton's Address, which has been revised by himself. They are as follows: —

All of them have heretofore been published, with the names of their respective authors, or are now avowed by them. Others would have been added, but the volume is already larger than it was intended to be.

As it has been published chiefly for free distribution, any person into whose hands the present copy may fall, and who can make no more suitable use of it, is requested to place it in some public library near to his own residence.

January 12, 1854.

LETTERS OF PHOCION,

BY

GEORGE TICKNOR CURTIS.

FIRST PRINTED IN THE BOSTON DAILY ADVERTISER AND COURIER, AUGUST — NOVEMBER, 1853.

LETTERS

TO

THE PEOPLE OF MASSACHUSETTS

ON

THE PROPOSED CONSTITUTION.

No. I.

"I have a great dislike to every thing that tends to debase the spirit of the people." — Dr. Franklin, *in the Federal Convention of* 1787.

Having read, as you are called upon to read, the Address of the late Constitutional Convention, and the project of a Constitution which it urges you to adopt, I propose to examine that document, and the various changes in your frame of government which it seeks to effect.

It is not to be doubted, that you are called upon to pass upon the most momentous question that can be submitted to a free people; and any citizen of the State may well exert himself, according to the measure of his abilities and knowledge, to aid you in coming to a safe and just conclusion. My name could add nothing to the intrinsic weight of the opinions which I shall express, and it ought not to detract from the consideration to which, of themselves, they are fairly entitled. No effort will be made to conceal it, for it is not my custom to avoid the responsibility attaching to any opinions I may express. But you will allow me to premise, that I have no personal interest in this question, beyond that of every inhabitant of the Commonwealth.

To me, so far as the prospect of my ever filling such sta-

tions is concerned, it is a matter of personal indifference, whether the various offices which this proposed Constitution undertakes to deal with are filled by the Executive or by the people, or what may be the tenure by which they shall be held.

I have never filled any offices in the government of the State, beyond those of a Justice of the Peace and a member of the lower branch of the Legislature; and by the blessing of Heaven, I sincerely hope and believe, that the former is the highest dignity which I shall ever hold hereafter. My interest, therefore, in the great question which is to agitate the Commonwealth during the coming autumn, is not more or less than yours; namely, to secure, enjoy, and perpetuate to my children the best government that republican institutions will admit. I firmly believe that those institutions are both theoretically the best that human wisdom can devise, and practically necessary in our American societies; and some study of their history has enabled me, I hope, to see the reasons on which this belief should depend.

Whether the great principles which ought to lie at the foundation of such institutions are or are not satisfied, in the changes which you are now asked to make in your Constitution, will be the principal inquiry to which I shall ask your attention.

The address of the Convention is marked by a plausible and sententious sophistry, which will be likely to impose on none but shallow minds. It seems to have been framed in the belief, that the people of Massachusetts can be deluded by words and phrases. It is as unfair, also, as it is sophistical. It parades, as the judgments of the Convention, results that were reached only by majorities, and oftentimes by majorities largely composed of those who deliberately sacrificed one opinion for the sake of securing votes to another.

It keeps out of sight, upon many most important and indeed vital subjects, the fact, that a very large minority of the Convention protested against the results arrived at, as a violation of the natural and the civil rights of those whom they represented, and suppresses the fact, that the majority marched to their conclusion in utter disregard of a principle which lies

at the foundation of representative government. It declares, for instance, that "a majority of more than one hundred members determined to preserve the system of town representation"; but it wholly conceals the fact, that the mode in which the majority determined to preserve that system was earnestly and bitterly complained of, as a violation of the political equality of every citizen with every other citizen. What then is to be thought, and what is to be said, of a document, which, purporting to speak in the name of a public deliberative body, and officially signed by its officers, withholds from the people of the Commonwealth the important and necessary information, that a large portion of their delegates contended and complained, that the civil rights of their constituents were disregarded and trampled upon by the very majority that is thus paraded in justification of the measure proposed?

Did the majority of the committee, by whom this address was prepared, and did the officers of the Convention, by whom it was signed, find themselves unable to lay aside the *partisan* character which they had worn throughout the proceedings, when they came to address the *whole* people of the State in the name of the *whole* Convention? Did they suppose that it was either common fairness or common honesty, to lay before the people of the Commonwealth the views and opinions of the majority, and to omit all mention of the fact, that other members of their body protested against those views and opinions, as a violation of the principles on which all political equality in a free government depends? They may answer this question if they can.

It has always been supposed to be of the essence of republican governments, that the rights of minorities should be preserved; and it has been the peculiar boast of such governments, that they and they alone can preserve and protect the political equality of all the citizens. In monarchical and aristocratic governments this is impossible, and does not profess to be accomplished; for such governments are founded upon the negation of absolute and inherent rights in the whole people of an equal character, and upon the idea, that whatever rights are at any time found in their possession are concessions from those who are above them. But it has been the

peculiar merit of our free, republican, and representative governments, that they preserve *equal rights to all*, because every individual forms a part of the source whence all political power proceeds; that while the majority are to govern, they are so to govern, as to give every one of the minority equal facilities and equal opportunity with every other citizen to become in his turn one of the majority, whose will is to constitute for the time being the law of the land. It was reserved for the Solons of our late Convention, to discover that this theory of republican governments is of no practical consequence or value; that minorities may be oppressed, and kept in the position of minorities, under republican forms, as well as under a monarchy, an oligarchy, or an absolute despotism; and that representative institutions may be so contrived, as to deprive large portions of the people of the power of becoming a part of the majority, that is to give law to the community. Whether this discovery was worth the great expenditure it has cost, — whether it will not be found, should it ever go into practical operation, to be a great injury and a serious blow to the cause of constitutional republican liberty, time will show.

But I will not anticipate the topics which you will be called upon to consider.

The Address of the Convention begins with the somewhat prominent assertion, that "the necessity for the Convention was great." Let the truth of this statement be tried by the facts. The pay-roll of the Convention amounts to one hundred and fourteen thousand ninety-two dollars. Besides this great sum, there is due to certain printers, on a wasteful contract for reporting and printing the debates, another large sum, the amount of which is not publicly known, if it has been even ascertained, — but which, it is estimated, by good judges, will be found to exceed thirty thousand dollars. The other incidental expenses are not known, but it is highly probable that the whole cost of the Convention will not fall short of one hundred and fifty thousand dollars. The political party or parties who originated the project of this Convention will, unless I greatly mistake the final result of their labors, be the first set of men, in the history of Massachusetts, to cause such an expenditure of the public money, without leaving any thing to

show for it in the institutions of the Commonwealth. The necessity must have been great indeed, to justify such an expenditure, at a time when the Commonwealth has not a dollar of surplus in her treasury, and must lay a tax upon her people in order to meet the current expenses of government, and to keep the credit of the State untouched in the money-markets of the world. But what was the necessity? In the year 1780, before the close of the Revolutionary war, the people of Massachusetts formed a Constitution, which has been as near an approach to a perfect government as the world has seen. Forty years afterwards it required and received some revision; but all its great essential features, all the wise and careful provisions, which the men of the Revolutionary age, with a wonderful foresight and an extraordinary capacity for political construction, engrafted into it, remained untouched. From the year 1820 to the present hour, no real grievance has existed, and no complaint has been made of the working of any of the institutions of the State, with the single exception, that the basis of the House of Representatives has been found practically inconvenient, in consequence of the corporate right of representation reserved to the cities and towns.

Granting, either for the sake of argument, or, as I am ready to do, without reservation, that the basis of representation needed to be reformed, it remains for those who allege the necessity for the late Convention, as a justification for its doings and its expenses, to show, in the first place, that the representation could not have been amended without a Convention; and in the second place, that a reform of the representation necessarily involved and required a radical change in the structure and basis of every other department of the government. That a public necessity for a more equal and satisfactory adjustment of the system of representation should be put forth as a plea to justify a radical change in the tenure of the judiciary; a restriction of the appointing power of the Governor, so as to strip the office of almost all the trusts which the wisdom of our ancestors had confided to it; an abolition of all tax qualification for voters, and an infliction of "sealed envelopes" *as a constitutional principle* for the regulation of the ballot; together with all the other innovations which this

Convention has devised, — is satisfactory proof, that the men who originated this scheme had other objects to accomplish, besides meeting the want of a better basis for the House of Representatives, which was all that the people ever contemplated or designed to touch. And, even with regard to that object, every citizen of the Commonwealth knows, that the existing Constitution contains a provision for its own amendment, fully sufficient for the occasion, and wisely designed to accomplish the process of *amendment* in contra-distinction to *revolution.* That provision is, that any amendment which shall be passed by two successive Legislatures, receiving a majority of votes in the Senate, and the votes of two thirds of the House, if afterwards ratified by a majority of the people, shall become a part of the Constitution. The object of this provision was twofold. First, to avoid the excitement and expense of extraordinary deliberative assemblies, dealing with the fundamental law. Secondly, to secure the operation of a principle, which has always formed a cardinal doctrine of our American governments since their establishment; namely, that it is both expedient and necessary, in order to *amend* a Constitution, that the assent of the existing government should be given to the proposed change. It is the absence of this assent, which makes the distinction between *amendment* and *revolution;* and in nothing did the framers of the Constitution of the United States show more wisdom, than they did in making every step in their progress from the Confederation to the new Constitution subject to the sanction of the old Congress.

What good reason, then, I beg to ask, can be alleged, why the Legislature should not have been applied to, to prepare a suitable system of representation, to be laid before the people for their adoption? Such a course of proceeding would not have cost the Commonwealth a dollar; and there is but one reason, if they were to speak the truth, that can be given by the leaders of the Coalition party, why this course was not adopted, and that reason is, that the Legislature would not have framed a system that would have suited their *party* purposes. No such scheme as that which disgraces the proposed Constitution could ever have proceeded from two successive

Legislatures of Massachusetts; and the fact, that these leaders avoided the course prescribed in the existing Constitution, and the scheme which they have concocted in a Convention, prove that the real necessity of the case was a necessity for the means of attaining political power for themselves and their followers.

Unfortunate, beyond the ordinary measure of misfortune, is that community which contains too many of those patriotic persons, who are ambitious of serving the public, and who cannot reach the object of their ambition, without pulling down the great landmarks which society has erected for its security and defence. Unless I am greatly mistaken, the Commonwealth contains at the present day an unusually large number of such persons; of men, I mean, whose business is politics; and among them are some who seem to have no other profession or employment. Certainly, an ambition to serve one's country in public office may be a laudable ambition; and I am not prepared to say, if an individual has a fancy for this mode of satisfying the wants of his existence, that a livelihood gained in public offices may not be respectably and honorably gained. But the characters and designs of men must be judged of by their acts, and political parties are only aggregations of individual men. Whenever it is apparent, that a set of men cannot attain political power in a State by pursuing the ordinary roads of ambition, and by the conduct which usually gains for individuals the confidence of the public; — when their path to power lies through the ruins of ancient institutions, and over the fragments of great principles of equality, security, and justice; — when, in fine, they must remodel every thing, and are found so remodelling it as to secure *their own advantage* at the expense of the best interests of society; — then the conclusion is irresistible, that the "necessity" which impels them begins and ends in the great law of self-interest and self-aggrandizement. You will find that there is no other supposition, upon which you can account for the monstrous scheme of injustice and radicalism, that has been laid before you for a Constitution.

PHOCION.

No. II.

In the paper which I had the honor of submitting to you, on Monday last, I charged, that the leaders of the Coalition party, by whom the proposed Constitution has been formed, had shaped its provisions with the unfair and selfish purpose of accomplishing their own *party* objects. I now invite your attention to some more particular proofs of this charge. Perhaps there is no more convincing proof of it, apart from the character and operation of the specific changes which they may desire you to adopt, than is to be found in the manner in which they require you to vote upon the results of their labors. They have laid before you seven or eight distinct propositions. In the first of these propositions, upon which, as if it were one object, you must deposit your ballots, *yes* or *no*, there are embraced a variety of distinct changes, in regard to which it is impossible for a majority of the people to entertain the same opinion for or against them all, and concerning which very few individuals can be found, who would vote in the same way upon each of them, from any but party motives. These subjects are so widely different in their character, and the changes proposed are subject to objections of such very different degrees of force, that it is impossible to assign any fair motive for placing them before you collectively in one proposition. Consider, for a moment, that, when the ballots of a whole people are cast upon any day of a general election, even for a single officer, how many voters are obliged to come to the polls and deposit the single ballot, in which resides all the power they can exercise over the subject, with many compromises of opinion and feeling, and with many doubts as to the correctness of their final decision. Multiply this embarrassment many times, and add to it the fact that the subject, on which that single ballot is to be cast, concerns the whole structure of the frame of government, and the principles on which it is to rest, and you can form some idea of the extreme impropriety of confining a voter to a single ballot, upon a proposition which embraces alike questions of moral and

political principle, — questions of mere expediency, — and questions with which neither principle nor expediency has any thing to do. A deliberate and purposed arrangement for thus controlling the judgments of a people, and forcing them into a position where they cannot express their judgments equally upon all the subjects involved, can be characterized by no milder term than by one which describes it as a fraud upon their rights. The case is wholly different, in point of principle, and the situation of the people is wholly different, from the case of the first formation and acceptance of a free constitution. On such an occasion, from the very nature of the case, the whole instrument might have been voted upon, — although it was not in Massachusetts, — as one frame of government, for acceptance or rejection. There is no previous Constitution to be altered or amended; what is presented might be acted upon as a whole, and if accepted, society is organized according to its provisions; if rejected, it must begin anew, and make a fresh attempt at organization. Hence it is, that in our previous history, both State and national, the language has been held and the principle has been acted upon with perfect propriety, that the particular Constitution offered might not be the best that could possibly be devised, or the one that would suit all men alike; but, inasmuch as something must be done, and an entire frame of government must be adopted, to save society from anarchy, individual objections to particular provisions would be sacrificed to the general good. But when a state has long possessed a frame of government, devised by the intelligence and established by the will of its people, — when the question is, not whether the government shall continue to be republican, or be moulded to some other form, but simply whether the principles by which some of its departments are regulated shall be changed, — there is no such necessity for requiring a vote upon the collective changes proposed, which is to adopt the whole, or reject the whole, as one proposition. There is not only no necessity for it, but it is impossible that it should result in a fair and free expression of the will of society upon the various and dissimilar subjects involved. This is too plain to require particular illustration. You will feel it to be true when you come to the ballot-box next Novem-

ber, and undertate to deposit your votes upon this first proposition of the Convention.

And it appears to me perfectly obvious, that the framers of these propositions were conscious that their schemes required to be carried by no inconsiderable exercise of political legerdemain. They have put into their first proposition two radical and sweeping changes in the institutions of the State, in both of which questions of the highest principle are involved. I allude, of course, to the new basis which they have devised for the House of Representatives, (which, I shall have occasion to show hereafter, involves a violation of justice and natural right,) and to the proposed change in the tenor of the judiciary from an office during good behavior to an office for ten years. They have also placed in the same proposition a change in the mode of electing the Senate, which does not seem to involve any question of principle; namely, requiring the Senators to be elected for districts instead of counties.

These three changes, namely, the representative system, the Judiciary, and the Senate, required evidently, in the judgment of the framers of the proposition, all the make-weights that could be thrown into the scale. If the bitter pills of the two first could be sufficiently gilded, the inoffensiveness of the third, in point of principle, would be at least a negative virtue. Men who were to be brought to the ballot-box, and there made to impose upon their fellow-citizens such a system of representation as is here devised, and to pull down the Judiciary of Massachusetts from the tenure on which it has rested for two hundred years, must have something to attract and distract their attention, to tickle their vanity, and to flatter their love of power. Accordingly, you are asked in this same proposition to do some things which are innocent but ridiculous, and some things which are surely inexpedient and unwise; but almost all of which address themselves to what politicians are in the habit of believing to be the weak side of the people. You are asked, for instance, to abolish the property qualification of Governor and Lieutenant-Governor, and to dock off from the one the harmless title of "His Excellency" and from the other the equally harmless addition of "His Honor." You are asked to elect the members of the Council,

the Attorney-General, the Secretary of the Commonwealth, the Auditor and Treasurer, the Judges and Registers of Probate, the Sheriffs, Clerks of Court, Commissioners of Insolvency, District Attorneys, and Trial Justices, instead of having them appointed by the Governor, or chosen by the Legislature. You are asked to abolish the tax qualification of voters, and to adopt the "secret ballot" as a *constitutional principle.* You are asked also to establish the plurality principle in the election of certain officers, to make certain changes concerning Harvard University, the school fund, and the militia. All this mixture of subjects involves, so far as I can perceive, no important question of principle, but I shall have occasion to submit to you hereafter, that many of them involve very grave questions of expediency. They are thrown out as so many tubs to the whale; and although I do not at all concur in the estimate in which politicians of a certain school are accustomed to hold the sense and intelligence of the people of Massachusetts, — treating them as a people who are to be caught by such devices, — I can easily see, in these things, proof that such *is* the estimate in which you are held, by those who propose to you such objects for your constitutional action, in the same category, and under the same ballot, with the representative system and the tenure of the Judiciary.

But let us look a little further into this first proposition, in connection with what is avowed in the Address of the Convention. The character and operation of the system of representation embraced in it may be examined hereafter. It is sufficient to observe, here, that the system *is confessed in the Address to be unequal.* You will see, when you come to examine it, that it is grossly and oppressively unequal and unjust. The important admission of the Address is, that "the inequality of representation between particular towns, when tested solely by population, may in some cases apparently be great." The palliations offered for this inequality we will discuss in another connection. Observe, now, that this system, thus confessedly unequal, — more unequal than any former system, for which the separate existence of the towns has been supposed to be a justification, and so grossly unequal as to have startled the public mind by its bold and daring injustice,

— has been artfully wrapped up with the tender of a district system based upon population, which you can only reach at a future day, by first adopting the system devised by a majority of the Convention. After explaining the motives of the majority, and defending the system on which they require you to vote, the Address proceeds to say: —

"But our deliberations have not been confined to the proposed system. Many of your delegates are of opinion, that the State should be divided into districts for the election of representatives according to the number of votes in each. In this opinion a large majority of the Convention do not concur; but we think it our duty first to interpret the people's will, and then to give a fair opportunity for its expression upon all questions of importance, whenever such a course is practicable. We have, therefore, made a constitutional provision that the Legislature of 1856, under the census to be taken in 1855, shall present a district system, which may be then substituted for the one recommended by the Convention, if in the judgment of the whole people it is wise to make the change."

So that the course of the Convention is this. They devise a system of representation, which they admit is unequal towards the cities and large towns, and they address this system directly to the selfishness and love of power of a majority of the legal voters of the Commonwealth; for it is undeniable that the voters in the towns which will least feel the operation of the inequality, and the towns which will gain by it, taken with those voters elsewhere who will embrace it from party motives, will be a majority of the voters of the State. The system is tied up with the specious offer of an equal system of districts, to be provided for by the Legislature three years hence, and to be tendered to that *same majority* of legal voters, as a substitute for the system under which they will have previously gained a power in the Legislature, which they will then be persuaded they ought not to surrender. If, therefore, the first proposition of the Convention shall be adopted, the Constitution of Massachusetts will stand thus: A system of representation will be in force that is so unequal as to give to one man, in some instances, nine times as much political power as to another, and this system, established by the will of a majority of the legal voters of the State, we must live

under for three years, before we can even get the right to make what will then be an entirely ineffectual appeal to that majority, for the substitution of a just and equal system.

Can any thing be more grossly apparent than the purpose of this contrivance? Was there ever any thing more plainly devised *for the establishment and perpetuation of the power of party?* If we can suppose this appeal to what are called in the Address the "rural districts," and "the different interests and sections of the Commonwealth," to be successful; if the sense of justice and the moral principle of the voters in those districts cannot resist this appeal in 1853, does any man believe that in 1856 these leaders of the Coalition party will not press the same appeal against the adoption of a system of equal representation by districts? Does any man suppose, that we shall not hear the same language employed to excite the jealousies of "the different interests and different sections of the Commonwealth" against each other? that "the rural districts," and "the agricultural and mechanical population," will not then be told, as they are now told in this Address, that this unequal system only secures to them "their reasonable share of power in one branch of the Legislature"? that they will not then be invited to consider that the Governor represents the voters of the State, and that the Council and Senate represent population without reference to voters, and therefore that they need have no qualms of conscience about the lion's share, which they have gained, and may well keep, in the House of Representatives?

If this language, and these motives, are sufficient *now* for the acquisition of such power, they will be sufficient for its retention *hereafter.* If, within the cities and towns against which this system is to operate, there are voters enough now to join, from party motives, with those in the smaller towns on whom party motives and local and sectional policy will both be brought to bear, and thus secure the establishment of the system recommended by the Convention, the hope that it will be quietly and generously surrendered in 1856 would be an idle delusion.

They who gain power by such means as the majority of this Convention have contrived, are not men to be very scru-

pulous about the means of retaining it. There is no reasonable hope for the final establishment of a fair, equal, and safe system of representation in this Commonwealth, excepting through the defeat of this proposition of the Convention, by the sense of justice, the love of right, and the moral principle of a majority of the people, wherever they may be situated or found.

Let us look at some of the justifications put forth by the Convention to palliate the injustice of their system. I pass by the unstatesmanlike and anti-republican notion of different interests and different sections in such a Commonwealth as this, requiring to be recognized and confirmed by its Constitution. It has been admirably demonstrated by Mr. Choate, in his speech on this subject, — a speech which contains the true philosophy of our institutions, — that, in a homogeneous population like that of Massachusetts, where every man, to use his apt illustration, is within a day's ride of every other man, — where pursuits and callings of all kinds are inseparably intermingled, and where the same natural rights are admitted by the civil law to belong equally to all, — a diversity of interests requiring to be adjusted by positive law is the last idea which ought to be admitted into a constitution. But if men who are loudest in their profession of the democratic principle of equal rights choose to desert and deny their own principles, I am not disposed to exert myself to convince them of their error. If I can do a little towards preventing them from misleading others, it will be all I can desire. With this view, let me ask you to examine one of the great sophistries of this Address, which was intended to be extremely effective. "We invite you," says the Address, in justification of the admitted inequality of this system of representation, — "to consider that the Governor represents the voters of the State; that the Council and Senate represent population without any reference to voters, and, as a consequence, that these two departments of the government will eventually be in the control of the cities and chief towns; and, finally, that we have sought only to secure to the several districts and to the agricultural and mechanical interests a reasonable share of power in one branch of the Legislature. This influence gives to this

portion of the people power to assent to, but never to dictate, the policy of the government."

The share of power thus sought to be secured for the "rural districts" in the House, is admitted to be more than their equal share, if their rights are measured by population or by voters; and, in some instances, on a comparison of one place with another, the figures will prove it to be as nine to one. So that the logic of the Convention is, that, because the cities and large towns may have voters enough to choose the Governor, and population enough to elect a majority of Senators, upon a system of equality with respect to those departments, *therefore* the principle of equality ought not to prevail in the basis of the House, but a smaller number of voters, and a less amount of population, ought to elect a larger proportion of representatives than a larger population or a greater number of voters.

Now, in opposition to this theory, on which you are asked by the Address to fix your contemplation, you may well be invited to consider what an act of legislation is, and what it involves. In every government, the Legislative Power, whether acting through a greater or less number of branches, is a unit. In our system, it is divided into three coördinate branches, — the Senate, the House, and the Governor. The assent of each of these branches is necessary to the making of a law. The Senate and the House have a check upon each other, and the Governor has a check upon both collectively. This system, in this respect, the Convention do not propose to change; and if they did, the bones of John Adams would not lie still in his coffin.

In a government, then, in which the Legislative Power acts through three coördinate branches, the Convention undertake to say, that the fact that an inhabitant of a city is represented in two of them equally with the inhabitant of a "rural district," is a justification for depriving him of an equal representation in the third. The fallacy of this becomes at once apparent, from the consideration that, in the enactment of a law, if A is not represented in one of the coördinate branches of the Legislative Power upon the same principles of equality with B on which both are represented in the two other de-

partments, his consent to the enactment of that law cannot with propriety be said to have been given, for in fact he has *not* had an equal opportunity to exercise the power which the theory of the government pretends to secure to him, in all the three branches, when it gives them coördinate power. And yet, in the face of this undeniable truth, the majority of the Convention put forward a system of representation, which they admit to be unequal, and which they appeal to sectional interests and jealousies to establish, *because* it is unequal, and then coolly tell us, that "no human government can attain to theoretic accuracy." If this system is adopted, we shall see that human governments can attain both to theoretic inaccuracy and to practical wrong, to an extent of which we have not heretofore supposed our republican institutions to be capable.

PHOCION.

No. III.

IN the last paper on this subject, I called your attention to the fact, that the first proposition on which you will be required to vote embraces a system of representation, which, if it is ever adopted by a majority of the legal voters of the State, upon the principles and motives on which they are asked to adopt it, will render the establishment of a fair and equal system, at any future period, extremely improbable, not to say impossible.

I referred to the manner in which the Convention have postponed even the offer of an equal system of representation by districts, to a period when their unequal system will have been for three years the law of the land, and when the same appeals will inevitably be made to the same motives, for retaining the power that will thus have been unjustly acquired. I now ask you to examine the reasons assigned by a majority of the Convention for the course they have taken in the construction of their first proposition.

"Many of your delegates," says the Address, "are of opinion, that the State should be divided into districts for the election of representatives according to the number of voters in each. In this opinion a large majority of the Convention do not concur; but we think it our duty *first to interpret the people's will, and then to give a fair opportunity for its expression upon all questions of importance, whenever such a course is practicable.* We have therefore made a constitutional provision that the Legislature of 1856, under the census to be taken in 1855, shall present a district system, which may be then *substituted* for the one recommended by the Convention, if, in the judgment of the whole people, it is wise to make the change." The inconsistency of first interpreting the people's will to be in favor of an extremely unequal system of representation by towns and cities, and then providing for the expression of a different will, three years hence, is obvious and glaring, when the two are presented in the same proposition.

The people are required to vote upon what is deceptive; for those who may desire a district system, having no opportunity to express their preference except by a vote which must establish the unequal system of the Convention, are placed in the position of being obliged to vote in favor of the latter, or to vote against the former. The idea of tendering to them a future chance of getting an equal system, after they have thus been compelled to vote in favor of an unequal one, or have their votes counted against the system which they would prefer, is a mockery. Had the majority of the Convention seen fit, as in all fairness they were bound to do, to present the two systems as alternatives, in distinct propositions, the people would have had a *present* opportunity for the expression of their wishes, that would have given justice, principle, and right an equal chance against injustice, want of principle, and wrong. As it is, a district system, or any other just and fair plan, may be considered as out of the question, if there are a majority of voters in the State willing to be influenced in 1853 by the motives, and willing to act upon the principles, which the Convention have interpreted as their will.

But let us look a little farther into this doctrine of interpreting the people's will to be in favor of the system devised by

the Convention. If the Convention had any authority to interpret the will of the people beforehand, it must by all correct reasoning have been the will of the whole people, or at least that of a majority, which they were to interpret. And in making this interpretation, every delegate was bound to regard himself as acting for the whole people, and for their rights and interests, and not for the rights and interests of his immediate constituents alone. If he was to interpret the will of the people, he was not to interpret the will of his town, still less the will of the party that chose him to be a delegate. If he was to interpret the will of the people, he was just as much bound to regard and to collect the evidence of that will in the cities and large towns, as in the "rural districts"; — just as much bound to consider what would be the wishes of that half of the people who reside in towns containing *more* than a given amount of population, as to regard those of the other half of the people, who reside in towns containing *less* than that amount. If, for the purpose of framing a proposition, which was to have the effect of establishing an unequal system, by excluding the power of voting directly upon an equal one, he was to constitute himself the judge of the people's will, and thus create a foregone conclusion, he was bound to interpret that will fairly, honestly, and upon the principles justly applicable to the duty before him.

Now there was no evidence whatever that a majority of the people desired a system of outrageous inequality. To assume that they did, is to assume what no delegate had a right to impute to them. It assumes that a majority of the people, from local and sectional policy, and from party motives, are willing and determined to establish a basis for the House of Representatives, on which one half of the population of the State will have one hundred and fifteen more members than the other half. So far as any presumptions are applicable to the subject, they are all against the supposition, that such can be the will of a majority of the people. The presumptions are, that a majority of the people mean to do right, and to establish and maintain justice; and he who acts in a public trust upon any other presumption, violates the first principles of the trust with which he has been clothed.

Again, even if the Convention were authorized, from ancient usage and the habit of representation by towns and cities, to infer that it is the will of the people to continue that mode of electing their representatives, there was no ground whatever for them to assume that the people desired to make the inequalities of that system greater than they are now. So far as the people have spoken, they have expressed a desire for a better basis, not a worse one, than that which now exists. So far as there have been complaints, they have been that the corporate system produces inequality, not that it tends to equality. In truth, the action of the people, in directing the Convention to assemble for the purpose of reforming the basis of the House, if it indicates any wish, tends to show that they desired some system which would relieve and remove the inequalities resulting from a rigid adherence to town lines. There is nothing whatever to show that the people intended, when they sanctioned the act calling the Convention, to have a system devised, avowedly, for the purpose of favoring the smallest towns in the Commonwealth, and of giving them, for the very reason that they contain the smallest number of voters, or the least amount of population, the largest ratio of political power assigned to any communities in the State. It cannot be supposed that the people intended to introduce a false principle into their government, which would make the political power of one half of them, in one branch of the Legislature, nearly twice as great as that of the other half, simply because their local habitations are in municipal corporations which respectively embrace fewer inhabitants than those in which the rest of the people reside. Still less is there any pretence for saying, beforehand, that a majority of the people of Massachusetts desire and intend to introduce into their government another vicious principle, which is to recognize the necessity of giving to those engaged in agricultural or mechanical pursuits any larger share of power, in one branch of the Legislature, than that assigned to men of other pursuits. Such a principle may find a place in a government which recognizes classes, and is therefore obliged to provide for the interests of the classes which it recognizes, as being in some sort adverse to the interests of the rest of the communi-

ty; but it is wholly out of place in a republican government, and is a sheer violation of the principles of democracy.

How would it have sounded in the formation of the Constitution of the United States, when the Federal Convention of 1787 were engaged in framing a system of representation for the whole American people, if it had been claimed that the agricultural States ought to be represented in a much larger proportion to their actual populations, than the commercial or manufacturing States? Such a claim could only have been founded on the pretence on which the present claim for a similar distinction on a smaller scale is rested; namely, that the agricultural communities ought to have more legislative power than the commercial or manufacturing communities, simply because they *are* agricultural and not commercial or manufacturing. The great statesmen who framed the Constitution of the Union were likewise great republicans; and they knew well, that, whatever difference of pursuits may lead to an apparent difference of interests, as between one community and another, there is no method by which the democratic principle can be introduced into the legislative power of a government, but by making every man equal in political power to every other man, by a numerical representation of the whole. How absurd then it is, and how utterly subversive of the democratic principle, to introduce into a State, where neither caste nor class exists, — where there are less than a million of people of all occupations, — where distinctions and privileges are unknown and ignored, — a basis of power in the legislative department of the government, founded on the idea that men engaged in one pursuit, or residing in a town of a particular size, ought to have more voice in the enactment of laws than all the rest of the community! But it is unnecessary to enlarge upon this subject; the Convention have manifestly put a false interpretation upon the will of the people, and have contrived the means, as far as lay in their power, for producing a false expression of it.

I desire not to be understood — because in these remarks a district system has been contrasted with that proposed by the Convention — to insist, that representation by districts is the only mode in which an approach to something like equality can be made.

There certainly are no insuperable difficulties in the way of the adoption of the district system. It has been demonstrated, that the Commonwealth can be divided into districts so nearly equal in point of population, as to produce an average representation, in which all appreciable inequality would disappear. But if the feelings and wishes of a majority of the people are in favor of adhering to the principles of corporate representation by towns and cities, from the idea that the municipal interests of every town require that it should be always represented by one of its own citizens, or from any other idea or feeling, why, in the name of all sense and reason, should not the representation be so arranged as to produce as close an approximation to a true political equality as the system of town representation will admit? The only plausible reason that can be assigned for adopting a varying ratio, which gives to an inhabitant of one place less political power than to an inhabitant of another, when the former lives in a town containing more inhabitants than the place where the latter resides, must be, that it is desirable to reduce the size of the House from what it would be under an exact numerical representation of the whole people. But to my mind there are worse evils that may befall the social and political condition of this Commonwealth, than a large House of Representatives. I have sat in a House of at least six hundred members, and at a time when parties ran very high, and were almost equally divided. The assembly was as intelligent, transacted business with as much despatch, and with as thorough an understanding of the subjects before it, as any House that has existed since, or that will be likely to exist under any system of representation that may be adopted within the next quarter of a century. Above all, — and this consideration is one that should occupy the first place in any scheme for adjusting this difficult matter, — it was an *honest* body! swayed doubtless at times by party appeals, and sometimes influenced by prejudice, but in the main acting conscientiously, and probably acting with the more uprightness, from the very fact that it was so numerous. But conceding, as one may well concede, that, from motives of economy, and having regard to the due accommodation of the body itself, it is necessary to keep the

number of the House within a certain limit, no satisfactory reason can be given why the principle to be adopted should not be that of the utmost practicable equality, consistent with the plan of corporate representation. The system of the Convention is directly the reverse of this.

It begins with assigning for the class of the smallest towns so low an amount of population, as the number requisite for one representative, and then varies the ratio for every additional member so capriciously, as the towns increase in size, that it arrives at last at a point where nine men in one place have only the same political power with one man in another place. It is absurd to pretend that this is either necessary or expedient. The necessity of adhering to town representation does not require it, and the expediency of a small House cannot justify it. Nothing can justify the introduction into a state of a distinct, marked, and decided political inferiority of one portion of the people to another portion, in point of political power, except the existence of classes, which require to be protected from the encroachments of each other.

Let it also be understood, that I do not oppose the adoption of this Constitution, solely or principally, because it is to affect the city of Boston by the loss of a certain number of members in the House of Representatives. If it were the pleasure of the people of the State to place this city under a ban, and to refuse to its inhabitants the same voice in matters of legislation that is accorded to the residue of the people, I should regard it as very foolish and unjust, but I should not think it worth while to oppose a Constitution, *which I believed right in other respects*, for that reason alone. The city of Boston might probably continue to prosper, and its inhabitants to be reasonably secure of obtaining all that they want from the justice of the Legislature, even with a smaller proportional delegation than that of other cities and towns. But the radical vice of this Constitution, in the matter of representation, is, that it affects injuriously, not one city only, but all the cities; — not one town only, but all the towns having the misfortune to possess more than two or three thousand inhabitants; — not the counties only, relatively to each other, but the towns in one county, relatively to others in the same county.

For example, the whole population of the State, according to the State census of 1850, was 973,715, of which a quarter part is 243,428. A very small fraction over one quarter of the people, or 243,485, reside in 197 towns, of 2,065 inhabitants or under, and they will elect upon this system 131 representatives annually, including the average of the 64 towns which elect every other year. Another quarter, amounting in all to 243,457, reside in 84 towns, of 2,074 to 4,379 inhabitants each, and they will elect 130 representatives. Thus one half of the people will elect 261 representatives. The third quarter of the people, amounting to 245,692, reside in the 28 towns of the largest class and the 6 cities of the smaller class, and they will elect but 82 representatives. The fourth quarter of the people, inhabiting the 6 largest cities, numbering 241,988, will elect 64 representatives only. The second half of the people, therefore, will elect 146 representatives, while the first half will elect 261; — majority in favor of the first half of the people, 115. In the first quarter there will be one representative for every 1,868 inhabitants; in the last quarter, there will be one representative for every 3,766 inhabitants.

But let us take a single county; and for the sake of comparing one agricultural town with another, and in order to take a county in which there is not a single city, let us select the county of Franklin. The town of Deerfield is a purely agricultural town, and contains a population of 2,421. The town of Monroe, also an agricultural town, has a population of 254. Under the system of the Convention, every inhabitant of Monroe, for six years out of ten, will outweigh every nine inhabitants of Deerfield; and on an average throughout the ten years, every 31 inhabitants of Monroe will outweigh every 242 inhabitants of Deerfield. Take another illustration, from the same county. The following six towns:

Coleraine,	1,785;	Greenfield,	2,580;
Conway,	1,831;	Montague,	1,518;
Deerfield,	2,421;	Northfield,	1,772;

containing 11,907 inhabitants, will be entitled to one representative every year; and there are six other towns in the county, containing in all 3,744 inhabitants, which during six years out

of every ten will be able to tie the vote of the 11,907 in the House of Representatives.

With reference to this state of things, a Greenfield paper puts the following significant question: —

"Is it really true, that the standard of honesty and intelligence is higher in Erving than in Deerfield? or in Monroe than in Coleraine? or in Leyden than in Montague? If not, then will any man tell us why, on an average of ten years, every 45 voters in Erving should balance every 258 voters in Greenfield, and why, during six years out of every ten, one voter in Erving should match every six in Greenfield or Deerfield, and every four in Northfield, Conway, or Montague. There is but one reason. It is not principle. It is PARTY."

These statements are sufficient to show the character, operation, and effect of the proposed system. It is a blow aimed at intelligence, property, and numbers, wherever they are congregated in masses; and they are to feel it and suffer under it, in proportion to their weight in the social scale. The principle adopted is that of increasing the political power of a community, by a rapidly increasing ratio, in proportion as its numbers and its wealth fall below those of other communities. It is pretended, but falsely pretended, to be a distinction in favor of rural, agricultural, or mechanical districts, against commercial and manufacturing populations. It is, in fact, a distinction in favor of communities lowest in point of numbers, intelligence, and property, as against all the other communities, without any real reference to a distinction between the interests or employments of the people. If the Commonwealth of Massachusetts means to adopt this principle of distributing political power, instead of the principle of the political equality of all her citizens, it will not be many years before the character of her legislation will show the effects of the change.

PHOCION.

NOTE. — The above calculations concerning the operation of the new system in the county of Franklin are taken from the Greenfield Gazette and Courier. They were prepared by a gentleman in that county, in whose accuracy I feel perfect confidence. The other calculations in this paper are taken from those made by Mr. Hale, of the Daily Advertiser. I believe the results arrived at by Mr. Sargent (of Cambridge) give a majority of two members less (that is, a majority of 113, instead

No. IV.

If the reader is not already weary of the subject of representation, I propose to consider it in another aspect, and to examine the scheme of the Convention with reference to an assertion made in the Address, by which it undertakes to justify the admitted inequality of representation embraced in that scheme.

"We invite you," says the Address, in a passage which I have quoted before, "to consider that the Governor represents the voters of the State; that the Council and Senate represent population without any reference to voters, and, as a consequence, that these two departments of the government will eventually be in the control of the cities and chief towns; and finally, that we have sought only to secure to the rural districts, and to the agricultural and mechanical population and interests, a reasonable share of power in one branch of the Legislature. This influence gives to this portion of the people power to assent to, but never to dictate, the policy of the government."

I deny the assertion, that the arrangements made in this Constitution give to that portion of the people, whose "reasonable share of power in one branch of the Legislature" it secures, only the power to assent to, but not to dictate, the policy of the government. I affirm, that the whole Constitution is an artfully contrived scheme, for the purpose of enabling the inhabitants of the small towns to dictate and control the policy of the government, and that, if it is adopted, the laws of Massachusetts will be made by a minority of the people.

Let me ask your attention to the proof of this assertion.

I have already shown, in the last paper, that one half of the people, living in 281 towns of 4,379 inhabitants each and under, will elect, under this system, one hundred and fifteen

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of 115) to that half of the people which is to obtain the great preponderance of political power. The difference is not material. The great question is, under *all* the calculations, what I have endeavored to state in this paper, viz.: Why introduce inequalities not required by any necessity, and not to be justified by any expediency?

more representatives than the other half of the people living in the other towns and cities. It is clear, therefore, that a small minority of the people will elect a majority of the representatives; and if the majority that may be so elected by a minority of the people should be of the same political party, or of two parties willing to coalesce, although it should be only a majority of five or ten, it would control the action of the House. In judging of the propriety of adopting a new scheme of government, which is to place the three branches of the legislative power in entirely new relations with each other, in consequence of the establishment of different modes of electing each of them, and a different rule of determining what constitutes an election, we must take into consideration the fact, that the people are divided into political parties, and we must also, in this case, remember, that they are divided into three parties, two of which, in matters of legislative action, have sufficiently evinced their determination to act together as one.

With regard to the election of Governor, the proposed Constitution retains the majority principle. It gives the Legislature power to change that rule to a plurality. But, with a majority of representatives elected by the two coalition parties, *that* change, as long as the three parties retain their present popular relations to each other, will never be made. The chances are, in the present state of things, against an election of Governor by a majority of the people. Whenever the election devolves on the Legislature, the House of Representatives, according to the proposed Constitution, are to select two out of the *three* persons having the highest number of votes, and return them to the Senate, from whom the Senate is to choose one to be the Governor. The majority of representatives, elected by a minority of the people, of course will determine the two candidates to be sent to the Senate, and they will, also of course, *not* send the one politically opposed to them. Thus "the reasonable share of power" secured to a majority of the people in the House of Representatives will, in the most direct manner, be exercised to determine the political character of the Governor; and, therefore, two branches of the legislative power will rest upon the votes of a minority of the people.

It is true that this result depends upon the contingency of the majority of representatives, who will be elected by a minority of the people, being of the same political party, or of two parties having a common object to accomplish in the choice of a Governor; but this contingency, in case of the adoption of this Constitution, is not only possible, but extremely probable. If, by a constitutional arrangement, it is in the power of a minority of the people, dwelling in a certain class of small towns, thus to acquire the control of two branches of the legislative department of the government, the existence of the power will have a very strong tendency to bring about the result, and to cause the inhabitants of those towns to adhere in general to that political party which is to gain such an enormous advantage. But, even if this result were only possible, and not probable, its possibility is a sufficient refutation of the pretence set up in the Address of the Convention, and a sufficient objection to their scheme. Constitutions are made, or should be made, with a view of preventing a minority of the people from obtaining the control of the legislative department, and not with a view of permitting, still less of encouraging, such a result.

You should also take along with you, in judging of this part of the scheme, the fact that, by this proposed Constitution, the appointing power of the Governor is to be greatly increased, in reference to another distinct department of the government. Although the Convention propose to take from the Governor the power of appointing some of the executive and administrative officers of the government, they retain to him the power of appointing the Judges of the Supreme Court and the Court of Common Pleas, who are to be commissioned, when appointed, for ten years only, instead of during good behavior. *If, therefore, a majority of the present Judges of either Court should die in any one year, the Governor would have, for ever after, the appointment of a majority of that bench once in every ten years; while the Governor himself, by whom those appointments would be made, might owe his election to a minority of the people.* Thus the proposed Constitution, so far from giving this minority only the power to assent to, but never to dictate, the policy of the government, places

two branches of the legislative department, *together with the judiciary*, within their control, in any year when the election of Governor is thrown into the Legislature, and there are vacancies on the bench of either of the Courts.

Let us now turn to the other branch of the legislative department, and see how it will be with regard to the Senate. It is quite true that a majority of all the people of the State *may* elect a majority of Senators, and that the cities and towns, which contain respectively more than a certain number of inhabitants, will be found to contain a majority of the people of the State. But deserting, in this instance, the majority principle, the Convention have provided that, for the choice of Senators, the State shall be divided into forty districts, containing an equal amount of population, and each entitled to elect one Senator, and that the person having the highest number of votes is to be declared elected. Under this system, it is possible for twenty-one Senators to be elected, who will be of the same political party or parties with the majority of the House, and who will only *theoretically* represent a majority of the people in their districts. In this case, therefore, the political party or parties, who had obtained, through the votes of a minority of the people, the control of the *House*, and the power of determining the political character of the Governor, *would also possess the Senate.* It is clear, therefore, that under this Constitution, in contingencies which are both possible and extremely probable, *the laws of Massachusetts will in fact be made and administered by a minority of the people.*

Let me ask you, then, to judge of this Constitution in its influence on the general character of the legislation of the State. I need not say to you, that laws made by a minority of the people, through an artificial arrangement of the legislative power, belong to aristocratic governments, in which the power of governing is lodged in certain classes; and that in a republic, laws, which are habitually known to emanate from the will of a minority, cannot be respected or acquiesced in. When the laws rest upon such a basis, among a people who have been accustomed to live and act under the doctrine that law is the will of society, expressed through the voice of a

majority, there must be a growing disregard for the authority of all law. A people who cannot appeal to the highest sanctions of law, in the general will, must either surrender the name of republicans, and consent to be governed by an oligarchy, or they must become restive and unwilling subjects of a rule, that reposes on no foundation of justice and right.

Let me also ask you to look at the particular influences of this Constitution on the legislation of the State.

In the first place, look at it in its influence on the relations of particular sections of the State to each other. An attempt is now made to introduce a discrimination, founded on the idea of antagonistic interests, as between city and country, rural and commercial populations, and places of different magnitudes. *This idea is to be engrafted into the Constitution of the State, as a basis on which political power is to be distributed.* The great ideas embodied in the fundamental law of a people necessarily affect and influence their legislation. It is so in all governments, and ours can be no exception to the operation of a principle which is founded in human nature, and is universally operative. This idea of a discrimination in favor of rural or mechanical populations, or populations of a certain size, will be followed out in legislation ; and, as we are to have a Constitution made for rural districts and small towns, and people of certain occupations, so we shall have laws made for the same purpose, in the same spirit, and to carry out the same idea. This has never happened before, among us, because no former system of representation was ever based upon the idea of such a discrimination. It will happen hereafter, should this Constitution be adopted, because the discrimination will have been expressly made the basis for assigning a preponderance of political power to certain classes of men or classes of towns.

In the second place, look at the influence of this Constitution on the legislation of the State in reference to the internal affairs of particular places. The cities of this Commonwealth are bodies politic, to which a certain portion of the legislative power of the State has been granted by charter for the local purposes of a population, whose wants require, in some respects, different provisions of law from those of less

populous places. But the special powers of these local legislative bodies are not large. The powers of our municipal corporations, as compared with those of other cities in the Old World, and with those of some cities in other States of this Union, are small, and relate to but few objects. They have been kept so, because the character of the central government of the State has been beneficent, and almost paternal; because all men have had ready access to the general legislature; and because, whenever the particular convenience of individuals, or the wants of a particular population, have required special legislation, it has been readily and liberally afforded. The charters of the cities have thus, when first granted, been kept within narrow limits. Their legislative power has been increased only from time to time, as necessity required, and has never been extended to those objects which appropriately belong to the cognizance of the general legislature. But adopt a Constitution, which is to have the effect of making the inhabitants of these cities feel that they are not duly and rightfully represented in the government of the State, that their objects and their wants cannot command the same attention, and cannot secure the same relief, that they have hitherto had, and you will create a very strong tendency to lean upon and resort to the local legislative powers now vested in their municipal bodies, whose authority will be strained, by forced constructions, to provide for objects which have not heretofore been deemed within their cognizance. The consequence will be a great amount of litigation, and, finally, conflict with the central government of the State.

These considerations may serve as hints, to which your wisdom and judgment will enable you to give far more effect than I can give in the short space devoted to this discussion. But the great consideration, after all, is that on which I have again and again insisted; namely, that *this Constitution gives to a small minority of the people power to control and determine the character and policy of the government.* Those who tell you that it only secures to certain interests a share of power, made necessarily larger than that accorded to other interests in the same branch, in order to balance and compensate for irregularities produced elsewhere, are only attempting to mislead

you for their own political purposes. I have spoken of the operation of this Constitution with reference to the power which it gives to certain political parties, and have referred in this to the two parties known as the "Coalition." The argument, if the other party should possess a majority of representatives elected by a minority of the people, would be precisely as strong, and I trust I should be capable of presenting it in the same light. No constitution is fit for a free people to live under, which enables a small minority of the people to determine the political character of the Legislature, and to control the Judiciary, whether one party or another gains the ascendency by means of it. That constitution alone is fit for a free people to live under, which puts the policy and course of the government into the hands of a majority of the people, or, when that is not always and constantly practicable, comes as near to it as the circumstances and situation of the people will admit. It may be, that the state of political parties in this Commonwealth may render it impossible to carry on the government upon the principle of requiring a majority of votes for the election of all officers. If so, — and if we have reached a point when a change must be made in this respect, — in the name of all that is decent and honest, let it be a change to a system that will have some consistency of principle in its application to the various branches of the government. Let it not be a rule applied to one branch, because it will work a political advantage to a *party*, or to a set of men hankering for the offices of the Commonwealth, and suppressed in another branch, because it would operate injuriously to their plans. Let it be adopted as a principle, and because it is a principle, which will alone produce the nearest approximation to a strict government of the majority, by operating alike in all the elections in which the people are required to express their will.

PHOCION.

No. V.

THE JUDICIARY.

Important as the question of representation is, there is another question, of at least equal importance, involved in the Constitution which you are asked to adopt, in the place of that under which you and your fathers have lived happily and prosperously for a period of more than seventy years. I allude, of course, to the change which you are asked to make in the tenure of the Judiciary.

Our ancestors considered, that the due independence of the judges required that they should hold their offices during good behavior; and they believed that the independence of the judges is an essential security to the rights of every citizen or subject of the Commonwealth. It is impossible to express the great reasons which connect these two propositions, in the inseparable bands of truth, more forcibly than they are stated in that solemn and impressive declaration of the twenty-ninth article of the Bill of Rights: —

"It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent, as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well, and that they should have honorable salaries, ascertained and established by standing laws."

No essayist, no writer on government, no publicist whatever, has succeeded in stating these great truths with more logical precision than they are stated in these memorable sentences. The premises are necessary to the conclusion, and the conclusion follows irresistibly from the premises. Change the one or the other, and the doctrine loses all its consistency and all its truth. If the right of every citizen requires that

the judges should be as free, impartial, and independent as the lot of humanity will admit, then a degree of freedom, impartiality, and independence less than that to which the lot of humanity can be made to attain, is neither the best policy, nor a true security of the rights of the citizen. That a tenure of the judicial office during good behavior, and upon established salaries, is the highest state of freedom, impartiality, and independence which the lot of humanity will admit, no man in his senses can deny; and if it is, any other tenure is manifestly inconsistent with the rights of the citizen, which the declaration establishes. The majority of the late Convention have provided for another tenure for the judges *hereafter* to be appointed, namely, that they shall hold their offices for ten years only; and you will not fail to observe, apart from the question of policy involved in this change, the absurdity to which they have reduced the declaration of the Bill of Rights. That declaration, in this *new* Constitution now proffered to you, they have made to read as follows: —

"It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the Supreme Judicial Court should hold their offices *by tenures established by the Constitution*, and should have honorable salaries, which *should not be diminished during their continuance in office*."

They propose, therefore, that the Bill of Rights of this Commonwealth shall assert it to be the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. But, as if their conclusion had nothing to do with this great premise, they declare, that it is the best policy, and for the security of the rights of the people, that the judges should hold their offices by tenures established by the Constitution, and then go on to provide that they shall hold them for ten years only. If this conclusion is true, the premises are untrue; if the premises are true,

the conclusion is false. If a tenure for ten years is the best policy, and best secures the rights of the citizen, then the rights of the citizen do not require the highest independence which the lot of humanity will admit.

The framers of this new Constitution seem to have forgotten, or not to have known, what the Bill of Rights of this Commonwealth is. It is a declaration of the rights inherent and inalienable in every citizen and subject of the Commonwealth, intended to impose limits on the people themselves, and to declare the principles on which the provisions of the Constitution are to be established. When, therefore, the Bill of Rights declares, that it is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit, it is a self-evident absurdity for the Constitution to establish a tenure of the judicial office which is *not* as free, impartial, and independent as the lot of humanity will admit. And when the Bill of Rights further declares what the security of every citizen requires the tenure of the office to be, it must, in order to be consistent with the previous declaration, be a tenure during good behavior. Unless the Bill of Rights itself provides and declares what the tenure of the judicial office shall be, and thereby, for the transcendent reason of securing the rights of every individual, limits the power of the people to enact a different tenure in the Constitution, the whole article is entirely out of place. To declare what the right of the citizen requires in the Bill of Rights, and then to go on and enact in the Constitution a plain inconsistency with that declaration, is doing what no set of lawgivers in this Commonwealth ever did before.

But bad as this botching of the great charter of our liberties is, I will not detain you with mere criticisms on the work of the Convention. The change itself which they propose, and the reasons which they have offered for it, await your examination. In the first place, then, it will not fail to strike you, that, by not altering the tenure of the *present* judges, the Convention have admitted, that there is no present reason for a change. Will any one venture to say, that the past affords any reason? I have looked in vain into the Address, for a direct statement, that there has been any thing in the history

of the Judiciary of Massachusetts to require or justify this change. The writers of that document state, indeed, that "in a free government the people should be relieved in a reasonable time, and by the ordinary course of affairs, from the weight of incompetent or unfaithful public servants. Under the present Constitution, a judge can only be removed by the difficult and unpleasant process of impeachment, or of address. Such remedies will be resorted to only in the most aggravated cases." But do they venture to assert, that the people of this Commonwealth have ever been oppressed by the weight of incompetent or unfaithful judges? Or that there has ever been a case, less than the most aggravated, in which impeachment or address has not been resorted to, but in which a removal would have been desirable, or has ever been desired? Or do they mean that this statement of the reason for the future provision which they make shall be taken by the people as an *insinuation*, that there have been, in the past, incompetent and unfaithful judges, who have been left upon the bench, because impeachment and address are difficult and unpleasant processes? If such is their insinuation, the whole people of the Commonwealth, who are neither demagogues nor believers in demagogues, will rise up to repel it, alike from those who have received their appointments from one Executive, and from those who have received them from another. If such is the insinuation of the Address, there never was a more false and injurious imputation cast upon any set of magistrates, since judicature has been known among men. The Judiciary of Massachusetts, from the day on which she became an independent State to the present hour, has been as able, as upright, as much respected, and as respectable, as any judiciary in any part of the civilized world; and the case has rarely, if ever, been known among them, of a judge remaining upon the bench after he had ceased to be competent, or had become unfaithful. It may be doubted, whether such a case is within the memory of any man now living. But whether such an insinuation was intended to be covertly made, or not, it is manifest, that the Convention, by not applying the change to the *present* Judges, did not dare to make it openly, and did not venture to assert that experience requires

the change. The sole reason why they did not apply to the present Judges a change which they say is necessary in the future, was because they were afraid to encounter the odium of a fair, practical application of their own measure, and thought to get it in edgewise.

But let us now examine the doctrine of the Convention, that it is expedient, that the judges should hold their offices for ten years only. It cannot be pretended, that a judge who sits upon the bench, and passes upon questions affecting the life, liberty, property, and character of his fellow-citizens, is in a state which can be correctly described as independent, if, at the expiration of ten years, he is to look for a reappointment to the Governor, who, besides being the Executive of the Commonwealth, is always the head of a political party. The Convention, therefore, are in favor of a dependent, and not an independent judiciary.

Now, in opposition to their theory, I undertake to affirm, that the true democratic doctrine — that which looks to the safety and security of the rights of the humblest individual, and provides for them in an impartial administration of the laws — is "an independent judiciary." In the first place, all men will agree, who are not blinded by party prejudice, that, unless the judiciary is independent, the judicial office will not in general be sought or accepted by men of the highest ability, combined with the highest character. Men of real talent can do better than accept a place which they can hold for the short period of ten years only, and men of real character will not place themselves in a position of dependence upon the chances and changes of political parties. The judicial office should be made so desirable as to command the services of those most fitted to discharge its duties; and, among the qualifications for the discharge of those duties, character and talent are two great essentials. There are many and obvious reasons, why the most eminent members of the legal profession should be attracted to the Bench, as a matter of public policy. One reason is, that the Bench ought always to maintain a supremacy over, and a superiority to, the Bar. I believe that all thinking men, who have much considered this subject, will agree in regarding this as essential. If the Bar predominate over the Bench in learn-

ing, quickness of apprehension, clearness and soundness of judgment, and force of character, justice cannot be well administered. The tendency among us, apart from the influence which our constitutional provisions have hitherto exerted, is to predominance by the Bar, from numbers, from social position, and from influence in other branches of the government. The people need to be protected from this tendency; and this protection is to be found in such a tenure of the judicial office, as will induce men to accept it, who are individually superior in point of ability, learning, and weight of character, to most of the advocates who practise before them.

In presenting to you this consideration, I am not unmindful that the Bar of Massachusetts are, in general, deserving of great credit for the aid which they have always given to the Court in the administration of the law. As a body of men, whose profession and duty it is to advocate the rights of others, I believe the Bar of this Commonwealth have generally aimed to discharge their duties according to their official oaths, with all due fidelity to the Court, as well as to their clients; and I should be the last person in the world, to be willing to depreciate the services which they have rendered, and are daily rendering, in the administration of justice. Without a learned, zealous, and able Bar, no Court can discharge its duties satisfactorily to itself, and to the true advantage of the public. But it should never be forgotten in considering this great subject of the relations of the Court to the Bar, that it is the office of an advocate to present one side and one view of a subject, and to enforce that side with all the talent, learning, zeal, and address that he can employ in the service of his client. This is the only mode in which the conflicting rights and interests of men can be judicially investigated, and the truth, whether of law or fact, be finally elicited in the process. It is, therefore, obvious, that the office of JUDGMENT, which is to extract from the animated and highly colored discussions of the Bar the elements of a wise, true, and just decision, ought to be discharged by a mind equal at least, if not superior, in power of research, in grasp and force of intellect, and in all the habits of a trained analysis, to those whose business it is to present a single view of the subject. Have you ever seen a feeble

judge, sitting in the trial of a cause conducted by really great and superior men at the Bar? If you have, you have, to some extent, witnessed the effect and the consequences of that inferiority, which I am now contending ought not to be found upon the bench. And if to an intellectual inferiority you add an inferiority in point of character; if, besides, you place the judge upon the bench in a position where he must not only succumb to the superior strength of the advocates before him, but must find in some of those advocates men of political power and influence, and must be constantly reminded, by their presence, of the political bearing of the questions before him, and be constantly alive to the effect on his own position and prospects of the decision which he is to pronounce, — you will be able to form some idea of the kind of judiciary you will be likely to have, when your judges are commissioned for ten years, and are to look for a renewal of their commissions to the success of a political party.

But the subject is too important, and too full of interest, to be disposed of in a single essay. I shall resume it in a future paper.

PHOCION.

No. VI.

THE JUDICIARY.

IN the last paper, I called your attention to some considerations, which show that the judicial office ought to be made so desirable as to command the services of the ablest and best members of the legal profession; and that it is not made so, when the judges are commissioned for the short period of ten years, and are obliged to look for a renewal of their commissions to the success of a political party. Those considerations referred to the internal relations of the State to its own citizens, in the impartial, pure, wise, and able administration of justice. I now ask you to look at this subject in its connection with the relation of the State to the Union.

The late Convention seem to have done every thing that was in their power, to reduce the offices of the State, and especially the judicial offices, below the ambition of men of high ability and character, and to make them desirable only to a class of men, who cannot bring to the service of the Commonwealth the same degree of talent and capacity, which the government of the United States is able to command. How miserable and short-sighted a policy this is, which has a tendency to drive the best men out of the service of a State into the service of the United States, we have lately seen exemplified in the State of Ohio, — the third State in the Union in point of population, — whose Governor has just resigned his office, in order to take a consulship abroad. Such a policy is suicidal to the best interests of a State, to its proper influence in the Union, and to the duties which it owes to the complex relations of this confederacy. It is in the highest degree important to the security of the Union, that the just powers and full influence of the several States, in their respective spheres, should be maintained. The tendency is, and almost always has been, since the adoption of the Constitution of the United States, to a preponderance of the power and influence of the general government over those of the States, without the exercise of any thing more than its proper constitutional functions.

From the growth of the country, from the increased magnitude of the objects with which the general government is concerned, and from the consequently increasing patronage that belongs to it, the legitimate constitutional power and influence of the United States increase much more rapidly than those of the States. Our political system is so constituted, that, unless the States are careful to preserve their legitimate influence, and to counteract this tendency of the general government to outstrip them in energy and force, the balance of the Union must be seriously deranged. At the time when the Constitution of the United States was formed, it was not only admitted that the State governments must be preserved, but it was perceived to be necessary, in order that they should be preserved, that they should retain and continue to exercise all the powers which were not necessary to be

granted to the general government for the accomplishment of the objects for which it was to be instituted. The powers and functions of the States, as they were actually left after the adoption of the Federal Constitution, if suffered to fall into decay, or if not exercised with proper energy and vitality, must, in all conflicts with the powers of the general government, sink beneath the superior strength and natural supremacy of the latter. Such a state of things would as surely lead to a dissolution of the Union, as a violent and unconstitutional assertion and exercise of the doctrine of State rights; for, so soon as the just powers of the States in their constitutional spheres fail to be properly and duly exercised, so soon will the power of the Union begin to be irksome, and finally become intolerable.

Now, there is no department of a State government more necessary, or more efficient, in the assertion and maintenance of the legitimate constitutional rights and powers of the State, than its Judiciary. It is the Judiciary of a State, for example, that is to construe and declare the constitutional law of that State, and the rights of its citizens and inhabitants under that law. It is for the Judiciary of a State to declare what is the law which determines the rights of property and of persons within that State; to determine whether the legislation of the State, which regulates those rights, is in conformity with the provisions of its Constitution; and these adjudications of a State Judiciary are and must be received and recognized as the law of that State, in the tribunals of the United States. What then can there be more important to the welfare of the people of a State, than to have its Judiciary — who are to declare the law of the State, upon the rights of persons and of property within that State, not only for the purposes of adjudication in her own courts, but for the purposes of adjudication in the Federal tribunals, when those rights are brought into question there — composed of men of first-rate ability, influence, and weight? When it is recollected, that, in all cases of a supposed conflict between the law of a State and the provisions of the Constitution and laws of the United States, and in all controversies between the citizens of one State and those of another, the Federal Judiciary is empowered

to draw to itself the discussion and adjudication of all questions which may arise between individuals, (subject to the single qualification that it is to look to the Judiciary of the State for the construction and declaration of the State law,) it is impossible to overstate the importance of having the very best minds employed in the duty of ascertaining and declaring the rules which determine the rights of property and person under the State law. If the declaration and maintenance of those rules is left in the hands of inferior men; if mistakes are committed; if violations of the sound principles of jurisprudence creep into the administration of the law of a State, as it is declared by its Judiciary, — the mischief is not and cannot be confined to the adjudications of its own courts, but it infects also all the fountains of justice, whether they flow in the domains of the State itself, or in those of the Federal Union. Certainly, then, it cannot be pretended that the judges of a State ought to be — or can with safety and propriety be allowed to be — any thing less than men of the highest order of talents, learning, and character that can be found in the legal profession within her limits.

But what do our late Convention propose to do? It is difficult enough *now* for any Governor of Massachusetts to find men, who are fit to be judges, — and who are willing to leave the lucrative practice which that fitness has always commanded for them, — to take a seat upon the bench. If the secrets of the Executive embarrassments for the last twenty years or more were to be laid before the people, I apprehend that it would be found that there have been few applications for judicial appointments by the men most to be desired, and that the motive of public duty has had to be strongly appealed to, in order to obtain such men. But the Convention, as if they desired to make this motive still less available than it is now, propose to take from the Executive the power of offering to any suitable man a seat upon the bench during good behavior, and to confine the range of choice to men who will take that seat for ten years, with the chance of being dismissed to private life at the end of that term, and forced to earn their livelihood by a practice which has been absorbed by others in the keen competitions of the Bar. And what

compensation or relief for this unwise and imprudent change do they offer to the people? Why, nothing more than the confidence which *they* feel, that the judges who are found really competent and faithful will be retained upon the bench, by a renewal of their commission. Even if men, who are really fit for the office, are likely to be found upon the bench under this system, — men willing to take a seat with a commission for ten years by the side of those who hold their commissions during good behavior, — I doubt if the confidence of the Convention in their reappointment is not entirely misplaced and delusive. But whether it be so or not, *that confidence is no adequate security for the great public interests at stake.*

Let us see what the grounds of this confidence are, as they are stated in the following passage of the Address of the Convention: —

"In a free government, the people should be relieved in a reasonable time, and by the ordinary course of affairs, from the weight of incompetent or unfaithful public servants. Under the present Constitution, a judge can only be removed by the difficult and unpleasant process of impeachment or of address. Such remedies will be resorted to only in the most aggravated cases.

"Under the proposed system, we have no apprehension but that faithful and competent judges will be retained in the public service, while those whose places can be better filled by other men will retire to private life, without violence or ungracious circumstances, and scarcely with observation."

The Convention then propose to adopt, in place of a removal of an incompetent or unfaithful judge by impeachment or address, a system of removal by the Executive at the expiration of ten years, "without violence or ungracious circumstances, *and scarcely with observation*," "having no apprehension but that faithful and competent judges will be retained in the public service" by the Executive. This plan of making judges retire to private life without observation, at the pleasure of the Executive, and the amusing dread of the "ungracious circumstances" of an impeachment evinced by the writers of the Address, remind me strongly of a letter which I once saw in France, in the hands of a gentleman curious in autographs,

written by a revolutionary functionary during the Reign of Terror to the executioner, at the time when the guillotine first began to work. "Citizen," said the letter, "I am pained to inform you that the public morals were yesterday much shocked by the unnecessary stains of blood upon the pavement; we request you, in future, to make use of sawdust at all executions."

But to return seriously to a serious subject; — I must say, that, in my humble judgment, the public interests require more security that competent and faithful judges shall be retained in office, than can be afforded by any degree of confidence which anybody may feel in the right action of the Governor, whoever he may be. The best disposed Executive, who may wish to discharge his duties conscientiously, may not always be able to do right, in the matter of reappointing a judge, against the clamors of party and the claims of partisans. The argument comes, or may come, in such a plausible shape, — that the incumbent has enjoyed the full time contemplated by the Constitution, and that a faithful and distinguished member of the Governor's own party now wishes for his turn in the office, — that it may be very difficult for all Governors to resist it, and quite impossible for some. It ought not to be left to any Executive to say whether a judge shall be removed from office, or, what is in effect the same thing, shall be quietly dropped at the end of a short commission, "scarcely with observation." It ought not to be so; first, because it gives the Executive a power over the Judiciary, of a dangerous character, which may be and will be wielded to political ends. The theory of our government and the theory of this very Constitution are, that no department of the government ought to have such a power over any other department. Secondly, the Executive ought not to have this power, because there is no form of trial of the fact of competency or faithfulness provided. All is to pass in the secret recesses of the Executive conscience, and he is to be practically irresponsible for a decision, which he makes without public inquiry, or any mode of public investigation into the great and solemn issue of the competency and faithfulness of a judge. In the third place, it ought not to be so, because an error in judgment, or a

biased and prejudiced decision of the Executive, would inflict an irreparable injury on the public, in the loss of a magistrate who had had ten years' experience in the duties of the office, and whose usefulness may, and probably will, increase with every year through which he remains in it.

On the other hand, the value and importance of a removal by address or impeachment, in a case of real incompetency or unfaithfulness, cannot be too highly appreciated. It is the only mode of removing a judge, or taking him out of the public service, that is consistent with the independence of the Judiciary and the real interests of the people. It is so, *first*, because it keeps the power of the different departments of the government distinct, and prevents either of the two others from exercising political control over the Judiciary. It is true, that a judge may be impeached, or his removal may be attempted by address, from political motives; but these motives must be brought to the test and stand the trial of a public investigation into the charges made, upon the oaths of witnesses and the public responsibility of all who have any function to discharge in the process. And therefore I say, in the *second* place, that a removal by address or impeachment is vastly to be preferred, because it requires a formal public investigation into the facts of competency and fidelity. The great maxim, that "no man should be condemned unheard," is in this case important, not only to the rights of an individual, whose reputation and usefulness may be involved, but it is equally important to the public interests, because the public ought not to be deprived of the services of a judge, without a careful, open, public, and responsible finding of the fact, that he is unfit for the station which he fills. Place your judges in any other position, and you may be deprived of their services, at the instigation of a demagogue, through the malice or the selfishness of party, or by the machinations of some powerful individual, whose schemes of private rapacity, injustice, or oppression it may have been their duty to crush. In the *third* place, a removal by impeachment or address is a far better security for good conduct in the judges, if they are men fit for the position, than any such plan of dropping them out of office "without observation" can ever become. What

are called, in the sleek delicacy of this Address, the "ungracious circumstances" of an impeachment, are the best possible security that the public can have for the honesty, impartiality, and purity of a judge. The functions of a judge are discharged in public, before the eyes of all men, and they involve the dearest and most important interests of the State and of every one of its inhabitants. And that he may walk uprightly in his high function, and discharge it with the best exertion of every faculty that God has given him, and with a conscience void of all offence, there is no security, which men of honor and uprightness can be subjected to, like the sanctions of that form of public trial and public degradation, which ought to follow upon any dereliction of duty or any substantiated charge of incompetency.

But I am admonished by the length of this paper that the subject, which I have not yet exhausted, — if I am capable of exhausting a question of such magnitude and importance, — ought to be resumed at a future opportunity.

PHOCION.

No. VII.

THE JUDICIARY.

IF the designs of men may fairly be inferred from the schemes which they set on foot, and from the arguments which they employ to secure their establishment, then the men who governed the proceedings and shaped the results of the late Convention may justly be charged with an attempt to bend the institutions of the Commonwealth to their own political, *party* purposes. With regard to the Judiciary, they have devised a plan full of danger to the best interests of the people, and subversive of all the sound maxims of constitutional government. This plan is entirely different, in its features and effects, from the one that was generally expected of them. Most persons, I suppose, anticipated that the lead-

ers of the Coalition party would be in favor of making the Judiciary elective by the people. In this anticipation, it appears, more credit for fairness was given to the majority of the Convention than they deserved. The plan for an elective Judiciary involves more confidence in the people, than the majority appear to have entertained; and it involves, also, comparatively, too little opportunity for that political control over the Judiciary, at which they seem to have aimed, and for which they have made ample provision. The Constitution, which they undertook to remodel, provides that the judges shall be appointed by the Executive, but shall be commissioned to hold their offices during good behavior. This tenure of office may be regarded as essential to that degree and kind of independence of the Judiciary, which the fundamental maxims of our government affirm to be the best security for the rights of the citizen. It is true, that a tenure of office for a term of years, if that term be so long as to expire at about the average age at which vacancies may occur from natural causes, might be consistent with a proper degree of independence of Executive control, under a system of Executive appointments. But the Convention, in total disregard of the necessity of preventing an improper control over the Judiciary, have adopted a term of ten years, which is just about one third of the average length of time for which men placed upon the bench, at the age of forty or under, may be expected to continue to be useful in the public service.

But this is not all; nor is it by any means the worst feature of the proposed change. I have not looked into the Constitutions of the different States of the Union, which limit their judges to a term of years; and I think it very immaterial whether there is or is not a single State where a term so short as ten years has been adopted, leaving the appointment with the Executive. But I hazard nothing in saying, that there is no State in this Union, where a term of years has been adopted, in which some careful provision has not been made for obviating the consequences of having a majority of the Court go out of office in any one year, by fixing different terms for those first appointed, and so regulating their commissions, that the Executive cannot have the power of ap-

pointing to a majority of vacancies in a single year. The Constitution, which we are now asked to adopt, leaves this wholly to chance. Should it be adopted, and should the accident happen that a majority of the judges were to die within a year, then once in every ten years the Governor would have the appointment of a majority, for all time. But this Constitution declares the principle, that the three powers of the government ought to be *kept* separate; and yet if it is adopted, with this feature in it, — and it must be adopted with this feature, if at all, — there is no security that the whole judicial power is not *permanently* put under the Executive. Now, if you will take the trouble to look back to one of my former articles on the representative system, you will see that, under the scheme devised by the Convention, the Governor, who is to have this power over the Judiciary, — by which, in every *tenth* year, he may dismiss a majority of them from the bench or retain them there according to his own pleasure, and, upon motives and reasons for which he is to account to nobody, cause them to retire to private life, if he sees fit, " scarcely with observation," — may himself owe his political elevation to this power to the votes of a minority of the people. If you will look into the proposed representative system, you will see that it may be demonstrated, that the political character of the Governor may be determined by the votes of a majority of the House of Representatives, who will be elected by a minority of the people; and I need not say, that if the commissions of a majority of the judges should expire in such a year, and they were not of the political party of the Governor, the chances are, that they would retire to private life " without violence or ungracious circumstances, and scarcely with observation."

Few men, who are accustomed to reflect upon any thing, can doubt that there is such a thing in political science as *truth*. That there is a right and a wrong in politics; that the relations between the different institutions by which human society is governed and protected are not all arbitrary; that liberty, safety, and the public good depend upon the recognition and maintenance of certain *principles*, and cannot flourish without them, — are truths as certain as any thing in mathematical science. And there are few people in the world

who have done more for the discovery and practical exhibition of these principles, in their application to free constitutional governments, than the people of this Commonwealth of Massachusetts. Our early Colonial history; our contests with the power that undertook to deprive us of the Charter; our great Revolutionary discussions; and, finally, our new and admirably contrived institutions, by which we undertook to substitute, and did successfully substitute, the authority of the people for that of the crown, — in the framing of which men who had deeply studied all political science were concerned; — prove the advances that we have made, and the happy results that we have achieved, not merely in the business of *self*-government, but in the great art of all constitutional government. Among the great truths, for which, in their application to purely popular governments, we may justly claim the merit of discovery, this doctrine of the independence of the judiciary — in which I include its freedom from political control — is one of the most conspicuous and important. It is of the utmost consequence that we should bring home to ourselves, as a practical truth, that this doctrine is not an antiquated prejudice, that has served its turn in its day, and may now give place to looser arrangements. It cannot give place to any thing, without injury to the best interests of society, for the reason, that it is founded in truths that are as eternal as society itself, and as indestructible as the social necessities of man.

Indeed, if the tendencies and developments of society among us prove any thing, they prove that the necessity for an independent judiciary, instead of having become an old prejudice, to be exploded by new theories as society advances, becomes every day more and more stringent; — that not only is its position in our political system as important now as it was when the foundations of our civil polity were laid, but that its importance is gathering every day fresh illustration and newer force, by what is every day taking place around us and in the midst of us.

In the first place, all men must perceive, on a moment's reflection, that, in a popular government, the judiciary is, for all the purposes of self-defence, the weakest of all the depart-

ments into which government is divided. It has no political relations to the people, or to the other departments. It has no patronage to dispense, and consequently it cannot reward its friends, nor punish its foes. It knows neither friend nor foe. It is employed, unceasingly, in declaring the law and in administering justice, without respect of person, and without regard to consequences. In all well regulated communities, if the judges are attacked, they cannot descend into the arena to defend their conduct, or to vindicate their judgment. When they have spoken, the law has spoken; when they have pronounced, society has uttered its command; and neither the dignity of the one, nor that of the other, can be dragged into a strife with the convicted criminal, or the disappointed suitor, or the baffled politician, their friends, patrons, or supporters. Men may assail them; the press may libel them; other branches of the government may seek to overwhelm them;—but through all, and in the midst of all, society expects to see them turn neither to the right hand nor to the left, and requires them to give their days to their great duties, and to consume their midnight oil in the investigations which those duties involve.

Now, is not this all just as true to-day as it was seventy years ago? Nay, as the community becomes more and more thronged; as the relations of property and of persons become more and more complicated; and as the subjects of judicial controversies become more and more entangled with those questions of constitutional law which are peculiar to our systems of government, and which connect themselves collaterally with all our politics, does not the necessity, the indispensable necessity, for an impartial judiciary become more and more manifest? As the strife between political parties becomes closer, and the political character of the executive and legislative departments is determined by sharp contests, which alternately elevate and depress those who struggle for political power, is it not more and more important that the judiciary should be so completely removed from political control, as to be out of the reach of that ambition which may be tempted, in its extremities, to turn it to its own purposes? As the majesty and dignity of the law become more and

more important to society, does it not become more essential that the judiciary should preserve that position of dignified reserve, which deprives it of the power of self-defence against external attacks, and really makes it, in every political sense, the weakest department in the government?

There is scarcely an honest man in the community, unless he has been led away by some theory, who will not answer these questions affirmatively. Let me then direct your attention to one of those tendencies, which has attained a monstrous development in our own day, by which the security and good order of society are seriously menaced. I refer to the frequency and the ferocity with which judges are attacked for their decisions, by those who are the losers in a political, and sometimes even in a pecuniary object. Who has not seen the most eminent magistrates in the land assailed, their characters and motives and names and persons held up to ridicule, to hatred, and contempt, because of some decision involving some of the topics of the day? It has now come to be a common, almost a certain occurrence, that when a decision of a court of justice is made, which crosses the path or disappoints the purposes of certain agitators, it is instantly followed by an attack upon the court; and there has been nothing in the history of libels which has exceeded these attacks in malignity, energy, and fury. And this warfare against the ministers of the law has not been confined to occasions involving the plans or feelings of politicians or philanthropists. I have known a disappointed suitor, who had money to lavish upon an unprincipled press, libel the whole Federal Judiciary, for a decision involving nothing but a question of property.

In a country where the press is free, — where the passions of men have unbounded expression in the field of political discussion, — these things cannot be prevented; and the sole remedy is in the penalties with which the law visits libel and slander. But this remedy, open to all other men, is practically closed to judges. It is closed by the dignity of their office; by the moral necessity that they should leave their decisions to vindicate themselves, and their characters to the protection of the virtuous and well-disposed; and by the impossibility

of pursuing the libeller in their own courts. Against this enormous evil, however, they cannot stand, if their tenure of office exposes them to the slightest political control. Nothing *can* secure them against the influence of the demagogue, or the weakness or wickedness of those who profit by the demagogue's agitations, except a position where they are above all the elements of party or personal strife, and where they are to feel no responsibility, save to that public trial, which is to remove them from the bench, upon a public conviction of incompetency or unfaithfulness.

PHOCION.

No. VIII.

QUALIFICATIONS OF VOTERS.

IT has long been the policy of this Commonwealth to extend the right of suffrage to all males of the age of twenty-one years and upwards (except paupers and persons under guardianship) who have resided in the State for one year, and in the town where the vote is offered for six months, and who have paid a poll-tax of $ 1.50 at any time within two years previous to the time of voting. A great change is proposed by the Convention, without assigning a single reason for it; namely, the abolition of the tax qualification. Like many of the other changes proposed, this change is commended to the people by the Address, with an insinuation of what is not true. The tax qualification is represented as a *property* qualification, and the proposed change is represented as only another step in a reform long since begun, and now proper to be completed.

"Under the original Constitution," says the Address, "voters and public officers were required to possess *property qualifications*. These have heretofore been removed *in part*, and we now recommend the entire abolition of the *property qualification* in the voter for all na-

tional and all State officers mentioned in the Constitution. The obligations of citizens to contribute to the public expenses by assessment of taxes are not in any degree changed."

There is so great an amount of disingenuousness in this paragraph, that it is difficult to allow it to pass without the imputation of dishonesty. An uninformed man might read it, and be led by it to suppose, that the possession of some amount of property is now, in this Commonwealth, a prerequisite to the right of voting, and that the Convention have undertaken to remove this qualification, as a final step in the extension of the right of suffrage, which has been gradually taking place, until nothing but this remnant of former restrictions remained to be removed. But on looking into the present Constitution and laws of the Commonwealth, he would find, that there is no property qualification whatever for voters, and that a tax qualification only is required, which is so regulated as to be within the means of any man who can work; and on looking into the proposed Constitution, he finds that what is called, with such high-sounding phrase, "the entire abolition of the property qualification," is the removal of the obligation to pay a poll-tax, which cannot by law exceed nine shillings, New England currency, at some time within two years previous to voting.

The qualification of paying a poll-tax is in no sense a property qualification. It is an abuse of terms, so to describe it. Such a tax can be paid, and is paid, by men who possess no property whatever, which the law does not exempt from taxation. It is not assessed upon property. It does not presuppose the possession of property. It is assessed upon the individual, rich and poor alike, as his just contribution for the protection of his person, which the law and the government afford to him.

When a government extends the right of suffrage to all persons of a certain age, who have paid such a tax, it practically gives the right to everybody not a pauper; for, among the able-bodied poor, and among all who maintain themselves by labor of all descriptions, there are very few persons indeed who cannot pay a dollar and a half in two years, or seventy-

five cents in a year, as their contribution to the expenses of a government which protects their lives, liberties, and labor. If there is now and then a rare case of a man, not in the poor-house, who really cannot pay his poll-tax without suffering, it is so rare as to be practically of no moment in the arrangements of the suffrage of the State. The question, therefore, whether it is proper to remove this qualification, is a question of general policy, composed of two elements, one of which has reference to the public good, or the interests of the State, and the other concerns the good of the individual, in whose favor the removal of the qualification may be supposed to operate. Let us examine each of these elements separately; and first, let us look at the interests of the State.

That there must be some qualifications of voters, — that suffrage in this Commonwealth cannot be absolutely universal, and so completely unrestrained as to admit of the importation of voters into the State for the purposes of an election, and of all the other frauds which an unguarded suffrage encourages and allows, — is a settled point in *our* public policy. No convention and no number of conventions can make the people of Massachusetts consent to the abolition of *all* qualifications. Upon this point, the experience or example of other States is of value to us only as a warning. It may suit the condition or policy of some States to have universal suffrage. But what is done in one State of this Union is not necessarily a rule for any other State. The genius, the habits, the institutions, of every State are peculiar to itself; and it is one of the peculiarities and blessings of our Federal Republic, that it admits of a union for common purposes between States of different institutions, different habits and customs, and whose populations have had a very different history and training, from the first settlement, and differ widely in their present condition. In this matter of suffrage, the people of Massachusetts always have required, and always will require, some qualification, for the reason, that it is contrary to their settled notions of the fitness of things, in the management of their government, besides being wholly unnecessary, that suffrage should be thrown open to everybody without restraint. This conviction is due partly to ancient habits, but

mainly to the general and enlightened perception of the impropriety of admitting to a share in the government of such a State as Massachusetts, those who are not qualified to make her laws or to select her rulers. It is a conviction which no man and no party could change, if it were attempted.

But along with it, there has been, and still is, another conviction, equally strong; and this is, that the qualifications ought to be so few and so light, as to admit to a share in the political power all persons who can reasonably be presumed to be fit to exercise it. We have supposed, hitherto, that we have attained the just medium, by requiring a certain age; a brief period of residence outside of the almshouse; and the payment of a very small assessment towards the public expenses. The question is, whether one of these qualifications can be abolished with any more propriety than the others.

The Convention do not propose to remove the exception against paupers. But why not? Why not open the poorhouses, and admit the pauper to vote, as well as the man who pays no poll-tax? Both are equally interested in having a good government. One is a charge to the government, the other maintains himself; but neither of them contributes any thing to the support of the government, unless the labor of the pauper, which the government appropriates to itself, is to be considered as his contribution, in which case he has the stronger claim of the two. Now, what is the reason for excluding the pauper from voting? It is, that, as a general rule, a man who cannot maintain himself by his labor, in such a community as Massachusetts, has not the mental and moral qualifications which make him a fit depositary of political power. But when you leave the almshouse, and come to a class who stand nearest to the pauper, — to a man who cannot pay a poll-tax of $1.50 in two years, — have you risen at all in the scale of mental and moral qualifications for the exercise of the right of suffrage? As a general rule — there may possibly be a rare exception — you certainly have not. As a general rule, there is no man, out of the poorhouse, in Massachusetts, who cannot pay this poll-tax and yet subsist, who can be said to possess the proper mental and moral qualifica-

tions for a voter. The tax, it should be recollected, is not to be regarded as a consideration paid in the purchase of the right of voting. If the right rested upon purchase, the rich man, who pays a large tax upon property, ought to have a larger share of political power. The payment of the tax is evidence of the possession of those qualities of intelligence, prudence, and capacity, which fit a man to exercise political power in a government of the people.

The qualifications of age and residence are to be regarded in precisely the same light, as far as they go. There may be a case of a man who is as fit for the right of suffrage at twenty, as other men are at twenty-one. But the State demands some evidence of fitness; and, as the same rule must be established for all, it selects the age at which a man is deemed capable of taking care of his own affairs. Just so with residence. There may be a case of a man who has resided in the State only three months, who has as much knowledge of and interest in her institutions, as he will have when he has been here a year. But inasmuch as immigration into the State is permitted, and is perfectly easy, the State thinks proper to require some further evidence of fitness than the age of the voter, and, inasmuch as the rule must be general, it takes the period of a year's residence, in order to cover the cases of immigrants. But these two sources of evidence are not, as the State has hitherto considered, sufficient to cover all cases, and to form a complete and safe general rule for all. It has therefore required a third fact to be added, namely, that the voter has so much mental and moral capacity as to be able to pay a very small sum towards the public expenses. This payment is deemed proof of the possession of that degree of intelligence, capacity, and self-government, which makes a man a fit depositary of political power.

Unless, therefore, you come to universal suffrage, and abolish all qualification, there is no more propriety in dispensing with one of the three positive qualifications heretofore required, than there would be in dispensing with either or both of the others, or than there would be in abolishing the negative qualification, that the voter shall not be a pauper or a person under guardianship. The Convention have not pro-

posed to touch more than one of these positive or negative qualifications. But what they propose to do is, to dispense with that *one* of the proofs of fitness and capacity for the exercise of the right of suffrage, which is necessary to make the general rule complete and efficacious; and they propose this under the false pretence, that the change would be a removal of a property qualification. Now, one of two courses must be taken. The State must either determine that it will require no evidence of fitness in the voter, or it must adhere to such evidence as really amounts to something like proof. The age of twenty-one years proves only that the individual has arrived at a period of life when the law deems him fit to become his own master; not that he *is* fit, even for that. Residence in the State for a year proves only that the individual is not a newly arrived stranger, ignorant of our laws, and capable of judging soundly of our policy; not that he *is*, in point of fact, qualified to take a part in making our laws or shaping our policy. But the payment of his assessed share of the public burdens proves a capacity so to govern his own affairs as to acquire the means of payment, and from this capacity is inferred the possession of mental and moral qualities, which, probably, make him fit to exercise the trust involved in the elective franchise. I hold, therefore, that as long as it shall continue to be the policy of the State to require any evidence of such fitness, the tax qualification, as we have hitherto applied it, is both the most efficacious and the least burdensome evidence that can be demanded.

With regard to the interests of the class who may be supposed to be relieved by the removal of the tax qualification, I doubt whether such relief would be a favor. Certainly it is not one, that an enlightened and really benevolent statesman would seek to confer. What is it that raises the labor of Massachusetts above the labor of most other communities on the globe? What is it that puts the laborer among us upon a footing of equality with the rich man, who rolls by him to the polls in a coach? Not solely the high wages that he can command; the education that he can have for himself or his children; or the quality of food or clothing that he can enjoy. These are all great blessings of his condition. But there is

added to them likewise the great political right to be one of the sovereigns, — one of the governing class of society; — and the tenure by which he holds this right is precisely the same as that by which the richest man in the community holds it, namely, the evidence by which he proves his capacity to vote intelligently and honestly upon public affairs. Require no such evidence from him, and you do him a double injury; first, you take away from him a great stimulus to exertion, prudence, thrift, and patriotic feeling, — the only stimulus the State can apply to him; secondly, you degrade him from the level on which he stands with the rich, by leaving *their* fitness for political power to be inferred from their wealth, and refusing to take *his* thrift, frugality, and cheerful discharge of his social duties for proof that he is as fit for it as they are. The dignity, the self-respect, and the moral independence of labor in this Commonwealth, you may depend upon it, have an intimate connection with the mode in which we have regulated the right of suffrage. For my part, if I had the entire shaping of this right for a community of freemen, I would give more for the qualities that are fostered by such a system as ours has been, in those who have nothing but their labor to depend upon, than for all that unrestricted suffrage can do for them. The one policy elevates, the other depresses them. The one recognizes them as moral and accountable beings, whose political rights rest upon the same foundation with those of the rich and prosperous; the other treats them as a horde, whose suffrages are to be solicited by demagogues and bought by parties who care nothing for their fitness to give an intelligent, or their fidelity and caution to give an honest vote. Long, long may it be, before the labor of Massachusetts is thus wounded by its friends or by its enemies.

PHOCION.

No. IX.

MAJORITY AND PLURALITY ELECTIONS.

In the winter of 1850 – 51, there being in this Commonwealth no choice of Governor by the people, in consequence of the state of parties, the choice devolved upon the Legislature; and, besides the complete organization of the State government, that body was then to choose a Senator in Congress. The Legislature, as the people had been, was divided into three parties, neither of which possessed a majority. Of the distinctive principles or objects of these parties, — as to which of them was right, in my opinion, and which wrong, — which of them embraced the men most fit to be intrusted with the government of the State, and the high Federal office then to be filled, — it is not my present purpose to speak. I wish now to deal with historical facts; — facts which, unhappily, can never be forgotten, as they never can be blotted out from the history of Massachusetts.

Two of the political parties, which were struggling to obtain possession of the State government, had, in the popular election, nominated and voted for separate candidates for Governor, upon entirely distinct and opposite political principles; but they had at the same time formed a coalition for the purpose of electing as many members of both branches of the Legislature as they could, by their joint action, in anticipation of the state of things which was thus actually brought about. The consequence was, a return to the Legislature of many politicians, who cared little for the distinctive organizations to which they nominally belonged, in comparison with *the great object of obtaining, by some means or other, as many of the offices that were to be filled as they could acquire.* The Legislature, thus composed, came together; and then ensued a series of transactions, which every citizen of Massachusetts, who has not been led astray by participation in or defence of those proceedings, must always regard as deeply disgraceful, dishonorable, and corrupt. Two caucuses of members of the

Legislature, possessing distinct political principles, and elected by the people *because* of those professions, were then seen trading for the offices of the State with each other. Votes were promised and given, on one side, in consideration of votes promised and given on the other. Office was balanced against office, and dignity against dignity, until the places of trust, which the people have created for the public good, and intended should be filled with reference to it, were all parcelled out to the entire and mutual satisfaction of the "contracting parties." Into this great bargain for place, the high office of an United States Senator was brought as a makeweight, and was obtained by one faction as its pay for what it conceded to the other. Whether the individual who obtained the office fitly represented, or represented at all, the political sentiments of a majority of the people of the State, was a consideration to which no one gave the slightest heed. It was sufficient, that the coalition of the two factions presented an opportunity to make the terms which would secure the place, and that the terms of the bargain were such as to insure the result.

If, now, there is such a person in Massachusetts as an intelligent and reflecting man, who has no party feelings about this transaction, or one who can lay them aside sufficiently to look at it in a true light, he can scarcely fail to see two things: first, that such proceedings are essentially as corrupt as the purchase of offices by means of a money consideration, or by any thing else given for the votes necessary to secure them; and, secondly, that it is possible to make constitutional provisions concerning the mode of organizing the State government, which, instead of diminishing, will increase the facility with which parties can enter into and complete such bargains. It is not necessary to enlarge upon the first point; — the second demands our serious consideration, now that a Constitution is before us, which, for some reason, *not stated*, requires a majority in some elections, and admits of only a plurality in others.

It is obvious, that, if a majority of the popular vote were not required for the election of a Governor, the election would not be thrown into the Legislature, in any state of parties. We had, until we found ourselves in the state of things

brought about by the Coalition, escaped such demoralizing scenes as were enacted in the Legislature of 1850–51, because the organization of the two branches, under the provisions of the Constitution, brought into those bodies the representatives of *two parties only*, who were so situated as to be out of the reach of the temptation to trade away their principles for political power. The election of Governor was therefore thrown into the Legislature, without danger to the interests or the honor of the State; and as long as the political condition of the State continued to be that of a people divided into *two* distinct and well-defined parties, no serious mischief or inconvenience could ensue from the rule, which carried the election into the Legislature, on a failure to obtain a majority of the popular vote. But when a *third* party came into the field, and succeeded in electing a sufficient number of members of both houses of the Legislature to enable them to hold out the temptation to one of the other parties to unite with them for the purpose — and the sole purpose — of obtaining and sharing the offices of the State, this constitutional rule became the efficacious instrument for the accomplishment of the whole design. It brought the prize of the Governorship within the grasp of such a coalition; and this prize, with all the attending patronage and power of the office, was sufficient to sweep into the arrangement every office of the State, and, as it turned out, to overcome the virtue, consistency, and self-respect of both the factions that entered into the scheme.

And now we have a Constitution offered to us, which has been made by some of the very men who took a leading part in that spoliation of the offices of the State. Their political relations, and the relations of their respective parties to the Commonwealth, are unchanged. They are numerically what they were then; at least, they have not increased, and it is probable that one of them is somewhat diminished. We may, accordingly, not expect to find the provisions of this Constitution so framed, as to discourage or prevent similar transactions, in the organization of the government. When two parties have passed through a traffic like that of 1850–51, they will not be found creating any obstacles to a repetition of the profitable transaction. If, consequently, you will ex-

amine carefully the provisions which they have made, you will see internal evidence enough that they have shaped them with a purpose. If anybody had found this Constitution in the street, without the slightest knowledge of the occurrences of the past summer, he would have had no reason to doubt by whom it had been made, or what it had been made for.

It retains the rule of a majority for the election of a Governor by the people, and abolishes it, for a plurality, in the election of Senators. It abolishes the majority rule for a seat in the Senate, and retains it for a seat in the House. It enables a minority of the people to elect a majority of members of the House, and this majority are to select the two candidates out of *three*, who are to be sent to the Senate, when there is no choice of Governor by the people. It thus secures and perpetuates the rule, by which a *popular* election of Governor, in the existing state of things, is almost sure to be defeated. Then, when it gets the election into the House, the political character of the two candidates who are to be sent up to the Senate is to be determined by those who represent a minority of the whole people; and finally, when the matter reaches the Senate, the ultimate choice is to be made by men who obtain their seats at the board by a *plurality only* of the votes in their respective districts.

Such a system, it is needless to say, is destitute of all principle and consistency. It is not to be dignified with the name of a system. It is simply a disgraceful scheme for obtaining political power, without the concurrence of the people, who are the rightful holders and dispensers of that power. If provision must be made to meet the case of a failure to elect the Governor by popular vote, the very first principle in that provision should be, *that those who are to become the electors in the secondary stage of the election should themselves represent the largest possible number of the people.* This principle the Convention have directly reversed. By the manner in which they design to constitute the House of Representatives, they have made the secondary electors of the Governor, that is, the majority of the House, the representatives of a small minority of the whole people, dwelling in the smallest and poorest class of towns in the State. Finally, when the third

stage of the election is reached, the ultimate electors of the Governor may be persons who not only do not represent politically a majority of the whole people of the State, but each one of whom may in fact be elected by an actual minority of the votes in his own district.

Let me now, as an illustration of the nature of this scheme, suppose that the framers of the Constitution of the United States, as in fact was once proposed, had provided that the people should vote directly for the President, and, in case no person should receive a majority of the popular vote, that the choice should be made by certain electors. But suppose also, what in point of fact never was proposed, that they had provided, that a majority of these electors should be chosen by a class of States containing a small minority of the American people. If we can imagine such a provision ever to have taken effect, it would long ago have overthrown the government. The intolerable absurdity and folly of such a scheme would have destroyed the Union, on the very first occasion that might have brought it into practical operation. And it ought no more to be tolerated in a State, than it ought to have been or could have been tolerated in the Union. The Governor of a State is the representative of the people of the State, just as the President is the representative of the people of the United States. Like the President, he is a distinct branch of the legislative power, besides being the Executive; and, if he cannot be the actual representative of the political sentiments of a majority of the people, speaking through a primary election, he ought to be designated, in the secondary election, by those who represent the largest possible number of the people.

But argument and discussion on such a scheme as this of the Convention are a waste of words. I will add a few observations upon one of their plausible side-issues, and then I shall have done with this part of their plan. After stating how much of the majority rule they retain, and how much of the plurality principle they adopt, *without assigning a single reason for their contradictory provisions*, they say: —

"At the same time, we have provided that the Legislature may substitute the plurality rule whenever the public will shall demand it, with a condition, that no act for that purpose shall take effect until one year

after its passage. Thus we have given an opportunity to test the wisdom of the plurality system by experience, and power to apply it to every popular election in the Commonwealth, whenever the deliberate judgment of the people shall require it."

Now, upon this the reader will have the goodness to observe three things: — 1. Supposing that the public will should ever be in favor of a uniform and consistent rule for all popular elections, and that that rule should be the plurality principle, who are to interpret the public will? We have heard much from the writers of the Address about "interpreting the people's will." Who are to interpret it in this instance? Why, a Legislature, chosen under this new Constitution, in which a minority of the people will have acquired *a power that they will never part with*, until it is wrested from them by another Constitution, or something worse. It is not made imperative upon the Legislature to substitute the plurality rule, anywhere; it is only provided that they *may*. 2. It is an entirely false issue to pretend that "the wisdom of the plurality rule" is involved in the acceptance or rejection of this Constitution. If it had been made imperative upon the Legislature to try the plurality rule, there would have been some pretence to say that an opportunity was "offered to test its wisdom." But the Convention have provided no such opportunity. What they have done is, *first*, to leave it wholly optional with the Legislature, and, *secondly*, to constitute a Legislature that will have the strongest possible motives to make them blind and deaf to every demonstration of the popular will. 3. If the Legislature thus constituted should ever be driven, by any chance, into a change of the rule, the act is not to take effect until one year after its passage. One more chance is thus reserved to the political schemers who have devised this system, to obtain possession of the government, and who knows what may not be done for party power and party purposes, while the people stand waiting a whole twelvemonth for the uniform rule that is to bring their own government a little more under their own control?

PHOCION.

No. X.

JURIES JUDGES OF THE LAW.

Among the propositions submitted by the late Convention, as amendments to the Constitution, is the following: —

"In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict of guilty or not guilty, to determine the law and the facts of the case; but it shall be the duty of the court to superintend the course of the trials, to decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings; and also to allow bills of exceptions. And the court may grant a new trial in case of conviction."

It is understood to be the purpose of this amendment to make the jury in criminal trials judges of the law; that is to say, to give them the power of *determining* the law as well as the facts of the case, and to remove the obligation to receive the instructions of the court upon the law as absolutely binding. Whether the terms of the proposition are such as will accomplish this object with safety to the accused, I shall consider hereafter; at present, I wish to discuss the question whether the object itself is a fit and proper one to be accomplished.

The importance of a right decision of this question cannot be overstated. If this proposition is adopted as a part of our Constitution, the whole administration of our criminal law, as it involves the rights of the Commonwealth on the one hand, and those of the accused on the other, will be seriously and deeply affected by it. If the rights of the public, or the rights of the accused, either or both, shall be essentially impaired or endangered by this change, the whole institution of jury trial will lose ground in the public confidence and respect. The persons who propose this change affect to belong to the party of progress and improvement. This step, instead of being a step in the direction of progress and improvement in the science of government, is a step backwards towards the Dark Ages. It is a step which it would be discreditable to a people

so intelligent, and possessed of such ample means for the safe, correct, and consistent administration of criminal jurisprudence, as the people of Massachusetts are, to take. It is so, because it confounds things perfectly distinct from each other; because it intrusts the determination of a class of questions of great difficulty and nicety to a tribunal unfit to determine them; because it exposes the rights of the public and the rights of the accused to unnecessary dangers; and because it will inevitably diminish the public respect for the great and important institution of trial by jury.

The real value of trial by jury is the same in kind, although it may differ in degree, in both criminal and civil cases. No man, who has not some political purpose to gain, and who really understands the subject, would think of assigning to trial by jury in civil cases a higher value than this; viz. that it furnishes a safe and convenient, and therefore valuable tribunal, for the determination of questions of fact. There is, undoubtedly, in the intelligence and knowledge of human nature and of human affairs, which are to be found among a jury of twelve men drawn from the common and miscellaneous pursuits of life, great aptitude for the determination of questions which depend upon human testimony. But, beyond this, the value of jury trial in civil cases cannot be carried. No man, with an important right in litigation between himself and his neighbor, would be willing to have a jury determine any thing more than the *facts* of his case. A proposition to have them determine the *law* would be instantly rejected by every litigant. In criminal cases, there is to be added to the value just stated one further element, which trial by jury introduces into the administration of the criminal law, as a safeguard to the liberty of the citizen, — between the government and the accused, — viz. the interposition of the people. But this does not render the people, or their representatives, the jury, more capable of determining questions of law correctly in criminal cases, than in civil. They never were made a part of the tribunal, upon any notion that they were more fit to determine a question of criminal law, than one of civil right; and although the common law has empowered the jury to return a general verdict of guilty or not guilty in criminal

cases, which involves a decision of the law, as well as of the fact, it has always proceeded upon the idea that the jury should take the instructions of the court as an evidence of the law, which they are bound to regard. The question therefore remains, in regard to criminal cases, whether the jury are as competent to determine the law, as they are to determine the facts involved in the issue. If they are not, then the public are bound to provide for the determination of the law of the case by some tribunal, or some portion of the tribunal before which the trial takes place, that *is* competent to determine it, with safety to the rights of the accused and the rights of the government.

I will now proceed to illustrate the views which I take of this subject, a little more in detail. A man is accused of crime, and is set to the bar to be tried for an offence which must be distinctly and specifically charged. If he is guilty, it is of the utmost importance that he should be convicted. If innocent, it is equally important that he should be acquitted. The very statement of these propositions shows that there are rights involved in the trial, on both sides, of equal importance. The question to be determined is, whether the party is guilty of the crime charged; but this question is composed of two elements, or rather it is an inquiry involving two questions, viz.: — First, did the accused do certain acts? Secondly, do those acts, under the circumstances in which he did them, constitute the crime charged? The first is purely an inquiry into a matter of fact. The second is purely an inquiry into a matter of law. A tribunal, or a part of a double tribunal, may be very fit to determine the first, and very unfit to determine the last. The two questions are so essentially different, both in their nature and in the elements for their determination, that a capacity to determine the former upon correct principles has no tendency to show a capacity for determining the latter. Because a jury of twelve men, taken from all the occupations of life, are extremely competent to decide, upon evidence, whether the accused did certain acts, it does not at all follow that they are competent to determine whether those acts constitute the crime charged. Take the common case which occurs in nine instances out of ten of indictments for

murder, where the question is, whether the killing amounts to murder, or only to manslaughter. It will not be pretended, by any man of common sense and common honesty, that the nice distinctions between murder and manslaughter are known to the common run of men likely to be drawn upon juries, however great their general intelligence, or however high their social position. They may be, and I think they are, very capable indeed of deciding correctly what acts the accused did; — whether he struck the blow in sudden passion, and in a moment of human infirmity, or in premeditated malice; whether provocation existed or was absent; — whether the accused himself stood in any danger from the deceased; — or whether the deceased did any thing to draw upon himself the fatal stroke.

These are questions which depend entirely upon testimony as to matters of fact, and which common men are not only capable of determining, but which they can, perhaps, best determine, out of their general acquaintance with human actions and motives, and their general capacity to judge of the force of human testimony. But the question, whether the acts of the accused, in all the circumstances in which he stood, amount to murder or only to manslaughter, depends upon principles and distinctions with which common men are not familiar. Of his own knowledge, or from his own sources of knowledge, not one juror in a thousand can correctly decide this question. He must, in some way, be informed at the trial, and by some one having a part to perform in the trial, what the rules and principles are, on which the just determination of this question depends. We will suppose that he is informed by the court, but is left at liberty to apply the knowledge, or not to apply it, as he sees fit; — to take so much of it as he chooses to take, and to reject the rest; — or to treat the whole with inattention, according to his general views of the propriety or expediency of convicting or acquitting the accused. The difficulty — and it is a fatal one to the propriety of this plan — is, that, in this state of things, neither the public nor the accused can have any *guaranty* that the verdict will be founded on correct views of the law. As to the facts, the oath of the juror is a guaranty for a correct verdict; for

when a juror is sworn to render a true verdict, according to the *evidence*, his conscience is reached; — the evidence places *facts* before him, and he cannot disregard those facts without violating his conscience. But when he is sworn to render a true verdict according to the *law* and the evidence, if he is left to "determine" absolutely what is law, his conscience is not reached; for what the judge or the counsel in the cause may tell him is law, amounts only to *opinions*, and if he is the ultimate judge of the law, he may have a different opinion, and may follow it, without any injury to his conscience, and without violating his oath. If the juror is to determine the law for himself, *without any standard for that determination out of himself*, his oath is no guaranty to the public or the accused, that he will decide according to the law of the land. The provision now before us supposes that the juror is to have an opinion of his own upon the law, and that he is to act upon it, when he sees fit; or, in other words, that he is to determine what the law is, without any standard of determination out of himself. This, I affirm, abolishes the sanction of the juror's oath, so far as there is any matter of *law* involved in the issue.

I am more and more persuaded that this objection is a true one, the more I examine this subject, and that it ought to be decisive of the impropriety of adopting the proposition of the Convention. Let the reader consider, for one moment, of what vast consequence it is, that the determination of the question of guilt or innocence of crime should be made under some sanction, which will reach the consciences of those who are to determine it. Innocence has no other protection, guilt has no other certainty of punishment, than what is afforded by the sanctions which bring the conscience of the tribunal into activity, and cause it to be violated by a wrong decision knowingly made. We endeavor to reach the conscience of a juror by his oath; and in general we do reach it, and bring it into its proper relations with his understanding. He is required to make a solemn promise before God, and by a direct appeal to the Deity, that he will determine the issue "according to the law and the evidence given him." This is no mere ceremony. It is a direct invocation to conscience, to do its appropriate office, under the most solemn and searching of

all religious sanctions. There can be no doubt that it is effectual, in the vast majority of instances, in every Christian community. The common language that is constantly heard at the bar, in the mouths of advocates, in which the oaths of the jury are invoked, proves that the efficacy of these oaths is well understood by that class of men whose business it is to study the minds of jurors, and to understand the motives, principles, and feelings that actuate them. That principle, to which the advocate, in the highest flight of his impassioned address, makes his final and strongest appeal, must be an operative and influential one, in the minds of jurymen. No man would willingly submit to be tried by an unsworn jury, and no government ought to submit its accusations of crime to a tribunal which does not act under this sanction.

But it is obvious that, whatever form of oath is resorted to, the conscience of the juror is not brought into the act of decision, if he is so placed as to be able to make a wrong decision without knowing that it is wrong. It is the wrong decision *knowingly* made, that violates the conscience; and if the knowledge that it is wrong be wanting, conscience is as passive as if it formed no part of the moral being, whose mental faculties are employed in the act of making the decision. Now, in nine cases out of ten, it is impossible for a juror, who is made the judge of the law, with a *right* to disregard the instructions of the court, to know whether his own view of the law is correct or not. When the witnesses tell him *facts*, he knows, if he believes what they say, what will be a correct and what an incorrect decision, so far as the facts are concerned. He is not at liberty to vary those facts, or to depart from them; and if he does, he *knows* that he decides wrongfully. But when the court tells him what the law is, which makes those facts a particular crime, and at the same time tells him that he has a right to take a different view of the law, if he sees fit, he does not *knowingly* decide wrong, however wrong his decision may be, so far as the law is concerned, because he has no means, out of himself, by which to determine what is right and what is wrong. Hence, I say, his conscience is not appealed to at all, in that part of the case which depends upon the law, and the accused may be acquitted or

convicted without the intervention of the moral sense of the juror in the act of determination.

Apart, therefore, from all consideration of the fitness of jurors to determine questions of law, — a consideration which I am willing to waive, except so far as it bears upon the question of their being able to *know* when they decide wrongfully, — I maintain that a constitutional provision, which removes or even weakens the sanctions of a juror's oath, would be a change very unfit for an enlightened, moral, and religious people to make; and I submit to all reflecting men, that when the juror has a right to disregard the instructions of the court, and to determine the law of a case for himself, his oath does not reach his conscience for any thing but the facts detailed to him by the witnesses. He may hold the law to be any thing that he pleases, and acquit or convict accordingly, without the least violence to his moral nature.

I know not what is to take the place of that fear of God, under which, as an ever-present sanction, justice has always been administered in countries governed by the common law. I shrink from whatever tends to banish it out of any tribunals, as from a thing hostile to the great interests of civilization. There can be no doubt, that, since the spread of Christianity among men, both criminal justice and civil justice have been administered with vastly greater purity than they were before; and that purity has increased, just in proportion as the different systems of jurisprudence have given directness and force to those religious sanctions, which preserve the mind of man in its true relations of responsibility to God. No amount of general intelligence or general integrity can perform the office of that direct appeal to the moral sense and the religious nature, which is made by a juror's oath. Justice, administered without the active and restraining presence of conscience, would be a curse to any people on earth.

It certainly is not so administered now, among us. When the jury are sworn to render a true verdict, "according to the law and the evidence *given* them," they receive the law from a judge, whose official oath binds him to state it truly, according to the best of his ability and understanding, and who acts also under the penalty of an impeachment, if he states it

knowingly wrong. The oath of the jury, which binds them to return a verdict in accordance with the law given to them by the court, insures the action of their consciences upon the law of the case, as well as upon the facts. If the law is not correctly stated by the court, and the accused is convicted, a bill of exceptions enables him to have it reviewed and reëxamined, under all the lights that can be brought to bear upon the question. For this system, in which, from the beginning to the end of the process, every part of the tribunal acts under the most solemn religious responsibilities, the Convention have proposed to substitute a power in the jury to act upon their own opinion of the law, which no oath or adjuration can bring within the domain of conscience.

PHOCION.

No. XI.

JURIES JUDGES OF THE LAW.

SINCE I last addressed you on the subject of the proposed Constitution, intelligent men, in all parts of the State, have devoted themselves to the examination and exhibition of its deformities, and there is now a reasonable prospect of its being rejected by your votes. Perhaps further discussion will have little influence on the result. I have, however, been urged to complete the papers commenced nearly three months since, that they may form hereafter a body of arguments and opinions upon questions, that will always be of public importance, and that they may remain part of the history of this great controversy.

The last topic to which I had occasion to call your attention was the *Third* Proposition submitted by the Convention, which undertakes to make juries the final judges of the law. I have shown, that this proposition cannot be adopted as part of the Constitution of this Commonwealth without rendering

nugatory the sanction of the jurors' oath. It remains for me to show, that it cannot be adopted with safety to accused persons, and that no man can be sure of a fair trial, according to the law of the land, under the operation of its provisions.

The object of the provision doubtless was, to give additional protection to the accused. It will certainly fail to produce this effect. Juries are often quite as eager to convict as to acquit; and it sometimes requires all the authority of the bench to show a jury, that, whatever the moral guilt of the party on trial may be, he is not guilty, according to law, of the crime charged, and to induce them to act accordingly. Nothing can be more important to the welfare of society, than to have men convicted and punished for crimes, *according to law.* A conviction against the law is a hundred-fold more pernicious in its consequences, than an acquittal in the face of the facts. Now this Third Proposition of the Convention is so absurdly and awkwardly framed, and contains such contradictory provisions, that, after it has been adopted as part of the Constitution, it will be utterly impossible to obtain any remedy or relief for a man who may be convicted by a jury against the law of the land, except through executive pardon. The proposed amendment is as follows: —

"Proposition Number Three. — In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict of guilty or not guilty, to determine the law and the facts of the case; but it shall be the duty of the court to superintend the course of the trials, to decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings; and also to allow bills of exceptions. And the court may grant a new trial in case of conviction."

Here, then, it is provided, that the judge shall preside at the trial, and shall *decide* the law, — that is, I suppose, shall *rule* upon it to the jury; but that, after they have received the instruction of the court, the jury shall *determine* the law (as well as the facts of the case), — that is to say, shall *finally decide* what is law and what is not. If they decide wrongfully, or, in other words, if, upon the facts of the case, they convict

the accused of the crime charged, when in point of law he is not guilty of that crime, there can be no remedy for him on earth, except to appeal to the interference of the Executive.

The direction that the court shall "allow bills of exceptions," can have no application to such a case as this. Bills of exceptions are allowed for the purpose of bringing again under discussion, after the trial has terminated, the rulings of the court upon matters of law. But, when the court has ruled the law correctly, and the jury, exercising the constitutional right which this provision means to give them, have held the law *in*correctly, there can be no bill of exceptions, for there is nothing to which it can be applied. Nor will the provision, that the court may grant a new trial in case of conviction, be of any avail, when the jury have decided the law incorrectly, for two reasons. *First*, because the court cannot know that a wrong view of the law was the ground of the verdict; and *secondly*, because the jury, being made final judges of the law after they have received the instructions of the court, the clause which empowers the court to grant new trials must necessarily be confined in its construction to those cases where the conviction is against the weight of the evidence. It cannot include cases where the allegation is, that the jury have misconstrued or misapplied the law to the facts, because the very section of the Constitution, to which this clause is appended, makes the jury final judges of the law.

Now it may be assumed, with entire certainty, that in nine cases out of ten, in which the jury should undertake to exercise their prerogative of judging finally of the law, they would judge wrong; and out of these nine cases, in every one in which there should be a conviction, there would be no remedy whatever for the accused, short of the Governor's pardon. Let me invite your careful scrutiny of this difficulty.

PHOCION.

No. XII.

THE AMENDMENT OF CONSTITUTIONS.

The discussion which I propose to terminate in this paper was commenced before any political party in the State had determined to oppose the Constitution prepared by the late Convention. The objections which I have urged against it have therefore derived none of their force from the policy of any political combinations among us.

Having discussed the principal and most objectionable changes which you have been asked to make in the existing Constitution, I have now to consider the broader question of your competency to alter the Constitution of the State *in the mode proposed.* However little this question has been considered, it is one of transcendent importance; and looking forward, as I do, with confidence, to your rejection of these changes, it seems to me eminently desirable, that the true principles of our American liberty should be stated at the present time, because that rejection will be likely to be followed by a return to those principles. Had I been offered a seat in the late Convention, I should certainly have declined it, because I hold the whole proceeding to be an act of revolution, and I can see no necessity for overturning the present government of the State by a resort to revolutionary power.

The Revolution of 1776 established certain great principles as the fundamental doctrines of American civil liberty. The first of these principles was, that the people, and not an external authority, are the source of all political power. Our ancestors threw off the authority of the crown of Great Britain, and substituted for it their own. It follows, as a necessary corollary from the right of self-government, that those who are to govern themselves have a right to alter their government from time to time. But this idea of a government of the people, acting through the will and voice of a majority, was not new. The ancient democracies exhibited it; and its entire theory, with all the distinctions between this

and other forms of government, is as old as Aristotle. But what was new, and peculiarly American, was the second fundamental principle, which was brought into existence, and practically established, at the period of the Revolution; viz. that the people may limit their own power for the good of all, and that such limitations shall thereafter be respected, for the sake of the rights of the minority. The capacity of the people to limit their own power is necessarily included in their right to establish and alter government. Those who have originally unlimited control over a subject, may covenant in what way they will exercise that control, and may restrain themselves as to some modes, reserving to themselves others. Now, the great limitation established by the people of this Commonwealth at the Revolution was, that there should be a written constitution, or permanent fundamental law, and an independent judiciary to expound it. The object of this constitution, or permanent law, was, to set bounds to the action of the majority, by restraining their legislative power within certain limits; and the Judiciary was established, as the umpire, to determine when those limits are transcended. As the idea of limiting the power of a self-governing people was a purely novel and American idea; so, too, the particular limitation resorted to was wholly new and peculiar to ourselves. Its purpose was, to establish a republican and representative government, in contradistinction to a mere democracy, in which there is no permanent law, and no law of any kind, save the expressed will of the majority of the day.

It would seem to be scarcely necessary, after all our experience in the principles of our institutions, to undertake to prove that the people can and do limit their own power. Every thing in government, with us, proceeds upon this as a settled principle. In the first place, all restrictions as to suffrage prove it. No one proposes that the whole mass of the inhabitants shall govern. The whole mass have the physical power to govern, and a revolutionary right to do so; but, in the origin of the government, the whole mass have given their consent to certain limitations which confine this power, in a constitutional sense, to persons of certain

qualifications. In the second place, the existence of constitutions proves it. Aside from the provisions of a written constitution, and acting in disregard of them, the whole mass of the people, including men, women, and children, have the revolutionary power to overturn the established order of things at any time. But in and by a written constitution, they have agreed that this power shall not be resorted to, but that it shall be limited both as to the forms or modes in which it is to be exercised, and the individuals who are to exercise it.

It was, then, to prevent a resort to the mere power of numbers at the expense of the minority, and to establish a rule of civil polity, that should be permanent, that written constitutions were devised and adopted. If, therefore, a constitution is of itself a limitation of the original power of the people to declare, from time to time, what shall be the law, it follows that all the provisions of such a constitution are equally to be regarded as limitations of the same power. So that, if the people have, in their constitution, pointed out and prescribed a mode of altering or amending it, a resort to any other mode is a resort to revolution, and a departure from the constitutional limitations of their own power, which they themselves have established. By such a course of action, the constitution comes to be no more permanent than a statute, which shifting majorities may alter or repeal at any time.

The political history of Massachusetts affords no warrant for the doctrine, that the present Constitution is capable of being amended or altered by any other course of action, than that embraced in one of its provisions. The Constitution of 1780 was adopted by, and established for, the people living within the present limits of Massachusetts, or within the limits of what is now the State of Maine. When that portion of the people inhabiting the latter territory separated themselves from us, with our consent, certain amendments of the old Constitution became necessary for the people remaining in the limits of the present State of Massachusetts. The Convention of 1820 was called for this purpose; but it established no precedent for future conventions. The Constitution of 1820 was framed and established by the people of Massachusetts, after an integral portion of them had separated

themselves from the rest, leaving those who remained to modify and adapt the old government to their new circumstances. *This* people, acting through a Convention, — which was the only mode by which, in their situation, amendments could be proposed and submitted for popular approval and adoption, — established nine articles of amendment to the old Constitution. The ninth of these articles of amendment contains a limitation of their own power, which the people then saw fit to impose upon themselves. It prescribed a mode in which future amendments should be made; viz., that they should be prepared, and voted by a majority of one branch, and by two thirds of the other branch, of two successive legislatures, and should then be submitted to the people for ratification by a majority of the qualified voters.

It is perfectly clear, therefore, that the present Constitution has granted no power to the Legislature to delegate to any other body the authority to prepare and propose amendments, and consequently has given it no power to call conventions for this purpose. On the contrary, having prescribed the course and duty of the Legislature in the preparation and submission of amendments, the argument is unanswerable, that this provision of the Constitution exhausts all the power which the people intended to confer upon the Legislature. So that, upon all just principles of reasoning and construction, the power to call conventions, and to authorize *them* to prepare amendments, and provide for their adoption by the people, must be deemed to have been withheld, as much as if it had been expressly prohibited.

I regard the act of the Legislature, therefore, calling the late Convention, and all proceedings under it, as entirely unauthorized and unlawful. The adoption of the Constitution prepared and voted on pursuant to this act, would be a revolution; — peaceable and orderly, in one sense, but a mere act of physical force, which abrogates the constitutional limitation of their own power, heretofore solemnly established by the people. Such a proceeding renders the Constitution of the State the mere expression of the temporary will of the majority of to-day, to be set aside by just such another expression on any other day. No one denies the physical power of the

people so to act, but it is entirely inconsistent with the principles of our constitutional liberty, and, if it passes into a precedent, a majority may change the Constitution every year, in any mode that party leaders may devise.

What is to restrain this physical power? I answer, a regard for principle; a conviction, on the part of the people, that a steady adherence to the self-imposed limitations of their own power, is both a duty and a high policy; a duty, because justice to all requires it, and a high policy, because their own interest demands it. They have the physical power to pull down any man's house, at any moment, and to say that he shall have no redress. But justice would be violated, and their own turn may come next, when the majority, which sees fit to act only upon the naked physical power to do a thing, becomes shifted from the individuals who have so acted to-day, and the same thing is repeated by others to-morrow.

PHOCION.

THE

LETTERS OF SILAS STANDFAST,

TO

HIS FRIEND JOTHAM.

BY

GEORGE STILLMAN HILLARD.

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THE

LETTERS OF SILAS STANDFAST,

TO

HIS FRIEND JOTHAM.

No. I.

My dear Jotham, — You are one of the best farmers, but by no means one of the best politicians in the county of Worcester. On a question of turnips or subsoil ploughing I hold you to be a good authority; but when it comes to politics and government, your judgment is not much better than mine would be in the purchase of a yoke of oxen. The truth is, my dear Jotham, that you were not wiser than the rest of us when you were born, nor have you eaten a great deal of the stuff on which wise men are brought up. You have not been favorably placed in this respect. You have been for many years a big man in a little town: you have been a selectman, and a moderator in town meetings; you are a justice of the peace and a fore-handed man; you have had nobody to contradict you, to rake after your tongue and pick up your words and fling them at you again; the old men consult you, and the boys take off their hats to you. You have not had the nonsense knocked out of you, as we have that live in cities and have to fight our way through a crowd, and scramble for all we get. If I did not come and see you once a year, and trim you off and curry you down a little, no tongue can tell upon what shores you would have drifted. You might have been a Millerite, and slept with an ascension-robe at the head of

your bed. You might have had faith in the inspiration of Andrew Jackson Davis. You might have believed that saints and angels amuse themselves with table-turning and spirit-rappings, and that any man may have a half-hour's chat with the ghost of Ethan Allen, on paying a dollar to Mrs. Gullem. Certainly nothing is too much to predict of a man who did believe in the sincerity of Martin Van Buren's conversion to Antislavery doctrines.

You enjoy one accidental piece of good luck. For so honest a man as you are, you are, in one point, a bit of an impostor, because you look so much wiser than you are. When I commenced the practice of the law, a face like yours would have been worth at least five hundred dollars a year to me. I should have half won my cause before I had begun to address the jury. Your tombstone gravity of manner, your silence, and the solemn sententiousness of your speech when you do open your oracular jaws, have given you a reputation for wisdom, to which you have as little claim, as a crow has to be called a respectable bird because he wears a black coat.

I have noticed that the grain of your mind has been running to knots ever since you settled your new minister, the Rev. Uplifted Sleek. He is doubtless a good man, but his kingdom is still something of this world; and I think it would be better if he wasted less of his energies upon terrestrial objects. He is a youth, just hatched out of a divinity school, running round with the shell yet on his head, who knows about as much of government, practically, and the difficulties of managing twenty-five millions of human beings, as you do about playing upon a dulcimer; and yet there is not a question of politics or government which he has not settled entirely to his satisfaction. It would be a real comfort to see a man who knows as much as he *thinks* he does. He knows that the Fugitive Slave Law is unconstitutional, and does not want more than ten minutes to prove it to any candid person whose mind has not been warped by those shallow sophists, John Marshall and Joseph Story. He knows that Daniel Webster sinned against his own conscience when he made his 7th of March speech. He knows that this country can be governed without any compromises on the subject of slavery; and he believes

that, if he could have been called to Washington in the spring of 1850, he could have settled all the questions that Congress had before them, in about the time it takes him to write a sermon.

There are many sucking theologians of the same stamp in the old Bay State, and little good do they do in their day and generation, — with book knowledge enough to make them conceited, and ambition enough to make them restless, — who are in fact clerical demagogues and Sunday stump-speakers, — who, instead of reasoning of righteousness and judgment, are ever banging away, in season and out of season, upon the Maine Liquor Law, or the Fugitive Slave Law, or some other matter of secular controversy, and poisoning the Sabbath with all the strife and bitterness of the week. When I have heard such a shallow popinjay in the pulpit, hurling round his accusations and denunciations, and waking up in the hearts of his people the evil passions which it was his duty to rebuke and put to sleep, I have sighed for the good old days of Dr. Drydrone, with his wig and his knee-buckles, who would preach you ten sermons on predestination and make nothing of it.

The Rev. Uplifted, like all these higher-law men, knows very well which side his bread is buttered on. He knows who has got the prettiest daughters in his parish, and whose wife makes the best apple-pies; and I rather think that you know it too, my dear Jotham. I can see the twinkle in the tail of your eye as you read these words, though you are fifty miles off. It is my private opinion, that the minister scrapes his feet at your front door about as often as at any house in the village. And the reverend gentleman has contrived to get the length of your foot better than any shoemaker ever did. I will tell you how he has done it. He has done it by holding his tongue before you, much as he talks everywhere else; by putting you up to talk and then listening to you. It is a great art, that of listening; and Uplifted understands it as well as any man I ever saw. When you are talking, he puts on an expression of deference, of acquiescence, of acknowledgment, which is beautiful to behold; and you think him a man of excellent sense, because he contrives to satisfy you of your own.

Coming to see you as I do, at regular intervals, I can mark

the influence which this smooth-tongued little minister has gained over you. I can see how he has inoculated you with his fanatical and fantastical nonsense. But for him, I do not believe that you would ever have voted for Martin Van Buren and joined the Free Soilers, or the Free Democrats, or whatever else they choose to call themselves; for they have as many aliases as Stephen Burroughs, and as I have not seen to-day's *Commonwealth*, I am not certain what their last title is. As you well know, I tried to hold you back, but it was in vain; you broke off, hook and line, bob and sinker; and since then, we have agreed to differ as to the depth of John P. Hale, the honesty of John Van Buren, and the wisdom of Horace Mann.

When we last sat under the shade of your patriarchal elms, we talked about the Constitutional Convention which had then just closed its sessions, and of the precious bantling which was the result of their three months' gestation. I was glad to find that there were some things in that document which even you thought not altogether wholesome to take. I should indeed have been surprised if all your early teaching and inherited convictions had been so far rubbed out of you, that you could have accepted all the rash and mischievous innovations of those bungling political journeymen. I left you in a rather hopeful state of mind, and only regretted that my sudden call to town prevented my discussing with you, in full, many points on which our conversation glanced. You will remember that I promised to address you in writing, on this subject, and to put down on paper some of the views which I had only time to touch upon when we were together. I mean now to redeem that pledge. I will point out in plain language some of the objections which I have to this *amended* Constitution, so called.

I will give you some reasons why I think that you, and other men like you, — good men, with families growing up around them, and snug little properties which a political constitution may make either greater or less, as the case may be, — should vote against it. And though the effort may cost me more time than I can well afford, yet, on the whole, I do not regret it, since it may be the better for you to have my views,

such as they are, in black and white. A letter which you can read and re-read and meditate upon, is better than a long talk, in which much is heard and little remembered. Spoken words are like the music of a bobolink, which rings, and swells, and gushes, till the whole meadow seems to be breaking into voice, and then passes off and cannot be recalled; but written words are like one of the songs which your little Mary sings to you, and which she can sing again and again, and lay down and take up and find still the same. Long may that sweet voice be heard on earth, and charm your ear always, and mine sometimes, with strains which are a foretaste of that blessed land in which there are no laws to be broken, and no constitutions to be *amended.*

SILAS STANDFAST.

No. II.

MY DEAR JOTHAM,— You said in our last conversation, that you thought the new Constitution, although not perfect, was, on the whole, better than the old one. I do not think so; and yet I am not so bigoted a conservative as not to be willing to admit that some few of the proposed changes are good, and some few neither good nor bad. But the difficulty is, that, by the unwarrantable and unprincipled action of a majority of the Convention, we are not allowed to pick and choose, — to select what we like, and throw away what we do not like, — but we must take all or reject all. This was the last act — the dying kick — of the Convention; but, though last in time, I put it first in order; because of its importance, and because it shows, most decisively and conclusively, what were the motives of that body, and what was their real purpose and object.

We have been living seventy years and more under a Constitution. That Constitution was framed in 1780. The men who drew it up were eminent for their wisdom, their virtue,

and their patriotism; and the Constitution of Massachusetts is a reflection and embodiment of their elevated qualities. Under it we lived and thrived. We had our share of trials and dangers, but we got happily through them. As children must have the measles and the whooping-cough, so we had the Shays rebellion, the Oxford war, the embargo, and other troubles. But we had a good Constitution to start with, and so we kept growing stouter and sturdier in spite of it all. No one can say, that from 1780 to 1820 we were not a happy and a prosperous community; as much so as any on the face of the earth. In the latter year, an important event took place in our domestic history. The District of Maine, which had before made one family with us, felt that she was old enough and strong enough to take care of herself; and so we parted, and she moved off and set up housekeeping on her own account.

This change in our relations made it desirable that there should be some modifications in the instrument under which the two States had previously lived. So, in the autumn of 1820, with the general assent of men of all parties, there assembled in Boston a Convention of delegates for the purpose of revising the Constitution of Massachusetts. That Convention was a body not inferior in wisdom and worth to the one which had framed the Constitution. Among the delegates — to speak of the dead only — were John Adams, Daniel Webster, William Prescott, Isaac Parker, Joseph Story, Leverett Saltonstall, and John Davis, — men admirable for their strong sense and their political sagacity, and not less admirable for their political integrity and unselfish patriotism. And the rank and file were of the same spirit as the officers. You might have taken any fifty names in alphabetical order, and devolved upon them the work intrusted to the whole body. Especially, the Convention of 1820 was *not a partisan body.* No man among them considered whether the result of their deliberations was likely to make John Brooks or William Eustis Governor of Massachusetts. I do not mean to say that they had not party convictions and party prepossessions, but they did not set them in the front of their motives. They came to their work with a singleness of purpose to make

such changes as the good of the State and the public wants required, and no more. They sat in deliberation two months. Their discussions were marked by ability, pertinency, and decorum. The result of their labors was submitted to the decision of the people in fourteen distinct propositions, each of which embraced a *separate* subject, so that the sense of the voters might be fairly ascertained upon *each;* and of these, nine were accepted, and five were rejected. Thus, whatever differences of opinion there might have been as to this or that particular proposition, everybody felt that the people had been *honestly* dealt with; that no *tricks* had been played upon them; that the public sentiment had been fairly ascertained; and there was consequently a general acquiescence in the result.

Now, my dear Jotham, I am not going to open to you my mind, as to the origin of the recent Constitutional Convention, and the real motives of those who got it up; nor am I going to tell you, — what I have so often told you before, — that, in my opinion, the people of Massachusetts no more needed a Constitutional Convention than an ox needs a third horn. Upon these points we have agreed to differ. You have made up your fagots, and I have made up mine: you prefer your way of tying them, and I prefer mine. So let that pass. It is very certain that out of one hundred and eighty-two thousand voters, sixty-six thousand did vote, in November, 1852, that it was expedient that a Convention should assemble in Boston, in May, 1853, for the revision of the Constitution of Massachusetts. The Convention accordingly did assemble, then and there. They remained in session three mortal months, and the amount of talking they did in that time was as great as it is possible for a body of that size to do in such a period, in this imperfect state of existence.

The debates are now in the course of publication, in two quarto or three octavo volumes. I am so fortunate as to possess one of these octavo volumes. It is ten inches long, six and a half inches wide, and three inches deep; and it weighs three pounds twelve ounces avoirdupois. It has nine hundred and ninety-four pages, in double columns and fine type. As to the quality of these debates, you and I will never have a chance to differ; for you will never have the patience

to read them. If I had hated you as much as I love you, I could wish you no worse fate than to be doomed to go through them all, from beginning to end. Indeed, no mortal man will ever read them through. If such a man should be found, I advise Barnum to secure him for his museum. He will be a greater curiosity than Joice Heth or the woolly horse.

I had occasion to keep a pretty sharp watch upon the doings of the Convention, as they were reported from day to day in the newspapers; and I have dipped into the printed volume of debates, here and there, and I am thus qualified to tell you, — what you never would find out for yourself, — that there is a considerable amount of ability in the discussions of the Convention. There were many good speeches made on both sides of the house. And, on the other hand, there were few that were so bad as to be absurd and laughable. But more than half of their recorded debates are just of that kind which is the most wearisome to read. They are neither good nor bad. They have about as much claim to be printed as the talk round a bar-room fire on a winter's night, or the speeches in a school-boys' debating club. They are mere dribble, — the rinsings of empty brains, and the runnings of party kennels; as nutritious as bran bread, and as savory as stale cider.

But I will not linger upon what they said, but proceed to consider what they did. Their duty was to revise an existing Constitution, and not to make a bran-new one; and they therefore ought to have presented all the amendments appertaining to one subject or department in a separate proposition, to be voted upon independently. For instance, if any changes were proposed in the Judiciary, they should have been offered to the people by themselves. In the same way with the Bill of Rights, with the Senate, with the House of Representatives; following the division of the Constitution itself. But, instead of this, they have lumped together nearly all of their alterations into one portentous mass, which must be bolted or rejected entire. The amended Constitution makes a pamphlet of forty pages. Of these, *thirty-eight* comprise one entire proposition, and *must* be voted for on one ticket. Every voter must say "Yes" or "No" to the *whole* of it. Appended to this monstrous leviathan, like a fleet of cock-boats around a

line-of-battle ship, are seven other amendments or propositions, occupying *in all less than two pages.*

Thus, as I said before, there is no chance for the people's expressing their minds upon the specific alterations made in the Constitution. I, for instance, should probably vote *for* the amendment dividing the State into forty Senatorial districts, and choosing Senators by plurality, and I should certainly vote *against* the change in the tenure of judicial officers. You would probably vote against me on both points, though I hope not on the last. Now see the embarrassment into which we are both thrown. I am obliged to ask myself whether I like the application of the plurality rule to Senators well enough to overbear my objections to the change in the tenure of judges, and induce me to take the two rather than neither. This question, happily, I can readily answer. You must go through the same process of self-inquiry, merely shifting the like and dislike.

Now, what were the members of this Convention hired to do? They were hired to revise the Constitution, and not to make a new one, and the fair and obvious duty imposed upon them was to submit their revisions and amendments to the judgment of the people, *separately*, — *each by itself*, — and not all, or nearly all, in one lump. I call this an unauthorized and unwarrantable act on the part of the Convention; and I maintain that, if the question had been voted upon by the people, whether the result of their labors should have been submitted in this way, in the shape of an entirely new Constitution, a large majority would have voted against it. But this letter is already long enough, so I will stop here, though I have not done with the subject.

SILAS STANDFAST.

No. III.

My dear Jotham, — In my last letter I spoke of the unexpected and unauthorized act of the Convention, in presenting so large a portion of their amendments in one lump: and showed you that such a course was a departure from their plain path of duty, and a surprise upon the people of the Commonwealth. I proceed now to consider the arguments by which the majority of the Convention justify their conduct in this regard. You will find them set forth in a document appended to the Constitution, called "An Address of the Convention to the People." They are as follows: —

"And, first of all, we think it proper to present for your consideration a complete system of organic law. The present Constitution was adopted in 1780, and there have since been added thirteen important amendments. By these amendments much of the original text is already annulled, and it is only by a careful and critical analysis and comparison, that the existing provisions can be determined. This ought not to be. Constitutional laws should be plain, that they may be impartially interpreted and faithfully executed, 'that every man may at all times find his security in them.' We have not then thought it wise, or even proper, to preserve, as a part of the Constitution, provisions which have long since been annulled; nor do we feel justified in proposing new specific amendments, whose adoption will render the fundamental law of the Commonwealth more difficult to be understood, and less certain in its requirements.

"We have, therefore, taken what remains unchanged of the Constitution of 1780, and the subsequent amendments, preserving the original language, wherever it appeared practicable, as the basis of a new Constitution, and incorporated therewith such of the resolutions of this Convention as are necessary to give to the whole, at once, a comprehensive and concise character. This has been our purpose; and if our view of duty is correct, we are entirely justified in submitting so much of our work as will give to the people of Massachusetts a complete system of organic law, as one proposition for your adoption and ratification. It is undoubtedly true, that when amendments are specific, and not numerous, they should be separately submitted to the judgment of the people; but this mode becomes impracticable in the for-

mation of a new government, or the rough revision of an old one. Our attention has been necessarily directed to every provision of the Constitution, and but one chapter is preserved in its original form. It only remained for us either to submit our work, to be added to the old Constitution as specific amendments, with the conviction that their ratification would render your form of government more complicated than it now is, or else to embody all of the old and the new that appears necessary to the safe and harmonious action of the system, and present it as *The Constitution of Massachusetts.*"

All this is plausibly and artfully put. It is doubtless the handiwork of that excellent logic-chopper, Governor Boutwell, who has got a head as deep and as cold as a well; and who, by the rich bounty of nature, possesses a power of sophistry, and an art of making the worse appear the better reason, such as the oldest lawyer at the bar might envy. But let us see how these solemn sentences will pass muster: —

"And, first of all, we think it proper to present for your consideration a complete system of organic law. The present Constitution was adopted in 1780, and there have since been added thirteen important amendments. By these amendments much of the original text is annulled, and it is only by a careful and critical analysis and comparison, that the existing provisions can be determined. This ought not to be. Constitutional laws should be plain, that they may be impartially interpreted and faithfully executed, 'that every man may at all times find his security in them.'"

In these few words there is both an overstatement and misstatement. It is not true that it requires a "careful and critical analysis" to determine what the existing provisions of the Constitution are. On the contrary, there is not a man in Massachusetts, who has sense enough to make a will, or go in when it rains, who cannot, in five minutes' time, satisfy himself as to any constitutional provision he feels any interest in. It would be better, perhaps, if the Constitution were as round and as smooth as an orange, without a single excrescence upon it in the shape of an amendment. It would be a prettier thing to look at. But, after all, the proof of the orange is in the eating; if it tastes good, it answers the ends for which an orange was made. So the end for which a constitution was made is to establish and maintain a government

which shall secure the liberty of all, and the rights of all; and if it do that, it does all its appointed work, and it is of no consequence that it is not perfectly ship-shape, any more than the Constitution of the United States, which has had a dozen amendments tacked on to it since its first adoption. A polished mahogany cart would be handsomer than one of oak and pine, but it would not bring home your hay any better. Men feel about the constitutions under which they live, much as you do about your house. An architect might find something to criticize in it. He might tell you that your porch was not well proportioned, that your parlors were too low, and that your entry was too large, or your kitchen too small. You would say in reply, that all this might be true, but that you had become accustomed to these things, and felt no discomfort from them, and that they had even become endeared to you by old associations, and you would not have them changed if you could. It would not be difficult to build a finer house; but, after all, it would not suit you so well. Yours, as it stands, is warm in winter and cool in summer, and keeps out the rain, and your wife likes it, and your children like it, and that is enough for you.

Again, Governor Boutwell, in this Address, speaks of the Constitution as if it were a body of laws coming immediately home to every man's business and bosom, and that they ought to be so plain "that every man may at all times find *his* security in them." But is this so? Consult your own memory for a reply. You are a selectman and a justice of the peace. How many times in your life have you had occasion to consult the Constitution, for any thing regarding your personal security, or for any thing else than a matter of discreet curiosity. Probably not once. On the other hand, not a week passes that you do not have some call to consult the statutes of the State. The Constitution is a body of organic rules. These are simple in their construction and phraseology, and the chief reason why they are not perfectly plain — if they are not — arises from the imperfection of language. For instance, the Constitution provides that every member of the House of Representatives shall be chosen by written votes. This seems entirely free from ambiguity; but some years ago there arose

a question whether *printed* votes were or were not *written* votes, *in the sense in which that word is used in the Constitution;* and it was taken up to the Supreme Court, and they decided that *written* votes did there mean *printed* votes. In this case, the Supreme Court was nothing but a live dictionary. In the Constitution of the United States, many of its words and phrases have thus been judicially defined. In the famous Dartmouth College case, the court did little more than define the word *contract*, as used in the Constitution.

The Constitution, in general, bears directly and immediately upon the Governor, the Legislature, the Judiciary, but only in here and there a point upon the citizens, individually and personally. It is for the *government*, — for the officers whom the people elect, and the magistrates whom the Governor appoints. It prescribes certain rules and conditions to which all departments of the government must conform. It marks out certain limits over which they must not pass. It defines what may be done and what may not be done. But it leaves a wide margin, especially for the Legislature, to act in. A great deal of mischief may be done, and yet the walls of the Constitution not be overleaped. Unjust and ridiculous laws may be passed, money may be foolishly spent, and the most absurd resolutions adopted, and yet not a hair of the head of the Constitution be touched.

You sometimes recreate your exhausted faculties with a game of whist. This amusement will supply us with a familiar illustration of the difference between a Constitution and the body of statute laws made under it. The *Constitution* answers to what may be called the laws of whist, — such as that the ace takes the king, that you must follow suit, that the trump card takes every thing. These are comparatively simple, and may be learned in an evening. But the rules of whist, which prescribe when such or such a card ought to be played, are numerous and complicated, and these are like our *statute laws*, which are, and must be, minute, various, and manifold.

Again: whatever practical inconvenience may have arisen from there being several amendments appended to the Consti-

tution, might have been easily obviated by the action of the Convention itself. One of the last things they did was to appoint a large committee, to meet in November, to count and declare the votes on which the fate of the new Constitution depends. That committee might have been charged with the further duty of taking the Constitution into a new draft, incorporating all the present amendments, and also those which the people should sanction by their votes in November. This would have been an easy task. A clear-headed lawyer could do it in a week, and not work hard either.

But to all arguments founded upon mere inconvenience, the answer is obvious; and that is, that the Convention was a body *acting under instructions from the people*, and that those instructions were to *revise an old Constitution, and not to make a new one.* If you sent your watch to a watchmaker to be repaired, and he sent you in a bill for a new one, you would certainly not pay him. The new watch might be a better one than the old; but that is not the question. The man was employed to do ONE thing, and he did *another.* You liked your watch because your father gave it to you, because it was a good watch, and because it had served you well.

And now, my dear Jotham, do you really suppose that the solemn blarney of that plausible smooth-tongue, Governor Boutwell, expresses at all the *real* reasons which induced the leaders of the Convention to make such an experiment on the sense and conscience of the people. If you do, you are greener than the greenest of your meadows after a long rain, and I advise you to keep out of the way of the grasshoppers, or they will eat you up bodily. Some politicians have two sets of reasons or motives. One is a *show* set, which is paraded before the public, and the other is the *genuine* article, which is only brought out in family parties, or before very intimate friends. The former are like the drop scene at a theatre, to amuse spectators, and hide the ugliness and falseness behind it.

There was once a pretty narrative written in the French language, called the Temple of Truth, describing a building in which all the residents were constrained to speak the truth *involuntarily*, and in spite of themselves. If Governor Bout-

well had written that address in the Temple of Truth, it would have run somewhat in this wise : —

" You will observe, fellow-citizens, that the greater part of our amendments are presented to your consideration in one proposition, appended to which are seven others. These last are of no great consequence to the objects we have in view, and as to some of them, we have doubts whether they will be ratified. We are not so foolish as to think, for instance, that you will, by the adoption of the eighth proposition, throw overboard the system of banking which has served you so long and so well, and substitute for it the wild and visionary scheme there presented. You did not expect to be called upon to vote for all, or very nearly all, our amendments on one ticket; but Mr. Butler, Mr. Wilson, and myself, who have managed the Convention from the beginning, have, after much deliberation, thought this the most expedient course. You will observe that we have arranged the distribution with considerable adroitness. We have not put any thing in the first proposition which we think *quite* hopeless and desperate; nor have we left out any thing which we think *very* essential to the real purpose which has been the guiding star in all our deliberations. *That purpose* has been to secure to the harmonious coalition between the Democracy and the Free Democracy that ascendency in the State which they have enjoyed in the Convention, and thus to put an end to the dominion of the Whig party, which we pretend has been so disastrous to the character, happiness, and prosperity of our ancient Commonwealth. We have made the strong support the weak, so that both may go through together, like a cripple on a blind man's back, — one supplying eyes, and the other legs. We have, for instance, so greatly favored the small towns, in our system of popular representation, that we hope to gain the support of all the voters in them, whether Whigs or Democrats; and we hope, also, to reconcile the Democracy of the large towns to this injustice by the degradation of the Judiciary, and the abolition of the poll-tax as a condition precedent to the elective franchise. Had we put the system of representation as a proposition by itself, the Democrats in the large towns would have voted against it; had we done the same with the abolition of the poll-

tax, we should have encountered the opposition of the conservative part of the rural population. As it now is, we think we shall have the votes of both. By the acceptance of the Constitution, we look upon the Coalition as good for at least five years, so that not only will Mr. Wilson be Governor, but I shall go to the Senate of the United States. These, fellow-citizens, are the real motives which have led us to adopt this novel and unexpected course. You will consider this communication as confidential, because, for the sake of appearances, we shall be obliged to assume a different language, and talk as if we really believed what we are saying."

SILAS STANDFAST.

No. IV.

MY DEAR JOTHAM, — The subject I am now upon — the form in which the action of the Convention is submitted to the people for their ratification — is rich and fruitful. I must linger upon it. The whole of its beauties are not revealed by a sight of the new Constitution itself. The history of its conception and birth in the Convention is curious and instructive.

That body was in session for three months, as I have before said. After they had been hacking and slashing at the Constitution for several weeks, the question naturally arose in the minds of many of the members, as to the shape in which their labors were to come before the people, — especially as there were some inconsistencies in their votes, and some capricious and arbitrary variations in matters to which one general principle seemed obviously applicable. The minority members discussed this subject occasionally in conversation among themselves, — much, however, as the passengers in a ship talk about the way she is navigated by the officers and crew; because it was obvious, from the course things took, that, on all important subjects, the action of the Convention was fixed

beforehand, in some other place and at some other time; and they were only called upon to make up the work which had been cut out elsewhere. Towards the end of the session, Mr. Dana, for Manchester, happened to remark, incidentally, in the course of debate, that, so far as he could see, the new Constitution must be submitted as one entire proposition, and that the alterations could not be proposed separately. Upon this, Mr. Hallett, for Wilbraham, rose in his place, and in his most leonine manner expressed his dissent from the views of the gentleman for Manchester, and his opinion that the amendments *could* be presented separately, and *ought* to be presented separately, and that if the gentleman for Manchester could not do it, *he* could. The minority members pricked up their ears at these little splinters from the main body of debate, and hoped that more light might be allowed to break in upon them. But their hopes were destined to disappointment. *Upon the caucus docket, that case had not then been called.*

Thus things went on, till, towards the close of the session, a committee on revision was appointed, who were charged with the duty of putting into shape all the acts of the Convention, reconciling their inconsistencies, correcting their oversights, and moulding them into the form in which they should go before the people for their ratification. That committee asked and obtained permission to report in print; and their report was presented at so late a day, that it did not fairly get into the hands of the members, so as to be ready for discussion, till the morning of Monday, August 1st, on which day it had been determined that the Convention should adjourn, and on which day it did, in point of fact, adjourn. Thus, only one day was given, not merely to settle the important question, as to whether the several amendments should be presented separately, or nearly all in one heap, but to examine the report of the committee, and to see how far it could bear a critical analysis, how far one part agreed with another, and how far it comprised the action of the Convention and excluded all they had declined or omitted to do. The report, as printed and presented, made a pamphlet of considerable size; and it had been so hastily prepared, that *in*

the course of Monday two or three revised editions appeared, from time to time. A considerable part of the day was spent in reading over this pamphlet, making corrections, alterations, erasures, interlineations, and additions; and, at a very late hour in the evening, the Convention closed its sessions, leaving the ink of their interlineations, and the wafers of their additions, hardly dry; and this printed document, thus bescrawled and bewafered, *remained on the President's desk, as the only evidence of the great organic law proposed to the people of the Commonwealth of Massachusetts.*

I will not dwell upon the unseemly haste with which a report of such great importance, that demanded the most careful examination and patient discussion, was hurried through all the stages of debate in a few hours. I can well pardon the impatience of country members, who had been gasping through the heats of July, in a crowded city, to get back to their cool and breezy homesteads. A farmer shut up in Boston, in the month of August, with his cattle lowing after him in the barn-yard, and his corn rustling after him in the field, is a sight to move the springs of compassion in the heart of the oldest politician. But this is no sufficient apology for the indecent neglect of all the time-hallowed forms of procedure, — the rash violation of all legislative decorum, — which this act of the Convention involved.

You have been a member of the General Court, and you know the way in which business is done there. You know that, when a law has been passed through all its stages, it is finally *engrossed;* that is, it is written upon parchment, as the least destructible material that can be so used, and then submitted to the examination of a committee, called the "Committee on Engrossed Bills." When they have reported that it is correctly engrossed, it is signed by the presiding officers of the two Houses, approved by the Governor, and then deposited in the archives of the Commonwealth, in the office of the Secretary. Thus, every law and every resolve passed by our Legislature may be found in the Secretary's office, carefully written on parchment, without erasure or interlineation. And the legal evidence of any statute or resolve of Massachusetts, before a foreign tribunal, is a copy certified

by the Secretary, under the seal of the State, which copy *must* be made from the original, in his office.

Such is the care with which the integrity of *common* legislative proceedings is guarded. Surely, so grave and important an instrument as a constitution is entitled to at least an equal degree of consideration and respect. So thought the men who sat in the Convention of 1820. Let us contrast their conduct with that of their degenerate successors in 1853. That Convention assembled Wednesday, November 15, 1820.

On November 30th, Judge Jackson, of Boston, moved that a committee be appointed "to consider in what manner such amendments in the present constitution of government of the Commonwealth, as may be made and proposed by this Convention, shall be submitted to the people for their ratification and adoption, and in what manner their votes thereon shall be returned, and the result ascertained."

Judge Jackson, in supporting his motion, stated that his object in making this motion was to remove a difficulty which had frequently occurred in the course of the debate, from an uncertainty with respect to the form to which the amendments agreed to by the Convention should be reduced. For his part, he had no doubt of the course proper to be pursued. He thought that they had no authority, under the act under which they were convened, to reduce the Constitution to a new draft; and if they had the power, he should not think it proper to exercise it. In that case, when the amended Constitution was submitted to the people, they would be obliged to accept or reject the whole. He thought it the most proper mode to propose the several amendments distinctly, so that, when submitted to the people, they might act upon each specific amendment, and adopt or reject it, according to their judgment of each. Otherwise, they might reject the whole, on account of their objection to a particular article; and thus they would fail of their object, and all the labor of the Convention would be lost.

A committee of five persons was accordingly appointed, of which Judge Jackson was chairman. That committee, December 5th, reported five resolutions, of which the fourth is as follows: —

"*Resolved*, That all the amendments made by this Convention shall be proposed in distinct articles; each article to consist, as far as may be, of one independent proposition; and the whole to be so arranged, that, upon the adoption or rejection of any one or more of them, the other parts of the Constitution may remain complete and consistent with each other. If any two or more propositions shall appear to be so connected together, that the adoption of one and the rejection of another would produce a repugnance between different parts of the Constitution, or would introduce an alteration therein, not intended to be proposed by this Convention, such two or three propositions shall be combined in one article; and each of the said articles shall be considered as a distinct amendment, to be adopted in the whole, or rejected in the whole, as the people shall think proper."

The fourth resolution was passed, December 8th. The others were laid on the table.

On Wednesday, December 13th, Mr. Webster moved "that a committee of nine members be appointed, to reduce such amendments as have been, or may be, agreed upon, to the form in which it will be proper to submit the same to the people for ratification."

Of this committee, Judge Jackson was also chairman.

On Monday, January 1st, Mr. Varnum, of Dracut, moved that the committee for reducing amendments into the form in which it shall be proper to submit them to the people, be instructed to report from time to time, as they shall mature the business before them.

Mr. Varnum said his object was to have the report acted upon from time to time, that it may be committed to an engrossing committee, in order that the Convention may not be obliged to wait three or four days after all the principles of the amendments shall have been adopted.

On Saturday, January 6th, Judge Jackson made a report, comprising the several amendments, substantially in the form in which they were finally submitted.

On Monday, January 8th, and Tuesday, January 9th, the report was discussed and accepted, the exact form of the amendments settled, two copies thereof made and attested by the President and Secretary, one of which was transmitted to the Governor, and the other, *engrossed on parchment*, was deposited in the Secretary's office, and then the Convention adjourned.

Thus you see that the Convention of 1820, which sat fifty-five days only, Sundays included, settled on the twenty-third day of their session the important principle that their several amendments should be submitted separately, *and that they had three days to discuss the language of the several amendments.*

The Convention of 1853, sitting three months, *had only one day* in which to settle the *principle* and shape the *forms*, and that day the *last* day.

But this is too plain to be further discussed; so let me call your attention, my dear Jotham, to one or two other strange and curious facts. There are, at this moment, no means of making legal proof of the amended Constitution: that is, no such means as are known to the laws and sanctioned by the usages of our Commonwealth. There has been no copy engrossed and deposited in the office of the Secretary, to be referred to in verification of its provisions. The original and parent instrument is itself a pamphlet, with erasures, interlineations, and appendages. The Constitution — the most important and sacred of all secular codes — is not treated with the respect paid to a resolve to pay a man for a horse that was lost in the Shays rebellion. And again, that original, such as it is, is in no official and responsible custody, such as is known to the law. No man at this moment can know, in the legal sense of the word, where that instrument now is. I presume it is in the keeping of one of the three gentlemen who sustained, respectively, the offices of President and Secretaries of the Convention. Personally, I have full confidence in the integrity of those gentlemen; I believe that each and all of them are incapable of tampering with the work of the Convention, or of making any changes other than those which were *scrawled or wafered* before midnight on the first day of August last. But the law trusts nothing to *personal* integrity or *personal* character. It appeals to the *official* conscience in all cases; it requires *official* verification. Let me illustrate this. You will admit that this Commonwealth never saw a more perfect embodiment of truth, than is presented in the person of the eminent magistrate now presiding over its Supreme Court. The water with which he was baptized was taken from the very well in which Truth lives. And yet not

a judgment of *his own* court could be proved by *his* oath upon the stand. There must be an official copy, certified by the clerk, under the seal of the court.

And now, my dear Jotham, I beg of you to ponder these things. You will observe that this indecorous and rash course of the Convention was the necessary result of their determination to present so very large a part of their alterations in one proposition; because, of course, they were obliged to wait till the last moment, — till every thing had been done, — in order to know where to put each change, and how to distribute their precious emendations so cunningly as to force their acceptance. You may not feel so much as I do on this point. You have not, I suppose, the habit of considering how often forms and phraseology are important. But everybody must feel hurt and indignant at this coarse and reckless disregard of the old decorums and established decencies of proceeding. When any man tells you that forms are of no consequence, set him down for either a shallow or an unprincipled person. Forms and substance are often as closely blended as body and soul in man. On this point, let me tell you a story, which shall close this long letter.

Once upon a time, the foreign ambassadors residing in Constantinople agreed to dine together, and each to contribute the national dish of his country. The English ambassador was to furnish a plum-pudding. So he wrote the recipe, — so much flour, so much sugar, so much suet, so many raisins, to be boiled so long, and in so much water. When the dinner was going on, and pudding time had arrived, a cry was heard of "Room for the English ambassador's dish!" and four stout servants appeared, reeling and panting under the weight of an enormous tureen, filled with a dark-colored liquid substance, of the consistency of gruel. "Alas!" said the ambassador, "*I forgot the bag.*" What the bag is to the pudding, such are the forms of liberty to its spirit. The cooks of the Convention have boiled their pudding without the bag. Will the people swallow their sickening plum-porridge?

SILAS STANDFAST.

No. V.

My dear Jotham, — I now proceed to examine some of the particular changes and amendments adopted by the Convention, not in any methodical order, but just as they happen to occur to me.

They have taken away from the Governor and Lieutenant-Governor their respective titles of His Excellency and His Honor. This is a change of little consequence; and it is quite as well to drop these prefixes, the fashion of which has passed away. Titles of honor are somewhat out of date, like wigs and knee-breeches. No man of sense will value such a showy handle to his name, and we hope, perhaps somewhat rashly, that no fool will ever be Governor of Massachusetts.

They have provided that the pay of the Legislature shall cease at the end of one hundred days in any one session. This was a good subject to talk about, and a considerable amount of declamatory gas was evolved in the course of the debate, and some jokes, rather small for their age, let off upon the length of our sessions, and the length of our speeches. But is it not a rather trivial and undignified act? We proclaim to the world, that we cannot find here in Massachusetts, with all our schools, our churches, our intelligence, and our morals, a body of three or four hundred men, who can be trusted to do their legislative work by the day, but that we must bind them, as we do a lazy mechanic, by a contract, that, if they don't finish their job on a certain day, they are to get no pay for any time beyond. This looks to me like defiling our own nest. If we want to have our legislation done cheap, why not offer it, as they do the contracts for supplying the army and navy of the United States, to the lowest bidders. Suppose we authorize the Governor to advertise for proposals from contractors, to engage to furnish a gang of three or four hundred able-bodied men to do our legislation, paying them so much by the job. That would be only carrying out the principle contained in the limitation of the session to one hundred days.

The increasing length of our sessions — a great nuisance — is owing to three distinct causes. First, the great increase of the State in wealth and population, which both multiplies and magnifies the action of the Legislature. Second, the fact that so many of the members live at home, instead of boarding for the time in Boston, and go out and come in upon the railroads, and care little how long the session may last, while they are so well off. This habit contracts the hours of business, and no measure of importance can be acted upon before ten in the morning, or after four in the afternoon, without leading to a long debate on a motion to reconsider for the benefit of the absentees. And, lastly, the absurd magnitude of the lower House, which makes business crawl, and groan, and creak, like a huge, overloaded wagon in muddy roads. Making laws with four hundred heads, and with talking tongues in at least half of them, is like driving an omnibus with six horses through a crowded town. Your team is always getting entangled; you have to make constant stops, and you are lucky if you don't get overturned. Of these three causes, the first two cannot be helped; the last can; but the quacks of the Convention have only made the evil worse, as I shall show you hereafter. They have cured the patient of a cold, and left him with a fever.

But the chief objection to this effort to restrict the length of the sessions is, that *it will not prove effectual.* If a man or a State is going to save a little money by a shabby act, let them take good care that they save their money: otherwise, they will have the shabbiness and nothing to show for it. It will be a mortgage, without an estate. You will observe that the language of the amendment is, "No compensation shall be allowed for attendance of members at any one session, for a longer time than one hundred days," but there is no provision that there shall not be more than one session in a single year. Now the Governor has, by the present Constitution, and will have by the new one, if adopted, the power to call an extra session, whenever the welfare of the Commonwealth shall require. If, therefore, he thinks, or pretends to think, a Legislature have left important duties unfinished, at the end of one hundred days, and they have refused to work at noth-

ing a day afterwards, the Governor will assuredly call an extra session. This very thing, in fact, *has recently happened* in the State of New York, where they have a similar provision in their Constitution. You may say that public opinion would forbid such a way of getting round the will of the people. To this I reply, Then why not let public opinion take care of the whole matter?

The new Constitution provides that the Legislature "shall in no case decree a divorce, or hear and determine any causes touching the validity of the marriage contract." This provision is well enough, but it is wholly unnecessary. They might as well have provided that the Legislature should not set the Frog Pond, in Boston Common, on fire, or act plays in the rotunda of the State-House. By the uniform usage of a long period of time, as well as by positive statute enactments, the *Supreme Court* has had, as it certainly should have, jurisdiction in all questions of marriage and divorce. Everybody understands this; everybody is content with it; and any attempt on the part of the General Court to usurp a power, which, within the memory of man, they have not exercised, would be as repugnant to public sentiment as if they should sit as a tribunal for the trial of cases of murder or treason. So we may let this provision pass without further comment. It is neither good nor bad; it is only a clean chip in a basin of soup.

As I told you before, I don't mean to follow any particular method or order, in dealing with the new Constitution, but to take up each subject as the humor seizes me. This letter, especially, I intend to make up of scraps and fragments, like a picked-up dinner on a washing-day.

You are aware that the Executive Council has been retained. It had something of a run for its life; the committee reported against its being continued; and the chairman, Mr. Hallett, supported this conclusion zealousy, ably, and elaborately. But after an interesting debate, the Convention voted to keep the body, but to change its organization. Their number is reduced to eight, and instead of being chosen by the Legislature, on a general ticket, they are to be elected by the people in single districts. This change seems to me injudi-

cious. I see no objection to the present mode of election, and I never would make a change, unless there were some good reason for it. A seat in the Council Chamber is a very respectable and honorable post, but not one which either rouses or gratifies a soaring ambition. The atmosphere of the place is a little sleepy; perhaps somewhat after-dinnerish, even in the forenoon. It would be a very good place for you, my dear Jotham. Your judicial gravity of countenance, and your excellent habit of silence, would make you a shining light in that quiet constellation. A body like the General Court seems to me very well suited to make the proper selection of Councillors; and I do not know of any better argument to support this proposition, than the fact that they have always chosen them well. I have in my mind's eye the picture of a model Councillor; a man of excellent, sound, quiet sense, about fifty years old, weighing from one hundred and eighty to two hundred pounds, with a deliberate utterance, a safe judgment, and a large watch-chain, well-polished boots, with a slight creak in them, a black-satin waistcoat, rounded into a comely curve, and a grave, prosperous, eight-per-cent. sort of a manner. But if you devolve the election upon the people, you will not be so likely to have men of this stamp. You will be more likely to get what are called popular men, — active, noisy, political partisans, who make themselves conspicuous by their earnest continuance in button-holding, and by their facility of public speaking, — the cheapest and poorest of talents; men with small judgment and large self-esteem, who will not be able to sit still, or hold their tongues, and who will be as much out of place in the Council Chamber as a dancing dervish in a Quaker meeting, or a barber in a nunnery.

Besides, there is an obvious propriety in electing the Councillors on a general ticket. The Governor, Lieutenant-Governor, and Council make up a sort of family party, where the discussions are faithful and wise, but intimate and familiar. Their relations are, or should be, somewhat confidential. The Governor should feel perfectly at ease when advising with them. It is desirable — and indeed the theory of the Constitution supposes — that the members of the Council should

be of the same political opinion with the Executive; and, in point of fact, I believe this always has happened to be the case, with the exception of a year or two. But now, inasmuch as it is proposed that the Governor shall be chosen by a general vote of the State, and the eight Councillors by the vote of the eight separate districts, it is plainly possible for one party to have a majority in the whole State, and yet the other party to have majorities in five districts. In such an event, there would be a majority against the Governor in the body to which his nominations are submitted for confirmation.

If the persons composing this majority are unscrupulous political partisans, — as they very likely would be by popular election, — they would reject every nomination, however pressing the necessity, or however inconvenient the vacancy. The Supreme Court might be without a Chief Justice for twelve months, and the State prison without a warden. Rogues might be untried, and murderers unhung. Mackerel might go unbranded, and beef and pork escape inspection. The very wheels of the stage-coach might stick fast in an opposition bog. And even if there should be a majority of the Governor's friends in the Council, it can hardly ever fail that there should be two or three political opponents; — and what will be their position? That of spies in an enemy's camp. They will bring with them an atmosphere of suspicion and distrust. The poor Governor may then bid farewell to the quiet mind. All his sayings and doings will be watched, distorted, and remembered. They will be laid up to be used as ammunition in future political contests. No decorous gubernatorial jokes will ever hereafter enliven the grave wisdom of the Council Chamber, or paint a dignified smile on official cheeks. No easy chat will ever soothe the austerity of executive toils. There would be danger in that. All communications must be curt, laconic, and lapidary. Nothing must be said which may not be reported in an opposition newspaper. I do not think the Governor of Massachusetts holds a very enviable office, under the present system. He gets much abuse, and little influence or gratitude. He has to go to public dinners, and make speeches after them; to review troops on very

unquiet horses; to have a great deal of unsolicited advice thrust upon him; to be insulted by anonymous letters; to have his time eaten up by swarms of bores; and in every appointment that he makes, to create twenty bitter enemies. But make the contemplated change, and we shall have to revive an obsolete law, which imposed a fine on any one who should refuse to serve as Governor, after having been elected thereto. We shall hardly find a white man to take it; and may have occasion to commend the provident forecast of the Convention, which left the door of the office open to our colored brethren, by providing that a man might be Governor of Massachusetts who is not a citizen of the United States.

SILAS STANDFAST.

No. VI.

MY DEAR JOTHAM, — You have heard much, of late, about the secret ballot and self-sealing envelopes: indeed, you might say that you had heard of nothing else. One would suppose, from the zeal with which this measure has been pressed, that the connection between constitutional liberty and gluten was as close as that between taxation and representation. Personally, I do not feel so strongly on this subject as many of my political friends. I am well content with the law as it now stands, allowing the voter to use an envelope or not, as he pleases. I mean, in any event, to let everybody know how I vote; that is, everybody who feels an interest in knowing. Nor do I believe that any party will gain or lose, or that the result of any election will be affected, by any particular method of depositing votes. I dislike the arguments by which this measure is supported, more than I do the measure itself.

I am a Whig, and therefore am supposed not to know any more about the people than a Highlander does about a knee-buckle; but I have a much better opinion of my fellow-citizens of Massachusetts, than to suppose that they need the protec-

tion of such a law. I think great injustice has been done, both to labor and capital, in the discussions upon this subject. I do not believe that the voters of Massachusetts are afraid to express their convictions at the ballot-box. Had such want of confidence in the manliness of our people been uttered by Whig politicians, would not the stump speakers of Democracy have roared themselves hoarse with vindication and denunciation? Would not the "spirits of our fathers" have been called upon at least one thousand times, to repel such charges against their sons?

There has been a great deal of cant and humbug and mock-turtle sentimentality in the debates on the subject. Pictures have been drawn — more pathetic and tear-compelling than a rope of Wethersfield onions — of poor, conscientious voters, forced by some cruel capitalist to vote against their convictions, rather than deprive their children of bread. Towards all such narratives my heart is as hard as Pharaoh's. I do not believe a word of them. Such drafts are not honored at my counter. When I hear these stories, my impulse is to answer them with an expressive gesture, — to apply the end of my right thumb to the tip of my nose, and extend the hand with the fingers apart. You have read — everybody has read — the Pickwick Papers. You remember Mr. Job Trotter, who was always weeping like a watering-cart, but whose lachrymal pumps were never set agoing except to get himself *out* of a scrape or somebody else *into* one. Whenever this democratic pathos is brought out, — whenever a political Job Trotter begins to blubber, and to flourish his pink pocket-handkerchief, — I am disposed to say, like the indignant Sam Weller, "What are you melting with now? — the consciousness of willany?"

The Secret Ballot Law is the political child of Mr. Amasa Walker, an honest and amiable man, but as credulous as he is honest, and as visionary as he is amiable. In 1850 he was chairman of a joint legislative committee, which heard evidence and made a report upon this subject. One day this committee got hold of the tail of a tremendous story, — a story of a forty-bomb-shell power, — that was going to blow the whole Whig party sky-high. The hero of it was the sexton

of Brattle Street Church, in Boston. He was described as standing near the polls, on election day, with a tear in his eye and a vote for Bancroft in his hand, not daring to deposit it till encouraged by a brave-hearted Democrat; and the next day he was turned out of his place. And who do you think was the black-hearted tyrant who turned him out, as the story went on to say? Why, Deacon Moses Grant; a man known to you, — known all over the State, — for his virtues, his goodness, and his worth. Now there are some things that cannot be believed, because they are too ridiculous; and this story about Deacon Grant is one of them. You might as well try to make the people in Boston believe that General Washington ever promised an office to one man and gave it to another, — that Old Put run away from a fight, and hid himself in a smoke-house, — that Rufus Choate ever made a dull speech, or Stephen C. Phillips a short one, — that John Van Buren ever spoke half an hour and said nothing blackguard, — that Horace Greeley ever appeared in white-kid gloves and patent-leather boots, — or any other monstrous and impossible invention. It is hardly necessary to add, that the whole story turned out, on inquiry, to be without a shadow of foundation.

There are two good reasons which make me doubt all these stories about the oppressions of capital and the wrongs of labor. In the first place, if a rich man were disposed to make a tyrant's use of his wealth, he would not dare to do it. I never was in the city, town, or village, in which public opinion would not frown indignantly and successfully upon such an abuse of power. In the second place, the interests of men, their selfish instincts, which you may always rely upon as certainly as upon the force of gravity, will prevent such conduct as the Secret Ballot Law is aimed against. Take, for instance, my own case. The man that I employ to copy my papers is an Abolitionist, a woman's-rights man, a believer in the potato gospel of St. Graham, a Come-outer, — in short, every thing that I am not. But then he writes an excellent hand, he brings home his work at the very moment he promises, and is moderate in his charges; I therefore employ him, and shall continue to employ him, and care as little about his

opinions as I do about where he buys his ink or his pens. So the tenant of one of the houses I have charge of is one of the noisest and most pestilent Democrats that ever shouted in a caucus or strutted in a torch-light procession. But then he pays his rent punctually and takes good care of the premises, and that is all I inquire about. A paying Democrat is a better tenant than a non-paying Whig.

Many persons lay claim to public sympathy on this head, under false pretences. John Muggins, for instance, works in a machine-shop. He is a Democrat; but he is also lazy, drunken, worthless, and ill-tempered. He is dismissed from his employment on account of these bad qualities. Muggins straightway becomes a martyr. He is a victim of a cruel and aristocratic faction. He has had the courage to vote for Boutwell when his employer voted for Winthrop, and therefore he has lost his place. The bread is taken from his mouth, because he has dared to exercise the proud privilege of a freeman. Great is the stir in the tents of the unterrified. Muggins becomes another Morgan. Henry Wilson discourses of Russian serfs, and of Francis Bowen and the North American Review. Butler's soul is disquieted within him, and the ears of his hearers suffer accordingly.

I have another objection to the secret ballot, — and it is a practical objection, — which is, *that it cannot be effectual, in the cases for which it is intended, without the most degrading deception on the part of the secret voter.* The object of the law is to enable a man to conceal his vote. But a man is not a Whig or a Democrat because he votes in a certain way; but he votes in a certain way because he is a Whig or a Democrat. The act of voting is but one way of expressing opinions which, in some form or other, the voter is constantly letting out. Whenever it is an object to find out how a man votes, it can be done, unless he covers himself, from top to toe, with a cloak of falsehood. You remember the actor in one of Dickens's stories, who entered into the part of Othello with so much spirit that he blacked himself all over whenever he played it. So a man cannot have the protection of the secret ballot unless he blacks himself all over with lying. He must vote one way and live another. He must set a guard upon

his lips and his face, and never speak a true word nor look a true look.

But suppose, after all, by way of argument, that the result of some close struggle, in some particular place, shows that there has been treachery in the camp, and a Whig capitalist, who has many voters under him, determines to institute a rigid inquiry among his hands. He summons one of them — a suspected voter — into his presence, and says to him, directly, "John, how did you vote yesterday?" Now there are three ways in which John, who, pretending to be a Whig, has voted the Democratic ticket, can meet this question. He may tell the truth; in which case, he is discharged, and the secret ballot will have done him no good. He may refuse to answer; but his employer interprets his silence into a confession of the truth, and acts accordingly. He may tell a downright lie, and say he voted the Whig ticket. In this case, you have made the secret ballot do its work, but have you not paid pretty dearly for your political whistle?

You are a man of truth, my dear Jotham: you were a boy of truth. I have not forgotten the flogging you got because you would not tell who painted the master's horse pea-green, and yet would not say you did not know who did it. How proud I was of you on that day! prouder than if you had been the best scholar that ever blushed before a committee, or spouted at an academy exhibition. There never was a time when you would have purchased the success of your party or your candidate by a lie. The triumph of any party is of less consequence than that the people of Massachusetts should be a truth-loving community. A State has no right to degrade the morals of its subjects, in any way. Think of a community's deliberately encouraging falsehood, tempting men into untruth, setting a trap for double-dealing, putting a bounty upon prevarication!

We live in a world of imperfections. I have read of a man in Virginia, who, noticing that the squirrels ate only the outside rows of fields of corn, said he would have a field with no outside rows. But on earth we cannot have a field of corn with no outside rows. It may be possible in heaven.

In our country the pursuit of wealth is the absorbing interest.

What are the dreams and visions of all the boys in your town? Why, to go to Boston, or New York, or South America, or China, or California, and get a great deal of money, — to ride in a carriage, — to live in a four-story house, with Brussels carpets in every room, — to wear the handsomest gold watch that money can buy, — to go to the Museum, — to have a knife with fifteen blades. When everybody is thus struggling and burning to be rich, — when, in point of fact, so many do become rich, — it is possible that there may be now and then a bad man disposed to abuse the power that wealth gives him. And I do not know that you can help this by any legitimate remedy, that will not insure a positive evil, in order to guard against a contingent abuse.

You are aware that we have a special statute provision for the protection of the poor voter. By a law passed by the General Court, in 1852, it is made a criminal offence, punishable by fine and imprisonment, to attempt to influence voters by bribes, threats, or promises of employment. I like a law of this kind. A rich man that meddles with the political conscience of the laborers whom he employs, — who bullies men into voting one way, or punishes them for voting another, is not only a tyrant, but a blockhead. He is at once odious and contemptible. He is as stupid as King Log, and as mischievous as King Stork. He is doing what he can, in his paltry sphere, to bring on a time when the different classes of society, instead of working together for the common good, like beavers in a meadow, or bees in a hive, will be fighting together and mutually destroying each other, like so many Kilkenny cats. You and I are not rich, but we have something to lose in a universal row; and I feel towards one of these money-laden donkeys much as you do towards a woodchuck among your cauliflowers, or a strange dog in your sheep-pasture. Punish him as you will; punish him where he is most sensitive; take away his money by fines; make him ridiculous, and hold him up to the jeers and laughter of his intended victims, just as you nail a hawk on your barn-door to refresh the spirits of your hens and turkeys. Revive the pillory for his special benefit; order the sheriff to tar and feather him in a grave and orderly manner; paint his nose sky-blue, and in fast

colors, so that it shall not wear off till the next election. Do what you like, — he will have no sympathy from me.

But even if you claim the expediency of the secret ballot as a preventive or remedial measure, it has no claim to come into the Constitution. In the first place, it is a matter of detail or form, and a constitution is a collection of rules and principles. Governor Boutwell said, on one occasion, in the Convention, that they should not submit to the people every *truth* which they might regard as correct and proper in itself, but only those *truths* which were to be regarded as so important as to justify their being incorporated into the Constitution. I like to quote from Governor Boutwell when he is right. You will take none of his language. He uses the emphatic word *truths* to denote the propositions which belong in a Constitution; and this is just the right word.

In the next place, it is a party measure, — the result of a party struggle, — and the Constitution is no place on which to suspend party trophies. A perfect constitution would be an aggregation of truths to which all are ready to give their assent; because a constitution is meant for the protection of all. The best constitution is that which contains the smallest amount of disputed propositions; or, in other words, that is the best constitution which reflects the least amount of partisan or temporary feeling. When political parties begin to deal with constitutions so as, through them, to accomplish party ends, and maintain party ascendency, the first step has been taken towards disorganization and revolution. The Constitution is not a football, to be kicked to and fro, between the feet, and in the dust of contending parties. You may put an argument on this subject in the shape of a dilemma, which is unanswerable. The secret ballot will or will not be sustained by the public sentiment of Massachusetts. If it be sustained, it may safely be left on the statute-book, because there will be no disposition to repeal it. If it be not sustained, it ought to be left on the statute-book, so that it may be repealed.

And now I want to call your attention to one curious fact, which is, that by the new Constitution envelopes are to be used in national, state, county, and *city* elections, but not in

town elections. What do you suppose was the reason for this purely arbitrary distinction, — this distinction without a difference? I think you will be puzzled to answer this question, after taking your time for it, — after looking into the fire, and out of the window, and up to the ceiling, and rubbing your left shin, as is your custom when you are puzzled. I can answer it for you, but I will not now, because my letter is long enough, and because there are one or two other similar inconsistencies, and I want to wait till I can put them all together, and show you the family likeness in all.

SILAS STANDFAST.

No. VII.

MY DEAR JOTHAM, — By the *present* Constitution, no person can vote in any election held within the State, unless he shall have paid, by himself or his lawful representative, some state or county tax, which shall, within two years next preceding such election, have been assessed upon him, in some town or district of the Commonwealth.

By the *new* Constitution, the payment of a tax is not required as a condition precedent to voting in the election of any national or state officers.

By the laws of Massachusetts, as you are well aware, persons who are not possessed of any taxable property pay only a poll-tax, which can never exceed the sum of one dollar and fifty cents annually, and may be, and often is, much less.

By the proposed change, the elective franchise will be extended to a certain class of persons who cannot, or *will* not, pay this slight poll-tax.

This change in the qualification of voters rests upon what I understand to be a Democratic doctrine, that every full-grown, featherless biped, who wears a hat instead of a bonnet, has a *natural* right to vote; and that to exact the payment of a poll-tax, as a condition precedent to the exercise of the elec-

tive franchise, is to force a man to buy that to which he has a free right, and also to bestow upon property a privilege which belongs to manhood. Let me examine this doctrine, *that every man has a right to vote, simply because he is a man.*

In the first place, let me apply to it a test which walks directly into your own house, through your front door. Your wife — my excellent sister Martha — has more sense under her nightcap than you have under yours, and you know it, my dear Jotham; and I have always honored you for your manly recognition of your wife's intellectual superiority. You owe your respectable position in life, in part, to her admirable understanding, and your willingness to walk by its light. Now, will you please to tell me how it happens that *you* have a natural right to vote, and *she* has not? I will give you all the time you ask to consider this question, and grant you permission to consult all the oracles of Democracy, from Thomas Jefferson to George Bancroft; and, at the end, you will have to give it up as a bad job. If man, *as a human being*, has a natural right to vote, we are guilty of the grossest injustice in saying that woman shall not vote. The only ground on which we can put her exclusion from the elective franchise, consistently with justice, is, that the duties imposed upon her by *the family relation* are incompatible with the discharge of public functions, the function of voting included; and that, as the former are of primary importance, and the latter of secondary, the latter must give way. Thus women are denied the right of voting, because a great majority of men, and a great majority of women, are of the opinion that their value as women, as wives, and as mothers, will be impaired by their becoming voters and mingling in the strife of politics; so that the highest interests of society exact this renunciation at their hands.

Take another illustration from your own household. There is your oldest son, William, who is twenty years old and a Senior in college. You are proud of that boy, and well you may be. He has the figure and bearing of a man, and a man's maturity of mind and strength of character. But he cannot vote, simply because the State, which is *compelled* to fix some precise age for it, has determined that a man must have lived twenty-*one* years, and not a minute less, before he

can enjoy the privilege. So felons in the State prison, and paupers in the almshouse, are deprived of the power of voting, which they once possessed.

Thus you see that the State — the aggregate wisdom and conscience of the whole community — withholds the right of voting from one class of human beings entirely; in another, it postpones the power of exercising it to a certain period; and it takes it away from two other classes, after having once bestowed it upon them. *Now, if society has the right to make these various distinctions, it clearly has the right* to make discrimination among human beings, of the masculine gender, who are twenty-one years and upwards, and neither felons nor paupers.

Thus we are led to the conclusion, that the elective franchise is a trust, or privilege, which may be bestowed or denied, according as the interests of the State and the well-being of the whole community may require.

Now, supposing (what is certainly true) that the State has the *right* to deny the privilege of voting to those who have not paid a tax within two years, is it *expedient* to exercise that right?

There are few laws or rules which do not or may not work hardship sometimes. It is their very nature to do so, — it cannot be helped. There are few laws, therefore, which may not be attacked from a sympathetic point of view. But sympathy is not always a safe, nor even a controlling, motive in legislation. The well-being of the people is the highest law. I dare say that the present rule may bear hard upon here and there a poor laboring man, burdened with a large family, who gives up the right of voting because it is sorely inconvenient for him to pay a poll-tax. Poverty is to me a sacred thing. No sneer or scoff of mine shall ever light upon the poor man's head. That would be to beat a cripple with his own crutch.* *But I also do dare to say, that, in spite of individual hardship, the interests of the State are the best secured by the present con-*

* Mr. Eames, of Washington, one of the oldest members of the Convention, — a member of the Convention of 1820, and a highly respectable man, — said he never heard a man complain of paying a poll-tax.

stitutional provision; and that a good citizen should submit to a rule of exclusion, salutary and expedient on the whole, though it may be hard in his particular case.

You must remember that *laws are never made for exceptional cases.* We legislate by classes and for classes, and not for here and there an individual. I have no question, that there are many paupers at this moment in Massachusetts, who have the understanding and the moral worth which would qualify them to vote, — who have been reduced to the necessity of public support by sickness or inevitable misfortune; and certainly no men have a greater interest in the State than they have, for their very existence depends upon it. And yet paupers do not vote, because, taking them as a whole, the interests of society are deemed to be best subserved by excluding them. In legislation, all who are in the same boat must go the same way.

The above conclusion, as to the expediency of retaining the present constitutional provision, is in some measure the result of observation. The real qualifications to be claimed in voters are moral and intellectual; the State endeavors to secure such voters, and such alone, as have a fair amount of sense and worth; and if the right of voting is made dependent upon the payment of a poll-tax, it is because experience has shown, that in the long run, and as a general rule, the personal qualities which entitle a man to vote are not commonly to be found in those who do not pay this very small contribution to maintain the order and well-being of society, whether from inability to do so, or, what is oftenest the case, from unwillingness. For, of the persons now excluded from voting by reason of the non-payment of a poll-tax, a very large majority, in my opinion, is made up of those who *do not choose to pay it;* and that those who *cannot pay it* form a very trifling percentage; and I say further, that a man who *will not pay it,* who will not exercise the small self-denial requisite to pay it, has not the moral qualities entitling him to vote.

These may not be popular doctrines, but they are not the less true and important for all that. Stump speakers do not carry them about in their saddle-bags. If I were a candidate for the General Court, I might fail of my election if it were

known that I held such opinions. I pray you, therefore, to say nothing about it out of your own household, and put my letter into the fire when you have read it. These old letters, that remember what their writers have forgotten, are great nuisances to growing politicians.

But, further, I object to the proposed change, because it breaks down the distinction that should be carefully maintained between the virtuous and conscientious poor, who, from a sense of duty, and out of their want, and not their abundance, contribute their mite to the State, and the idle and profligate poor, who feel neither the duties of men nor the duties of citizens; —

Because, while thus thrusting the elective franchise upon those who have not earned it, do not deserve it, and do not want it, its value will be lessened, and the number of those who do not vote at all — now alarmingly large — will be increased; —

Because, in the cities and large towns, at least, it will aim a blow at the efficiency of the principle of registration. At this moment, a receipt from the city or town treasurer is the evidence on which the right to have one's name on the voting-list rests. Take that away, and how are the officers charged with that duty to know how to distinguish the resident from the stranger? We shall be flooded with voters who have no right to vote.

I feel strongly upon this subject. The most dangerous diseases of popular governments have been those the seat of which is in the ballot-box. Here the most formidable mischiefs have begun and spread. And they all grew from this root, — from the headlong zeal of struggling political partisans to gain some immediate and present end, without regard to the effect upon the instruments thus used. I have read shocking stories about elections in other States; of the wholesale and unblushing corruption of voters, and of the scenes of brutality and violence at the polls. If half those stories are true, may God avert such doings and such scenes from the soil of Massachusetts! But if our elections have been pure, if they have been decently conducted, if they have been fair expressions of the popular will, the cause is to be sought in the securities

and immunities which we enjoy, and which those States do not. And can you wonder that I feel uneasy at the prospect of losing one of these securities?

In my letter on the secret ballot, I called your attention to the fact, that that mode of voting did not extend to town elections. Please now to take note, for future reference, of a similar gross inconsistency upon the subject of my present letter. A person who does not pay a poll-tax may, under the new Constitution, vote in the election of any national or state officer; but *not in the election of any city or town officer.* This, too, I lay aside for future examination.

SILAS STANDFAST.

No. VIII.

MY DEAR JOTHAM, — I propose in my present letter to discuss the plurality rule, or principle, as it is applied in the new Constitution. And I have a few steps to take before I come to the stairs.

The egg from which the Constitutional Convention was hatched was laid in the General Court of 1852. The people had voted, in 1851, that they would not have a Constitutional Convention. But the friends of the people, the *exclusive, extra* friends of the people, came to the conclusion, either that they did not know their own minds, or that they would change them in the course of a twelvemonth. Accordingly, not daunted by their rebuff, and with a perseverance worthy of the saints, the Coalition Legislature of 1852 determined to put anew to the people the question which they had answered in the negative two months before. Had a Whig Legislature thus presumed upon the ignorance or fickleness of the people, — had they thus, after an unfavorable verdict, demanded a new trial before the same jury, — what an airing of vituperative epithets we should have seen on the lines and fences of Democracy! But it is comforting to behold what the people will

take at the hands of their friends. The voters of Massachusetts, instead of showing any resentment at being treated like a coquettish damsel, whose first faint "No" is a mere gentleman usher to a "Yes," vindicated the confidence that had been reposed in their changeableness, — ate their own votes without butter or sauce, and accepted in 1852 what they had rejected in 1851. As the people are always right, it follows, that the Constitution did not need any amendments in 1851, but did need one hundred and fifty thousand dollars' worth in 1852. What a degree of wear and tear it must have been exposed to in the interval, to get so much out of repair!

But to go back to the General Court of 1852. In the House of Representatives, January 7th, it was ordered that a committee be appointed, to consist of one from each county, with such as the Senate may join, to take into consideration the propriety of amending the Constitution, so as (among other things) "*to make the plurality system apply in* ALL *elections for state officers, by the people.*"

In due time, a joint committee was appointed, and, on the 21st day of February, made an elaborate report, in which (among other things) may be found the following remarks on the plurality system: —

"In the sixth place, we recommend the adoption of the plurality system in more of our elections. To what extent the Constitution should be revised on this subject, and how far the system shall be carried, will of course remain for the Convention to settle. Nor do we now express any opinion as to which would be most expedient, if the system is to be adopted, to apply it to the first, or only the second or some subsequent election. But the time and money which is now expended, and the party animosity which is engendered, by the numerous and unsuccessful attempts to elect the various state, county, and town or city officers, have become grounds of repeated and loud complaints in all portions of the Commonwealth. This part of the Constitution should undergo a thorough revision; it should be done, not rashly, but with great care and deliberation." — p. 13.

"The present cumbersome, formal mode of organizing the government should be abolished. . . . . *The election of Secretary of the Commonwealth, Treasurer and Receiver-General, Auditor of Accounts, and Executive Councillors by the people, with an application*

of the plurality principle to these officers, as well as to the Governor, Lieutenant-Governor, and State Senators, would do much to remedy this evil." — p. 14.

This report is signed by Whiting Griswold, Anson Burlingame, Moses Wood, Isaac Davis, R. C. Brown, Martin Briant, John B. Nichols, Samuel C. Pomeroy, William W. Bacon, William Cleverly, and John W. Simonds. Of these, Messrs. Griswold, Burlingame, Davis, Cleverly, and Simonds were members of the Convention.

Now, you prefer, and I prefer, and all men of common sense brought up in Massachusetts prefer, the majority rule, whenever and *so long as it is practicable and possible.* The rule that the majority shall govern, lies at the foundation of all democratic governments. No man will give it up without reluctance, or without a struggle. So long as it works well, no question would ever arise upon the subject. So much for the rule as a matter of principle.

Now look at it historically for a moment. During a long period it sufficed for the government of Massachusetts. Your memory goes back to the days of the Federal and Democratic parties; and there must have been a solid satisfaction in those days, when there was a fair stand-up fight between two sets of principles and two sets of men, — when every one saw his foes drawn up in front of him, and his friends ranged along his side, and there was no danger of a fire in the rear, or of having his flank turned by false allies. In those days they knew no more about third parties than they did about spiritual rappings or women's conventions; and a man no more threw away his vote, than Daniel Boone would have thrown away his fire in an Indian fight, with a red-skin behind every tree. Whoever had a plurality had a majority also.

But a change came over the spirit of our politics. That change began with the Anti-Masonic party, about thirty years ago, the seed of which was the blood of Morgan. In time, other eccentric and portentous bodies intruded themselves into the regular political system, and disturbed its movements. There was the Liberty party, the Temperance party, and the Native American party; and now we have the Hunkers and the Barnburners, the Hard Shells and the Soft Shells, the

Free Democrats and the Democrats who are not free; so that our political contests, instead of being a pitched battle between two lines, are like an Irish row at Donnybrook Fair, where every man's shillelah is against every other man's head.

The result was, that the majority rule would not work. You could not elect your Governor, or set the wheels of state agoing. What, then, was to be done? And this question reminds me of a pertinent anecdote. A clergyman was once called to administer the consolations of religion to a lady, who had had the misfortune to lose one of her children. He found her in by no means an evangelical state of mind. She was rebellious, inconsolable, mutinous. She was deaf to the voice of consolation, and repulsed the soothings of sympathy. The good man had something of the old Adam in him, and his patience gradually gave way; and after a burst of clamorous and unreasonable grief, he said to her, quietly, "Well, madam, what are you going to do about it?"

This story often comes to my mind; not only in public affairs, but in that little "kingdom of me" that a quaint old writer speaks of. The inexorable question, — What are you going to do about it? — is always in my way. It is a great iron wall, that goes up to the sky and down to the centre; I cannot get over it, or around it, or under it. There is but one thing that I can do, and that is, submit. That lesson I am learning, and I flatter myself that I am making some progress therein. At least, I do not knock my head against the wall, as I used to.

Now, apply this question to the subject before us. You *must* have a Governor, and you *cannot* have him by a majority rule, and what are you going to do about it? The Constitution — our present Constitution — answers this question. It provides that, in the failure of the popular choice, the Governor and Lieutenant-Governor shall be chosen, and the vacancies in the Senate shall be filled, by the joint action of the Legislature. I need not tell you the particular modes; because the difficulty is so constantly happening, that every one is, unhappily, familiar with the constitutional remedy. But here the Constitution stops. It takes no heed to the va-

cancies in the House of Representatives. It takes it for granted, that a quorum of sixty members will always be elected, and rests contented with that.

Thus, you will observe, that, as regards the Governor, Licutenant-Governor, and Senators, the Constitution prescribes an alternative mode of election. In the failure of a choice by a majority of the popular votes, it requires them to be elected by a purely arbitrary and artificial method. It says, in effect, in regard to these officers, that they must be had, whether or no; and if you cannot have them in one way, you must have them in another.

Now, the positions I have been coming to are these: that where the Constitution requires us, in case of need, to throw aside the majority rule and take up some other, we are bound to consider the comparative value of different substitutes, and take that which comes nearest to the majority rule, — that which is simplest and best; and that a *plurality* of votes is a better expression of the popular will than the present mode of election by the Legislature.

Take the case of the Governor. There are three candidates in the field, and the whole number of legal voters is one hundred and eighty thousand. But the highest candidate has only fifty thousand votes; the second has but forty thousand; and the third has but thirty thousand. You perceive, therefore, that sixty thousand voters have not voted at all, and that, if you carried out the majority rule to its absolute extent, you should require the successful candidate to have ninety-one thousand votes. In point of fact, no Governor of Massachusetts was ever chosen by a majority of *all the existing voters.* Thus, the first modification of the abstract majority rule is to allow the officer to be chosen by a majority of all the persons actually *voting.*

But to go back to the case I have just supposed, where there are three candidates, and there is no choice; what are you going to do about it, inasmuch as you *must* have your Governor? I submit it to you, — I submit it to any candid person, — that the best way is to take the man who has the *highest* number of votes, because you have hereby the *strongest* expression of the popular will that it is possible to obtain.

But by sending all the three to the General Court, it often happens that he who has the smaller, or even the smallest number of votes, — whom the people least want, — is made Governor. This is wrong, unjust, fraudulent. The Constitution never intended it. But it has been done again and again.

Now, what have the Convention done? They have divided the State into forty Senatorial districts, and provided that Senators be elected by a plurality of votes. So far, so good. Could we have a chance to vote on this alone, we should all of us be thankful to take it.

But then they have provided, also, that not only the Governor and Lieutenant-Governor, but the Secretary, Treasurer, Auditor, and Attorney-General (the election of whom is transferred to the people), shall all be chosen by a majority of popular votes, and that in default thereof they shall all be chosen by the General Court, in the same way that the Governor and Lieutenant-Governor now are. And they have also allowed the Legislature to modify this rule, with a restriction as to the time when their law shall go into effect, postponing its action for a year. In my judgment, this course of the Convention was *a mere party trick.* It was in palpable disregard of the teachings of the last ten years, and of the known and reasonable wishes of the people. It was an obstinate adherence, for party purposes, to a rule — the majority rule, I mean — which they knew could not be applied. It was contrary to the express promises and professions of the very men through whose agency, and urgency to procure the plurality system, the Convention was, among other reasons, called. The public sentiment is, as they know, unequivocally in favor of applying this system to *all State elections;* and the people had a right to expect, from the report of the legislative committee, from which I have quoted, that it would be so applied. Those who voted for the Convention voted for it with this expectation. They have been cajoled, deceived, cheated, and jilted by their pretended friends and lovers, and they have now a fair right of action against the signers of that report, for breach of promise of plurality. The object of the whole has been to give the leading offices of the State to

men who can get neither a *majority* nor a *plurality* of the votes of the people, — to men who can get only a *minority* of the votes, — in short, to THEMSELVES.

When I was a boy, one of my schoolfellows got up a lottery. The tickets were ninepence apiece, and quite a tempting list of prizes was offered. Many tickets were sold, but the prizes were not forthcoming. When the manager was remonstrated with on account of the delay, he said *they had concluded not to draw.* So the plurality rule was one of the prizes in the Convention lottery, but when the managers got together, *they concluded not to draw.*

I am well aware that this new Constitution allows the Legislature to modify the action of the Convention on the subject of majority and plurality, so far as state officers, representatives, and city and town officers are concerned. They have shifted their responsibility, and opened a back-door of escape, in a similar manner, upon the system of representation. To these acts of the Convention I reply: —

First, that they had no legal right to do so. The members of the Convention were hired, at a great price, to amend the Constitution, and they had no right to devolve their work upon another set of public servants. It is a well-known principle, that an agent or attorney cannot depute his powers to another, unless authorized to do so by the instrument from which his own authority is derived.

Second, that we have now a mode of amending the Constitution by the action of two successive Legislatures and the confirmation of the people, — which is a far better method than the vote of a single Legislature.

Third, that a Legislature chosen under the outrageous and iniquitous system which the Convention have devised, will be no fair expression of the popular mind, and that the same motives which were controlling impulses in the Convention will be controlling impulses in the Legislatures elected under the new Constitution — *if it be adopted.*

SILAS STANDFAST.

No. IX.

My dear Jotham, — Let us now look back a little. I have asked you to bear in mind the capricious action of the Convention in regard to the secret ballot and the tax qualification, and their disregard of public sentiment and their own previous professions in respect to the plurality rule. I told you that I would endeavor to find a reason for conduct which seemed so unreasonable, — to explain what seemed so inexplicable. I am now ready to do so, for I have *now* got my birds in a line, and can fire at them together.

In the application of the secret ballot, a distinction is made between cities and towns. A mayor is chosen by envelopes, and a selectman by open and unfolded votes. A man that lives on one side of a street must go to the polls, armed and equipped with brown paper and gluten; while his neighbor, on the opposite side, has only his vote to deposit. But the proper distinction between a city and a town is only in degree, and not in kind. It is simply this: that, after a place has reached a certain size, it is more convenient to have a mayor and aldermen to look after its interests than a board of selectmen. The voters are men of the same infirmities, and exposed to the same influences, in both cases. In principle, every argument in behalf of the secret ballot which suits the pavements suits also the fields. If the secret ballot is bad in the village, it is bad in the city; if good in the city, it is good in the village. Town meetings are often the scenes of the most angry contests; the passions of men are most kindled by what lies nearest them; tempests in tea-pots often rage so as to blow the lid clean off. There was once a town — now a city — which was convulsed to the centre upon the question, whether a certain bell should be rung at a certain hour. The war of the bell was nearly as exciting as that of the bucket, in Italian history. There was no bloodshed, but a great deal of ink-shed and a vast deal of breath-shed.

The only argument urged in support of this irrational and

invidious distinction is the argument from inconvenience. It is said, that, as town officers are elected singly, it would be extremely troublesome to deposit, open, and count so *many* sealed envelopes. To this there are several answers. In the first place, there is no law, and no reason, why towns, after choosing a moderator and town clerk, should not elect their other officers on *one* ticket; and, in point of fact, many, if not most, of the large towns do so. Where the town is small and the voters few, it would not be inconvenient to count the votes though in envelopes. In the second place, it is from the friends of the law that we are always hearing it proclaimed that principles should be maintained in spite of inconveniences in the application of them; and it does not become them to blow hot and cold with the same mouth. In the third place, the most zealous friends of the secret ballot deny its inconvenience, without exception or qualification. I like to get my powder out of the enemy's magazine; and therefore I shall quote a few sentences on this point from Mr. Amasa Walker, and with the more pleasure because he is an honest man, and I believe that he believes what he says. He said in the Convention: "*I can conceive that it will greatly facilitate the business of town meetings, when the people get accustomed to it.* In voting for selectmen, for example, a GENERAL ticket might be used. All the names might be put upon *one* ticket, and the candidates be all elected *at once.* Assessors, too, might be voted for in the same manner. *It will enable people in the country, in their town meetings, to elect officers more rapidly and more conveniently.*" Now, Mr. Amasa Walker is the father of the secret ballot, and ought to know what it is.

In the same capricious and arbitrary way, the Convention have dealt with the relation between the payment of a poll-tax and the right to vote. The non-payer may vote in any *state* or *national* election, but not in any *city* or *town* election. He may vote for a governor, but not for a mayor; he may vote for a representative in Congress, but not for a selectman. Why is this distinction made? Why do not the sympathies of democracy go with the poor voter to the end? If his exclusion is wrong in the one case, how comes it to be right in

the other? Why *give him* in one month what he must *pay for* in another? A plain, poor man comes to the polls in November, and deposits his vote, and no questions are asked. He comes again in December or March, and the door is slammed in his face. Why is his reception so different in the two periods? I have heard it said that democracy is "the supremacy of man over his accidents." But this is the supremacy of accidents over the man!

And on what ground is this distinction defended? It is this: that the votes thrown at town meetings and municipal elections act upon the appropriation and expenditure of *money*, and that the man who has not contributed towards the general fund is not fit to have a voice in the disposal of it. That is, a man may take part in the government of the State or common country, and have a voice in *the most momentous questions*, — *the most vital and comprehensive interests*, — and yet, when it comes to the spending of a few dollars, he shall not be trusted. Then his lips are sealed, and his hands are tied. This, mind you, is the *Democratic* doctrine. It is put forth by the friends of the people, who are ever exalting the virtues of the poor, and vituperating every Whig writer and speaker who ventures to doubt whether the men now excluded from voting are absolutely an army of saints and martyrs, marching, as Dickens says, "right slap to heaven, and no questions asked."

Look at the injustice and absurdity of the exclusion. The poor man's interest in town affairs — and especially, if he have children, in school affairs — is immediate, direct, and personal; in state and national concerns, comparatively remote and indirect. Thus, by keeping him out where he most wants to go, you wound him where he is most sensitive. Besides, a town meeting has a certain domestic, almost a family character. Exclude a man from this, and you set a sort of brand upon him which all his neighbors must needs see. They are asked to the feast of *business*, but he is forbidden to come. These little things, which touch men in their most intimate and familiar relations, are the most keenly felt. Every man likes to hold up his head among his neighbors. My life upon it, if you should ask the poor men in your town

which they would value the more, — the right of voting in town meetings, about common affairs and school affairs, or the right of voting for state officers, nine out of ten will tell you, the former. They are more interested in them, — they understand them better, — they are better fitted to vote about them.

And now, my dear Jotham, I ask you again, why the Constitution, in which, more than any other human code, uniformity and consistency are requisite, is such a piece of tessellated work, with here a bit of black stone and there a bit of white; here a bit of sympathy and there a bit of thrift; here a bit of tenderness and there a bit of rigor; here a smile of invitation and there a frown of repulsion; here a dab of gluten and there a fold of paper.

And why were the Convention so indifferent to the demands of public sentiment on the subject of the plurality rule? why did they cling to an inconvenience which twenty-five States have abandoned? why did their leaders eat their own words? why did they load a gun to the muzzle with *professions*, and then refuse to pull the trigger?

When we talked about the proposed Convention, last year, I told you that a Convention to be called under such conditions — struck out from the fiery struggle of heated parties, like a spark from the collision of flint and steel — must of necessity be *a partisan Convention*, reflecting the passions of the State, and not its reason; and that in such a body you could no more deliberate with caution and wisdom upon constitutional reform, than you could experiment upon the composition of gunpowder in the midst of a battle. It was on that ground, mainly, that I voted against the Convention.

My fears were prophetic. The Constitutional Convention proved a *partisan* body; and its *partisan* zeal was inflamed by the consideration that, while the Coalitionists had a majority in the Convention, the Whigs had a majority in the Legislature, which sat a fortnight after the Convention had assembled, and in the same hall. The first act of the Convention — their vote upon the form of notice to the town of Berlin — was a paltry and contemptible expression of *party* passion. The whole Commonwealth of Massachusetts set in motion, to

compel the little town of Berlin to use self-sealing envelopes! The *posse comitatus* called out to catch a truant boy! Sherman's Artillery summoned to smoke a woodchuck out of his hole! And as was the beginning, so was the end. In the purposes at which they aimed, — in the motives which guided them, — the Convention was an eminently consistent body, — a *party* Convention to the last.

Now, upon the subject of party, I profess to be no better than my neighbors. I am a party man. I call a party an association of men, of substantially the same way of thinking in politics, who act together in order to accomplish certain desirable political ends, which, otherwise, cannot be attained. I believe in the necessity of party organization, party discipline, and party drill. And, in the proper place, and at the proper time, I have no objection to a rough-and-tumble party fight. I am ready to give and to take, — to hit and to be hit, — to lay on and not to flinch. *But a Constitutional Convention is no place for party zeal or party contests.* They are as much out of place there as jokes at a funeral, or a country dance in the broad aisle of a church.

You are aware of the present coalition of parties in the State of Massachusetts. This is a fixed fact, or what somebody calls a perfect fact; or, as the French say, an accomplished fact. This *Coalition* had a majority of about a hundred in the Convention; and that was a very stubborn fact. They had every thing their own way, and that was a very comfortable and exhilarating state of things — for them, at least. And so it came to pass that they took counsel among themselves, *how they could so amend the Constitution as to extract from it the means of preserving and transmitting their own power in lineal descent.* They were to make a staff which should support the steps of the Commonwealth, but at the same time have a dagger inside, with which to slay the Whig party. So there were two sets of motives at work, which sometimes crossed each other's path and stood in each other's way to such a degree, that more than once the machinery got out of gear and threatened to come to a dead lock. To drive a tandem team of motives is not very easy. Where you are keeping one eye on the pot over the fire, that it may not boil over,

and another out of the window, that the pigs may not get into the garden, a perplexing conflict of duties will arise, unless there be a perfect understanding between the pot and the pigs, which is a rare thing.

Now the Coalition is stronger in the small towns, as a general rule, than in the cities; and thus, in the Convention, the small towns were to be petted, and coaxed, and bribed, and bought. This was especially the case in the apportionment of representatives, and it was the same in other matters. The "rural districts" basked in their smiles, but the cities languished in the shadow of their frowns. A tone of sentiment was attempted to be created by comparison between the two, always unfavorable to the cities. Boston, especially, was decried, disparaged, ridiculed, and denounced. A sneer or fling at Boston was always a hit in debate; especially if it fell from the lips of one of her own sons. The flavor of injustice was heightened by the sauce of ingratitude.

But the farmers in the small towns and "rural districts," as you well know, do not like the secret ballot, because it is not manly, and because it is a new-fangled innovation which they do not understand. And they are opposed to the abolition of the poll-tax, as a condition precedent to voting, because they know that in that event they shall lose all that is now collected from that source. So the farmers were satisfied with having both of these changes kept out of their town meetings and town deliberations; and as to the poll-tax, the cities were obliged to be included, because not even the spectacles of the Convention could find any distinction between towns and cities on this point.

So the party eagerness to preserve the Coalition explains the capricious and contradictory action of the Convention on the subject of plurality. It takes three parties to make a political coalition, as certainly as it takes two men to make a bargain. But the plurality rule would make it as impossible for a third party to live, as for a rat to breathe in an exhausted receiver. The leaders of the Convention knew this, and recoiled from the gulf of self-immolation, as they drew near to it. Apply the plurality rule to *State* elections, and the Coalition *loses its whole stock in trade and must needs shut up shop.*

While the majority rule is preserved, and the three parties continue, — and the existence of the rule insures the continuance of the parties, — the Governor, Lieutenant-Governor, and the other State officers made elective by the people under the new Constitution, will all, at last, come, by a standing abuse, contrary to the seeming purpose of the Constitution, to be elected by the Legislature; and then will recur, and be prolonged to the end of the chapter, these edifying scenes of barter, traffic, and distribution, which reflected so much dishonor upon the State of Massachusetts in 1851. Then we shall see, year after year, a knot of men in one wing of the State-House, sitting on a platform made at Buffalo, and another knot of men in another wing of the State-House, sitting on a platform made at Baltimore, and a set of office-brokers running between the two to negotiate and bargain. There will be a price-current of offices, as there is of fancy stocks. One day a United States Senator will be worth a Governor and an Attorney-General; and the next, only a Governor and an Auditor. Honors and offices, which should imply and prove popular confidence and reward public service, will be distributed according to the will of a few *trading politicians*, and the Legislature will be merely called upon to register their edicts.

And now, my dear Jotham, I am going to prove what I have said; and I am going to prove it by putting two witnesses of the *opposite* party on the stand.

The debate in the Convention on the plurality question began on the 24th day of May, on the report of the Committee on Elections, applying the plurality rule to *all* elections by the people. The debate continued, with some few interruptions of other subjects, till the first day of June, when, on motion of Mr. Butler, the whole subject was referred to a committee of one from each county, which committee was appointed the next day.

That committee did not report till the 27th day of June; and their report embraced substantially the provisions which the Convention finally adopted.

The subject was not reached in the order of debate till the 18th day of July. In this debate Mr. Schouler moved an

amendment, applying the plurality rule to the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor, and Attorney-General. On the 19th day of July the question was taken on the amendment in the Convention, and one hundred and fifty-nine members voted for it, and one hundred and fifty-nine against it, and the President then voted in the negative. Here it may be remarked that the one hundred and fifty-nine who voted in the *affirmative*, *represented a constituency greater by one hundred and fifty thousand souls than those who voted in the negative.* The resolves reported by the committee, amended in respect to representatives to the General Court, were passed July 22d.

And now I propose to call my witnesses; and the first one I put upon the stand is Mr. Caleb Stetson, a member of the Convention from Braintree, an old-fashioned Democrat, who has never bowed the knee to the Baal of Coalition, a man of practical sense, a successful man of business, honest and upright in all his ways and works. He was in favor of the plurality rule in State elections. On the 22d day of July he made a short speech in the Convention, from which I quote a few sentences: —

"I am free to admit, myself, that I believe that such legislation as has been had in this body is disreputable; and if I understand any thing of the character and feelings of the people of Massachusetts, they will never sanction the tergiversation of this body. . . . . Sir, the changes which have been made upon this floor, from time to time, by the leaders of the Free Democracy of this body, and by those who are called the True Democracy, have been such, that I think, had any spectator been in the gallery, viewing the doings of this Convention, they could not but suppose that the brains of some of such leaders were hung upon a weathercock. It appears to me that certain members have lost sight of the purposes for which they were sent here. *They appear to have but one purpose, and that is, the making of political capital for themselves, and to lose sight entirely of the objects, or the purposes, for which this Convention was called.*"

My next witness is Mr. Edward L. Keyes, who sat in the Convention for Abington, — a Free-Soiler and seceder from the Whig party, — a man of fervid spirit and impetuous tem-

perament, — an impassioned and powerful speaker, — of a mutinous mood, not always docile to party dictation, — and sometimes disconcerting his friends by his explosive rhetoric. Immediately after the tie vote I have mentioned on the plurality question, on the 19th day of July, and the President's negative vote, he said as follows: —

"I must confess, however, my surprise at the vote just taken; and while I am filled with surprise, I must also be allowed to express my gratification at the fact, that this Convention has been saved from lasting disgrace by the casting vote of the Chairman; for *had we lost this question, what should we not have lost? Every thing. The Liberty-party in the Convention would have been defeated in all the most important matters; the* WHIG PARTY WOULD HAVE BEEN TRIUMPHANT, AND IN A FAIR WAY TO HOLD THE REINS OF POWER FOR AN INDEFINITE PERIOD. Sir, had that amendment succeeded, I would have prayed Heaven that the people might have hissed the whole amended Constitution into oblivion."

After these citations comment is unnecessary. Where a prisoner pleads guilty, the case is not put to the jury. It may be considered as proved, that, if you will indulge me with a pun or two, the *singularity* of the action of the Convention upon *plurality*, was owing to the *duality* of parties in the Coalition. It was a base, vulgar bargain, for party purposes. So of the secret ballot: so of the poll-tax.

The Vicar of Bray, who changed his religion half a dozen times in the course of his life, always maintained that he was a man *of principle;* and that this principle was to live and die Vicar of Bray. With this interpretation, the Convention were eminent and conspicuous for their devotion to principle. More timid, less scrupulous spirits sometimes falter, or retrace their steps. Compunctious visitings intrude and arrest progress or change direction. But not so with that body. They went right on, neither pausing nor turning aside, and they made a party Constitution, and not a State Constitution.

SILAS STANDFAST.

No. X.

My dear Jotham, — In my present letter I wish to speak of the changes made by the Convention in the appointment and the election of certain officers. By the proposed Constitution, the Secretary, Treasurer, Auditor, and Attorney-General are to be chosen annually by the people, by a majority of votes; and in default of choice, then by the General Court, by *concurrent vote*, in the same manner that the Governor now is. At present, the Attorney-General is nominated by the Governor, and the other three officers are chosen by the General Court, *in joint ballot.*

By the proposed Constitution, Judges of Probate, Registers of Probate, Sheriffs, Clerks of the Courts, Commissioners of Insolvency, and District Attorneys are to be elected triennially by the people of their respective counties and districts, by a *plurality vote.* At present, all Clerks of the Courts are nominated by the Judges of the Supreme Court. Trial Justices, newly created officers, are also elected for three years.

As to one or two of these proposed changes I am indifferent or doubtful; to the rest I am entirely opposed.

I am indifferent as to the Secretary, Treasurer, and Auditor. Whether chosen by the people or by the Legislature, the result will be probably much the same. In either event, the candidates will be selected by the managers of the respective political parties into which the State may be divided, — votes will be controlled by party ties, — the General Court in the one case, and the people in the other, being only called upon to confirm a caucus nomination. I am opposed, more or less earnestly, to the rest. Thus as to the Attorney-General, District Attorneys, Commissioners of Insolvency, and Registers of Probate, especially the first three, no good reason has been given for a change. The present mode of appointment has worked well; it has secured to us faithful and competent officers. I have heard of no dissatisfaction, except such as was manufactured to order. And in political matters I would always let well alone. I have heard of an epitaph on a tomb-

stone, which was in these words: "I was well: I would be better, and I am here." Where no inconvenience is felt, — where no discontent is expressed, — I would not make a change simply *for the sake of change.*

The qualifications of an attorney-general, a district attorney, and a commissioner of insolvency, are professional rather than political. They rest upon professional attainments, which the general public can only estimate by their results, and from the report of their professional brethren. The qualities which enable men to discharge the duties of these offices worthily, are by no means identical with such as commend them to the favor of those who hold open the door of political advancement. An executive nomination, subject to the confirmation of the Council, — where the responsibility is brought home, — is, in my judgment, more likely to secure us good public servants, in these departments, than a popular choice. Moreover, I hold it to be unsafe to have an attorney-general dependent on the popular will of a party, where the party may be very desirous that some of its members should not be prosecuted, who ought to be; nor should I be willing to have commissioners of insolvency so appointed, where insolvents are numerous, and could often influence a county election, for their own purposes.

There are four sorts of officers left to be considered: Sheriffs, Judges of Probate, Registers of Probate, and Clerks of the Courts.

The office of sheriff does not require any special training for the discharge of its functions. The popular will *may* make as good selections as executive appointment; but the danger is as to the effect of the proposed change upon the officer himself afterwards; and this danger is great. By the present Constitution he may be reappointed: under the new one he may be rechosen. His being rechosen will depend upon his favor with some political party; and that means with the *leaders* of that political party. But the duties of a sheriff should be discharged without fear or favor. He is often called upon to do unpopular acts; and the attitude which he generally assumes towards the community is not of a kind to awaken agreeable sensations in those whom he approaches.

He will sometimes be called upon to oppose the headlong current of a mob; he will sometimes be brought into official collision with men of great political influence. It is highly desirable, therefore, to have a man in this place who will be guided only by a sense of duty, tempered by a sense of humanity. But make it his object to become popular, especially with politicians, — let him be counting the chances of a re-nomination at some political caucus, open or *secret*, — let him be anxious to gather in a stock of personal good-will, — and you may be sure that, in some particular emergency, in some conflict of impulse and duty, he will be found wanting. Remember that you need, in a sheriff, those qualities which will meet rare, exceptional, and dangerous cases. His common and daily duties are as plain as the road to mill, and as easy as eating and drinking. Anybody will serve a writ of John Doe against Richard Roe, or arrest a pickpocket, or carry a burglar over to Charlestown, or keep order in a court-house; but, sooner or later, the test of the man's honesty, firmness, and independence must be applied. The fountains of popular madness are broken up, — a mob is tearing down a convent, or threatening to tar and feather an Abolitionist, — the community is set on fire by a fugitive slave case, and some desperate fanatics are urging the sheriff to have the fugitive taken by force from the United States Marshal, — and your sheriff should be a man to meet these emergencies. Taking life as it is, and men as they are, in what manner are you most likely to have and to keep officers of this high stamp? Let your own experience of life, your own observation of men, answer this question.

Then, as to Judges of Probate. The qualifications for this office are both professional and personal. The judge need not be a *great* lawyer; but he should be a *good* lawyer, so that his decisions need not be often appealed from. A man may make an excellent judge of probate, and not be what is called a popular man; so he may be a very popular man, and yet not make the very best judge of probate. By the proposed change, we shall be likely to have needy and active politicians, rather than good lawyers and men of sound, safe, practical sense, — talkers, rather than wise men, — stump-speakers,

rather than cautious and conscientious magistrates. In view of these considerations, — in view of the fact, that from first to last, throughout the Commonwealth, we have had this office filled by such worthy, faithful, and competent men, — I prefer executive appointment to a popular choice, always at the mercy of political parties.

But in all judicial posts, the *tenure* of office is of more importance than the *mode of appointment;* that is, the way that you get a man upon the bench is not of so much consequence, as the influences which act upon him when he is seated there. I will not anticipate here what I propose to say when I come to speak of the action of the Convention in degrading the tenure of our Judges to a period of ten years, but only urge such considerations as seem exclusively applicable to the particular class of magistrates we are now discussing.

A judge of probate stands in relations to the community which demand, above all things else, honesty, firmness, and impartiality. He must be above suspicion in these respects. He is constantly deciding questions of property; and the purse-vein of our people beats sensitively. He has to pass upon matters where family feeling is involved, — to lay his hand upon chords which run back to the core of the heart. At present, — holding his office upon the tenure of good behavior, — directly responsible only to the Legislature, who may remove or impeach him, — we can rely upon the best exercise of his best faculties. The judge of probate is now, to borrow the language of the Constitution, "as free, impartial, and independent, as the lot of humanity will admit." But elect him *for three years*, make him responsible to a political party and a political press, and it cannot be so. Let me put a case. There is an administration account to be settled, and on one side there are a poor widow and her orphan children, and on the other, the administrator, who happens to be a man powerful in influence with the political party upon which the judge depends for re-nomination and re-election. Will this judge be no respecter of persons? Will he look at every item in that account with a single and a fearless eye? We read, that "a father to the fatherless, and *a judge of the widows*, is God in his holy habitation." Will your triennial

magistrate be "a judge of the widows" in the sense in which the Psalmist uses the words?

As to Registers of Probate, why should we make a change when we are well off? We have now, and always have had, competent and faithful officers in these places; and as I do not believe that we are going to have our kingdom come on this earth, I am shy about giving up any thing that works uniformly, positively well. If you have a razor that shaves well, or a scythe that mows well, or an axe that cuts well, you would never think of swapping it off for a new one. You would not run the risk of a change. Why not apply the same rule to laws and institutions?

The case of Clerks of the Courts is much worse. I think that the action of the Convention on this head is nothing less than an outrage. I use the word advisedly. It involves a want of all decent respect for the Judges, so unlike the usual character of the people of Massachusetts, that nothing more strongly illustrates the partisan madness of the Convention, and their want of confidence even in the judges for whose appointment by popular and party votes they provide. Clerks are now appointed by the Judges, as they manifestly ought to be. All propriety, all convenience, all decency, are in favor of it. The Clerks are the agents and ministers of the Judges; the relations between them should rest upon personal confidence. It is their duty to execute, and to execute instantly, the orders, decrees, and judgments of the courts; and therefore they ought to be under their absolute and immediate control. Justice may be stopped else. The people should be no more asked to choose the Clerks of the Courts, than to choose the clerks in the office of the Secretary of State, or the nurses in the hospital at Worcester.

But the places of the Clerks are desirable posts, because they are comparatively lucrative; and therefore they must be had, in order to bestow them upon greedy office-seekers. They must be put into the public crib. They must feed the ravenous maw of a class of men whom I look upon as among the chief nuisances of the land, — the trading politicians, — who, leaving their lawful calling, take to peddling cheap politics about the country, writing vulgar squibs in

vulgar newspapers, and making speeches, half venom and half froth, like the slaver of a mad dog, — men who have no knowledge, no principle, no decency, no truth, — whose whole stock in trade is a brazen front, a loud voice, and an assortment of bad language. Would that a strong wind from the mountains might blow these locusts into the sea, so that the land might have peace! There is one consideration which applies to all these offices in which it is proposed to substitute popular choice for executive appointment. As it now is, we have the responsibility *brought home* to the Governor and Council, and they are amenable to public opinion if they make bad appointments. But devolve the choice upon the people, and the responsibility becomes so divided and distributed, that it practically ceases to exist. The choice of the people in offices is like a woman's choice of a husband; which is a negative choice, and cannot go beyond the offer made. So the people must select one of the candidates proposed to them, while the Governor's range is unlimited. The contemplated change increases a power already too great, — the power of *caucuses* and *conventions;* which really means the power of a secret, irresponsible junto of political wire-pullers. A convention is no more than a decorous ceremonial, in which all has been previously arranged, cut and dried. The chairman of the committee who goes out to nominate officers has the list of them in his pocket before he starts. The President whom that committee comes in to nominate, has his speech all written out and *committed to memory* at home. The chairman of the committee on resolutions has them ready prepared, after careful advisement with the political managers. The candidates are settled beforehand. All things are conducted with a commendable command of countenance, which, however, imposes upon none but the small boys in the gallery. All the work has been done, before the meeting is gathered, by a few active, cunning politicians, sitting, with closed doors, around a table, *without reporters and without responsibility.*

When this matter was under discussion in the Convention, and it seemed pretty evident how the vote would be, it was asked what would be done in case it became necessary to remove one of these officers, elected for three years. Sup-

pose he should become insane, or physically disabled, or be guilty of gross misconduct, how is the public exigence to be met? The committee charged with the subject took the matter in hand afresh, and the Convention, under their guidance, adopted a provision, which is so remarkable that I quote it entire: —

"The Governor, by and with consent of the Council, may at any time, for incapacity, misconduct, or maleadministration of their offices, remove from office Clerks of Courts, Commissioners of Insolvency, Judges and Registers of Probate, District Attorneys, Registers of Deeds, County Treasurers, County Commissioners, Sheriffs, Trial Justices, and Justices and Clerks of Police Courts: provided, that the cause of their removal be entered upon the records of the Council, and a copy thereof be furnished to the party to be removed, and a reasonable opportunity be given him for defence. And the Governor may at any time, if the public exigency demand it, either before or after such entry and notice, suspend any of the said officers, and appoint substitutes, who shall hold office until the final action upon the question of removal."

This arrow, you will notice, comes out of a *Democratic* quiver; but it looks to me as if *despotism* had sharpened the point. It is true that the Governor may now remove some of these officers, but it is *because* he appoints them, and *is therefore responsible for them.* But he cannot remove a Judge of Probate, or a Justice of the Police Court, or a Register of Deeds. His power is enlarged in the direction in which it ought to be diminished. I need not tell you how grossly the authority here vested in the Executive may be abused, in times of great party excitement, *when the protection of the Constitution is most needed*, and how completely the will of the people, which the authors of these changes *profess* to hold so sacred, may be trampled under foot and annulled.

Just look at the relations established between the Judges and Clerks of Court by these bungling and mischievous innovators. The Judges must submit to have their agents nominated by a political cabal, chosen by a political party, and removed by a political Executive! What would you say, if the men that worked on your farm were hired by a town meeting, and discharged by the chairman of the selectmen?

That would not be a bit more absurd or more grotesque, than the way in which the judges have been dealt with. The latter is as much more outrageous and indecent, as execution of judicial precepts is more important than the getting in of hay.

Again, the vagueness and indistinctness of the provision are as conspicuous as its offensiveness. The judges of probate, sheriffs, &c. are to be chosen on the Tuesday next after the first Monday in November, for three years next following the first Wednesday in the succeeding January. Now suppose the Governor and Council remove one of these officers in March, how is the office to be filled in the interval between that time and November; because the substitute can only hold office till the question of removal is settled? And in case of removal, shall the new officer be chosen for an entire three years, or for the unexpired portion of the three years of the party removed? If you have an opinion upon these points, I will trouble you for it.

At any rate, it is plain that, when the Governor in March has removed the officer and the election is to come on in November, the officer will spend the interval in intriguing, and moving the passions of his party against the Governor, so as to get re-elected in spite of him, and will sometimes succeed, — perhaps often.

And now I proceed to close this long letter with a single suggestion. The end of all these proposed changes will be, to *lessen the value of the several offices* which they touch. Take from the Governor his patronage and responsibility, and he becomes an empty ceremony. Elect the Attorney-General and District Attorneys by a popular vote, and you expose them to all the indecencies and virulence of our political press, — to the certainty of having their whole personal and professional lives, and the lives of their fathers, grandfathers, brothers, and first-cousins, ransacked, in the hope of finding something that may be turned to account in a party contest. Men of high professional standing, who alone ought to fill these offices, will not consent to be dragged through the kennels of party in this way, although they might be willing to have their names submitted by the Governor to the Council. Your candidates must therefore, if this plan be adopted, be taken

from a *lower* range; from more obtuse natures; from spirits too familiar with filth to fear its contact. *Thus, in different ways, the value of all leading State offices is impaired.* I think this very unwise and mischievous. There is always a competition between the general government and the State governments, for the able men of the country, in which the general government is always bidding higher and higher. The talent of the land is more and more tending to Washington. We have recently seen two State Governors resigning their places, to take inferior, but more lucrative offices, under the general government. Still, there are two States which have endeavored to counteract this tendency, by making State offices valuable and important, and creating a high tone of State feeling and State pride. These two are Massachusetts and South Carolina. The consequence has been, that the influence of these States, *throughout the country*, has been proportionately much greater than their territory or population. Their policy has been wise, honorable, and successful. Shall Massachusetts abandon it? Do you want to see the cream sent to Washington, and only the skim-milk left at home? This is not an obvious consideration, but to me it is a very important one. I pray you to ponder it.

SILAS STANDFAST.

No. XI.

MY DEAR JOTHAM, — I will now turn to the action of the Convention upon the Judiciary. On this subject we all feel much. Respect for the law is a strong, popular instinct in Massachusetts, — in which you and your neighbors share; and I am sure that you would never, knowingly, give your hand to any change which will weaken the administration of the law.

Our Judges, at present, are appointed by the Governor, and

confirmed by the Council, to hold office during their good behavior; but they may be removed, summarily, by the Governor and Council, on address of the two Houses, without assigning any reason therefor; and they are also liable to impeachment and dismission for cause assigned. By the proposed Constitution, they are to be appointed for only ten years; and at the end of that period may be reappointed.

This change is simple and explicit. As you see, it takes but very few words to tell it. It does not look formidable, nor does the thing strike the senses as dangerous. A plain man goes into a court-house, and sees a grave, middle-aged gentleman, in a suit of black, listening to the arguments of counsel, or charging a jury. Every thing is conducted with decency, decorum, and propriety; the sheriff maintains order; the lawyers say, "May it please your Honor," when they address the court; and it is difficult for such a spectator to comprehend that it is of any great importance whether a piece of parchment, which the judge has in his desk at home, contains the words "during good behavior," or "for ten years." He may feel that so respectable and dignified a gentleman will behave very well in either event. He may say that he cannot understand why people should get into such a worry about what they call *the judicial tenure*. I will tell you.

Every man that has reflection enough to get in his firewood for winter, will admit that it is desirable to have *the very best judges that we can possibly get*, for the safety of our persons and character and property is intrusted to their learning, wisdom, and uprightness. In what way, then, are we to secure this advantage? In the first place, we must create and maintain a tone of public sentiment which will cause the office and the person of a judge to be respected. In the next place, we must give the judges honorable salaries, so that fit men may not feel they should be guilty of injustice to their families by taking a seat upon the bench. In the third place, we must give them a sense of security, so that their minds may not be troubled by any uneasy apprehension for the future which we can remove. The moment a man begins to worry about to-morrow, his value for to-day begins to be impaired.

Now, the first and immediate effect of this proposed change

will be to make a seat upon the bench less desirable than it is at present; and, consequently, you will be obliged to go lower down on the list of the bar before you come to a man who will be willing to take it. Let me illustrate this. In general, the best age to be elevated to the bench is from forty to forty-five; a period when a man's place at the bar has become fixed, and he has as much business as he ever has. Suppose that a lawyer of this age, with a large and lucrative practice, and a young family growing up around him, is given to understand that a seat upon the bench may be tendered to him. As things now stand, he will reason with himself after this fashion: — "It is true that, by going upon the bench, I give up at least one half of my income, but then I assume a post of great usefulness and respectability, and though I may have to work nearly as many hours as I do now, yet my work will not be so wearing, exhausting, and exciting, and I shall escape much of this haunting and sleep-murdering sense of responsibility. My health will undoubtedly improve. Perhaps I cannot hope to keep all the business I now have, if I continue at the bar, against the competition of the able young men who are treading upon my heels; but a seat upon the bench is a possession which I can hold so long as my faculties are spared to me." The end of this self-communion is, that, with a little persuasion, a flattering interview or two with the Governor, a favoring intimation from the Chief Justice, — perhaps a little influence from one who loves her husband well enough to make sacrifices for his health and happiness, — he accepts the proffered post.

Suppose, however, that the new Constitution should be adopted, and that a lawyer of the same age and similar position has the same offer made to him. He will say at once, "I cannot think of taking this place. I am now maintaining my family, educating my children, and, at the same time, putting something by for a rainy day. I go upon the bench, and at the end of ten years, when my clients will have forgotten me, — when the discharge of judicial duties will have unfitted me for resuming practice, — I may be turned adrift upon the world, and with very little in my pockets for ballast. I cannot take one step towards the bench. I feel the hands of my

children pulling me back by my coat-tails.". Thus he would surely reason; and he would reason rightly. It is of no use to urge that he might, and probably would, be reappointed at the end of ten years. *He also might not;* and a prudent man will not take the risk.

I have, as you well know, a very high respect for the judicial office. I think one such judge as Judge Story *was*, and Chief Justice Shaw *is*, is worth as many brawling politicians like ———, (on the whole, I will not fill up the blank,) as could stand between here and Connecticut River. The function of a judge is much higher than that of a lawyer. In the practice of the law there are moral and intellectual dangers, which it requires constant self-vigilance to guard against. But there is nothing in the duties of a judge which does not contribute to the best growth of the mind and character. But the office of a judge is not in all respects desirable, even to those who have the requisite learning and ability; for the vigorous health and even temperament, without which no judge can do his work with comfort to himself or anybody else, are not given to all able and good lawyers. His duties are severe and monotonous, — a hard and steady pull, — ever the same. He has to work from the first day of January to the last day of December, and yet not always get his work done. He must give all his faculties this week to learn the details of a case, which next week he had better forget. His mind is always taking in and discharging cargo. And then the bad air he has to breathe, and the interminable long speeches he has to hear from empty and resonant bladders of the law, who, on a question of a rain-water spout, begin with the deluge! It is, after all, not a very tempting place; not so tempting as I wish it were.

Nay more, a seat upon the bench — which it is of such vast importance to have worthily filled — is already *growing less and less desirable.* Old men will tell you, that the person and office of a judge are not so much respected as when they were young. Old lawyers will tell you, that a seat upon the bench is not the object of professional ambition that it once was. The dreams which play around the pillows of our ambitious young lawyers are of *political, not of judicial advancement.*

Their air-castles are all built at *Washington.* To be representatives, senators, foreign ministers, — these are the rainbows painted on the clouds of their future.

The effect of such a change as the new Constitution proposes will be, to make the judges on the bench *inferior to the leading lawyers at the bar;* and that would be a thing not only lamentable to contemplate, but most unfavorable to the welfare of the community, and the great ends of justice. At present, when a client comes into my office, to consult me about his case, I feel assured that he will have a fair trial, whoever may be opposed to me; and that whatever I may have to say will receive a candid and unbiased hearing, and get all the weight it is entitled to. But suppose another state of things, — such as surely will come, should this change go into effect, — and I might be constrained to say to my client, "You have got a good case; the law and facts are on your side; but then it will have to be tried before Judge Slowcoach, and Mr. Vivid, the great man of our bar, is opposed to you; and he *owns* that judge, — he has got as good as a bill of sale of him in his pocket; and when *he* is in court, the judge does not dare to say his soul is his own. I therefore cannot give you any assurance that you will have a fair trial." Is this a comfortable thing for a lawyer to say, or for a client to hear?

No man who wishes well to his country will ever do any thing to weaken the Judiciary; for the Judiciary, do what we will, is the weakest of all the departments of government. It is weaker than the Executive, — it is far weaker than the Legislative. Its natural support is in the reason and judgment and conscience of the community; but our passions array themselves on the side of the Legislature. A conflict between the two is no impossible event; and, in case of such a conflict, how, according to their sympathies and affinities, would men be found ranging themselves? Around the Judiciary would gather the old, the grave, and the cautious, — the sickly conservatives that ought never to have been born, — the old fogies, that ought to be ashamed of themselves for being alive; they would stand around the bench, with their spectacles, their crutches, and their walking-sticks. And on the other side

would be mustered the hosts of "Young America," led on by the Wilsons, the Butlers, and the Burlingames, all full of youth, and passion, and strength; and, in the shock of the encounter, what would become of the Judiciary and its friends?

> "Ask of the tree which the lightning has shattered,
> Ask of the leaves which the storm-wind has scattered."

Therefore, to lower the Judiciary — to make it weaker and less honored — is as superfluous as to increase the patronage of the President of the United States, or add to the length of a New England winter.

As I said in a previous letter, I think that the *tenure* by which a judge holds his office is of more importance than *the mode of his appointment.* In my judgment, an executive appointment, during good behavior, is the very best way to get a good judge, *and especially the very best way to keep him good;* but, as at present advised, I would prefer to have these magistrates chosen by the Legislature, or the people, *during good behavior*, rather than appointed by *the Governor for a term of years;* because then I should feel that, *after they had begun to act in that capacity*, there would be no influences upon them which would impair their value as judges.

Let me quote to you here, as a sort of introduction to what I am going to say, a sentence or two from our Bill of Rights, a part of which I have cited before: —

> "It is the *right* of every citizen to be tried by judges *as free, impartial, and independent as the lot of humanity will admit.* It is, therefore, not only the best policy, but *for the security of the rights of the people, and of every citizen*, that the Judges of the Supreme Court should hold their offices so long as they behave themselves well; and that they should have honorable salaries, ascertained and established by standing laws."

These are simple, noble, comprehensive words. Nothing can be taken from them; nothing can be added to them. You will note the connection which the Constitution recognizes between the independence of the judges and "*the security of the rights of the people, and of every citizen.*" Here is the rub; the thing is touched with a needle's point. You will observe, too, that the Constitution starts with an admission of human

infirmity in judges, and then proceeds to guard the people, as far as possible, against that infirmity. The Constitution is right in both. The fact is true; the precaution is wise. The judge is, first, a man; second, a lawyer; and, third, a judge. The framers of our admirable Constitution proposed to themselves two objects in regard to the Judiciary: first, to get the best possible judges; and, second, to secure afterwards the best exercise of their best judicial faculties. The proposed change will do neither. It will give us judges inferior to those we have always had, and will expose them to dangerous influences and temptations heretofore unknown in Massachusetts.

What is the first great quality in a judge? Beyond all question, INDEPENDENCE. He may be learned, wise, and conscientious; but if he be not independent, if he have not the courage which rests upon independence, there is not the least security that his good qualities will move in the right direction. This is the guardian virtue, which stands at the gate and keeps watch over the rest. Now, let the judge know and feel that the Governor, at the end of ten years, may or may not reappoint him; suppose him also to be a man of little property, and dependent for the just support of his family upon his income, — do you imagine that he will be perfectly independent, that no shadow of apprehension, no touch of favor, will ever pass over his mind? On this point, I am well aware that Democratic orators and politicians, taking counsel, doubtless, of their own pure instincts and pure associations, are apt to soar to heights of transcendental disinterestedness and magnanimity, quite out of my sight; but then I remember that on the secret ballot their speech is all the other way; for *then* the voters of Massachusetts become very frail and dependent, and must be protected against the influence of their moneyed employers. Judges are cut out of the same cloth as other men, and I know enough of human nature to know that *all* men should pray fervently to be delivered from temptation. If you will insure me angels on the bench, with wings folded up under their coats, I may cease to oppose the new Constitution on this ground; but you cannot get angels to serve you in this capacity; and, under the proposed change, you will not get a class of men for judges that will come very near to angels.

It is a stern fact, from which there is no escaping, *that he who controls a man's bread exerts, sensibly or insensibly, more or less control over his thoughts and his will.* I do not mean to say, that, come what will, we shall have base, venal, and corrupt judges in Massachusetts, or that their sycophancy and subserviency will be palpable, glaring, monstrous; but I *do* say, that the lofty and eminent excellence which we have had in that department will no longer be there; and that we must hereafter be content to associate with our ideas of a judge, a less conspicuous merit, and a less distinguished ability, than we now rest upon for the protection of our persons, our property, and our characters, — in short, all that is worth protecting or living for.

As a man thinketh in his heart, says the wise man, so is he. This saying, applicable in so many ways, applies also to the case of judges. At present, no man, however dissatisfied he may be with the decisions of the court, can say, or have reason to think, that the judges have been moved by any thing but their convictions; but let them be in a position to give color to the charge of being actuated by foreign influences, and especially political biases, and discontent will be sure to vent itself in that way. You know how many of the cases that come before our courts have more or less of a political aspect, especially constitutional cases, and you also know that many lawyers are vehement politicians; but perhaps you do not know what I can tell you, that there are *some* lawyers who cannot conceive it to be consistent with the scheme of Divine Providence in the government of this world, that *they* should ever be mistaken. Therefore, when the court decides against *them*, they feel as if chaos were come again, — that suns will cease to rise, and stars refuse to shine. Now would you like to see such a state of things in Massachusetts, as that a lawyer-politician might ventilate his wrath, after an adverse decision, in words like these, muttered in the bar, but not inaudible: "You think it a fine thing to sit up there on the bench and make law to suit your own politics; but your course will soon be run. Your ten years will be out next year, and we will pitch you overboard with as little ceremony as you pitch overboard a law that does not

suit you, and put a man in your place who will have some sympathy with the people, and respect their wishes a little more than such an old fogie as you."

In England, the judges are independent of the crown; formerly they were not. The change was considered, and justly so, as a great triumph of constitutional liberty. In the course of the debates in the Convention, a speaker of the Coalition party remarked, that it was right that the Judiciary should be independent of the crown in England, so that it might stand between the government and the people; but that here the people are the sovereign, and we do not want any thing to come between *them* and the government. There is great confusion of ideas in this statement, although it is constantly advanced against an independent Judiciary. It is not true, that in England the Judiciary stands between the *government* and the *people;* it stands between the *government* and the *individual.* And just so here, the Judiciary stands between the *government* and the *individual*, and it ought to stand there; but then the *government* here is the *people;* and we want a Judiciary strong enough *to protect the individual against the people, in case the people should be wrong.* We want a judge who will *not* fear a political party or a political press. We insist that every criminal, however odious his crime may have been, should have a *fair* and *dispassionate* trial. We claim and need a Judiciary strong enough to protect a trembling culprit against popular violence and political persecution. We insist, when the constitutionality of a law is before the court, that no judge should feel that his chance of reappointment may be affected by his decision. We claim to have political offenders tried as impartially, — with as much freedom from executive influence, — as John Marshall tried Aaron Burr. Does any man say that John Marshall would have tried Aaron Burr in the same way, had the tenure of the judges of the Supreme Court been for ten years? I reply, that, with such a provision in the Constitution of the United States, you would never have had John Marshall, or any man like him, on the bench.

The Judiciary of Massachusetts is one of the brightest jewels in her honored crown; we do not perceive all its lustre,

because it is worn upon our own brow. But go to Arkansas, to Wisconsin, to Georgia, and ask there what is the authority of the Massachusetts Reports, and you would be enlightened on this subject. Your heart would swell with honorable pride at the respect paid, in those distant States, to the decisions of *our* Judges, whom the new Constitution insults by virtually pronouncing them unfit to appoint their own clerks! Such influence as we exert, through our courts, is one of the purest and highest that man can have over man. It has no alloy of passion or prejudice; it is the calm supremacy of truth, reason, and conscience. Are we to renounce this? Are we to throw it away in pure wantonness? I trow not. The people have been taken by surprise upon this question of the Judiciary. They will give their answer at the polls.

SILAS STANDFAST.

No. XII.

MY DEAR JOTHAM, — We have now done with that portentous omnibus, the First Proposition, — an omnibus so huge, that a passenger at one end cannot see a passenger at the other, —and therefore I can call your attention to the Third Proposition, touching the right of juries in criminal cases, which is as follows: —

"In all trials for criminal offences, the jury, after having received the instruction of the court, shall have the right, in their verdict of guilty or not guilty, to determine the law and the facts of the case; but it shall be the duty of the court to superintend the course of the trials, to decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings; and also to allow bills of exceptions. And the court may grant a new trial in case of conviction."

In order to apprehend the full force and effect of this proposed change, we must first ascertain what is the law, as it now

stands. And on this point, it is fair to state that there is some difference of opinion among lawyers and judges. This arises partly from the imperfection of language, and partly from the fact, that in general a man's convictions and opinions follow in the lead of his sympathies, passions, and prejudices. We believe what we wish to believe; truth is what a man *troweth*. Under our system of law, the rights and powers of the jury in criminal cases are expressed in a well-known legal proposition, *that the jury are judges of the law as well as the facts*. But from these words one man will extract one meaning, and another another. A man who thinks that there is danger from the encroachments of the Judiciary, will put one interpretation upon them; while another, more apprehensive of popular passion, embodied in the jury-box, will put another, and both will be justified to their own consciences. I will explain these words to you, as I understand them; and as they have been recently expounded by the Supreme Court of our State.

Every criminal issue involves questions of law as well as questions of fact. For instance, an act of homicide is committed, that is, one man kills another. This may be murder, or it may be manslaughter, or it may be justifiable or excusable homicide. In the first case, the punishment is death; in the second, it is imprisonment; in the third, the person is acquitted. When a man is on trial for murder, and the defence is that the act was no more than manslaughter, — and when the evidence has all been put in, — the judge, in his charge to the jury, does not say to them, in so many words, that the prisoner is guilty of murder or manslaughter, because that would be an interference with their peculiar and exclusive province; but he explains to them the legal principles by which murder is distinguished from manslaughter, tells them that such and such palliating circumstances discriminate the one offence from the other, and, at the close, says to them, that they must apply these rules of law to the facts in the case, as they have heard them from the witnesses on the stand, and find their verdict accordingly.

Thus, there are two elements put into the case: first, the facts as proved by the witnesses; second, the law as laid

down by the court. With the former, the court have nothing to do, they have no right to tell the jury that they must believe this witness and not that one, — that this statement is true and that is not true, — because this would be an intrusion upon the proper and exclusive province of the jury. But as the jury, and the jury alone, are to weigh the facts, so the court, and the court alone, are to expound the law. This is their function and their duty.

But by the proposed change the jury are to have entire control over both the law and the facts. They have the right to "*determine* the law," — that is, to fix or settle the law. They are to take the judge's charge, not as an *authoritative exposition of the law*, but as a *piece of evidence respecting the law*, which they may believe or not, just as they choose. He is no longer to *instruct* the jury, but to *advise* them; he is not so much a judge as a presiding officer, — a moderator of a judicial town-meeting.

We judge of a tree by its fruits. What sort of fruits will this tree bear? The instant and obvious effect of the proposed change will be, to destroy the certainty of the criminal law. This law will be just what the twelve judges, sitting in the jury-box, may determine it to be in each particular case. There will be one law in Boston, and another in Worcester, and another in Springfield; one to-day, another to-morrow, and another next week. The government will be a government of men, not of laws. At present, a client comes into my office and tells me that he has been knocked down, or that somebody has called him a thief, and he wants my advice as to whether he shall resort to a civil action, or a criminal prosecution, for redress. I can now advise him, with some reasonable confidence, as to his rights in either event; but let this proposition be adopted, and I must say to him, "If you bring a civil action, the result will be so and so; but if you have recourse to a criminal prosecution, I can give you no *opinion*, but only a *surmise* or a *guess*. If the foreman of the jury which tries the indictment should chance to be a political or personal enemy of yours, they may bring in a verdict of 'Served you right,' or 'Good enough for you.' You are a Whig. *That* bench may be of opinion that there is no law

in Massachusetts against a Democrat's knocking down a Whig."

Let me go a little further, and imagine this professional dialogue continued a few steps. Suppose my client to be a man of a large spirit, inclosed in a small body, and say to me, "Well, Squire, the next time a great strapping fellow, that has not got a cent in the world, knocks me down, what will be the consequence if I stick a bowie-knife into him, as I mean to do?" Now, to use a homely expression, the boot is on the other leg, and I can say to my little game-cock of a client, that perhaps the twelve judges who try *that* case may be of the opinion that there is no law in Massachusetts against sticking a bowie-knife into a man who has knocked another down.

It is no sufficient reply to these considerations to say, that practically such results are not likely to happen. It is always right to argue against any law or rule from its *possible* consequences. I do not want a fair-weather and smooth-water law; but one that will hold when the wind is blowing great guns, and the waves beating on the ship like so many trip-hammers.

Upon what are called the rights of juries, there is a great deal of declamatory nonsense put forth, founded upon analogies so false and apprehensions so grotesque, that they can only be explained by a want of common sense or common honesty. In England, two hundred years ago, the bench was disgraced by a set of judicial bloodhounds, who hunted the martyrs of liberty to death, with as little regard to law as to humanity, and a jury was merely an instrument to execute the will of a cruel and wicked tyrant; *therefore*, the rights of the juries here, in America, in the nineteenth century, are likely to be trampled under foot in the same way, and must be protected against similar encroachment! Why, in England even, such scenes will no more happen again, than will Queen Victoria drive down to the Parliament House in her state coach, and demand the bodies of Cobden and Bright to be given up to her, for making radical speeches. And in our country such things will occur, — such apprehensions will become real, — when ice fails in Labrador, or talking in Con-

gress, — when Everett grows prosy, and schoolboys protest against holidays, — when Irving's "Sketch Book" is not read, and the Debates of the Convention are, — when the name of Washington ceases to be reverenced, and that of Benedict Arnold begins to be, — *but not till then.*

Again, these trials in England were state prosecutions, in which the prisoner was charged with attempting to overthrow the government. Would it not be a good joke to see a man trying to overthrow the government here, which would be like trying to turn over the great pyramid of Egypt, and set it up on the apex? Would it not be curious to see where or how he would begin? Our government is like a rocking stone, — one man can shake it, but a hundred thousand cannot overturn it. When was our last state prosecution in Massachusetts? Who was ever hung for treason here? Even old Shays was allowed to die in his bed, and Dorr, in a neighboring State, aspired in vain to the palms of martyrdom. And yet we hear small lawyers and small politicians constantly drawing analogies between a criminal prosecution here, in which society is protecting itself against attack, and a state prosecution in England, in the days of the Stuarts, when the government first condemned and then tried. A wretch breaks into a lonely farmhouse at night, and cuts the throats of a poor couple whom he finds asleep in their bed, and Windy Gas, Esq., who defends him, talks about Sidney and Russell, and addresses, on behalf of his odious and cowardly client, the sacred sympathies which embalm those illustrious names.

When anybody talks to you, my dear Jotham, about the danger of the judges encroaching upon the rights of the juries, do you set him down for either a fool or a knave; probably the latter. There is about as much danger of it, as there is of your house being burned, and your children scalped, by the Indians. Our perils do not lie in that path. We do not need to strengthen the jury or to weaken the bench. Within our time, an Abolitionist has been shot in Ohio, and a sheriff murdered in cold blood by Anti-renters in New York; *and who has been punished for it?* In our own State, a convent, occupied by defenceless women and children, has been burned down by a mob, and who was punished for that? one

youth, by a short imprisonment. To widen the domain of popular passion, to increase the impunity of popular violence, is to fan a prairie-fire, and swell the freshets of spring. And yet the course of democracy has ever been to give force to the element of popular passion, embodied in the jury, and to weaken the element of reason and justice, represented by the bench. A radical politician hates a judge as instinctively as a crow hates a gun. A radical heaven is a place where every man does what he pleases, and there is a general division of property every Saturday night. Courts and judges interfere with this desired consummation, and therefore radicals feel towards them much as wolves do towards shepherds' dogs.

The rights and duties of the jury, with us, are affected by the peculiar relations between the Constitution and the laws made under it. In all popular governments, where the majority rule, a written constitution becomes necessary; because, otherwise, there would be no protection for the minority. Thus arises an important — the most important — branch of law, — constitutional law. Lawyers are constantly raising, judges are constantly deciding, the question whether a certain statute is or is not repugnant to some clause in the Constitution, the paramount, organic law. In England, they know nothing of this class of questions. Parliament there is supreme, and, as is pointedly and popularly said, can do any thing except change a man into a woman. In regard to these constitutional questions, so close is the connection between the will and the mind, that, where there is any room for doubt, ninety-nine men out of a hundred really and conscientiously will believe a law to be unconstitutional which they dislike; and the reverse. You remember the Charles River Bridge case, many years ago; and the constitutional questions that grew out of it. Do you suppose there was a man in Charlestown, whose real estate was benefited by the new bridge, who believed that the act creating it was unconstitutional? I have heard of moral idiots; such a man would be a moral genius of the highest order. I have read of a Pope who tried himself for heresy, and, at the end of the hearing, adjudged himself to be burned; but if there ever was such a man, the breed has long been extinct. It is the same thing at this

moment with the Maine Liquor Law, so called; all who dislike the law really believe it to be unconstitutional.

Now, under the proposed amendment, the jury have the right to acquit any one who may be tried under a law which they may deem unconstitutional. What will be the practical effect of this? A law is passed by a large majority; it is sustained by public sentiment; the court charges that it is constitutional; and yet, if one juryman think otherwise, no conviction can ever be had under it. Is not this an anti-democratic principle? Does it not give to one man in twelve, or one twelfth of the community, the power of nullifying the decision of the majority, lawfully expressed?

In the discussions upon this subject, it seems to be assumed that the court will always, and as a matter of course, be more inclined to convict than the jury. But this is by no means the case. It often has happened, — it often will happen, — that a prisoner at the bar has been tried and condemned by public sentiment before the indictment has been read to the jury. In such cases it is the duty of the court to protect him against a headlong popular prejudice and to say to the jury, in words of authority, that, whatever your passions or feelings may say, the law says so and so; and by the law alone this man must stand or fall. Is it not a noble thing to see a judge thus instructing a jury? Is it not a noble thing to see a jury obeying such instructions? There is not a prouder day in the whole life of Boston, than that on which a jury of her citizens acquitted the soldiers who had fired upon the people, on the seventh of March, 1770. John Adams, in closing that case for the prisoners, said to the jury: "To your candor and justice I submit the prisoners and their cause. The law, in all vicissitudes of government, fluctuations of the passions, or flights of enthusiasm, will preserve a steady, undeviating course; it will not bend to the uncertain wishes, imaginations, and wanton tempers of men."

This appeal was heeded. The jury took counsel of their "candor" and "justice," and not of their passions. Would they have done so, if they had had the right to "determine" the law? I am aware that the judge may grant a new trial in case of conviction. But will your decennial judge have the

courage to brave public opinion, and save a man whom the people have determined to slay?

It may be said, that the proposed change will have no great practical effect, because now the jury may return a general verdict, and cannot be interrogated as to the grounds of their determination; and thus they have now the power of disregarding the instructions of the court, and of determining the law for themselves. To this I reply, that the change converts a *usurped power* into a *lawful right*, and we thus lose the security which we now have in the *conscience* of the jury. There are some men yet left in the world, who are afraid to do wrong. Give them the right to determine the law, and the last barrier between popular madness and an innocent man's blood will be broken down.

SILAS STANDFAST.

No. XIII.

MY DEAR JOTHAM, — I now come to speak of the system of representation in the popular branch of the General Court, which the Convention have offered to the voters of Massachusetts; a subject which I must discuss in a single letter, though *all* the injustice and absurdity of the proposed scheme could not be exposed, or held up to shame, as it ought to be, in less than a dozen. I shall therefore not go into any elaborate statistical details, or make any minute comparisons between one part of the State and another. There is, in fact, no longer any need of this. The broad and palpable enormities of the system are enough for my purpose, and are widely enough known. They are as easily seen as a church by day-light. When we hear that a noble-hearted friend of liberty is languishing in prison, our indignation and sympathy do not wait to learn the precise weight of his chains or the number of their links. The simple fact is enough. It is not the exact degree of injustice and oppression that stirs the blood; we

feel before we calculate; — the sense of wrong is roused before the sum total of the wrong is known.

A great deal of ink and breath has been expended, during the last three or four years, to convince the people of Massachusetts that they had a Constitution so sadly out of repair, that nothing short of a Convention was able to mend it. If the quacks of Democracy are to be believed, we have been languishing under such a complication of disorders, that nothing but an extraordinary degree of native vigor has kept us alive. And what was our most alarming disease? What was it that required the speediest and sharpest remedy? Why, the representative system, beyond all question, doubt, or controversy. And what were the most marked symptoms of this state of desperate sickness? First, that the House of Representatives was far too large for the convenient despatch of business; second, that the representation of the people therein was not founded upon the true democratic principle of equality.

Upon both of these points, as they declared, there was a general consent among judicious and unprejudiced minds. The House of Representatives, as at present constituted, is too large a body for the convenient despatch of business. A traveller in Russia, observing the universal use of the hatchet among the peasantry, remarked that, if they were taught to write, they would mend their pens with it. To summon a Legislature of from three hundred and fifty to four hundred, to make laws for less than a million, seems to me like using a hatchet to mend a pen. Business drags its slow length along, like a wounded boa-constrictor; it moves to the tune of the Dead March in Saul. The sessions are protracted to an absurd length; and a double expense is thus incurred, both from the number of legislators to be paid, and from the length of time they are about their work.

The House of Representatives, at present, is not founded upon that principle of equality which we all recognize as the basis of democratic institutions. The small towns have more than their fair share of representation; the cities and large towns have less. Political power is not distributed according to population, and a voter's weight and influence in the State depend upon the accident of his locality.

Well, the Convention was called, more for the sake of remedying this double evil than for all other reasons put together; at any rate, such was the pretext. It was on this ground, mainly, that the question was presented to the people. No politician could have had the face to talk about a Constitutional Convention, if the system of representation had been unobjectionable. The people would have laughed him to scorn, as one who wanted to help the Dutch take Holland. That *was* a grievance. It was a drum that they could beat; and they did beat it to some purpose. By it and through it they got their Convention. And then what did they do? Why, they laid their heads together, and talked, and ciphered, and made tables, and at the end of three months came out with a scheme vastly worse than the present system in all respects; a scheme which gives us a *larger* House, and makes the *inequality* of representation more glaring. The average number of the House, as at present constituted, is *three hundred and seventy-two;* under the proposed change, it will be *four hundred and five.* And as to inequality, there is one decisive fact; and that is, *that, in a House of four hundred and five, a number of voters less than one third by fifteen hundred, will and must elect two hundred and eight members, or over one half the House!* The present system is sufficiently unequal, but clearly not so bad as that.

This is certainly a notable result. Here were a body of men called together to take off a burden, and they lay on a heavier one. A convocation of doctors is summoned to cure a patient of a slight touch of the rheumatism, and they leave him roaring with the gout. The cool assurance of the Coalition politicians, in claiming merit at the hands of the people for lashing them with scorpions, when before they were, at worst, gently beaten with birch rods, is only to be paralleled in that celebrated scene in Swift's "Tale of a Tub," where Lord Peter bullies his brothers Martin and Jack into believing, or into *saying* that they believe, that a brown loaf is a shoulder of mutton.

And on what grounds, by what arguments, is so unjust, so anti-democratic, so shameful a system of representation defended? Mainly on the ground of prescription. Massachu-

setts has had from the beginning a representation of corporations; her towns, as such, have been entitled to choose representatives, and therefore a plan which has come down to us from our fathers, and is hallowed by the associations and traditions of two hundred years, should not be abandoned, even to take up a system which we might prefer if we were going to begin anew.

Considerations of this kind, urged by Democratic politicians, have to me a savor of suspicion. The voice is the voice of Jacob, but the hands are the hands of Esau. I spy the "pig peard" of radicalism under this conservative muffler. I remember that these men, who trot out "the wisdom-of-our-ancestors" argument in defence of a system which time has made unequal, unjust, and mischievous, change their hand when the same defence is invoked for a sacred and time-honored principle, such as the independency of the Judiciary. *Then*, we hear of "obsolete abuses," of "retrospective prejudice," of "dark ages" and "feudal oppressions," of "Old Hunkers," "Old Fogies," and "the fossil remains of an antediluvian age of politics." *Then*, Massachusetts is a hopeless laggard in the race of improvement, and insists upon riding through the world with her head turned towards the horse's tail. Then we are asked when we last left our cards at the door of the Ark, and how the country looks around Mt. Ararat.

Now, few men feel more strongly than I do the argument from prescription. But the constitution of a House of Representatives is just one of those things we are bound to learn from experience, and to make changes in order to meet the changes and requisitions made by time itself. This whole battle was fought in England twenty years ago, in the debates on the Reform Bill. There and then this argument was pressed in favor of *the old rotten boroughs*, that had ceased to have voters, and manufactured nothing but members of Parliament. On the other hand, the liberal statesmen contended, that the population had changed its localities, under the demands of commerce and manufactures, — that populous places had become solitudes, and solitudes populous places, — and that the House of Commons must be modified accord-

ingly, — in short, that representatives must be taken from the past and given to the present. These considerations prevailed, and the House of Commons was reformed; and it was a wise and salutary reform, carried against the Tories, who made use of precisely the same arguments that Boutwell and Hallett are now addressing, not to the sense, but to the nonsense, of the people of Massachusetts. And shall we be less wise, less progressive, than England? Shall we flaunt in her cast-off rags?

Again, it is said that the towns and rural districts must be protected against the cities. This argument would be merely foolish, but that it happens also to be wicked. I use the word advisedly. I call that man wicked who sows the seeds of strife between one part of a community and another. If you caught a man in your house setting your children at variance with each other, or poisoning their minds with distrust of their parents, you would kick him out of the back door, and put on your thickest pair of cow-hide boots in order to perform the ceremony effectually; and you would serve him right. In like manner my wrath is stirred when I see a shallow and unprincipled demagogue blowing, with venal and impure breath, the coals of strife between city and country, and hardening the hearts of brethren against each other. And the notion on which this argument rests is as false as the motives which prompt it are base. It is slandering the title to an estate, in order to buy it at less than its value. There is *no* difference in interests, there is *no* alienation of feeling, between the city and the country. We are all in the same boat, and not a very large boat either. This calumny was never heard of till within the last few years. It was made to order. *That viper has crawled out of the Coalition heart*, and the people of Massachusetts will crush the reptile's head with their heel!

But *why* are the "rural districts" to be protected against the cities, and what is there in the latter which makes them so dangerous? Sometimes we are told that it is the great wealth of the cities that makes them formidable, and sometimes, their great poverty. Sometimes it is said that talent of all kinds is drawn to the cities, and that this is a formid-

able element; and, again, that huge masses of ignorance are aggregated in cities, and that peril resides in them. Thus, whether a man be rich or poor, wise or foolish, *so long as he lives in a city, he is dangerous*, and must therefore be disfranchised. To state these arguments is to refute them; they contradict and neutralize each other. Certainly, within the last twenty years, especially since the application of steam to locomotion, the cities and large towns have increased more, in proportion, than the "rural districts"; but what then? Nobody is compelled to leave the village and come to the city. And why is it that so many persons thus change their place of residence? Because they think that they can get a living more easily in the cities and large towns than in the villages, and the necessity of getting a living is the controlling motive in the lives of nine men out of ten. And, as a general rule, the reason why more men can get a living in one place than another, is from some superior natural advantages which that place enjoys. And shall a place be made, through the laws of man, to suffer for benefits conferred upon it by the laws of God?

But I will not pursue this subject, though I have hardly crossed its threshold. The true rule in regard to the representative system, in a growing and progressive community like ours, is that laid down by Governor Boutwell, in a speech in the Convention, "the application of the results of experience to the existing institutions of the country"; respect being had to the traditionary feelings and transmitted instincts of the people, so far as is consistent with the claims of justice and the inevitable changes of time. I am well aware of the clause in the proposed Constitution, by which the Legislature of 1856 is required to district the State for the choice of representatives. But, though the Constitution uses the emphatic word "*shall*," I do not know why the Legislature may not use the equally emphatic word "*wont*," and then what are we going to do about it? Besides, a Senate and a House of Representatives, chosen as those bodies must be in that year, if this party Constitution prevails, will *never* agree upon the details of a district, and thus the plan *will* fall through, as it is intended by the wire-pullers behind the scenes that it *should*.

SILAS STANDFAST.

No. XIV.

My dear Jotham, — Many of the "thrilling," "impassioned," and "electrifying" speakers, whose names bestar the columns of the "Commonwealth," like so many fire-flies on a June night, would fain persuade the people that the Whigs, after all, are in favor of most of the changes proposed by the Coalitionists in their party Constitution. But this is not so; and they either know it already, or they must soon find it out. Irish echoes are said to anticipate the sound; Coalition knowledge often anticipates the fact. The "Commonwealth" *knew* that Dr. Palfrey did not write his own pamphlet, and that Mr. Charles Francis Adams was not opposed to the Constitution. As there is a knowledge that is power, so there is an ignorance that is bliss.

We should all be glad to have the Constitution amended where it needs it. We should be glad, for instance, to have the House of Representatives so diminished in number as to make it an effective working body in these postdiluvian periods, when the years of man are only threescore and ten. We should be glad to have the plurality system applied to the election of Governor and other State officers, so that we may choose men to govern us without having them corrupted and the State dishonored by base barters for office. And we should be glad to have other salutary changes adopted, now, or as time and circumstances may develop the need of them. But the proposed Constitution has done none of these. As Governor Morton says, in his recent speech at Taunton, it has done what it ought not to have done, and has left undone what it ought to have done. Its omissions and commissions are alike glaring. This Constitution, with its clumsy blunders, its shameful injustice, its low, dishonest, *partisan* character, we reject and disavow, as an unworthy thing, — disgraceful to those who conspired together to make it, mischievous to the great interests of the State, and tending to break down moral principle and social order among us.

The proof of all this, my dear Jotham, I have already given

you, — sometimes in detail and sometimes not, — but always, I think, plainly enough. I have shown you, for instance, that the shabby attempt to shorten the sessions of the Legislature by an unstatesmanlike provision, that has been already trampled upon in New York, will only end, if adopted, in making two sessions for one, multiplying long speeches, and putting more money into the pockets of the representatives, just as it has in that State. I have shown you that it is not decent or honest to lump nine tenths of the Constitution into one mass, and endeavor to *corner us up, and drive us* to take a great deal that we condemn, in order to get a little that we like, and so help the Coalition to carry out the unprincipled bargains they made in the Convention by their wholesale log-rolling. I have shown you how mean it is to demand a poll-tax and open voting in TOWN affairs, in order that the dollars of the *farmers* may not be touched by any hands they do not see and know all about; while every thing relating to *National* and *State* affairs is given up to the *secret* ballots of those who bear no penny of the public burdens. I have shown you, that, in the hurry and eagerness of the Coalition to carry their party measures, they *forgot* to order any authentic or legal record made of the very Constitution they ask you to accept, so that you cannot now verify what it contains, in the only way it is permitted to verify the commonest judgment of a court of justice, or the most unimportant resolve of the Legislature.

Some things I have not touched upon, for want of time. I have not exposed all the clumsy blunders of the proposed Constitution, which gives, for instance, in one article, power to the Governor and Council to determine who are elected, and who "*shall be*" Senators, while, in another, it reserves the *same* power to the Senate itself; and, when it comes to Harvard College, restores the obsolete, rejected, sectarian Board of Overseers, which would thus be made to consist mainly of sixty or seventy *Congregational* ministers in Boston and the five neighboring towns, — *all just because the Convention did not know any better how to do its work.*

But a truce to these details, — though they should all be noted and considered by the people, — and let me say a word about two or three of its preponderating provisions, which you will

talk over with your neighbors when you come to make up your decision on the whole subject set before you by the Convention, — a decision, which, in its results and consequences, will affect the welfare of your children and your children's children, long after you and I are in our graves.

And, First, — The "Proposed Constitution" should be rejected, because it would give up the great principle that we fought for in the Revolution, that taxation and representation should go together; and because, for the purposes of the party coalition, and for no other purposes, it would put the power of the government *permanently* into the hands of a *minority* consisting of less than one third of the people, who would not only be *enabled* to choose more than half the representatives every year, but who *must* do it, — an outrage on every idea connected with the republican doctrine, that the will of the majority shall govern the minority.

Second, — The proposed Constitution should be rejected, because it would impair or destroy the independence of the Judiciary, and degrade an authority, indispensable to the welfare of the community, by putting on the bench inferior men, in place of the high and faithful judges who have so long administered justice to us and to our fathers, with wisdom, integrity, and mercy, and who have given the jurisprudence of Massachusetts a name for learning and uprightness in every State in the Union.

Third, — The proposed Constitution should be rejected, because it would not only treat the justices of the Supreme Court with an indignity as unworthy of us as of them, in taking from them all control over their own clerks, but also break down the independence and efficiency of the executive power, by making the clerks of the courts and the sheriffs so dependent on a political party for their places, that the question whether a popular leader shall be punished for a crime of which he has been convicted, will depend upon the question, whether the clerk and sheriff will give effect to the judgment of the court, when, on the one hand, both clerk and sheriff are sure that they shall, at the very next election, be dismissed from office if they do it; while, on the other hand, — even in case the Governor should dare to turn them out for their re-

fusal, — they can trust to their party to reinstate them by a popular vote, in contempt of the Governor and his authority.

And, Fourth, and last, — We should reject the proposed Constitution, because, *by a cunning and corrupt party arrangement*, — made to secure a Coalition supremacy in the Commonwealth, and for nothing else, — a fair majority of the people can *never hereafter* get rid of any of its unjust and mischievous provisions, since it declares that *less* than one third of the voters shall, in all future time, have control of the other two thirds, in the choice of members for *any* convention that may be held to amend the Constitution; an insult to justice and honesty, which, if it should be engrafted into our Supreme Law by the jugglings of party leaders, will lay the foundation of a series of feuds, quarrels, and agitations, which will never permit the people of this Commonwealth to have an interval of peace, until, in some way or other, the disfranchised and outraged majority are restored to the rights, on which their welfare, and that of their children, depends.

Now, then, my dear Jotham, since, as I have shown you, the great *Representative* power of the government is, by this proposed *party* Constitution, given, in the most unjust and unjustifiable manner, to a small minority of the people; since the *Judiciary*, the bulwark of our personal rights and personal safety, is broken through by it; since the *Executive*, to which we look for immediate protection against violence and wrong, is weakened and overawed by it; and since *no remedy is left by it, in the hands of a majority even of two thirds of the voters of the Commonwealth*, for all or any of these monstrous evils, and for this overthrow of principle and law; — since, I say, I have shown you all these, you know the reasons why WE GO AGAINST THIS PROPOSED PARTISAN CONSTITUTION; and my word for it, my dear Jotham, you and the two thirds of the people whom it seeks to defraud of their rights, will, when the question is put to them, be of the same mind.

Indeed, the very leaders of the Coalition, and of the two parties that have formed it, *already* desert the obnoxious and shameful cause, and come over to us. Marcus Morton, once a Democratic Governor of Massachusetts; John G. Palfrey, lately the Free Soil candidate for the same office; the venera-

ble Samuel Hoar, always superior to the love of place; Charles F. Adams, more faithful to the honored name he bears than to his recent political associations, and others of mark among them, are *already* on the outer walls of the old Constitution, beckoning the people to the defence of their rights. All honor to them for it! And all honor they will have, when the 14th of November is come and gone. For this is not a party question; and party passions — however they may be stirred up by reckless partisan leaders and venal stump speakers — will *not* decide it. It will be decided by a careful and conscientious exercise of that sound sense which, in the mass of the people of Massachusetts, cannot be long hoodwinked, and which has never yet been *cornered*, or *outwitted*, or *driven*, as it is now attempted to *corner*, and *outwit*, and *drive* it, by what Mr. Palfrey well calls "a stupendous piece of log-rolling." Mark my words, Jotham, the fate of this "ring-straked and speckled" Constitution, the product of fraud, trick, and *party* corruption, is settled in the minds of the people already. Massachusetts will follow the manly examples of New Hampshire, Delaware, Connecticut, and Rhode Island; and that your honest vote will contribute to this desired consummation, I am sure.

SILAS STANDFAST.

ADDRESS

TO THE

CITIZENS OF FITCHBURG,

DELIVERED, AT THEIR INVITATION,

BY

HON. SAMUEL HOAR.

FROM THE BOSTON JOURNAL, NOVEMBER 1, 1853.

ADDRESS OF MR. HOAR.

Mr. Hoar said he had been invited to address this audience upon the subject of the proposed amendments to the Constitution, and he had consented with great reluctance to do so. He felt this reluctance, not on account of any unwillingness to make known to his fellow-citizens the views which he had been able to form on this subject. It was his belief, that it is the duty of every man to make known to his fellows, whenever and wherever he has the opportunity, his views upon questions of public interest, to the end that he may correct whatever is amiss in his own views, and aid his neighbors in coming to correct conclusions; and in this way he will render a service valuable to himself and to them. He hoped to present his views in a candid manner, and proposed to submit them to the criticism and judgment of his hearers. If these views appeared to his hearers to be right, he hoped they would follow them; if they did not so appear, reject them. Heaven forbid that he should ask any one to pursue any other course than this.

What are the principles, he asked, which should guide us in forming our opinions and giving our votes in the approaching election? Ought we to be governed by our political party prejudices? Is there any considerate, fair-minded man, of sober judgment, who will not at once answer this in the negative? We have all had, in the course of our lives, strong political party attachments. Ought they to operate in a case like this? If they do, we shall suffer, — certainly, inevitably. It becomes us to give our political party prejudices to the winds,

and to look at the instrument which is presented to us, and at that alone, without any consideration of who it was that prepared that instrument.

Mr. Hoar said he should be obliged to state old-fashioned principles. He should not dare to present to an audience, for whose judgment he should have any respect, principles which are not well understood and acted on by the citizens of Massachusetts heretofore. Let us then look at the propositions offered to us, and see if they accord with the principles of equality, of justice, of natural right. If they conform to this test, let us adopt them without further inquiry, for they will be for the benefit of the whole people. If they conflict with it, let us reject them, for if we do not we shall suffer.

Before proceeding to examine some of the more prominent provisions of the new plan, Mr. Hoar said he would speak of several which to him seemed right and just, and which in their tendency would have a salutary effect upon the whole people. The first of these was the provision for single Senatorial Districts. This ought to be adopted, for reasons obvious to all. There is justice and equality in it, and it accords with the principle embraced in the present Constitution, of securing equality to all. Second, the increase of the School Fund, and the prohibition of its ever being devoted to any sectarian or denominational purposes. These, he could not doubt, would receive the approbation of his fellow-citizens. He also thought there should be some provision made by which a citizen having a claim against the State could have an impartial and fair hearing in his case, and have justice secured to him. There were some other features in which the principles were right in themselves, but the modifications of which were wrong; but he had not time to stop to examine them, and would pass to matters of more importance.

He would then ask the attention of the audience to two branches of the proposed plan, to which he could not give his assent, and to the reasons why he could not support them. The first of these branches was in regard to the House of Representatives. That plan is very well understood to be this: — it gives to every town, however small, a representative six years in ten; it gives to every town having 1,000 inhab-

itants, one representative every year; to every town having 4,000 inhabitants, two representatives every year; to every town having 8,000, three representatives every year; and so on upwards, making 4,000 the mean increasing number for a single representative. The present Constitution gives to every town a representative as often in the course of ten years, as the number 160 is contained in the number of its inhabitants, and the right also of a representative in the valuation year. Every town having 1,200 inhabitants, instead of 1,000, has the right to a representative every year, and 2,400 instead of 4,000 is made the mean increasing number. The change is obvious to all.

There is, for some reason, an existing inequality between the representatives from the small and large towns. A town with 1,200 inhabitants may send a representative, but a second cannot be sent without double that number. In the small towns, a very considerable power is given to the voter above the large towns. The Convention of 1780 affirmed the doctrine that the natural right of all is equal; the Convention of 1820 reaffirmed it, and even this last Convention also reaffirmed it, and it should not be departed from without good and sufficient reason. It is not a sentiment of antiquity, but is embraced in our present Bill of Rights, in such expressions as, "All men are born free and equal"; — "The *people* have the right to invest the Legislature with authority"; — "All power resides in the people"; — "There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principles of equality." These last words are in the proposed plan as clearly as in the others of 1780 and 1820; and in order to provide "for a representation of the people on the principle of equality," it goes on to make a provision which gives a representative to the small towns with not more than 50, and, in some cases, not more than 20 voters, six years out of ten, and makes the mean increasing number 4,000, instead of 2,400, for the large towns; and yet, in the small towns, makes the number requisite to secure a representative 1,000, instead of 1,200. Are these provisions in accordance with the principles of equality which I have read? Do they carry out those

principles, or do they violate them? If the former, adopt them; if the latter, reject them.

The results of these changes must be great. But these are not the worst features of this plan. Let us look further, and see how they compare with the principles of equality or natural right. He did not propose to enter into a minute comparison of the effect of this new plan in the case of particular small towns, where it gives to a voter in one town, two, three, five, six, and in some cases ten times the power of a voter in another town. It would occupy more time than he had. He would look at some more general results. It had been calculated that the proposed plan would give the control of the State, so far as the House of Representatives is concerned, to one third of the inhabitants of the State, — that is to say, that one third shall govern the other two thirds. Some say this is not quite true; but if it approximates to that, he would ask if it is in accordance with the principles of equality. The people govern, *not the corporations.* Some calculations have been made on a larger scale. Franklin County is allowed, by this plan, one representative for every 1,450 inhabitants; Bristol County, one for every 2,870 inhabitants. Suppose I stop here, and have not another statement to make, is this according to the principle of equality? What is the difference between these two counties. There are not found here the Irishmen who are found in Boston or Fitchburg, and who are given as the reason for these inequalities. What has Bristol done that her men have not the right to vote, and that her votes are not as good as the men of Franklin? Do you suppose the people of Bristol will be satisfied with this system, if it is fastened upon them? Are we doing them justice in voting for it? And is it not your wish to do justice in the matter?

Again, Nantucket will have a representative for every 2,026 inhabitants. Suffolk one for every 3,877. I will now come to a still more general statement. The five counties west of Middlesex — Worcester, Hampden, Hampshire, Franklin, and Berkshire — have a representative for 1,884 inhabitants, and the rest of the State one for 2,731. Is this equal? There must be a new meaning affixed to the word if this be equality, nat-

ural right, or justice. Can we expect that the different sections of this Commonwealth will rest satisfied with such provisions in regard to its representation? Can you expect that any part of the State, which may get more than its equal right, will on the whole gain any benefit by such a violation of the principle of equality? No. Men do not enjoy that which they get wrongfully, and the same applies to communities. They as individuals will receive the penalty of any violation of the great principles of justice or of right. I repeat the question: Is this fair, or honest, or right? Does this proposed plan tend to diminish or increase the present inequalities? If the statements which have been made approach correctness, the decision must be against it.

The friends of this plan say, "We go in favor of town representation." Is it the *corporations* which frame our laws, or the *people?* the corporations, or the mind, the intelligence of the Commonwealth, as embodied in the laws of the State, which is to govern? He had seen, in the remarks of some persons who wished to sustain this great injustice, the argument, that we must preserve the town institution,— that this institution had been of great benefit. All these arguments assumed that these town institutions will be lost, unless we give to a man in one town two, three, five, or ten times the power we give to a man in another larger town. He could see no reason in this. If it be right that the five counties west of Middlesex should have a representative for every 1,884 inhabitants, and that the rest of the State should have its power diminished one quarter, a good reason should be given for it.

Mr. Hoar next alluded to the proposed changes in the Judiciary, which in importance he considered exceeded even the inequality in the system of representatiou. On this point he would not trust his own views alone; but finding them supported by the Conventions of 1780 and 1820, and acknowledged by the recent Convention, he felt that he had some foundation for presenting them. The existing Constitution declares, that "it is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit"; and it further says, "It is, therefore,

not only the best policy, but for the security of the rights of the people and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well." Thus speaks the existing Constitution. The proposed plan embraces the same words in part, but says it is the best policy, &c. that the Judges "shall hold their offices by *tenures established by the Constitution*," — not "while they behave themselves well." Here is a change proposed which is *fundamental, and it means a good deal.* Will it not have the effect to make the opinion of the judge depend upon the opinion of those who have the power at the expiration of his tenure of office, which is fixed at ten years, to turn him out?

A man fit to be a judge should be a man of high character, of integrity unspotted, of profound learning in the law, — a man of some experience in the law. Supposing a judge have not these qualities, what would be the consequence? Every man who in court has seen a comparatively weak man on the bench (a sight seldom seen on the Supreme Bench in Massachusetts) — and on one side an able advocate, and on the other a comparatively weak one — knows his feelings, as he has seen the law wrested from the hands of the judge, and, in point of fact, the advocate, and not the judge, making the law. Do you want such judges in Massachusetts? or do you want men on the Supreme Bench and in the Court of Common Pleas who are not exceeded by the advocates at the bar, — judges who cannot be controlled and led away, — who will enforce the laws as the Legislature says they exist, — who will give security to the weak as well as the strong, the poor as well as the rich, — who will show no favor or affection for one or the other, — judges who can and will execute the law equally, impartially, and independently?

But, say the friends of the new plan, may not the judges be reappointed at the expiration of the ten years? Mr. Hoar answered this question by citing the case of the sheriffs under the present system, who, on every change of political power, — though most excellent officers, — have been turned out to make room for the political friends of the administration. Suppose the time of a judge near its close, and he has an impor-

tant case to decide, the decision of which may affect those who have the power of his reappointment, will not this fact have a tendency to swerve his judgment? Are we as sure of impartial judgment, as though the judge were entirely independent of the Executive?

Is this change, he asked, a trifle, or a matter of most immense importance? To him it appeared to be the latter. It is a blow struck at the Judiciary, and, if carried into effect by our votes, will be felt over the whole State. And this is not all. The whole proceedings in regard to the Judiciary have a tendency to break it down. Will you be likely to get the first and best men in the profession to take the office on such conditions? There is a difficulty even now in getting them to do it. Common sense teaches us that they will not accept it, if it be made still less worthy of acceptance. Does there any evil exist which will justify such a change as is here proposed? He knew of none.

Another proposed change is, that the Clerks of Courts, instead of being appointed by the Judges, shall be chosen by the people for a term of three years. Where is the reason for this? He knew of but one, — that there may be one more office to be scrambled for in our elections. In what possible way are the people to be benefited by this change? How well are the people qualified, let me ask, to vote for a Clerk of the Courts in Nantucket, or in Berkshire, or Franklin, or in your own county? Why should not the courts, who know what kind of men they need to record their rulings and decisions correctly, have the power to appoint their own clerks, and such men as they wish? He hoped this question would be answered at the ballot-box. Did you ever know a clerk appointed by a court for a sinister purpose? Can the people do it as well as their agents, the judges? No, — the whole thing is impossible, radically wrong and unnecessary, except for the purpose of the politician who wishes to flatter the people for his own benefit. If you elect the Clerk of the Court by the people, why not elect the Clerk of the House of Representatives? Suppose the clerk who holds office by the power of the people should refuse to obey the court, the public business must suffer unnecessary delay, or the Judges

of the Supreme Court must go as humble suitors to the Executive, and ask for the removal of the clerk. Do you believe they will do this?

Mr. Hoar then took up the provision in the Bill of Rights, in which the executive, legislative, and judicial departments are prohibited from exercising the powers or duties of each other, and most clearly showed that it was violated in the proposed Constitution, by allowing the Governor, with the consent of the Council, or *without that consent*, on complaint for incapacity, misconduct, or maleadministration in office, to remove Judges of Probate, Commissioners of Insolvency, County Commissioners, &c. Not only can the Governor remove such officer, but he may appoint some one to his office — until the case be heard and settled; and in the mean time parties interested in this removal may have secured their own ends, to the wrong and injury of other parties equally interested. It is estimated that once in twenty years the entire property of the Commonwealth passes under the inspection of the Judges of Probate, and it is, therefore, of the highest importance that they should be straightforward, high-minded men. Will this new plan tend to secure such? He thought not. Conferring this power of the removal of the Judges of Probate and other officers by the Governor, is also creating a new court, a new judicial power in our State, hitherto unknown.

And there is still another blow at the Judiciary. It is provided in one of the separate propositions, that the jury, and not the judge, shall settle the law in all criminal cases. What will be the result? Men who compose the juries do not devote their lives to the study of the law. Will they be as likely to decide right as the judges? And who is to correct their decision in case it be wrong? With the present system, the decision of the judges in the lower courts, if wrong, can be corrected by the judges of the Supreme Court. If juries decide the law, there is no possible way of settling their correctness. And the result will be, that you will have no system of law at all. The same law will be construed differently in different courts, and, it may be, on different sides of the same court-house. It will be a government of men, and not of

laws; and questions involving the property, character, life even, will be made to depend upon the views of the men who may be on the jury. A man guilty of murder may be convicted or get clear, according to his popularity or unpopularity with the jury.

In their manner of submitting the new plan to the people, the friends of the measure have shown that they are afraid to trust the people. It is so arranged that we must take the whole or none. Is this fair, or right, or honest, towards the people? Must we swallow poison to get a mouthful of food?

There were other points upon which he would have spoken had there been time; — but he must stop. What, he asked, shall we do? Why should we make these innovations? and what shall we deserve if we go to tampering with those great principles of equality and of right which have been secured to us as the fruits of the labor of such men as formed our present Constitution? What became of the old Italian republics, and where is the French republic? The political parties quarrelled and secured to themselves anarchy and despotism; — and that is what we shall merit if we trifle with such blessings as have been given to us, and under which we have so abundantly prospered. High-minded men, who understood its provisions, made the present Constitution, and it has answered its purpose. Our duties in regard to it we are now to answer at the ballet-box.

ADDRESS

TO THE

CITIZENS OF TAUNTON,

DELIVERED, AT THEIR INVITATION,

NOVEMBER 4-7, 1853,

BY

HON. MARCUS MORTON.

ADDRESS OF MR. MORTON.

Mr. Chairman, — I desire, in the outset, to ask permission to dispense with the customary parliamentary form of addressing an assembly through its presiding officer, and to speak directly to my fellow-townsmen here assembled.

The Chairman. — Proceed, Sir, in the way most agreeable to yourself.

Fellow-Citizens, — It gives me pleasure once more to look upon your frank and honest upturned countenances, and I hope, on this evening, to present to you, in return, one as honest and frank as your own. You cannot but feel some surprise to see me addressing a political assembly, on the eve of an election; and I confess that I feel no little surprise myself. It is now nearly a quarter of a century since I appeared in this capacity. I had fully determined not again to be drawn from the quiet and peaceful pursuits of private life, to take any public part in the turmoil of party strife and of political warfare. I intended to confine my political labors to what is every citizen's duty, — to a careful inspection of the proceedings of our public agents, to the free discussion with my neighbors of public measures, and to the efficient expressions of my opinions, by my suffrage, at the polls.

But when my fellow-townsmen desired my services in the Convention called to revise and amend our Constitution, I could not well resist the call. The duty required, though political, was so unlike ordinary political duty, and, in my view of it, so unlikely to involve party spirit, and its manœuvres and intrigues, that I could see no good reason for with-

holding my labors and my experience, if they were deemed of any value. I accordingly entered into the Convention, and that I got deeply interested in the proceedings of that body, and was greatly disappointed in its transactions and in the results of its labors, I will not attempt to conceal. My views on these matters were well known. But it was not my purpose to appear before the public to defend or advocate them. And I declined many invitations to address audiences in various places, from the Cradle of Liberty in the metropolis to the town-hall of a country village. But the invitation of my Democratic *constituents*, which was addressed to me, in common with my colleagues, requesting us to give an account of the proceedings of the Convention, and our views of the result of its labors, came upon me with the potency of a mandate. Believing, as I do, that every representative is strictly responsible to his constituents, and imperatively bound to render an account of his stewardship when called upon by them, I could not decline this invitation.

I have no authority to speak for my colleagues. But I will assume to say, that in devoted attention to the business before the Convention, in sincere endeavors to promote the welfare and best interests of the people, and to render our Constitution more equal, just, and democratic, we were not surpassed by the delegates of any other town. And I trust I may say in your presence, that we, in a good measure, succeeded in representing the true interests, opinions, and wishes of our constituents.

I now speak for myself. And I enter upon the duties required of me with pleasure and with grief. While it gives me pleasure to respond to your call, and to lay before you, for your approbation or condemnation, my own course of action, it is with grief and regret that I present to your consideration the results of the labors of the Convention. These I can neither approve nor justify. Indeed, I will not deny that it is a source of gratification to me, that I have been furnished with this opportunity to enter my public protest against measures so unrighteous and anti-democratic as these seem to me to be.

Before commencing the discussion of the proposed consti-

tutional amendments, I must ask permission to make one or two more preliminary remarks.

The call which brings me before you this evening comes directly from my Democratic fellow-citizens. But I am most happy to see before me citizens of all shades of political opinion. And to you all I acknowledge my responsibility, and to you all do I render my account. I cannot, and I would not if I could, disguise the character in which I appear. I am a Democrat. I have served in the Democratic ranks for almost half a century. Although I have, on two or three occasions, been constrained to differ from my political friends, I have never joined any other organization. It is true I have now and then attended mass meetings of every known party, to hear distinguished orators, whose doctrines I have sometimes approved and sometimes disapproved, but I never was a delegate to or attended any political convention other than a Democratic convention. And although I may not yield so implicitly as some to the binding force of party conventions, and do not deem the decrees of a caucus more obligatory than the dictates of conscience, I believe I have as seldom deviated from the caucus nominations as any man who has attended so many elections. I have lived and trust that I shall die in the Democratic faith. I must therefore test the proposed constitutional amendments, and the proceedings of the Convention, by Democratic principles. But in avowing with perfect freedom my own opinions, I trust I shall manifest a becoming regard to the opinions and feelings of others.

I do not intend to speak of the approaching elections of State officers. Nothing could induce me to enter into a public discussion of that subject. I may, however, remark, in passing, that, of the four gubernatorial candidates, two may be deemed Democrats and two Whigs. Perhaps my Whig friends may not accede to the correctness of this classification. But if they think that one of them does not belong to any "healthy" Whig organization, they must remember how laboriously and zealously he has served them in former times, and that he has never renounced any of the sentiments which he then advocated. They may say, as they have said before, that he and his Whig associates had become such ultraists

and extremists, that, having lost their homogeneity with their old party, they had sloughed off; and having failed to obtain that advancement which they thought they deserved, had formed a new organization, in the hope that they would there find a more just appreciation of their merits, and a more adequate remuneration of their services. But between these several candidates it is not my intention to express an opinion, or even to indicate my own preference.

One important error in the constitution of the Convention was, in the outset, overlooked, or not sufficiently considered. The act authorizing the Convention was so construed as to justify towns in electing delegates who were not inhabitants of the towns by whom they were elected. This, in my opinion, is a capital error. It is the worst feature in the election of the members of the British House of Commons. Members thus chosen may be wise statesmen and skilful constitution-mongers, but they cannot be true representatives of their constituencies. A knowledge of a people, acquired by a continued residence among and intercourse with them, can alone sufficiently identify a man with them to enable him truly to represent their wishes and wants, their peculiarities and principles. The representative of the people should correctly reflect the minds of his constituents, which he can never do unless he partakes of their labors, their wants, and their enjoyments, and is one of them. The representative should be a daguerreotype of his constituents, which an absentee can no more be, than such a likeness of an individual can be taken in his absence.

It is the right of the people to originate and form their frame of government, as well as to adopt and ratify it in the shape of a written constitution. And the representative of each constituency should bring into convention a true likeness of his principals, and thus, by comparing, assimilating, and amalgamating the views of the several constituencies, an aggregation may be formed which will be the true voice of the people of the whole Commonwealth, and the nearest possible approximation to the voice of each individual in it.

Another very great and insuperable objection to non-resident members is the door which it opens for political intrigue

and corruption, and for the outside influence of practised politicians and party managers. It impairs the free choice and independent action of the electors themselves. There were in our Convention some ten or twelve non-resident members, some of whom never saw the towns which they were chosen to represent; and it is well known that extraneous appliances procured the election of some, if not all, of them. I this morning accidentally read, in one of the most respectable newspapers in the United States, an article written by a very able and strenuous advocate of the proposed amendments, of the Free Soil party, and of their candidate for Governor, in which he says, "The friends of State Reform *contrived* to procure the nomination of a number of distinguished Democrats and Free-Soilers as candidates for the Constitutional Convention from towns of which they were not residents. These were in all cases triumphantly elected. These nominations were chiefly effected through the influence of GENERAL WILSON."

It is not my intention to impute any thing improper or dishonorable to the non-resident members of the Convention, either in the mode of their election or in their conduct in the Convention. I deal not with motives. My object is to show the error of the principle. But when I name men so distinguished for their eloquence, their learning, and their political experience as C. Sumner, Boutwell, Hallett, Griswold, Keyes, Dana, I. Sumner, Alvord, and Burlingame, it is unnecessary for me to add that they exercised a controlling influence over the Convention, and that the results of its deliberations are different from what they would have been had their constituencies been represented by their own fellow-townsmen. That the results are wiser, perhaps we ought to presume; but whether more consonant to the will of the people remains to be tested.

Our old Constitution was framed by wise and patriotic statesmen. It contained all the elements of a free government. It was democratic in principle, and adapted to the genius of a free people. Under it we have grown and prospered beyond precedent. It has secured to our people liberty and happiness. We have enjoyed our political rights to an

extent and with a security which a wise Constitution alone can guarantee.

One of the great and crowning excellences of a democratic government is, that, without a change of its principles, it always adapts itself to the ever-changing circumstances of the people. Hence it ever keeps up with, and promotes and sustains, the progressive improvements of the State, in population, wealth, and knowledge. These changes called loudly for a change in our Constitution. A principle of representation which very nearly approximated to equality, and was fair and just in a population of two hundred thousand, became extremely imperfect and unrighteous when that population had doubled and quadrupled. The great increase of the Commonwealth rendered alterations in other respects necessary. Accordingly, a Convention was called in 1820; and though it did not accomplish all which the friends of reform desired, yet it made many improvements, and set an example of moderation and patriotism worthy of imitation, and which had much influence in recommending to the favor of the people the last Convention.

Many amendments were proposed, some of which were adopted and some rejected. But the greatest imperfection of the whole, that of the representation, remained unremedied. Indeed, every attempt to amend this increased the evil, both in principle and practice. The gross inequality of the representation and the unwieldy magnitude of the House were universally condemned, and a remedy called for by the whole mass of the people. This, with other amendments which time and progress had rendered necessary, seemed to demand a revision.

Accordingly, a Convention was proposed. It was at first rejected by the people; but upon a second trial it was adopted by about seven thousand majority. The manner in which the Convention was called, and the majority obtained in its favor, were exceedingly unpropitious to the wise and beneficial action of the body. The leader of a certain party, who has been publicly and boastfully denominated "the champion of the Commonwealth," declared in debate, in the Convention, that this majority was "obtained with immense labor, and the

writing and distributing of almost innumerable letters." The question of a Convention assumed the form of a heated party contest and a fierce struggle for ascendancy between the contending parties.

Under these circumstances, I entertained great doubts of the wisdom of calling the Convention. I saw the full force of these objections, and cannot offer the apology of ignorance or inadvertence. But the defects of the old Constitution were so gross, and called so loud for amendment; the Convention of 1820 furnished so favorable an example of coolness, deliberation, and freedom from party; and I had so strong a hope and belief, that, whatever heat might have existed, when the people came to elect delegates, they would forget their party in recollection that the Constitution was to be made, not for a year, but for perpetuity, not for a party, but for the whole people, — that I voted for it. I will not shrink from my share of the responsibility of having called the Convention. But I need not now say, that, had I foreseen the course which the Convention adopted, and the result to which they came, I should have voted differently.

But although I saw the political contest in the election of delegates, and the party character of the delegates themselves, I still clung to the hope, that, when we entered into the hall of constitutional legislation, we should remember that the revision of the Constitution, and the introduction of new, or the modification of old principles of organic law, required the coolest judgment and the most dispassionate consideration; and that, on passing the threshold of the temple, we should shake from our feet the dust of party spirit, party prejudice, and party interest. But in this I was disappointed. And perhaps I ought to have expected that the political feeling which prevailed in the election of delegates would, by them, be carried into the Convention, and there mark, if it did not mar, its proceedings. I claim no exemption from the influence of party. And I suppose other younger and more aspiring men, who have a longer and brighter future before them, are equally, and perhaps more, liable to the same human infirmity.

But the worst aspect in which this subject presents itself is the party character which the question assumes before the

people themselves. We find them divided, upon the question of the adoption of the constitutional amendments, very nearly according to their political preferences. Almost all of one party are opposed to the adoption of them, and nearly all of the other are in favor of their adoption. Can such a division be the result of a dispassionate and impartial investigation of the subject? I fear not. I have heard it said in high places, that "it is enough for me to know that the Whigs oppose a measure. If they oppose it, I will vote for it." Is this the dictate of good sense and a single desire to promote the public welfare? or is it the offspring of political animosity and a narrow-minded, bigoted devotion to party? Such blind adherence to party dictation, though wrong in itself, may not be very dangerous in an annual election, when the error of one year may be corrected the next; but let me remind you, that we are now about to establish fundamental rules, which must govern the action of our children and our children's children for many generations. Let me then exhort you to lay aside all political predilections and preconceived notions of the effect which our decision may have upon the one party or the other. Party is short-sighted. Party is blind. All artificial contrivances to build up a party always react upon their authors, and sooner or later prostrate the party they were intended to build up. Be assured that the most certain way to promote a just cause is always to adhere to right principles, and to adopt wise and righteous measures.

I have seen, with deep regret, that party tactics are resorted to, and political arrangements made, to carry this constitutional measure, just as if it were a mere struggle for party ascendency. Trained orators, practised political speakers, are employed to travel from town to town, all over the State, to address the people on this important subject. Do they present both sides of the question to their hearers? or do they appeal to their political prejudices and party fealty? Would it not be wiser, and more respectful to the people, to place all the documents, bearing on this subject, in every man's hands, to be carefully examined by his own fireside and coolly discussed with his neighbor.

And do these itinerant orators devote themselves to all this

labor from purely disinterested and patriotic motives? Are they so devoted to the welfare of their country, — is their love of the people so intense, — are they so exceedingly anxious to procure the adoption of a wise and just constitution, — that they are willing for weeks and months to neglect their ordinary business, and devote their whole time to this object? May there not be, after all, some secret self-interest, unknown perhaps to themselves, lurking at the bottom of this burning zeal? May not certain brilliant offices, for the attainment of which the successful result of this struggle may seem to open the door, glitter before their eyes. May not any of those talented and eloquent advocates, from one who has graced the chief magistracy, to the more humble aspirant to official honors, honorably aspire to these high places, — and all unconsciously labor for their attainment. Were I as young, and talented, and learned, and eloquent as they, I doubt not that I should be as likely to be influenced by the same considerations.

These remarks are in some measure preliminary. And in answering your call for an account of the proceedings of the Convention, I know not where to enter upon the mass of matter before us; nor how better to address myself to the work than by acknowledging, in the language of the general Episcopal Confession, that "we have left undone those things which we ought to have done, and we have done those things which we ought not to have done." The inference which follows I will leave others to draw, if they think proper.

This quotation suggests a convenient division of this great subject into three branches. And, in my opinion, a fair investigation of these three branches will show enough in what we omitted to do, — enough in what we did do, — and enough in the manner in which we did it, — to condemn our whole proceedings, and to render the duty of the people imperative, to mark the whole action of the Convention with decided disapprobation. This is due to principle and to precedent. It is due to themselves and to their posterity.

We are, then, to consider what the Convention neglected to do which it was their duty to do, what they did which their

duty forbade them to do, and the manner in which it was done. In each of these branches will, in my opinion, be found that which should *condemn the whole.*

First, let us look at the sins of omission.

What are the duties of the members of such a Convention? Are they to make such a Constitution as they individually prefer, and then submit it to the people for their action, or are they, in originating and forming the instrument, to execute the will, and to represent the opinions and principles, of the people who elected them? A monarch of Europe, who was about to give a constitution to his subjects, would hold to the former. But no one who believes in democratic government can hesitate to adopt the latter. In this country, the right of the people to originate and establish civil government, and to alter and amend their constitutions, at their pleasure, is the universally accepted doctrine.

The first social compact ever written was that formed on board the Mayflower, in the harbor of Cape Cod, in 1620. In that case each individual, acting in his original sovereign capacity, put his own name to the compact. All stood on a perfect equality. All participated alike in the execution of the compact, and administering the government under it. This they continued to do, till their number became so large that they could not all act together. Then it became necessary to resort to some mode by which each individual might execute his equal share of the power, without his personal attendance. This could only be done through duly authorized agencies. One agent could speak and act for a hundred or a thousand, and as long as each agent acted for the same number of persons, each preserved his equal relative right and power, and no one gained any advantage over his neighbor. And thus originated the notion of representation, which is a modern invention unknown to the ancients. It is founded on the principle of perfect equality, each individual holding just the same weight with every other individual in the community.

One hundred could by their direct action form a government for themselves. But when that hundred had become a million, they could not assemble, deliberate, and act together; they could only institute or amend their form of government,

in the first instance, through their agents. These agents could prepare, and propose to the people for their adoption, such provisions as might be deemed promotive of the best interests and just rights of the whole. But in doing this, they should be the just, true, and faithful representatives of those who appointed them. They had no right to inquire what would benefit themselves, or promote the interest of any party, or enterprise, or section of the Commonwealth. But they were bound truly and faithfully to execute the will of their constituents.

Our Convention was called for specific purposes, to redress existing grievances, which had been indicated in various ways and were perfectly well known and understood by every man in the community, and of course by every member of the Convention. The delegate, then, who thwarted, or neglected to carry out, the purposes which he knew were entertained by the people when they called the Convention, or who evaded their wishes in any respect, was unfaithful to his constituents, and violated a fundamental principle of free government.

One of these purposes of the Convention, though not the most important one, was the reduction of the expenses of the government. During the last thirty years our State expenditures have increased from $ 200,000 to $ 600,000 per annum. There had gone up a universal complaint of this extravagance, and an imperative demand for redress. How did the Convention meet this demand? The first step was to increase their own compensation by an addition of fifty per cent. to the old established allowance. Let the acts of the Convention be ratified, and we have, by the voice of the people, which never will be controverted, a precedent established, that will add one third to the expenses of legislation in all after time. This single item will more than defray the expenses of half a dozen conventions, should they be deemed necessary, to do what this Convention neglected to do, or to undo what it did amiss.

I do not intend to argue that *three dollars* per day was more or less than the services of the members were worth. I have no standard by which to measure the value of intellectual labor, or to compare the mental capacity of one man

with another. And I probably should not have noticed this subject, had I not a desire to advance and recommend a principle. I hold that legislators should never be paid for their services. This is the immemorial rule in the British Parliament. Motives of patriotism, a love of distinction, a desire to be useful to the community, laudable ambition, furnish inducements quite strong enough to stimulate men to accept and seek the place of legislators. I would not add to them any mercenary stimulus. But I would never shut the door of promotion against the poor, any more than the rich. I would therefore allow a fair remuneration of the expenses incurred; for which purpose the long established *per diem* of two dollars would be amply sufficient.

Another way in which the people demanded a reduction of the expenses, was by a great diminution of the number of representatives. How has this demand been regarded? Just as the last was. By an increase, instead of a reduction. There was no one reform so loudly, so universally, and so imperatively demanded, as the diminution of the House of Representatives and the equalization of the basis of representation. But the action of the Convention on this subject, not being entirely negative, more properly belongs to the second branch of the discussion. If my strength holds out, it shall be fully treated hereafter.

Another demand of the people was, that useless offices should be abolished. This was required, not only for the purpose of saving expense, but for the purpose of carrying out that purely democratic principle which tolerates no more offices than are necessary for the proper transaction of the public business.

Foremost among the unnecessary officers were ranked the Councillors. The abolition of the Executive Council, and the transfer of the Lieutenant-Governor to the chair of the Senate, certainly were among the reforms desired and expected by the people. Since an Auditor had been established to settle accounts; since the militia had got so reduced as to leave only a light duty for the Adjutant-General to perform; since the proposed amendments provide for the election of most of the officers by the people, and since the remainder of the appointments can be transferred to the Senate; and since any board

of officers may be authorized to perform the clerical duty of counting votes, — very little is left for the Council except their share of the pardoning power, — a power which, from the nature of their board, they are very ill qualified to administer. A motion was made to dispense with these officers. A long discussion was held, and soon some indications began to manifest themselves of a principle which I fear had too much influence in other deliberations of the Convention. Here were nine easy, honorable places, well suited to the tastes of retiring politicians, and perhaps nine times nine delegates who might, if parties could be made to take a favorable turn, reasonably hope, at some day or other, to occupy these comfortable and dignified seats. It is not my intention to impute sinister motives to any one; but I cannot shut my eyes to the common frailties of our nature. The question dwindled to a very small point, and the result was to reduce the Council from nine to eight, and vest the appointment in the people.

Another great evil everywhere complained of was the length of the sessions of the legislature. From two months they had from time to time been extended to three and four, and even five months. A remedy for such a gross abuse of power by a limitation of the annual period of service was loudly called for by the whole community. The joint committee of the Legislature, who recommended, and may be considered the authors of, the Convention, in their report, which was accepted by the Legislature, say, "There is nothing in the legislation of Massachusetts which has given rise to more well-grounded complaints among the people, than the long sessions of the last four or five years." They further inquire, "What necessity exists for protracting the sessions four or five months each year? The committee believe, that a session of one hundred days will prove sufficient for the transaction of all necessary business by the Legislature."

To these demands of the people, — to this recommendation of the authors of the Convention, — to this decisive action of the Legislature, — the Convention could not be both deaf and blind. What remedy for these crying evils did the Convention propose? Early in the discussion of this subject, I offered the following amendment: "The Legislature shall assem-

ble every year; but shall never, except in case of insurrection or invasion, continue in session longer than ninety days, nor sit, during any year, more than one hundred days." That this was an effective limitation, all admitted. Fellow-citizens, was it a reasonable one? I have no doubt you will say that it should have been shorter rather than longer. It meant exactly what it said. Should it have been adopted? And was it adopted? No. It was rejected. It would not do to leave a blank. And what stands in its place? "No compensation shall be allowed for attendance of members, at any *one session*, for a longer time than one hundred days."

This, at first view, looks like a limitation of the time during which the Legislature may sit. But a slight examination will show that it is delusive and wholly inefficient as a restraint, and opens a door for worse evils than protracted sessions. After the expiration of the hundred days, when members of small means, and especially those from the country, shall have returned to their homes, a few men of wealth, who are indifferent about their pay, and men who have special purposes to serve, might continue the session till they had accomplished the objects of their ambition or their self-interest.

But this limitation is confined to *one session;* and not the slightest obstacle is thrown in the way of a repetition of the sessions, and the duplication of the hundred days, to the end of the year. And the delegates who proposed and sustained this limitation, and rejected the former one, were perfectly familiar with the political transactions of other States, and knew full well that the Legislature of New York, from whose constitution this provision was copied, were, at the very time when this was proposed, discussed, and adopted, holding an extra session, and drawing their daily pay on the second hundred days, as legally and cosily as if their constitution did not contain a word purporting to limit their sittings. The proposed limitation is therefore inefficient in practice, as well as deleterious in principle. It is also delusive, calculated to mislead the people, and to induce them to support the new Constitution, in the hope and belief that they will get a reduction of the legislative sessions, when in fact what they deem to be a limitation is both ineffectual and dangerous.

Another subject, which had long been a source of deep interest and anxiety to the people in most, if not all, parts of the Commonwealth, was the limitation of the power of the Legislature to involve the State in debt, and especially to loan the credit of the State to private individuals and corporations. The call for this limitation had been long and loud and incessant. This had ever been a cardinal doctrine of the Democratic party. It had been the rallying-cry in their stump speeches and electioneering addresses. Most of the leading members of the majority in the Convention had again and again resorted to it, and upon it laid the corner-stone of their electioneering arguments. Did they rely upon it as a sound principle, or did they resort to it as a mere electioneering catch-word? If the former, how could they vote against its adoption now they had the power? I, for one, cannot admit that I used it before the people as a mere artifice to delude them, and surreptitiously obtain their votes. I then believed, and still believe, that the doctrine is sound and important. If there is any one thing which the people should tenaciously hold on to, it is their own purse-strings. If there is any one power which they should cautiously and sparingly grant, it is the power to involve them in debt, and to sell or give away their pecuniary responsibility. The people's money and the people's credit are more safe in their own hands, than in the hands of any agents they can appoint.

If there is any one governmental power more dangerous and more liable to abuse than any other, it is the power of incurring State debts and loaning State credit. It exposes the members of the Legislature to all manner of influences and temptations. They are beset by lobby members. They are tempted by gastronomical appliances. They are courted by excursions into the country; and then some improvement of great public good is to be accomplished, and to be done without the possibility of injury to the State. And all that is asked is the use of a little credit, — just the signature of the Governor, or some other officer. How can such influences be resisted? It would require more than Roman firmness to withstand them. The only safety to the Legislature and to the community is to retain the power in the hands of the people.

The dangerous nature of this power will be seen by referring to the use of it in all our States, and the abuse of it in most of them. The debts and liabilities of all the States of this Union amount in the aggregate to more than *three hundred millions* of dollars. And some of the richest States in our confederacy have, by the too prodigal use of this power, brought themselves to the brink of bankruptcy. Look at the great State of Pennsylvania, unequalled in mineral wealth, and scarcely surpassed in other natural advantages, with a debt of forty millions, the very interest of which at times she has been unable to pay, and of course her credit has been impaired and her fair fame tarnished. Look at the young and vigorous State of Illinois, unequalled in the depth and richness of her soil, and scarcely surpassed in the quantity of it, so deeply involved in debt that she has not been able to pay up the interest, and has had her growth and progress greatly retarded. It is hardly necessary for me to refer to another great State, which has been driven into the disgrace of repudiation.

So alarming and all-pervading had the danger of this power become, that nearly or quite every State which has recently made or amended its constitution, has introduced some efficient restriction upon it. Clauses of this kind may be found in no less than nineteen of the State Constitutions. I supposed that similar limitations would be adopted here by acclamation. But in this, as in many other things, I found myself mistaken.

Several propositions were introduced, some of which were at first sustained by a majority. Among others, I offered two propositions. One was, that the Legislature should not have the power to loan the credit of the State, without submitting the matter to the people, and obtaining their assent. The other was, that the Legislature should not have power to run the State in debt, beyond one million of dollars, except to repel invasion or suppress insurrection. But these propositions were rejected by the usual voices and usual majority. And why was this done?

A certain most interesting portion of the State was cut off from convenient intercourse with New York and the

Western States, by an impassable mountain of rock. And the persevering inhabitants of this region and their indomitable representatives were determined that, as they could not go *over* this mountain, they would go *through* it. And in order to make a hole through which they could travel, they thought it necessary to obtain from the State a few millions of money, or of State credit, which could be converted into money. Now, as this amendment would stand, as impassable as the Hoosac Mountain, between them and the State Treasury, they not only declared hostility to the amendment, but avowed a determination, the execution of which could not be doubted, that, if this motion prevailed, they would oppose and defeat the whole Constitution. It is therefore apparent, that a local object defeated an important general constitutional provision, which, without such local object, would have met with almost universal approbation.

Now it is not within my present purpose to discuss the Hoosac Tunnel question, or to inquire whether it is wise or practicable to bore a hole some fifteen or twenty feet square through a solid rock, — the length of over four miles. I am sure I wish them success, in all their laudable efforts. So I do to the county of Barnstable. And could her sands be covered with clay, and a little sprinkling of manure, I have no doubt it would increase their productiveness, and thus add to the common stock. But much as I love Cape Cod, the birthplace of my ancestors, and much as I admire the beautiful hills and fertile valleys and romantic scenery of Franklin, I should not be willing to give either of them access to the public treasury to enable them to accomplish any enterprise, however desirable. Equal justice to the whole Commonwealth forbids it. And I must protest against the introduction of local interests to control or influence our action on grave constitutional questions. I cannot disguise my apprehension, that this Hoosac Tunnel enterprise had too much to do with several subjects which were before the Convention. Without a little aid from this source, how can we account for the most extraordinary excess of representation which has been apportioned to the vicinity of this gigantic enterprise?

There is one more important reform which was demanded by the people, that has been wholly neglected. I speak of what the committee before referred to call "the present cumbersome, formal mode of organizing the government." They say, "Eight or ten days are now usually occupied in this organization, which is nothing less than an annual waste of six or eight thousand dollars of the people's money. The election of Secretary of the Commonwealth, Treasurer, Receiver-General, Auditor of Accounts, and Executive Councillors by the people, with an application of the *plurality* principle to these officers, as well as to the Governor, Lieutenant-Governor, and State Senators, would do much to remedy this evil." "This change alone would in the course of ten years nearly or quite defray the whole expense of the Convention."

This committee further say, "We recommend the adoption of the *plurality* system in more of our elections. The time and money which is now expended, and the party animosity which is engendered by the numerous and unsuccessful attempts to elect the various state, county, and town or city officers, have become grounds of repeated and loud complaints in all portions of the Commonwealth." "We are aware," they say, "that the majority principle has long been considered the conservative element of our Constitution; and many sound and well-balanced minds may take alarm at a proposition of this kind; but we think that a moment's reflection will satisfy the most fastidious, that their fears are groundless. The practical operation of our Constitution for the last ten years has been, in very many instances, to place in the most important offices in the State men who have received, not a *majority*, but only a *plurality*, of the popular vote. Indeed, this result seems to be fast becoming the general rule, and not the exception. And in some instances these offices have been filled by men who have received not even a *plurality* of the popular vote."

This proposition was not only recommended by the committee and by the Legislature, but everywhere demanded and expected by the people. It was to remedy an existing crying grievance. The expense and delay in the organization of the government were the least of the evils resulting from this anom-

alous and cumbersome mode of proceeding. It presents strong temptations to office-seeking politicians and intriguing hacks to form cliques and collateral factions. It not only furnishes the opportunity, but presents strong inducements, for trading in offices, or, in the language of a distinguished member of the Convention, for *swapping*, and promotes dishonest management and official corruption. It also strongly and directly tends to subvert and nullify a prominent principle of our government. Instead of upholding the doctrine that a majority shall govern, it very generally favors the election of those who have neither a majority nor a plurality, but a very inconsiderable minority. This has frequently occurred in the administration of our own government. The voice of the people has very often been disregarded, to give place to party arrangement or political bargaining.

Under these circumstances, who could doubt that a mode of making officers so very objectionable in principle, and so pernicious in practice, would at once, and by a unanimous vote, be abolished, and the plurality principle substituted for it, — a principle which, if it failed to command a majority, would require at least the greatest number of votes, and prevent the withdrawal of the election altogether from the people? But to the surprise and astonishment of all, this salutary principle, which prevails in almost all democratic States, was rejected. And what added to the surprise and astonishment was the recollection, that it had been so strongly recommended by a committee, many of the members of which were the leading members of the Convention; that the recommendation had been adopted by a Legislature the members of which constituted a large portion of the Convention; and that this recommendation was one of the principal causes for calling the Convention.

But the efficient spring of action of which we had before seen an inkling, and which was to give tone and character to the proceedings of the Convention, now pretty fully disclosed itself. The Free Soil party, though not the most numerous, from its talents, its industry, and its ambition, manifestly exerted a controlling influence in the Convention, and the perpetuation and augmentation of that party clearly showed itself

as a leading object of the Convention. Whatever retarded or endangered the welfare or growth of that party, however much desired by the people of the Commonwealth, could not be expected to prevail. When, therefore, it was announced that the plurality system would be unfavorable to that party, its fate was sealed. It was said by some, that the three leading objects of the Convention were to build up the Liberty party, to make its chief man Governor, and to bore the Hoosac Tunnel. I will not vouch for the correctness of this statement. But I feel bound to state my conviction, that, had these been the leading objects of the Convention, it would have pursued very nearly, if not precisely, the course which it did pursue.

To show that I did not misunderstand the cause and spring of action in the Convention, and have done no injustice to the Free Soil or Liberty party, I beg leave to trouble you with a single quotation on this point. When the question on the adoption of the plurality rule was taken, the vote stood 159 in the affirmative and 159 in the negative. The President voted in the negative, and thus the question was lost. A leading Free-Soiler, whose talents and frankness no one will question, upon the annunciation, immediately rose, and without stopping to inquire whether there was any question before the Convention, declared his surprise at the vote just taken, and said, "While I am filled with surprise, I must also be allowed to express my gratification at the fact that this Convention has been saved from lasting disgrace by the casting vote of the chairman; for had we lost this question, what should we not have lost? *Every thing.* The Liberty party in the Convention would have been defeated in all the most important matters." "Sir, had that amendment succeeded, I would have prayed Heaven, that the people might have hissed the whole amended Constitution into oblivion." Indeed! was the "Liberty party" "EVERY THING"? And would the people, if that party had been discomfited, have been bound to bury "in oblivion" the whole proceedings of the Convention? Was that body called to act for the special benefit of the Liberty party, or any other party, or rather were they not bound to look at the interest and welfare of the

whole Commonwealth, without regard to its effect upon any party organization? And if the people were to "*hiss*" their disapprobation of any thing, should it not have been at that course which was a disregard of pledges given, and of the known will of the whole people?

I have now commented upon the principal sins of omission of which the Convention was guilty. I have mentioned the principal demands of the people in calling the Convention, and the main purposes for which it was called. They were, —

1. A reduction of State expenditures.
2. The limitation of the length of the sessions of the Legislature.
3. The abolition of the Executive Council.
4. The limitation of the power of the Legislature to incur State debts, and to loan the credit of the State.
5. The reduction of the number of the House of Representatives.
6. The equalization of the representation.
7. The adoption of the plurality rule in every election.

All these were demanded by the people. All these were among the principal purposes for which the Convention was called, and without which it would not have been holden. All these were well known to the members of the Convention. And to many of them the members were expressly, and to all of them impliedly, committed. All these demands have been slighted, or utterly disregarded. This was a violation of delegated trust, — a breach of representative duty, — a contempt of the will and power of the people; and so far as these matters were used to induce a call of the Convention, that other amendments might be procured, it was very like obtaining goods by false pretences. In this view of the subject, is it not due from the people to themselves and their posterity, to put the stigma of their marked condemnation and reprobation upon the whole proceedings?

I should now be pleased to enter upon the second branch of my subject, and to consider what the Convention *has done*. But I find myself, in the infirm state of my health, so much

exhausted, that it will be impossible for me to continue my remarks.

The meeting then adjourned to Monday evening, November 7, when Governor Morton resumed his argument.

Fellow Citizens, — Among the several amendments of the Constitution proposed by the Convention, there are some which meet my approbation, and which, I presume, meet yours, for which we should have been pleased to vote had the Convention allowed us to exercise our judgments as free citizens. Of these I shall say very little, because they have been discussed and presented to the public in the most favorable aspect by the numerous able orators who have advocated the adoption of the whole Constitution as proposed; and because I have neither time nor strength to discuss all the amendments. It will be found, that almost all the most important subjects for which the Convention was called have been either neglected, or so unwisely treated as to furnish unanswerable reasons for the rejection of the whole. Those amendments which are judicious and wise are comparatively of minor importance, and many of them capable of being provided for by ordinary legislation. They therefore will not justify any great sacrifice, — certainly no violation of principle, to secure their adoption.

Among the proposed amendments, the one in relation to the election of Senators is worthy of approbation. The choice of legislators or other officers by single districts is undoubtedly, in itself, the best mode of election. The present mode of electing Senators is not very objectionable. It has some advantages over the proposed system. It is more nearly equal. The fractions in forty districts will necessarily be greater in the aggregate than in thirteen. The formation of the forty districts will be subject to political intrigue and management, and to the process of "Gerrymandering," to which the present districts, being permanent, are not liable. Still, I give a decided preference to the single districts, and re-

gret that I have been deprived of the pleasure of giving my vote in favor of their adoption.

The *secret ballot* is an old favorite with me. I recommended it in an official message many years ago. And I can see no good reason for limiting the application of a sound general principle. Why confine it to national, state, county, district, and city elections? Why not include towns? Is not the secret ballot as much needed in Fall River or Taunton, as in New Bedford or Springfield? I should be glad to see it established in the Constitution, even in its present form, if I could do no better. But it is a consolation that, should it be rejected, it may still, if the people desire it, be provided for by law.

The same remarks apply to the tax qualification of voters. Every man contributes to the public treasury in what he eats or wears, and many men in some things that they drink. I would let every resident citizen vote, not because he pays taxes, but because he is a man. If this be a sound principle, as in the last case, why limit its operation to national and state officers? Why allow a man to vote for a president or a governor, that you will not trust to vote for a field-driver or a hog-reeve?

A capital error seemed to pervade the deliberations of the Convention. Expediency rather than principle, as in the two cases just mentioned, seemed to be the governing rule of action. This, if too much relied upon, always misleads. This will lead the wisest and most sagacious man, though always on his guard, into inconsistencies and absurdities. But principle, like truth, never misleads. Truth is always the same, and always consistent. No one truth, from the foundation of the world to the present day, was ever inconsistent with any other truth. So principles are always the same, and never clash with each other. The man who invariably follows these cardinal virtues, though simple and ignorant as a child, and always unguarded, never need to fear that he will be led astray, or will fall into inconsistencies and contradictions.

But there are many other amendments, such as the election by the people of several officers who now hold office by executive appointment; the limitation of the tenure of judi-

cial office, and some qualification of judicial power; the modification of the mode of electing the Governor by the Legislature; the limited application of the plurality; the mode of calling future conventions; the enlargement of the school fund; the regulation of the militia; the election of Councillors by the people; the *viva voce* vote in the Legislature; the abolition of the power of the Legislature to grant bank charters; the limitation of their power to create corporations; the prohibition of the application of school money to sectarian schools; the grant of judicial remedies to persons having claims against the State; the abolition of imprisonment for debt; the regulation of the writ of *habeas corpus;* the recognition of the right of the jury, in criminal cases, to judge of the law as well as of the fact; and probably some unimportant provisions which have for the moment escaped my recollection.

Some of these amendments are sound and just, and might very well become a part of our Constitution, while others are objectionable and of dangerous tendency, and ought to be rejected. But I do not deem them of sufficient importance to justify me in pretermitting other great topics to discuss them. The two last-named propositions relate to important subjects. But I believe they were introduced by two distinguished lawyers, as a kind of relief for some private griefs under which they were suffering. And as, in my opinion, they impair and weaken the great principles which their authors wished to establish and fortify, I can but hope they will be rejected.

I have, fellow-citizens, hastened over these amendments, not unimportant in themselves, and upon some of which I should have been glad to express my views, that I might have time to examine pretty fully the great subject which overshadows all the others; and in comparison with which all the other amendments dwindle into insignificance. All of you understand that I refer to the basis of representation. This lies at the foundation of government, and stamps upon it the character of freedom or tyranny. If this be right, we may overlook a thousand other errors, because this may, to a great extent, correct or remedy them. But if this be wrong, the vice is incurable, and, however wise all the other amendments may be, this will pervade and condemn the whole.

The power of making rules or laws for the regulation of the people of the community is in all governments the great and controlling power. In some countries enjoying a pretty large portion of freedom, it is called omnipotent. As it is exercised wisely or unwisely, will the government exert a salutary or deleterious influence upon its subjects.

In the original institution of government and the establishment of a civil community, the first step is to determine who shall have a voice in the formation and administration of the government, and the second is to determine how that voice shall be manifested so as to have its just and proper effect. In a community composed of a small number, each member partakes in the management of the common affairs, and of course each one has a voice exactly equal to every other one. This is a pure and direct democracy. But when the number becomes so large that they cannot all assemble together for the transaction of the public business, some other mode of expressing and ascertaining the voice of the whole must be adopted. This can only be done through agencies or proxies. And these, to express their true characters, are called representatives. And a hundred representatives, each one representing ten thousand, may as truly express the voice of a million, as if each one of the million were present and declared his voice in person. This notion of action by *proxy* was so strongly fixed in the minds of the people, that in our democratic neighbor, little Rhode Island, the votes for State officers are, to the present day, called *proxes*, and are sent up to the capital to be counted, instead of the elector's going himself to give in his vote. By the adoption of the system of representation, no one parts with any of his natural rights. This plan of representation is the most valuable invention in civil government. It was never understood by the ancients. But it is now a familiar doctrine, and indispensable in a free government.

It is based on the perfect equality of man. The doctrine of equality, whether in direct action or representative agency, is the fundamental doctrine of democracy. It is founded in justice and natural right. It is sustained by the fiat of the Almighty, and recognized and established in his revealed

word. The commandments, "Thou shalt love thy neighbor as thyself," and "Do unto others as ye would that they should do unto you," are the foundations of democracy, and every man who fully believes and always practises these precepts, in their full extent and bearing, must be a good democrat.

I start, then, with the sacred principle, that, by nature and the will of God, every man is born a freeman, and enters into society with equal rights with every other man. This, I believe every one who makes any pretensions to democratic principles will admit, is an indisputable political axiom. It was so considered by the fathers of the Revolution and the authors of our Constitutions, both national and state; and it is so recognized and established in the Declaration of Independence and in numerous state Bills of Rights. On this axiom rests the doctrine of equal representation, as it is an inevitable corollary from it. Indeed, the amendment in question acknowledges it, as it commences by declaring that, "in order to provide for a representation of the citizens of this Commonwealth founded upon the principles of equality," the representatives shall be appointed in the way therein specified.

Now let us examine the proposed amendment, and test its provisions by these principles. If it comes up to, and fully meets them, it may be set down as sound and wise, and worthy of the acceptance of the people; but if it essentially and materially falls short or deviates from them, it should be condemned and rejected. Principles so important and sacred cannot be violated with impunity.

It is said that in practice we cannot attain perfect equality. This is true. Nothing is perfect in this world. But if we cannot reach mathematical equality, is that any reason why we should not approximate as nearly to it as we can? Shall we adopt a system of substantial, practical equality, or shall we abandon the democratic rule, and resort to aristocratic principles, or adopt an arbitrary rule, unsupported by any principle?

I presume you all well know the provisions of the amendment under consideration. It gives to each town having less than one thousand inhabitants one representative six years in ten; to each town having from one to four thousand inhab-

itants one representative every year; and to larger towns, one additional representative for every additional four thousand inhabitants. This gives, in the whole, 430 representatives. A recurrence to the last census will show that there are 64 towns entitled to one representative six tenths of the time, and 212 towns entitled to one representative every year, and all the other towns and cities are entitled to more than one representative each year.

The first objection to this system is the absurdity of disfranchising the inhabitants of the small towns a part of the time, and compensating them for this wrong by allowing them an over-representation the rest of the time. This scheme, in doing injustice to the small towns a part of the time, does an injury to the larger ones all the time.

Another objection to this scheme is, that it violates the principle of equality, in this class of towns, by giving each of them the same representation, without any regard to their population. The 994 citizens of Boxford have just the same representative weight that the 210 citizens of New Ashford or the 242 citizens of Monroe have. Thus one man in either of the latter towns has more power in the House of Representatives than four men in the former town. And the inequality, in a greater or less degree, runs through the whole of this class of towns. Is this a just and righteous distribution of power? And will you give it your approbation?

Again, the same inequality runs through the second class of towns. We find one town, Hingham, with 3,962 inhabitants, having one representative, and another town, Chesterfield, with 1,009 inhabitants having the same. Is this representation "founded upon the principles of equality"?

But, fellow-citizens, there are several other views of this subject which will present it in a more striking light. And I now bespeak your largest patience and forbearance, for I am determined, at the risk of being tedious, to follow out this provision in most of its details, and to show its unrighteous, arbitrary, and anti-democratic character.

I will, in the first place, make a comparison between several different towns, to show the inequality between them. This will be the best test of the fairness and justice of the scheme.

For every representative ought to represent as near as practicable the same number of people. And every representative district should have a representative power as near as practicable according to its population. I will now refer you to the population of several towns, with their representation, and show you how utterly this justice is disregarded and set at naught.

In the comparison which I am about to institute, I intend to take strong cases, because that will best test the principle. And I shall not notice the fractional representation of the small towns, because, until a new census be taken, they will be entitled to annual representation, and because, when a new census shall be taken, it will show almost all the increase in the large corporations, which will make the inequality greater then than it is now, allowing the annual representation of the small towns.

I will commence by comparing some of the towns in this vicinity with some in the northwestern part of the State. Pawtucket with 3,876 inhabitants has one representative, and New Ashford with 210 and Monroe with 242 each has one. Thus a citizen of New Ashford has in the House of Representatives as much power as 18 citizens of Pawtucket, and a citizen of Monroe has as much as 16 citizens of Pawtucket. Follow the comparison a little further. There are ten towns in the State which have a population of 3,685 souls, and are entitled to 10 representatives, while Pawtucket with its population of 3,876 has but one. Is this equality or justice?

There are other towns of this class, for instance, Hingham, North Bridgewater, Rochester, &c., where the disproportion is even greater than in Pawtucket, and in all of the 212 towns the inequality is gross, as between themselves, as well as between them and the smaller towns. But time will not permit a reference to a hundredth part of them.

Let us for a moment look at the larger class of towns. A man in Fall River has one eighteenth part of the political power of a man in New Ashford, and one sixteenth of the power of a man in Monroe. The population of Fall River is 11,170, and is entitled to *three* representatives. There are twenty-three towns in other parts of the State, with a popula-

tion of 11,308, which are entitled to *twenty-three* representatives. So a citizen of New Bedford has *one sixteenth* of the weight of a citizen of New Ashford, and *one fourteenth* the weight of a citizen of Monroe. Thirty towns, with a population of 16,292 are entitled to *thirty* representatives, while New Bedford, with 16,441 inhabitants, has only *five* representatives.

Now let us bring this matter home to our own town, and see how we are estimated in the scale of political rights. Following the same comparison, a man in Taunton has *one sixteenth* the weight of a man in *New Ashford*, and *one fourteenth* the weight of a man in Monroe. From this it follows, either that each of us is only *one sixteenth* or *one fourteenth* of a man, or that every inhabitant of either of these favored towns is *fourteen* or *sixteen times* a man. Again, Taunton has a population of 10,145, and is entitled to *three* representatives, and *twenty-one* other towns with 10,015 inhabitants are entitled to *twenty-one* representatives.

Fellow-townsmen, can you approve a system like this? Is any one of you willing to admit that he is but *one sixteenth* or *one fourteenth* or *one tenth* of a man? Are the farmers, the brickmakers, the mechanics, the machinists of Taunton, so vastly inferior to the farmers of the Green Mountains, or of any other part of the world? What is there in any other part of the Constitution deemed so valuable by you, that you are willing to purchase it by such an act of self-degradation and political debasement? When this system of inequality and unrighteousness is brought home to ourselves, it is difficult to discuss it with becoming deliberation and calmness. Let me put the question to you, Is there a person here, a person in town, craven enough to acknowledge himself but the fraction of a man by voting for these amendments?

The proper test of the fairness of a representative system is the comparison of one election district with others, and thus ascertaining whether all are treated alike. If they are, the system is a just one; if not, it is an unjust one. We have just seen how the proposed system bears this test, — how utterly it is condemned by it. But let us look further, and see if we can find any alleviation of this evil. If, for instance, the representatives are pretty fairly distributed among

the different counties, sections, and interests of the State, it will be some mitigation of the injustice of unequal districts.

How is the distribution between the several counties? Norfolk, with a population of 77,441, can elect *thirty-one* representatives. Berkshire, with 48,937, — less than two thirds the number, — can elect *thirty-three* representatives. Barnstable, with 33,997 inhabitants, may elect *fifteen* representatives, and Hampshire, with 34,290 inhabitants, may elect *twenty-four*, almost twice as many. Bristol, with 74,979, can elect *thirty* representatives, and Franklin, with 30,888, a little over one third as many, can elect *twenty-six* representatives. We need not further follow the county comparison to see that no relief can be derived from that source.

Let us now see how the system operates upon the different sections of the State. The three northwestern counties, with a population of 114,115, may elect 83 representatives, while Norfolk and Bristol, with 154,121, can elect only 61, and Norfolk, Bristol, and Barnstable, with 188,118 inhabitants, can elect only 76. The Old Colony, with 176,680 inhabitants, may elect 76 representatives, while the three northwestern counties, with a population of 114,115, can elect 83.

I will present one or two other statistical views, and then relieve your patience on this part of the subject. The county of Norfolk, as I have stated, has 77,441 inhabitants, and 31 representatives. There are in other parts of the State 96 towns having 74,812 inhabitants and 96 representatives, — over three times as many as Norfolk. Again, Bristol, with 74,979 inhabitants, has but 30 representatives, while the before-mentioned 96 towns, with a less population, have 96, — more than three times as many. These 96 towns with 96 representatives have, as before stated, 74,812 inhabitants, and the three counties of Norfolk, Bristol, and Barnstable, with 188,118 inhabitants, have but 76 representatives.

There is one other aspect in which I wish to present this subject. It is highly important that the several great interests of the Commonwealth, as well as the people thereof, should be fairly represented. The scheme proposed necessarily gives the majority to the small towns. No increase of population, according to this ratio of representation, can ever change the majority.

The small towns are, and always must be, agricultural. Hence a majority always must represent agriculture. While I am willing to make this the favored interest, and give it a predominating influence, I am not willing to give the absolute power to any one class. Although this class might never combine against other classes, yet the sympathy of interest would always bring their votes together when that interest was involved. No! let the whole people, including farmers, merchants, navigators, manufacturers, mechanics, and laborers of every description, be represented according to numbers, and then every interest and pursuit will be duly cared for and protected.

I have already adverted to the extraordinary influence which a great mountain appears to exert over subjects which would seem to have no connection with mountains or rocks or tunnels, and I will now barely refer to a most wonderful coincidence. We have spoken of the extraordinary declaration, that, if any amendment was adopted unfavorable to the Hoosac Tunnel, the whole Constitution should be defeated, thus making that enterprise of more importance than any amendment which can be proposed. And in connection with this we have the fact that representation of the section interested in this project is double the representation of other sections of the State. I will offer no comments on a coincidence so remarkable; but leave it for the meditation of the curious in such subjects.

There is no limit to the illustration of the unfairness and absurdity of this scheme of representation. But I am sure that I have gone far enough to satisfy you that, in all its relations, whether to town, county, sections, or interests, it is monstrously unequal, unrighteous, and dangerous. It reverses the fundamental principles of free government, by giving to a small minority the controlling power. By this scheme THREE TENTHS of the people elect a majority of the House of Representatives. And less than *one half* of the people can elect *two thirds* of the House. Is there any safety for the liberty, the personal rights, or the property of the majority, when so small a minority can govern? Is there any guaranty that your Constitution will not be made worse, when a bare majority, and even less, in some stages, may propose amendments?

Another insurmountable objection to this is, that it makes a House altogether too large for the intelligent and deliberate transaction of the public business. The people everywhere demanded a diminution of the House; but the Convention, in defiance of their wishes, increased it. Such a multitudinous assembly necessarily falls under the influence of ambitious and aspiring, if not unscrupulous men, and becomes a piece of machinery controlled by party leaders; and questions, too often, instead of being decided in the Capitol, are settled in caucuses. The great and growing State of New York, with its three millions of inhabitants and its imperial territory, has but *one hundred and twenty-eight* members of the Assembly. The great States of Pennsylvania and Ohio, with their two millions each, and their extensive territories, have but *one hundred* in the lower House. And the State of Tennessee, with as many inhabitants and six times as much territory as we have, has but *seventy-five* representatives. Why should we employ four or five times as many agents to transact our business as these great States employ? I am in favor of a pretty full representation of the people; but having regard to the size of our territory and our present and probable future population, in my opinion *one hundred and twenty*, or at most *a hundred and fifty* members, would compose a better House than any larger number.

Another strong objection to this scheme is its tendency to increase the number of the House, already much too large. The number will be increased by the multiplication of towns. Although the introduction of the absurd and arbitrary rule that new towns of less than fifteen hundred inhabitants shall not be allowed any representative, may discourage and retard the formation of new towns, it will not prevent it. New towns will sometimes be formed with more than fifteen hundred inhabitants, and old towns will be left with a very small number; and both will be represented. The principal increase of population will be in the large towns. The ratio of representation is to be founded on the ratio of increase in the whole State, so that, while it greatly increases the inequality of representation, it will also somewhat increase the number of members. This intricate and mysterious rule, fruitful only

of evil, possesses the peculiar power of disfranchising a part of the people; of increasing the number of representatives; and of rendering the apportionment more unequal and unjust.

I must add, that this rule possesses a further extraordinary property. *It has the power of perpetuating and rendering irremediable the evil which it creates.* If you adopt this system, and place the power in the hands of a small minority, you must never expect them to give it up. This would be contrary to all experience and the principles of human nature. Who ever knew the few holding power voluntarily to surrender it to the many? The history of the very amendment we are now considering furnishes a strong illustration of this principle.

Various propositions were submitted in the Convention to divide the State into districts, and to reduce the representation and make it as equal as practicable. These were all rejected by large majorities, and the present system was adopted by a very large majority. But how were these majorities composed? Did the popular majority declare against these propositions? By no means. They were rejected by those who, having an undue share of power, were determined to increase it, at the expense of those who already had less than they were entitled to. I did not make the calculation, and do not speak from personal knowledge. But a gentleman in whose accuracy I have entire confidence made the calculation, and found that, although the majority in the Convention was nearly one hundred, yet that those who voted for the equal representation by districts represented 421,000, while the great majority represented only 386,000. Thus the rule that the minority holding the power will never give it up, aided by party tactics, triumphed over the will of the people.

Will you excuse a little more detail on this subject? My first motion was to establish the number which should compose the House; apportion this number among the several counties as near as possible (without dividing towns and the wards of cities), according to population, or ratable polls, or legal voters, as might be preferred; and then let each county be subdivided into districts for one, two, or three members, so as to let each member represent as nearly as practicable an

equal number. This was rejected. And then I offered a proposition to submit to the people, when they voted on the adoption of the Constitution, the question whether they would accept the above proposition or the town representation as proposed in the amended Constitution. I thought the right to settle this question belonged to the people, and that nothing could be fairer than to leave the matter directly to them. But this was objected to. And it was declared in debate by a leading delegate, that, if this was left to the people, "they would go with a hurrah for the district system"; and thereupon it was thought necessary to put it aside indirectly, instead of taking a direct vote upon it. A motion was accordingly made to substitute another plan for districting, which would be in no danger of being adopted either with or without a "hurrah." I thought I had reason to complain of the course adopted in refusing a direct vote on my motion; but I shall say nothing of that, as I have not come here to seek redress of personal grievances. The substitute was adopted instead of my plan, and now forms a part of the proposed Constitution.

By this, which is the 4th article of the 14th chapter, the Legislature in 1856 is required to divide the State into single or double equal districts for the choice of representatives. When it is recollected that the duty of forming these districts is devolved upon a Legislature, a large majority of whom will be from small towns, and utterly opposed to the whole district system, and that it will be in accordance with their interests, as well as their opinions, to defeat the whole scheme, it can hardly be doubted that they will either make such hideous districts that the people will be obliged to reject them, or that, through a disagreement between the two branches, they will fail to make any districts at all. In this way this substitute, having answered its main purpose by defeating my motion, will be *functus officio.*

In this connection it will be proper to advert to the provision for future revisions of the Constitution. All Conventions hereafter to be called are to be founded upon the same unrighteous rule as the House of Representatives, with the additional evil of allowing non-resident representation. Should this Constitution be adopted, what hope will remain for any

improvement in it hereafter? Fellow-citizens, will you submit to such imposition and self-degradation? Now is the time to resist. Will you hold out your hands to have the fetters well riveted? Or will you spurn the chains before the rivets are clenched?

I have now presented to your consideration such of the *acts done* by the Convention as my time and strength have enabled me to do; and you will judge whether they are worthy of your adoption, or whether they are such as ought to condemn the whole proceedings of that body.

But if the objections which I have stated have any foundation, how do the advocates expect to procure the adoption of the amendments? Their principal reliance must be upon *party discipline*, and the weight of the recommendation of the Convention. They also may well rely upon their eloquence and arts of persuasion. But let us for a moment look at a few of the arguments which are advanced.

I believe all of the advocates admit that some of the articles are objectionable to some people, but, say they, you must adopt the whole now, or you will never get any amendments, for the people will never call another Convention. Are they aware what is the admission necessarily implied by this? Why will the people never call another Convention? Will they not continue to have the same power? There can then be no other reason for their refusal, than that the people are so disgusted and dissatisfied with the action of this Convention, that they will never trust another.

They also say, that all admit that some of the provisions are good and beneficial, and, in order to secure these, they must vote for the whole, including the bad as well as the good; for they are all put together in one proposition, and you cannot obtain what you like unless you take what you dislike. But who put them together? Did not their advocates connect them for the very purpose of having this argument to urge?

Again, they say the old Constitution is very defective and imperfect, and the only way to remedy this is to adopt the new one. We admit the defects of the old Constitution, and we once thought no rational men would ever make another

equally defective. But in this we have found ourselves mistaken, for the new Constitution is really much worse than the old one; and to take it in order to get rid of the latter, would be to adopt a great evil that we might escape from a smaller one.

There being no justification of unequal representation, the accommodation of the scheme proposed, which its advocates mainly rely upon, is founded upon our system of town organization. They extol this system as being invaluable. I fully agree to the soundness of their views on this point. But the defect of their argument is, that the inference has no connection with the premises. Indeed, the opposite conclusion seems to be the more natural one.

The value and importance of our municipal system are fully appreciated. Our towns are indeed little democracies. Town-meetings are primeval legislative bodies, possessing, within their proper spheres, powers, upon the wise exercise of which, in a high degree, depend the well-being and happiness of the citizens. In these assemblies are considered and discussed such subjects as the laying out, making, and repairing of highways, — the financial affairs, — the support and employment of paupers, — the maintenance of public schools and the formation of districts for that purpose, — the enacting of by-laws and the management of the police, and the management of the general affairs of the town, — and the adoption of petitions, remonstrances, and approbatory and denunciatory resolutions, — and many other matters of deep interest to the inhabitants.

These topics engage the attention of the citizens, and open for investigation and discussion, not only local affairs and municipal regulations, but the science of government and the whole range of politics. In the investigation, discussion, and disposition of these subjects consist the excellence and advantage of these democratic schools. But is there any thing in the election of one or more representatives, which adds in the slightest degree to their utility? Will not the voting for a representative of a district be just as instructive and beneficial, as voting for a representative of a town? Will not the act, and the effect of the act upon the actors, be precisely the same in both cases?

But the effect of the instruction and political teachings will

be entirely different. The whole training and practice under our beautiful municipal systems teaches a reliance upon *man*, and not his accidents, — the perfect equality of all mankind, — and thus prepares the mind for equal representation. Therefore the proposed system violates the first and fundamental principles taught and practised in our municipal democracies.

Our parishes and school districts are invaluable ingredients in the formation of our beautiful scheme of free government. And the choice of a representative by each of these corporations might just as well be insisted upon as a choice by towns.

Probably the most anti-democratic absurdity into which this unjust scheme has driven its advocates is the representation of corporations. Unable to find any other sufficient basis for so unequal a system, they are compelled to rest on corporations for that portion which the population will not sustain. If any one thing is less entitled, and more unfit, to be represented than any other, it is that anomalous, bodiless, soulless, irresponsible, everlasting legal entity, called a corporation. It has no principle to sustain it, and no precedent to excuse it, except in the British Parliament. And even there the rotten-borough system, which we propose to imitate, became so abhorrent to the political light of the present day, that they were constrained to exscind its most prominent enormities.

It now only remains for me to ask your attention to the manner in which the proposed amendments were prepared and presented to the people.

In the first place, does the review which we have just taken show that enlightened patriotism, or short-sighted partisanship, — broad statesmanship, or narrow party tactics, — the love of democratic equality, or the love of political spoils, — in short, that principle, or expediency, were the more prominent considerations in the proceedings of the Convention? The people will judge, and by their votes on Monday next determine. If the result was the dictate of disinterested love of country, you should give it a favorable consideration; if of party, the presumption is that it is wrong and should be spurned, — if for no other reason, to rebuke the admission of that fell spirit into such a body.

The majority of the Convention professed to be democratic reformers. But if we judge of them by their acts, we shall be led to the conclusion, that a distrust of the intelligence of the people or a dread of the popular power influenced many of their decisions. When it was proposed to leave it to the people to decide whether they would adopt the plurality rule, they were denied the power. When those democratic measures, the secret ballot and universal suffrage, were passed, the people were not allowed the full benefit of them, but were limited in the application of them, just as you would guard children against the too free use of edged tools and fire-arms. And when an attempt was made to retain in the hands of the people the power to loan the credit of the State, the attempt was resisted and defeated on the avowed ground, that the people were not competent to exercise the powers, — not capable of taking care of their own money and their own credit! What sort of reform, what sort of progress, what sort of democracy, is this? I was always taught, that faith in the people was the criterion of democracy.

But the crowning act of the Convention, the measure which shows at once their distrust of the intelligence of the people and their disregard and contempt of their will, was the mode of submitting the amendments to the action of the people. Everybody everywhere supposed that there was but one way in which these could properly be submitted. That was, that each independent proposition should be presented by itself, so that every elector should have perfect freedom in voting upon it. Even the members of the Convention, until near the close of the session, were as strong and as well united in this opinion as the people themselves. They well knew that they were elected to *amend*, and not to *make*, a Constitution. No action was had on the subject, no instructions were given to any committee, in relation to the manner in which the amendments agreed upon should be presented to the people for their action. But just before the close of the session, the committee appointed to put the amendments into the form in which they were to be submitted, assumed authority also to recommend the manner of their submission, and accordingly reported a resolve, which presented nearly all the amend-

ments, including all the most important ones, in one proposition, and doled out six or seven minor propositions for the separate action of the people. By some secret charm or talismanic influence, the great majority of the Convention were converted from their former notions, and the plan was adopted by an overwhelming vote. But so strong was the conviction of the unfairness and injustice of the measure, that, since its passage, no one seems to covet the paternity of it, and boldly and manfully to defend and justify it.

One of the prominent advocates of the new Constitution, whose speech in Faneuil Hall was published in the Boston Post, is reported to have said, on this point, that he "*should have been glad to have seen some things submitted separately, and tried to bring about that result.*" I cannot question the gentleman's sincerity, for he made a speech in the Convention in favor of a separate submission. But he was on the committee who reported the plan which was accepted, and under which we are now acting; and although party spirit and party discipline sometimes make strange work with our mental and moral powers, I think he cannot have forgotten the proceedings of the committee. The plan, precisely as it now stands, including every article of the first proposition, without the change of a word or a letter, was adopted in the committee by a vote of seven to six, the gentleman himself voting in the affirmative.* I do not doubt that this gentleman, and other members of the committee, and many other members of the Convention, who by some influence or considerations satisfactory to their own minds were induced to vote for the plan, would sincerely and truly "have been glad to have seen some things submitted separately."

But let us look a little into this plan. Why were all the

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* This the Hon. B. F. Hallett, in one at least of his many speeches, pronounced, in language selected by his own taste, "*a base falsehood.*" It was well known in the Convention how the committee divided on this report. Those who were in favor of it were *Boutwell*, *Allen*, *Griswold*, *Dona*, *Abbott*, *Knowlton*, and HALLETT. Those who were opposed to it were *Morton*, *Choate*, *Parker*, *Briggs*, *Lord*, and *Oliver*. That the last six were opposed to the report is perfectly well known, and may be verified by inquiry of them. If Mr. Hallett was not in favor of it, then it never was adopted by a majority.

important amendments grouped together, and only some minor ones submitted separately? Why not submit them all together, or all separately? There must be some powerful reason for this extraordinary distinction. Can it be that the Convention desired and intended to resort to an artifice to get the people to make a show of approving what they in their hearts disapproved, and to give a legal assent to an amendment which they secretly detested? Is it possible that Democrats, nay, that those who pretend to be more than Democrats, — to be "Free Democrats," or "Democratic Democrats," — can desire to get any constitutional provision legally adopted without and against the wishes of a majority of the people? If that be "Free Democracy," I say give us the article in its pristine purity. How did it happen that all the amendments supposed to be popular were united with the representative scheme, and all of doubtful popularity were submitted separately? Was that so repugnant to the opinions and wishes of the people, that it required every thing of good that the Convention did, to induce the people to swallow it? I fear there can be but one answer to this question. The veil is too thin to conceal the object. It must have been to constrain the people, *nolens volens*, to vote for this scheme. Some of the members had the candor to avow this. Well may we say, in the language which one of the committee used on another occasion, "You need not attempt to disguise it. Everybody will see through it. The lion's skin is not half big enough to cover that other animal. His ears stick out, in all their longitude."

But again, does not this mode of submission necessarily operate as a restraint upon the freedom of the people? A man may like some of the many things which are combined, and dislike others. He is necessarily compelled, either to vote for what he dislikes, or against what he likes. It operates not only as a threat, but also as a bribe. It virtually declares that, if you will not vote for this thing which you do not want, you shall not have another thing which you do want, or it holds out the corrupting inducement, that you may have what you think is *right*, if you will take with it what you believe to be *wrong*. It is the Jesuit's rule, that the end justifies the

means. Do *wrong* that good may come from it. Spurn such a rule. Do what is *right* and *just* in itself, and leave the event to Providence. Such a course is always expedient, as well as righteous. A wrong to one individual can never be justified by any amount of benefit to others. If there is *one* unrighteous provision in this general proposition, nothing can justify a vote in favor of it, however wise and just in every thing else it may be. The responsibility rests on those who made the unjust connection.

I will, in conclusion on this point, say, that the representative has no right to restrain the free action of his constituent; the agent has no power to give orders to his principal; nor the servant to dictate to his master. I cannot express my abhorrence of this scheme better, than by repeating what I said of it in the Convention. I there said that it was like those having authority declaring to the religious man, You may have a church if you will place a gambling-house by the side of it; or to the friend of education, You may have a female seminary, if you will place a house of assignation next to it; but they are so connected, that you cannot have the one without the other. I said I would let the church and the school go, before I would take them at such a sacrifice. I would not be hired, by any price, to do an unjust act. And I hope the people will now join me in saying, that the Convention, by what they have *neglected to do*, by what they *actually have done*, and by the *manner* in which they have done it, have forfeited their respect and confidence, and incurred their deepest disapprobation of all their proceedings.

I have now adverted to nearly all the matters which I intended to discuss. I am aware that there are many other things worthy of deep consideration. But I must leave them to be suggested by your own reflections. Enough has been said to show pretty fully the working and bearing of all the proposed amendments, and the nature and character of the proceedings of the Convention. You have seen that it was conceived by *party*, — was planned by *party*, — was proposed by *party*, — was sustained by *party*, — was carried through by *party*, — was conducted in all its operations by *party*, — and

that its proceedings were of a *party* character; and that, if the amendments are adopted, it will be by a *party* vote. Are you, fellow-citizens, willing to have a PARTY CONSTITUTION?

And what is the political character of the party who have controlled the action of the Convention? While they claim to be Democrats and something more, have not the measures which they have proposed shown them to be devoid of the feelings and principles of a true Democracy? And have not their own declarations sustained and confirmed the same thing? Scarcely had the Convention commenced its session, when he who was an acknowledged leader in that body, who has since, by the united votes of the Liberty party, been recognized as the true representative of their principles, declared "*that the power of the Convention had no limit but its own will.*" Is this the Democratic rule of construing *delegated* power? It would better suit the latitude of Russia or Austria, than the genial climate of a free country. And another distinguished member of the same party, alike honorable for talents, learning, sincerity, and frankness, in discussing the basis of representation, declared of a portion of our population, that we "*might as well count the cattle in the farmer's field, or the crows that fly over it*"; thus comparing this very numerous class, not merely to the beasts of the field and to the birds of the air, but to that filthy, mischievous, thievish, carrion bird, the crow, — the disgust and abhorrence of the farmer. If these distinguished leaders speak the sentiments of the Free Soil party, (and who has a better right to speak for them?) we may judge what they mean by the "equal rights of man," and "the sodality of the human family"; and understand them when they speak of "Free Democracy," and denominate any one a "Democratic Democrat."

I declared in the commencement of my remarks, that I came before you as a Democrat, and I should discuss the proposed amendments on Democratic principles. Have I redeemed my pledge? I should, however, be glad, were there not so many Whigs present, to address a few remarks specially to my Democratic friends. And as it is, I believe I will let them out. They may not be entirely lost upon the Whigs.

Fellow-Democrats, the line of our party was formerly pretty plainly drawn and distinctly marked. The landmarks were principles, and these stood out so distinctively, that we had no fear of mistaking our own boundaries, or allowing others to come within them. There was then no disposition to tear down our partition wall, and occupy our fields in common with adjoining owners. We feared that the cross of blood which would ensue would greatly deteriorate our stock, and the intercourse would render both vicious. But, of late, we have had so many platforms made, and so many defective planks put in them, and the planks have so often been changed, that we hardly know where we stand, or when we safely stand.

My advice is, that we eschew all modern inventions, and stick to the original platform as first laid down by our fathers of the Revolution, the authors of the Declaration of Independence, and the framers of our Constitution, as it was trodden by Jefferson, and Madison, and Jackson. Every stick of the old platform is perfectly sound, without a flaw or the slightest indication of decay. As long as we firmly stand on this, no harm can come to us. Be careful not to be led away by collateral matters. Do not be diverted by any side issues. Be not tempted to mount any inviting hobby that may be led to your door. From these sources spring all our danger. They have caused all our embarrassment in relation to our extraordinary constitutional propositions.

But the recommendation of a strict adherence to the principles of your party implies no illiberality, much less prejudice, against any other party. The rule which you prescribe to yourselves, you will allow to others. The great questions for which we have struggled so manfully against the Whigs have been settled in our favor, and acquiesced in by them. The distance between the two parties, formerly so wide, has greatly diminished. As the Whig party has yielded to us in so many important points, let no remembrance of former hostility, let no appeal to party prejudice, impel us to vote against a measure merely because they are for it, nor deter us from voting for what is right because they support it.

You know, gentlemen, that I have always been opposed to

coalitions. All history shows that coalitions have always been devoid of consistent common principles, and been short-lived and productive of mischievous consequences. I have always advised a union of all men who entertained the same principles, by whatever different names they may have been distinguished. But I have ever opposed a combination of parties of *different* principles, for the purpose of gaining a political triumph, or of distributing the honors and emoluments of office and place among the contracting parties. I always believed such coalitions to be unprincipled and dangerous. I would say, let each man vote according to his own convictions, and leave the principles of our government to work out the consequences. Be assured that such, in the long run, will be productive of the greatest good to the country, to yourselves, and to every honest, well-principled party.

I am rejoiced that the National Administration has placed itself so distinctly upon this old-fashioned Democratic ground. I am rejoiced that the President has "*set his face like a flint*" against these unholy coalitions, and especially against the Coalition in this State; and holds that "*the Democrats who have participated in this have done worse than to commit a fatal error. They have abandoned a principle.*" Let us then strictly adhere to the pure old Democratic faith, unalloyed by the intermixture of any other tenets. Let us strictly adhere to and faithfully execute the compromises of the Constitution, neither enlarging nor diminishing them by a single hair's breadth.

The constitutional amendments are, beyond all question, the genuine production of the Massachusetts Coalition. If, then, the support of the Coalition "*is hostile, in the extremest degree, to the determined policy of the Administration,*" will not voting for the works of the Coalition be either "*right-handed backsliding*" or "*left-handed defection*"? And let me appeal to my Democratic friends and my Free Soil friends, if any such there be who voted for General Pierce, or intend to sustain his Administration, how can they vote for this Constitution, consistently with their support of the present Administration?

Fellow-citizens, I now close my remarks, not because I

have not many more things to urge against this Constitution, but because it is quite time that our deliberations should be brought to an end. This is probably the last time that I shall ever make a political address. I have been drawn out, against my wishes and determination, by your call, and by the magnitude of the question before you. I have considered the subject for a long time, and with great care and coolness. I have honestly laid before you the result of my deliberations. I claim no exemption from error or prejudice. But I may appeal to you to say, whether there can be any motive which I can have, except to sustain the honest convictions of my judgment. All my affinities and predilections were with the present advocates of the Constitution.

I regret that this address is not more worthy of the subject, of the occasion, and of yourselves. I have only endeavored to present plain facts and plain inferences in plain language. I have made no attempt at ornament or literary display. The beauties of rhetoric and the persuasion of eloquence I have left to the advocates of the new Constitution. I think they will need all their power.

For the facts which I have stated, I refer you to the public documents. From them you may ascertain their accuracy. The inferences which I have drawn, your own judgments will enable you to test. The subject is immensely important. It embraces principles, the effect of which will be felt for ages to come. If the results are such as I have described them, the Constitution proposed to you, if adopted, must be productive of evil consequences, and very little else. At any rate, some parts of it will inflict a great wrong on some portions of the community. Let us not, then, fall into the fatal error of doing wrong to some, especially to ourselves, in the hope that good will accrue to others. In conclusion, I am constrained to say, that I have come to the most unwavering conviction, that the whole scheme is the fruit of *party spirit*, and is throughout unequal, anti-democratic, and unrighteous, and therefore ought to be rejected.

ADDRESS

TO THE

CITIZENS OF QUINCY,

DELIVERED, AT THEIR INVITATION,

BY

HON. CHARLES FRANCIS ADAMS,

NOVEMBER 5, 1853.

FROM THE BOSTON DAILY ADVERTISER.

ADDRESS OF MR. ADAMS.

My Friends and Neighbors, — I have been requested to express my views of the proposed amendments to the Constitution, and I see no reason why I should refuse to do so. On a subject like this, whilst I should not seek to obtrude my sentiments upon others, I have nothing to conceal. Some of you have applied to me without party distinction. On my part, I meet you without party feeling. My topic will be the Constitution, and nothing else. You commit yourselves to nothing by simply listening to what I may say, whilst I desire it to be clearly understood, that in no way do I depart from the position I have heretofore held on other subjects, by the course I deem it proper now to take. Here we are not Whigs, or Democrats, or Free-Soilers, but simply citizens of Massachusetts, assembled for the purpose of consulting upon our interests under a government to be established for our common good.

For the first time in the history of this Commonwealth, an amended form of Constitution has been prepared and presented for adoption in the midst of party contentions. I hold this to be the most unfortunate thing that could well have happened, for it is entirely unfavorable to the exercise of that calmness of judgment which is indispensable to the formation of a wise decision upon the disputed points. For myself, I can only say that I have tried very hard to judge the question upon its own merits, and upon nothing else. I have looked about me to see whom I could find to consult, and I scarcely find a soul. On the one hand, I perceive the party in favor of the Constitution acting not so much on its merits as

upon the idea that its provisions will aid them in all future contests with their opponents; and on the other, I see the opposing party resisting it not so much on its demerits as from a fear that it may impair their prospect of reëstablishing their ascendency. On all such calculations, my little experience teaches me that no dependence whatever can in the long run be placed; and even were it otherwise, they should not be permitted to enter into the question of the goodness or badness of any form of government designed for the equal benefit of all. In such a state of affairs, I have been driven to trust the free and unbiased exercise of my own judgment. For the results to which it was brought, I pretend to claim nothing beyond the merit of calmness and of independence of all extrinsic considerations.

And first of all, let me specify the nature of our task. The preamble to the Bill of Rights prefixed to the Constitution declares that "the body politic is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good." Of course, then, each citizen who enters into such a compact has the same natural rights with every other, and, in giving up a part of them for the sake of securing the protection afforded by government, he is not required to surrender more than his neighbors, nor to acquire a smaller share of benefit than they. The only rule to be adopted in such a compact, then, is that of rights, as well as obligations, perfectly equal. Without such a foundation, no republican form of government can possibly be stable, because no considerable portion of the people who live under it will consent to suffer the grievous injustice of established inequality of rights a moment longer than they can help it. Any instrument constructed upon calculations of benefit gained by some at the expense of others, will not last. I do not here assume that any thing of the kind has happened in the present case; still less do I venture to impute any intention to bring about such a result to a single person of those constituting the majority of the Convention that proposes the amendments. All I mean now to point out is the absolute and paramount duty of us all, if we mean to consult the permanent good of the whole,

as well as of each individual in the Commonwealth, to raise ourselves clearly above the atmosphere of party passions, which always tends to make us more or less unjust to one another, and to consider what is now offered for adoption solely upon its own merit, as carrying out the principle of equal rights to all.

And here let me say a word upon the difference between the present question and the ordinary ones that spring up among us. The first is a case of *organic* law. The last relate to matters of administration. By *organic* law I mean that rule by which the society, of which we are all members, is kept together, and without which we should all fly apart. By *administration* I mean only the way by which the interests of that society, after it has been created, are well or ill managed. The two processes may be tolerably well illustrated by the example of a watch. The spring, and wheels, and screws, and pins, and case, are all separate pieces, which must be brought together, and fitted, each in its proper place, before the machine of which they are compounded can be called *a watch*. The process of composition may be called the *organic law*. It can be properly done only by following one rule, which is to make the parts produce a true measure of time. And about the greater or less excellence of the work there can be little room for opposition of sentiment, since there can be but one test, and but one way of applying it. But when once made, a very different set of persons may come in and successively take possession of the watch, wind it, and regulate it, and set it, and a great difference of opinion may naturally spring up among them as to who can keep it most exactly to show the passage of time. This is *administration*. In the one case, parties cannot or ought not to exist. In the other, they have a fair and legitimate field of exercise. A very good watch may be very ill taken care of. Just so a very good form of government may be very badly directed. In such a case, the remedy is to change the possession into more careful or competent hands. But a watch badly put together, with an unsuitable spring, ill-fitted wheels, and insufficient chains and screws, will never keep time, let the fidelity of the possessors be as perfect as it may, or let them

be changed ever so often. Just so is it with an ill-constructed government, which will never satisfy the people, let the managers of it be as competent as they may. Hence it follows, that the true wisdom consists in seeing that the thing is made right at first; and that no temporary passions or secondary motives be permitted to slip into the construction of a work, which, once in, cannot be again put out, and the action of which may tend to bring the whole system into public odium or contempt.

The Constitution of Massachusetts was adopted in the midst of the Revolutionary war. It was based upon principles which have stood the test of time; and its action proved so satisfactory to the generation that established it, that fifteen years afterwards, when a chance was left open for them to change it, they refused to do so. Twenty-five years later, the separation of the District of Maine rendered a modification of form absolutely necessary, and a convention was assembled to prepare it. That body proposed a few changes to the people, and such as in no way impaired or conflicted with the principles of the old instrument. Yet even of these, the majority adopted only a part, and rejected some of the most material. They acted calmly, and under no heat or party passion. Since that time, other amendments have been adopted upon the recommendation of the Legislature, and these must be admitted to have done something to change the consistency of the organic law. But we now have a much more general and extensive alteration proposed to us. Neither is it presented, as it was before, in parts that may be separated. We must take them as a whole, or none. I refer to the first and comprehensive proposition. The question here for us to settle in our minds is, whether it is on the whole good enough to justify us in voting for the entire change.

For my part, I have labored to regard the matter calmly in all its parts. I perceive some things which are improvements; some which scarcely deserve the name; some which appear to me the direct opposite. On comparing them all together, I have been reluctantly compelled to decide, that the ill overbalances the good, and that, being obliged to act upon all together, it is wiser and more safe to wash my hands of the

whole by voting against it, thus losing the good, than by accepting it to run the risk of admitting with that good a more than compensating evil.

Let me now state in brief my objections.

1. The first Constitution is a consistent whole. Its premises and its conclusions agree as well as the nature of things will admit. The details are legitimate deductions from the principles enunciated. There is neither incoherence nor inconsistency in all its main elements. In other words, the watch was well put together. I object to the substitute now proposed, because the new parts are often inconsistent with the old, and sometimes with one another. There is no ruling idea presented by them, and least of all, that which has been claimed, the idea of advance and progress. Nothing has been perfected. No change proposed is effectively carried out; some are left to be done hereafter by others, less likely to be competent.

2. A total failure to apply any adequate remedy to that particular evil which occasioned the calling of the Convention at all. I allude to the inequality of the representation. If, in the scales of a balance, three pounds are placed in one, and one pound in the other, it will scarcely be considered as setting them even to add four pounds to that which had one. The only difference is, that the same excess of weight has been shifted from one side to the other.

3. My third objection is, that certain evils are perpetuated which ought to have been remedied by the Convention, and which are more likely to be finally corrected by rejecting than accepting the amendment.

It would take far more time than I have to spare, to enlarge upon all these points in their order. I propose to confine myself to one of them as my main topic, and to touch upon others incidentally before I conclude.

I object to the Constitution because it contains in the clauses respecting representation a gross practical contradiction. Whilst in the premises it assumes to proceed on the basis of equality, in the conclusion it establishes a greater degree of inequality than ever. Let us look at the language.

The first article in the third chapter of the proposed Constitution reads thus: —

"There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality."

You will all note the words "*founded upon the principle of equality.*" The second article gives the conclusion designed to correspond to the premises: —

"And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town, containing less than 1,000 inhabitants, may elect one representative in the year when the valuation of estates shall be settled, and, in addition thereto, one representative five years in every ten years. Every town containing 1,000 inhabitants and less than 4,000, may elect one representative. Every town containing 4,000 inhabitants and less than 8,000, may elect two representatives. Every town containing 8,000 inhabitants and less than 12,000, may elect three representatives. Every city or town containing 12,000 inhabitants, may elect four representatives. Every city or town containing over 12,000 inhabitants, may elect one additional representative for every 4,000 inhabitants it shall contain over 12,000. Any two towns, each containing less than 1,000 inhabitants, may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, form themselves into a representative district, to continue for the term of not less than two years; and such district shall have all the rights, in regard to representation, which belong to a town having 1,000 inhabitants. And this apportionment shall be based upon the census of the year 1850, until a new census shall be taken."

Now I pray you to compare this claim of equality with some of the statements I propose to submit of the practical operation of the plan.

The town of Hull has a population of 262 souls, and it has 38 voters. It is allowed six representatives in ten years.

The town of Hingham, close alongside, has a population of 3,962 souls, and it has 866 voters. It is allowed ten representatives in ten years.

Every soul in Hull has a degree of political weight equal to about $10\frac{2}{3}$ of the men, women, and children of Hingham.

Every voter in Hull is equal to a little more than sixteen of the voters of Hingham.

I respectfully ask every candid man whether this representation can fairly be said to be "founded upon the principle of equality."

I have before me a list of ten towns, which is at the service of any one disposed to examine it. The united population of these towns is 3,926 souls. The number of voters in them is 850. These ten towns are allowed sixty representatives in ten years.

The single town of Hingham has 3,962 souls, thirty-six more than the sum of the ten towns. It has 866 voters, or thirteen more voters than all the voters of the ten put together, and yet Hingham is allowed only ten representatives in ten years.

Of course the proportionate weight of Hingham and of these towns is about one to six.

Can this be called a representation "founded upon the principle of equality"?

The ten towns alluded to, having 3,926 souls and 853 voters, are entitled to sixty representatives in ten years.

I have before me a list of six towns, at the service of any one of this assembly, having 22,858 souls and 4,486 voters, entitled to just the same number of representatives in ten years, and no more.

The proportion here is one to nearly six.

I have not time to multiply instances which are under my hand. What I furnish is decisive enough. And I respectfully once more submit it to the good sense of every impartial mind, whether a system showing any one of these results deserves to be designated as "founded upon the principle of equality." Does not the conclusion in the second article monstrously contradict the premises laid down in the first?

But this is not the only inconsistency. As if aware that the plan proposed could not bear the test of time, the Convention has appended to the close of its work a mode of getting rid of it, in the year 1856. It directs the ordinary Legislature of that year to prepare a plan of district representation, to be submitted to the people during that year, and, if approved by them, to take the place of their own plan. I propose to

consider this hereafter. My purpose in introducing it here is only to show the low estimate which they themselves put upon their work, when they consent to see it swept out of existence in three years. If they had had any confidence in the basis of their action, would not they have adhered to it more firmly?

But I do not understand that the gross inequality of this plan is denied in any quarter. It is a waste of time to enlarge upon it. In all of the intelligent and candid defence which has fallen under my observation, I perceive two lines of argument, both predicated in an admission of the fact.

One of these is drawn up after this fashion: —

"Yes, this system *is* unequal; but then we wish you to notice how very bad the old system is. At any rate, this is an improvement upon that, and we must consent to accept this, or we shall get nothing at all."

Now I perfectly understand the force of this argument, for it has been too often addressed to my judgment heretofore for me readily to mistake it. In the present instance I cannot give it weight for two reasons.

The first is, that, since the Convention was called mainly for the purpose of correcting a gross inequality complained of, they should have corrected it, and not have attempted to introduce a new inequality as a fit substitute for the old one. This is not a performance of the promise. The Convention was called to amend and to improve, and not merely to change. And without going into the comparison of the one system with the other, to show which is the least bad, it is enough to say, once for all, that two bads do not make one good, — two wrongs can never make one right.

The second reason is, that there is no evidence going to prove the fact which is assumed, — that we cannot get any improvement in other ways. I do not understand the reason why the Legislature cannot at any time propose an amendment, under the present Constitution, embracing all the ideas suggested for the use of that body in 1856 by the Convention. If the Legislature is after all to do the work that was cut out for the Convention, I do not exactly see the reason why it should have assembled at all. I know very well the objection that will be made in some quarters. I know that it will be

said the Legislature is hampered by the restriction requiring a vote of two thirds of the members present, of two successive Houses of Representatives, and that the opponents of every change will always constitute a sufficient number to defeat it. I will admit that this argument, and the conduct of one of the parties in this Commonwealth in resisting all amendments in the Legislature heretofore, had great weight with me in deciding my vote for the Convention. I can only say, that if it should be repeated, which I do not believe will be the case, I shall be again disposed to advocate the calling of a new Convention. There can be no doubt, in such case, that before a great while such a Convention would be demanded.

In truth, the question of representation has been the great stumbling-block in the government of Massachusetts for more than a century; and it will continue to be until the people begin to look a little deeper than they have ever yet done for the cause of the evil. For myself I must say that I have heretofore spent no little time and thought upon the subject; and I have come to some definite conclusions, which I may as well submit to your consideration now, as at any time. In order to do this clearly, it will be necessary to go a good way back into the history of the past.

The representation of Massachusetts is clearly to be traced back to the principle of borough representation in Great Britain, and the cause of our difficulties lies in the attempt which has been constantly making to assimilate that principle — which has not worked well even under the monarchical and aristocratic system of England, harboring, as it does, all sorts of irregularity — to the free institutions and acknowledged equality of condition of the people of this Commonwealth. There are many in America who have heard a great deal of the rotten boroughs of the British Parliament, but who have very little notion of their nature and origin. To them it may be cause of surprise to learn, that the House of Commons was originally made up of the representatives of the counties of England, who formed its aristocracy; and that when the sovereign first sent out his writs to the boroughs, or, in other words, the small towns containing the mass of the hard-working and industrious people, requiring each of them to send

two members to his Parliament, this was regarded as an appeal to the popular feeling in order to protect him from the aristocracy and to get more liberal grants of the people's money. The inducement presented was the right of representation; but so little was it felt as a privilege, that many of the towns endeavored to avoid the distinction of a call. Some actually succeeded in persuading the sheriffs not to include them in their returns. And hence the first cause of inequality; for by this act some places lost their representation altogether. Even of those which preserved it, many regarded themselves as liable to a burden, rather than enjoying a right. They sent two representatives, it is true, but they were obliged to pay them from their own resources. Even the two shillings sterling paid per day to their members, when the county members were allowed four, were considered as paying too high for having the borough's interests cared for by its own members. Yet it was the representatives of these very boroughs who first combined the elements of the popular features of the British Constitution, and it was to them that our ancestors, when they first came to these shores, were in the habit of looking for the great nurseries of the principles which drove them over here. It was still the popular feature of the Constitution, although even then the natural changes going on in the population of the respective towns were beginning to produce the consequences of a later time. By reason of attaching the right of representation to the *place*, and not to those who lived in the place, in the course of years it turned out that an old stone wall continued to be entitled to send two members of Parliament, whilst seventy or eighty thousand inhabitants, who had grown into a modern town, were not entitled to one. This evil consequence, I say, followed the mistake of attaching representation to *a town*, and not to *those who live in the town.*

Our ancestors were, most of them, drawn from the middling and poorer classes of the mother country who lived in towns. When they came out to Massachusetts, they came under the protection of a charter designed to create a commercial company, and not a political state. No provision was made in it for any assemblies other than those of the members of the

company, which, like the meetings of the famous East India Company, were known as the meetings of the General Court, in which they all had a right to participate. But after the step was once taken of transferring the charter to Massachusetts, the sparse settlements, and the difficulty of getting from place to place, soon rendered the assembling of all the members to do the common business inconvenient, if not impracticable. Hence sprung the idea of representation. No such thing is mentioned in the charter; but our ancestors, when forced to entertain it, very naturally looked at home in England for the precedents that were most familiar to them there, and they consequently created a representation of *towns*. By an act passed so early as 1636, —

"*It is ordered*, That henceforth it shall be lawful for the freemen of *every town* to choose (by papers) deputies for the General Court, provided that no town shall send more than two deputies, and no town that hath not to the number of twenty freemen shall send more than one deputy, and such *plantations* as have not ten freemen shall send none, but such freemen may vote with the next town, in the choice of their deputies, till this Court take further order."

Here may be perceived the similarity to borough representation in England, as well in the distinction drawn between the right attached to *towns*, as distinct from plantations which had none, as in the limitation to two members and no more. At the same time, the idea of the burden attached to the right so far continued, as that in all towns, not having more than thirty freemen, the matter of sending or not sending a deputy was left optional with them.

The germ of town representation in this Commonwealth is to be found in this law of 1636, and it is clearly wrapt up in the kernel of borough representation in the mother country.

Time passed on; the first charter was annulled by the powers at home, and the new one granted by William and Mary, in 1691, contained a clause directing the General Court of the Province to consist of "the Governor and Council, and such freeholders as shall be elected by the major part of the freeholders and other inhabitants of the respective *towns or places* who shall be present at such elections; each of the said

towns and places being hereby empowered to elect and depute *two persons and no more*," &c. At the same time, it gave the next General Court power to regulate further the representation. This power was exercised by an act passed the next year. By it "*every town* consisting of the number of forty freeholders, and other inhabitants qualified by charter to elect, shall send one freeholder as their representative," — every town consisting of one hundred and twenty freeholders, &c. might send two representatives, — each town having less than forty freeholders and more than thirty, might send one representative or not, as it pleased, — and towns having less than thirty might send one, or join with the next towns, they paying a proportionable part of the expense. No town could send more than two, excepting Boston, which could send four.

Here, again, it is easy to trace the models of the borough system of Great Britain. Here the representation was of *towns*, and not of persons; it was limited not to exceed two representatives, without regard to inequality in the excess of numbers in the respective towns over one hundred and twenty freeholders, excepting only the case of Boston, which, like the capital at home, London, was entitled to four members, and each town paid the expenses of its own representatives.

Such was the system as established in 1692; but the natural consequence of making corporate towns stand for men and women was not slow to show itself. Some towns prospered very much, whilst others went backward and withered away. The people, however, who removed from the one to the other, carried with them none of their rights of representation. These remained fixed to the houses and trees known under the name of the town they left. That to which they came gained their industry, it is true, but it gained no political power by the transfer. The arithmetic of corporate rights, which started by calling one hundred and twenty equal to one hundred and twenty, was not the less positive that it was right, when it came to cipher out four hundred and eighty to be equal to one hundred and twenty, and therefore to be equally represented by two members.

But with the dawn of the year 1776 there came new ideas;

and the General Court of that year began a law in these words: —

"*Whereas*, The present representation of this Colony is not so equal as it ought to be, and this Court being desirous to have the same as proportionate as it can in the present state of the Colony be made, —

"*Be it enacted*, &c., That each town containing two hundred and twenty freeholders, &c. shall at all times have the privilege of sending three members to represent them, and those which have three hundred and twenty, &c. may send four, and in that proportion for any greater number of freeholders."

This was the first endeavor to change the basis by engrafting the rule of numbers upon that of corporate representation. It lasted but a short time, because a new instrument of government was framed in 1780, only four years later, which is the Constitution under which we still live. To that, as it first stood, I beg now very briefly to call your attention.

The first article says: —

"There shall be, in the Legislature of this Commonwealth, a representation of the people *annually elected*, and founded upon the principle of equality."

Undoubtedly this meant that all the representatives should be elected every year. It did not mean any thing like what has been since adopted, a representation for one, two, three, four, or more years out of ten, and none at all for the other years.

The second article says: —

"And in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town containing 150 *ratable polls* may elect one representative; every corporate town containing 375 ratable polls may elect two representatives; every corporate town containing 600 ratable polls may elect three representatives; and proceeding in that manner, making 225 ratable polls the mean increasing number for every additional representative.

"*Provided*, nevertheless, that each town now incorporated, not having 150 ratable polls, may elect one representative; but no place shall hereafter be incorporated with the privilege of electing a representative, unless there are within the same 150 ratable polls.

"And the House of Representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members to the same, agreeable to this Constitution.

"The expenses of travelling to the General Assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can in the judgment of the House, and does not depart without leave."

Here it should be noticed that the idea of representation is once more made to attach to towns as corporations, and an attempt is made to engraft on it a scale of increase according to numbers. The sending or not sending was a voluntary act on the part of the town; and the person so sent as representative was to be compensated by the town, and not by the Commonwealth.

Here again peeps forth the origin of Massachusetts representation in the old boroughs of the mother country. They paid their representatives. So did our towns. They often tried to avoid and escape the charges of supporting any by omitting to send them. So did our towns. They were threatened with penalties for their dereliction. So power is given to the General Court to impose fines upon towns which neglect to send representatives. The leading and preponderating idea still remained as before, *representation of corporate towns*, and not of persons. Every corporate town was entitled to send, no matter what its numbers. The equilibrium was restored by establishing a certain proportion between the numbers and representatives peculiar to each. The system thus established was not inconsistent with the declaration by which it was introduced, but it was not made to survive the necessity that occasioned it. As a piece of workmanship, it is far more coherent and consistent than any thing which preceded or has followed it, but time and the multiplication of numbers made action under it cumbrous and inconvenient.

It is unnecessary for me to go into any further detail respecting the amendments since made. The Convention of 1820 proposed one, but it was rejected by the people. A great change took place when the payment of the compensation to the delegate was transferred from the town to the Common-

wealth. He ceased to be the representative exclusively of his own town, and became more that of the Commonwealth at large. His presence, too, became a matter of much more consequence to the interests of all the other towns. For each of them is of course liable for its share of the general burdens, and if each of the small towns obtains more than its proportion of representation, the expense does not fall upon them, but upon the large towns. Hence arises one of the great features of inequality and injustice in the present amendment. The small towns not only gain an undue share of power over the expenditures of the government, but the large towns pay both the burdens imposed by them and the expenses of those who are sent to impose them!

The inconsistency of all the amendments of the present age consists in this, that they rest *upon no principle.* They do not follow the representation of towns, because they disfranchise them without scruple a large part of the time. They do not follow the only democratic rule, that of numbers, because, for certain purposes, they acknowledge and establish an equality between unequal numbers in towns. In this regard I think the proposed amendment which we are now considering is worse, rather than better, than its predecessors. Whilst it does not carry out consistently the corporate rights of towns, it goes a great way to aggravate and extend the inequality of numbers, by enormously enlarging the franchise of the smallest of them. Instead of going forward, it goes straight backward to the borough system, and leaves an opening for the first time to what has happened in England, the influence of decayed boroughs. By the existing Constitution, ten small towns which I can name, although enjoying a far greater privilege than their numbers could claim, yet have but twenty-five representatives in ten years. By the proposed plan the same towns are to be entitled to sixty, and that in spite of the fact that they are mostly towns in which the numbers are diminishing. But this diminution is not to make any difference. They may continue to send representatives until the population diminishes to fifty souls or less, and the voters to five or six. Now I do not see how this differs in any substantial respect from what is denominated the rotten-borough system of the

mother country. By rotten boroughs I understand to be meant nothing more than towns which once had a population entitling them to be represented in Parliament; but in the course of time and the changes of occupation, the people have removed or died out, until so few of them are left, that some one wealthy man has it in his power to control their votes through his money, and to nominate whom he chooses for them to elect as members of Parliament. If it become an object to wealthy and ambitious men in Boston to get the control of State influence, I do not see why they could not very easily acquire the same kind of power in some of these small towns. In Hull, for example, there are but thirty-eight voters, few of them very much above the world in their circumstances. Of these, twenty would control the nomination of a representative six years in ten. What would be easier than to buy out two or three of the largest landholders at a good price, and to put in their places tenants of the right way of thinking? There would be no bribery, or corruption, or wrong, or injustice in this process; nothing which would not be perfectly fair; and yet such a result would just as much make *a nomination borough*, as if it had been brought about in Bramton, in England, a place of about as many voters before the days of the Reform Bill.

Neither let it be supposed that the numbers residing in the small towns constitute any distinction in our favor. We know from experience, that these numbers are diminishing regularly at every census. But even as they are, you will be surprised to learn that they fall below many of the boroughs that were disfranchised by the Reform Bill. I have taken the pains to add up the number of voters in ten of the small towns. They make 867, or an average of $86\frac{7}{10}$ for each. I have compared it with the lowest estimates I find of the number of voters in the fifty-six boroughs which the British Parliament abolished. Their population is in many of the cases much larger. These fifty-six boroughs gave 4,293 votes, or an average of $76\frac{1}{2}$ to each. Now the difference between our progress and that of Great Britain is, that, whilst *they* are entirely destroying the separate representation of these boroughs, *we* are enlarging and extending and confirming the rights of corporations of the same kind.

Democracy, according to my idea, consists of equal rights to all men under the law, as nearly as human imperfection will allow. Now I find no fault with others for judging differently, but it is not consistent with my notions to give a moment's sanction to a measure like this, so opposed as it seems to me to every notion of equality. Neither, on this point, does it seem that those who talk the most loudly of progress among us, act in any reasonable degree consistently with their declarations. I have not found the inequality of the system anywhere denied, even by its warmest friends. Mr. Boutwell, the chief pillar of the whole scheme, and a gentleman for whose attainments and character I have great respect, began his speech in the Convention in defence of it, by saying, "I rise, sir, *as a conservative*, an unusual character for me." That meant to say, of course, that he was for this time going counter to his usual democratic ideas. And my excellent friend, R. H. Dana, Jr., than whom I know no clearer-headed, as well as no better and purer man in this community, suddenly found himself acting as the mouthpiece of the party of progress, at the very moment when he was the most consistently enunciating the conservative principles which mark his mind and character. Knowing the man as I do, his speech gave me great pleasure; but I could not help thinking that it would have done honor to Lord Lyndhurst, if he had delivered it in his contest with the Reform Bill of Great Britain, in the House of Lords. It certainly did not express my views, still less the established doctrines of the progressive party. *It defended the principle of inequality.* It justified the discrimination against the large towns. Now I maintain, that the moment a majority in a republic assumes to draw a distinction with the intent that certain men shall be enabled to enjoy twice or thrice the amount of political power which an equal number of other men are to possess, *that is the hour when tyranny begins.* The fact that my good friend was sailing in the van of the so-called progressive squadron of the Convention upon this occasion, was certainly owing to no deviation of his from his established course. How the democratic fleet came to be under his lee is another question. And that question is answered by one of their most skilful leaders, Mr.

Boutwell, in his admission that they were playing the part of conservatives. But conservatives of what? Why, conservatives of established abuses of the democratic principle of *equal rights for all!*

The truth is, that, if we are really in earnest in bringing about a reform of this much vexed matter, we must go deeper than we have yet done. We must take the great principle of *democratic equality of numbers* as our guiding star, and proceed without hesitation wherever it may lead. With it, we must divide the large towns and aggregate the small. After the most deliberate examination I have been able to give to the subject, and that not lately, I am convinced that nothing else will permanently content the great body of the citizens of Massachusetts. The present plan, if adopted, will only share the fate of its predecessors. It remedies no existing evil.

And here let me remark, that there was *one* man in that Convention who saw the thing as I see it, and who had the firmness to come out with a full declaration of his sentiments. The speech of my honored friend, Charles Sumner, was not answered in that body. It has never been answered since. I do not believe it can be answered. But I must be permitted to say, that he tacked to it an unworthy conclusion. He listened to the siren song of expediency, coming from some friends who told him that ruin to their hopes would follow from their striking into the path of right. And he bowed his neck to the iron rod of party, at least in his action, if not in his sentiments and words. But had he and I, in the year 1848, listened to the same song, sung quite as skilfully by our then political friends, should we not since have been hunting in the pack led by General Zachary Taylor, and be now singing hosannas to the perfections of the Fugitive Slave Law? When our enemies reproached us with placing conscience before every other consideration, we gave a pledge to them which at any cost I am determined to redeem. I will *not* vote for a fundamental measure which I think bad, because some men who study the course of popular opinion more than I do declare that to do otherwise will be injurious to the interests of the party.

But I am well aware of the argument that is considered as meeting all this difficulty. It is said, that, admitting all that I say to be true, a remedy is yet presented by the last article added to the proposed Constitution, which provides: —

"The Legislature, which shall be chosen at the general election on the Tuesday next after the first Monday in November, in the year 1855, shall divide the State into forty single districts for the choice of Senators, such districts to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each; and shall also divide the State into single or double districts, to be of contiguous territory, and as nearly equal as may be in the number of qualified voters resident in each, for the choice of not less than two hundred and forty, nor more than three hundred and twenty representatives; with proper provisions for districting the Commonwealth as aforesaid, in the year 1856, and every tenth year thereafter; and with all other provisions necessary for carrying such system of districts into operation; and shall submit the same to the people at the general election to be held in the year 1856, for their ratification; and if the same shall be ratified and adopted by the people, it shall become a part of this Constitution, in place of the provisions contained in this Constitution for the apportionment of Senators and Representatives."

Here, they say, is the very system which I consider the best. Why am I not content?

The answer is plain. The duty of preparing this amendment will devolve upon a Legislature filled with the spirit of party. The clause of the Constitution now proposed to be adopted will, if it goes into effect, have filled the House with a majority on one side or the other. I care not which, — Whig, Democrat, or Free Soil. The working of the amendment will secure for it the affections of that majority which it puts into power. I ask, what sort of a tribunal is this before which to go, and solicit a districting bill, the effect of which may be to dethrone them? They know that, if the districting bill fails of ratification, then the system on which they stand, small towns and all, is to remain for ever. What can be more easy, under shrewd management, than to propose a very fair bill, which would yet be almost sure to fail of ratification? All this may be done in good faith, by those who have no confidence in a districting bill, and the consequence will be

the establishment of this rule of inequalities, until a new agitation shall make it necessary to summon a new Convention. Some of the leading friends of the Constitution do not pretend to anticipate any other result. Mr. Boutwell, in his speech at Berlin, uses the following language respecting it:—

"While, then, a majority of the Convention did not agree to the district system, they did agree that it is the right of the people to decide the question for themselves, and it is now in their power to establish that system without any cost whatever.

"I submit to the friends of the district system, that it is the part of wisdom and economy, first to accept the new Constitution, and then, in 1856, to take the judgment of the people upon a distinct issue, between the two plans, and therewith to be satisfied."

Now I must say I am not willing to remain content with so barren a satisfaction.

I therefore have made up my mind that this provision is a snare, I do not say intentionally put, which will only catch the unwary. I think it safest, on the whole, to take my chance of a change under the present system, which nobody now defends, believing that a new proposition, cleared of all accompaniments of an irrelevant nature, and proposed in a better and more liberal spirit than now prevails, will meet with the ultimate ratification of the people, and be an ornament (which this can never be) to our old and honored Constitution.

Having at this length stated my main and overwhelming objection to the Constitution proposed, which leads me with certainty to the decision to vote aginst it, because it does not properly regard the equal rights of all, I have scarcely left to myself time, or to you patience, enough to touch upon any other topic.

[On account of the lateness of the hour, Mr. Adams was compelled to speak of the remaining topics more concisely than was consistent with their importance, and as he has not written out the rest of his speech, we should not fully present his views, even if it were worth while to give from our own notes, as we might, a complete report of what he did have time to say. We therefore give simply an outline of what followed.]

Mr. Adams proceeded to consider the amendment in the Bill of Rights, rendered necessary by the change in the tenure of the judges. He quoted from the existing Bill of Rights ("for which," said he, "I need not say I have the greatest cause to feel the utmost veneration, and in which I should be jealous of all changes which do not improve the character of the instrument") the twenty-ninth article, as follows:—

"It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well, and that they should have honorable salaries, ascertained and established by standing laws."

He proceeded to point out the consistency and harmony of the reasoning of this article, and the irresistible manner in which the conclusion follows from the premises, contrasting strongly with the gross inconsistency of the article as it is proposed to be amended, as follows:—

"It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent, as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices *by tenures established by the Constitution, and* should have honorable salaries, *which shall not be diminished during their continuance in office.*"

Mr. Adams said he believed that the principle enunciated in the original article is now as true as it was when it was written. He proceeded to analyze the principles which regulate the character of the judicial tenure, and showed in a most convincing manner, that the tenure during good behavior, so far from being a feature at variance with other parts of the Constitution, is consistent with all of them, and necessary to

secure their harmony. He declared that the only safeguard which one or two individuals, or the few, have against injustice from the many, for the protection of their individual rights, is found in the strength given to the moral courage of the judges, by placing them in such a position that they are not afraid to offend the majority. If there be such a thing as a true democratic principle, this is one. To limit the tenure of the judges, throws them directly into the vortex of politics, and makes them what all our politicians now are, *weather-cocks.*

So important a change as this should not be hastily and rashly made, when nothing can be lost by waiting, and much may be gained from the experience of other States. Nowhere has the plan been tried where sufficient time has elapsed to give a right idea of the result. The election of judges by the people, to hold office during good behavior, would not be half so objectionable as the limitation of their tenure while their appointment is in the hands of the Executive, who is the very incarnation of party feeling and party prejudice.

Mr. Adams alluded next to the inconsistency and incongruity in the rules of election for various officers under the proposed Constitution; the Governor to be chosen by a majority, and, failing to obtain that, in the old, complicated method, altered only by reducing the number of candidates to be selected from by the House from four to three, — Senators and Councillors to be chosen by majorities, — Representatives by pluralities, &c. If the plurality rule be good in one case, why not in the others? The existing Constitution consistently requires a majority throughout. Why is a change made? And why is the number of candidates in the Legislature reduced? If one principle more than another is demanded by the progress of democratic ideas, it is the abolition of elections o fofficers by the Legislature, and the giving them to the people. This led Mr. Adams to speak of coalitions, which he seemed to think justifiable under the present Constitution, since it was but natural for two minority parties to adopt the only way they could, to defeat the majority party; but the system was at fault, and the opportunity for remedying the defect which the Convention afforded should have been improved.

For Heaven's sake, let us do nothing to augment the temptations to negotiation of offices. Keeping our minds and hearts pure before God and man, let us regard the guidance of public affairs as a solemn trust springing from the confidence of our fellow-citizens, and not to be gained by any unworthy acts. The path of politics is a path strewed with burning ploughshares. Let us seek to tread it, worthily, boldly, honestly, if we tread it at all. And let us fall with honor, if fall we must.

REMARKS

ON THE

PROPOSED STATE CONSTITUTION,

BY

JOHN GORHAM PALFREY.

PUBLISHED OCTOBER, 1853.

REMARKS.

I.

OBJECTS OF A CONSTITUTION. — DIVISION OF POWERS AND OF SUBJECTS.

The objects of a Constitution of Government cannot be better stated than in the following language of the Preamble to the Massachusetts Constitution of 1780: —

"The end of the institution, maintenance, and administration of government is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life."

"It is the duty of the people, in framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them."

It concerns the public well-being, that there should be "an equitable mode of making laws." Therefore a *Legislative* department is to be constituted, and so constituted as to afford the greatest possible security to the people that the laws shall be equitably made, and that they shall express the people's deliberate will, and be just and salutary.

It concerns the public, that there shall be "an impartial interpretation" of the laws. To this end, there must be a *Judicial* department; and it must be so constituted that the judges may be "as free, impartial, and independent as the lot of humanity will admit."

It concerns the public, that there shall be a "faithful execution" of the laws. To this end, there must be an *Executive* department; and it must be so constituted that the laws shall be promptly and completely carried into effect, according to their true tenor, in every case calling for their intervention.

The principles set forth in these statements will be assumed in the following discussion. Upon these principles it was, that, in 1780, that "Frame of Government" was reared for Massachusetts, under which, to a rare extent, her people have enjoyed the blessing of just and wholesome laws, ably and honestly administered, and efficiently executed.

The Constitution of 1780, recognizing the people's "right to institute government, and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it," made it obligatory on the Legislature of fifteen years later, to submit to the people the question of a revision. But the people, after the experiment of that length of time, desired no revision; and none was made. Twenty-five more passed in the same content, when the separation of Maine, making some of the provisions of the old Constitution impracticable, occasioned a Convention to be called for its revisal.

The time was favorable for disinterested and calm deliberation. It was what was called "the era of good feelings." At no period of our national existence has there been such a lull of party strife. The Convention showed a brilliant array of wise and patriotic men of all parties. Anti-Democratic Boston took a part of its delegation from the Democratic ranks, and the same was true of other towns. As the result of its labors, the Convention proposed to the people fourteen distinct amendments, of which the people, upon the reference to them in their primary assemblies, — considering and passing upon each on its own merits, as was the proper course, — finally adopted nine, and rejected five.

Among the amendments thus ratified was one for making future specific amendments, by means of a certain action of the Legislature in two successive years, confirmed by a majority of the people. From time to time, in the progress of events and of opinions, some further changes have been

deemed desirable, and have accordingly been made by this machinery. But in each and every instance of such action, as well as in the action of the Convention of 1820, single questions have been submitted to the people, to be by them considered and determined, on their own respective merits, separately, and independently of all other questions.

This was the fair way of dealing with the people, and of getting a true expression of their sentiments respecting the fundamental law by which they desired to be governed. When no constitutional government existed, — when a frame of government was to be reared from the foundation, as in 1780, — it was unavoidable to present a constitution to the people as a whole. But, since the first years of its operation, there never has been a question of any thing more than amending it. There never has been the most insignificant fraction of the people who would have listened to the proposal of sweeping it out of being, and beginning anew. One voter, or one interest, or one party, may like one change; and another, another; and whatever change the majority of the people, on full consideration, desires, ought to be adopted. The people have a right to vote for what they like, and against what they dislike; every citizen has that right; and it has been recognized in all steps which have heretofore been taken to effect constitutional reforms.

But from this method the course taken by the Constitutional Convention of the present year is a total and violent departure. Disclaiming any sentiment but one of perfect respect for many of those who voted for this arrangement, among whom I know there were men who never by possibility could intend to do any thing unfair, still I cannot help feeling that that Convention has encroached on my rights, as an humble citizen, in the way in which it presents questions of the last importance for my vote. Its result has the shape of a stupendous piece of log-rolling. We, the people, are compelled to answer, in a single syllable of affirmation or denial, to a mass of diverse and incongruous matters, set forth in some hundred and forty or hundred and fifty articles, new and old. Of the mass of changes proposed, we have no choice but to take the whole or none. Timothy Dexter got

off his ill-assorted cargo in the West Indies, by insisting that whoever bought a sugar-dipper should take a pair of skates. If, in order to get what we desired, we were only compelled to take what would be of no use to us, our case would be no worse than that of his customers. But we do not fare so well. If we want a provision for the choice of Senators by single districts, the Convention tells us that we shall not be gratified, unless we will vote, at the same time, that one man in Monroe shall have as much weight and power in the House of Representatives as six men in Deerfield. If a friend of Common Schools desires a constitutional provision for a large appropriation for their support, he must buy it by consenting to an invasion of the independence of that judicial administration which protects his fireside. Nay, — oddest of all tricks of political legerdemain, — if one favors the system of single districts for the choice of representatives, he must work his way to that system by first voting it down, and establishing the opposite one in its place. I say, it is a grave wrong and affront to the free people of this Commonwealth, to put them in such durance as this. It is usurpation over their right of choice in matters of the most profound concern, to force them into that position that they can do no better than balance things which they approve and things which they condemn against each other, so as to determine whether, on the whole, it is best to bring on themselves the evil for the sake of getting the good, or to go without the good for the sake of escaping the evil. They have a right to the opportunity of voting for nothing but the good, and against nothing but the bad, or what they think so.

It is said that a new draft of the Constitution was preferable, as the accumulation of amendments upon amendments would bring it into an inconvenient shape. The remark has weight. Suppose it to have decisive weight; what follows? That the people should be cornered, as they now are; that a course should be taken so disrespectful to their good sense, and so violative of their right of free action? Not at all. If the reason of convenience was urgent, — and I shall not deny that it was so, — the Convention, after agreeing on the amendments to be proposed to the people, should have made provis-

ion for submitting them separately; then adjourned over till such time as admitted of the vote being taken; and then come together again, and digested into one draft the amendments which were ratified; which last process might have been the work of twenty-four hours, or of three times twenty-four. Why was not this natural, just, and safe course preferred? Because it would have taken time? If there were any party objects which might be served by gaining time, they would present an intelligible reason, but not a reason which the majority of Massachusetts citizens would probably approve. Because it would have cost money? How much would it have cost? Two thousand dollars, or three? And in what proportion may it be feared that two or three, or two or three scores, or two or three hundreds of thousands of dollars, will be outweighed by the mischiefs of erroneous action in a matter of this moment? And what citizen, rich or poor, that has the dullest sense of the interests and the obligations involved, would not rejoice to pay his part of the cost, for the sake of being free to cast his vote with satisfaction, and according to his judgment?

II.

THE SENATE.

From the beginning, the Legislature of Massachusetts, as of all well-constituted republics, has consisted of two branches. The provision for the Senate, or "first branch," in the Constitution of 1780, was, that an aggregate of forty persons should be chosen in districts by a majority of the qualified voters therein. From among these forty, the General Court, when it should convene, was to select nine to compose the Executive Council. Those of the forty who should not be chosen Councillors, or should not accept that trust, were to constitute the Senate. At first, the counties (except Dukes and Nantucket, which were united) were to be districts for this purpose, and the number of Senators to be voted for was by the Constitution apportioned to the districts respectively. But

the Legislature was, from time to time, to district the Commonwealth anew, under the restrictions, that the districts were never to be more than forty in number, nor fewer than thirteen; and that no district should be "so large as to entitle the same to choose more than six Senators."

Had this article of the Constitution continued in force, it would have been in the power of the General Court to make that change which by general consent is demanded at the present time. By a simple legislative act, forty senatorial districts might have been constituted, each to choose a single Senator. But an amendment of the Constitution, made in 1840, recognized the existing county system of senatorial districts, and provided that "the said districts, so established," should "be permanent." This was an unfortunate measure, as time has proved.

The manner of constituting the Senate and the House of Representatives, unsatisfactory as to both branches, for reasons applicable to each branch severally, was the great cause which moved the people to call a Convention in the present year. As to the Senate, if any district fails to make a choice by a majority of votes, the vacancy must be filled by a joint ballot of the two Houses, from the candidates of the two parties which have thrown the largest number of votes. After the rise of a third, — the Liberty party, and subsequently the Free Soil party, — the inconvenience, and, as things stood, injustice of this arrangement, began to be seriously felt. In 1843, fifteen vacancies in the Senate were filled from a party which was in a minority in the State, by means of a majority of one or two in the House of Representatives, and as many among the Senators chosen by the people; and the same operation decided the choice of Governor, no popular election of that magistrate having been made. Thus the control of both the executive and legislative departments was secured that year to the party which had cast 56,200 votes for its gubernatorial candidate, while one other party had cast 54,700, and the other 6,500. In constituting the government of the present year, things worked the other way. The Whig party, which had thrown 56,500 votes for its Governor, while the aggregate vote of the other two parties was 69,000, hav-

ing a majority in the House of Representatives, filled the vacancies in the Senate with its men, and had the control of that body.

This state of things occasioned dissatisfaction in all quarters. It was unjust, inconvenient, irritating, on all accounts undesirable. There were other objections to the existing constitution of the Senate. The districts were too unequal in size; there was no good reason why a lean majority in the district of Dukes and Nantucket, comprising 1,400 voters, should send one Senator, while a majority equally meagre in the great district of Suffolk or of Essex should have power to elect six, thus depriving the minority in those districts, however large, of all power.

Such considerations led to a very general desire for that provision which is proposed in the new draft of the Constitution, viz. that the Senators should be chosen by a plurality of votes in forty districts, entitled each to one Senator. How general, how nearly approaching to unanimity, is the desire for this provision, appears from the action of the recent Convention. There were only four votes against the amendment, and not one of these was given by a Whig, the party which has recently found its advantage in the existing state of things. And, in the resolutions passed at its recent Convention for nominating State officers, the obtaining an amendment of the Constitution to secure "the election of the Senate from single districts" is announced as a feature of Whig policy.

Nobody finds fault with this amendment. Everybody wants it. There are, it is true, some serious theoretical objections to the rule of a plurality, which, as distinguished from a majority, is of course the smaller number of the voters. In a strict application of our republican doctrines, it is undoubtedly true that the will of the smaller number has no right to prevail against the will of the larger; and that, if an aggregate of voters — some for one reason, some for another, — some preferring one man, some another — choose to say that certain candidates for office shall not be put into office, even at the risk of the offices remaining unfilled, they have a right to say so, and to have their will prevail. And this has, down to

the present time, been the doctrine of Massachusetts. The principle of elections by a plurality, against the will of a majority, has never been recognized by her till within three years, and then only in the case of the election of Electors of President and of members of Congress. But, on the other hand, government must go on. It will not do to have an anarchy. And whenever experience shows that there is danger of such a want of unanimity among the electors as may prevent the government, some year, from being put into working condition through the operation of the majority principle, it seems unavoidable to adopt that method of choosing, which, among all surely practicable methods, comes nearest to it; that is, that elections should be made by pluralities.

Such experience, and such considerations, appear to have reconciled the people of Massachusetts, of all parties, to the only objection to the proposed amendment, while the weighty reasons which recommend it command wellnigh universal assent. We can have the amendment at once, without buying it by any sacrifice in respect to other things, as soon as the forms can be gone through, provided by the existing Constitution. As there is no opposition, there need be no apprehension of delay. We can adopt the amendment in that manner as an independent proposition, in season to choose our Senators under it in the autumn of 1855. If we adopt it as it stands in the scheme of the late Convention, we may choose our Senators under it in the autumn of 1854. One year is just the difference in point of time. But the difference in another respect is vast. In one way, we get the benefit without a particle of accompanying loss. In the other way, it is offered to us at the expense of sacrifices which are excessive, and beyond its worth; and which, if they were much less than they are, are entirely needless and uncalled for.

The people of Massachusetts have shown themselves wide awake to any attempt to coax them into one measure through the temptation offered by some other. The Constitutional Convention of 1820 was a body singularly free from party influences; but the people's vigilance did not sleep, for that. How tender they were upon this point, how jealous of any semblance of log-rolling, will be evident to whoever will look

at their action on the amendments submitted to them by the Convention of 1820. They wanted more freedom in respect to religious and parochial affairs, and the First Article of amendment gave them much more. But they would not take it, coupled with certain provisions of that article which they regarded as continued limitations of the benefit which they sought. They rejected the article, choosing to wait longer for what they wanted, rather than accept it on such terms; and they actually did wait accordingly twelve years, till in 1833 they put their will on the subject into a satisfactory shape. The Fifth Article embraced various important provisions, subsequently adopted; it abolished what had long been the empty form of choosing Councillors first from the Senate; and it offered the lure of a constitutional provision for paying the Representatives from the treasury of the Commonwealth, instead of from that of the towns. But because (though immeasurably less objectionable in this respect than the Constitution now offered) it embraced a variety of provisions, some intended, as they thought, to force the others through, they voted it down, and took their own time to make the changes they desired, one by one. The Ninth Article made a useful and popular addition to the provisions respecting the tenure of the office of Justice of the Peace; but because it was connected with, and appeared designed to carry through, another provision restraining the liberty of removal by *address*, the people would none of it. The Tenth Article, relating to Harvard College, shared the same fate. It proposed to open the Board of Overseers to ministers of all denominations, — a measure which the people favored, and which was adopted in due time; but because with this provision was associated what was construed as a further grant of power, the article failed to be ratified by the popular vote.

The people of Massachusetts are as hard to outwit in 1853, as they were in 1820. They have sense enough to know that when they want to do some duty, or obtain some benefit, it is not necessary to find their way to it through the doing of something which would discredit, or the submitting to something which would harm them. And whoever attempts to

put them into straits of this sort cannot reckon on taking any thing by his motion.*

III.

THE HOUSE OF REPRESENTATIVES.

Under the Constitution of 1780, each corporate town with one hundred and fifty ratable polls might elect one representative; each town with three hundred and seventy-five polls, two representatives; and so on, "making two hundred and twenty-five ratable polls the mean increasing number for every additional representative." As the population of the Commonwealth increased, this arrangement returned too large a House; too large, certainly, for economy; too large, perhaps, for convenient deliberation. There have been Houses, unless my memory is at fault, consisting of more than six hundred members.

The Convention of 1820 in vain proposed a remedy. The main features of its plan were, that each corporate town containing 1,200 inhabitants might elect a representative every year; that 2,400 inhabitants should be the mean increasing number to entitle a town to additional representatives; and that towns with fewer than 1,200 inhabitants should have the privilege of representation every other year, and also in the year of the decennial return of valuation of estates; the mean increasing number to be proportionally increased by the Legis-

* On this subject of the Senate, it is worth remarking, that the new Constitution provides (Chap. II. Art. 3), that the Governor and Council shall count the votes for Senators, "and *ascertain* who shall have received the largest number of votes in each of the several senatorial districts, and the person who has *so* received the largest number of votes in each of said districts *shall be a Senator* for the following political year." If so, what becomes of the other provision (Chap. I. Art. 11), that "each branch shall be the final judge of the elections, returns, and qualifications of its members"? Which is to rule, — Chap. II. Art. 3, or Chap. I. Art. 11? The existing Constitution has no such contradiction. It directs (Chap. I. Sec. II. Art. 3) that the Governor "shall issue his summons to such persons as shall appear to be chosen by a majority of voters, to attend on that day [the day of assembling of the General Court], and *take their seats accordingly*"; the question whether they are truly elected, so as that they "*shall be Senators* for the following political year," being still reserved for examination in the Senate.

lature every tenth year, so as to keep down the House to the number of 275. But these provisions were mixed up with other things in the Fifth Article of Amendment, and the people rejected the whole together. Several years after, they took up the same scheme of representation as a separate question, and in 1840 adopted it with modifications, one of which was, that towns with fewer than 1,200 inhabitants should elect a representative as many times within ten years as the number 160 should be contained in the number of its inhabitants. As so established, the provision, with that for successive extensions of the ratio, stands at the present day.

In place of this, the proposed amendment of the recent Convention provides, that every town, however small, shall have a representative six years out of ten; that towns with one thousand inhabitants, and fewer than four thousand, shall have a representative every year; and that, for additional representatives in a town, four thousand inhabitants shall be the mean increasing number. In cities, instead of the choice by general ticket as heretofore, it provides that there shall be a division into districts; no one district to elect more than three representatives.

The existing plan of representation is bad. This is worse. It retains the objectionable features of the old system, and aggravates them.

The plan of representation part of the time, and no representation another part, is an utterly indefensible and absurd anomaly in republican government. If the representative were but a medium for drawing, through the pay-roll, something for his town from the public chest, there would be some sense in the arrangement of sending him on that errand once, twice, or five times in ten years. But the question is of the right of a town — of a portion of the Commonwealth — to have some share in making the laws that govern it. If a right of that kind exists, it exists for all years and every year. If it does not exist for the whole time, it exists for no part of the time. The plan of occasional representation is just as reasonable as it would be for a man to make three full meals a day, and then go without eating, in alternate weeks.

The representation of population in the Senate, and of cor-

porations (in other words, of property) in the House, is a reversal of the ancient relations of the two branches. Municipal corporations are, in a just sense, money corporations. They are created and exist for the protection and management of property, while personal rights and liberties are guaranteed by the laws of the Commonwealth. The towns must keep up a police, schools, roads, almshouses, &c., but it is the money regulation of these matters that belongs to them, the obligation to use their money for such purposes being imposed on them by the State laws. Under the Constitution proposed, the smaller branch of the Legislature is the popular branch. The popular element is represented in the Senate, chosen on the basis of population; corporations are represented in the House.

The strict republican principle is, that all citizens shall have equal political power; in other words, that they shall have a share of representation in the public councils, in proportion to their numbers. The proposed Constitution violates that principle also, and violates it much more seriously than that which it is intended to supersede. The town of Wenham, by the last census, has 1,003 inhabitants, and in ten years has five representatives in the General Court. Boston has 138,788 inhabitants, and 440 representatives in ten years. In other words, her representative power, by the existing Constitution, is to that of Wenham as 88 to 1, while her population is as 138 to 1; two men in Wenham having more power than three in Boston. This is a great inequality; and, so far from being remedied by the amended Constitution, is proposed to be largely increased. By that plan, Wenham will have one representative, and Boston thirty-five, every year; each citizen of Wenham having nearly four times as much political power as a citizen of Boston.

New Ashford, in Berkshire, has 210 inhabitants, and sends two representatives in ten years. Pittsfield, in the same county, has 6,032 inhabitants, and sends twenty representatives in the same time. That is, the political power of a voter in New Ashford is more than three times that of a voter in Pittsfield. So it stands at present. According to the tables in the Secretary's Report of February 3, 1852 (Senate Docu-

ment of 1852, No. 18), New Ashford, keeping up its recent ratio of decrease in population, will contain but 193 inhabitants in 1860; but it will then, according to the proposed Constitution, send six representatives in ten years; while Pittsfield, with 8,927 inhabitants, will (by the mean increasing ratio of that time) be entitled only to twenty. The population of Pittsfield will be to that of New Ashford as 277 to 6, while her representative weight will be to that of New Ashford as 20 to 6. A New Ashford voter will have nearly fourteen times as much weight in the House of Representatives as a voter in Pittsfield. His present excess will be more than quadrupled.

It is alarming to think to what this may grow. It looks like a rapid movement towards the rotten-borough system. When thirty or forty voters in New Ashford can send a representative to the General Court six years out of ten, a franchise there will presently have a money value. Its last valuation was $ 99,966; that of Mount Washington, $ 93,402; of Clarksburg, $ 94,835; of Monroe, $ 60,538. There are not a few men in Boston who could each buy the property of ten such towns; and if they could command votes in the Legislature by being landlords, they would have a motive to do so. These four towns, with an aggregate population of 1,049 in the year 1860,* will, by the proposed arrangement, be entitled to send twenty-four representatives to the General Court in ten years, instead of the eight that they now send. The population of all of them has decreased and is decreasing from one census to another; but the prodigious and increased comparative power which by the proposed Constitution is to be conferred is, by the same Constitution, never to be less than it

* I have referred to a census in 1860, &c., so that the figures might be verified by Mr. Secretary Walker's tables, as was done in the Convention, in argument in favor of the project (*Official Report*, &c., Vol. II. p. 95). By the proposed Constitution, the decennial census is to be taken in 1855, 1865, &c., instead of 1860, 1870, &c. But the operation is the same; viz. that, while the towns which are to send six or ten representatives in ten years are never to lose any of their power, the relative power of all the other towns is to be continually decreasing from census to census, with the increase of the mean numerical ratio; in other words, that the relative representative power of the small towns, already enormous, is to be increased with each successive census.

is now; while that of all towns entitled to send two or more representatives every year is, by the same Constitution, to be abridged at every new census. How does the case of such small corporations as have been mentioned differ from that of Gatton and Old Sarum? New Ashford has only one tenth of the number of inhabitants that constituted the rule by which the English Reform Bill of 1831 disfranchised sixty boroughs at a blow. In 1843, the single vote of the representative from Montgomery, a town of 650 inhabitants, was enough to determine the character of the government for the year, including the Senate and the Executive. Hull, I think, has not generally thrown more than twelve or fourteen votes. Call the average twenty. A majority of twenty is eleven. At this rate, by the proposed Constitution, eleven votes will give a seat in the House six years out of ten. It is needless to pursue the reflections which such facts suggest.

The right of the small towns to a representative in each, or each alternate year, is, let it be remembered, the only part of the system which is to remain stationary, while (by the application of the mean increasing number, which is to be enlarged with the enlarging population of the Commonwealth) the representative power of the inhabitants of all but that least populous class of towns is to be continually lessened. The proportion is to be changed every ten years in favor of the towns of the smallest size (those which have now less than 4,000 inhabitants), and against all others; thus vastly aggravating an evil and injustice which must be owned partially to exist in the present system. That, by the proposed Constitution, they will be thus aggravated, is just as clear and certain as the evidence of figures. When we hear it said that the proposed Constitution is better than the present in this respect, it is not that there is any disagreement about such facts as have now been brought to view. There can be none. It is a disagreement about *what is better* and what is worse. The present Constitution operates to reduce, from time to time, by a uniform rule, the representative power of the respective towns as based upon the present population. The proposed Constitution secures to a larger number of towns a frequent or annual representation; and this is what by some is called an improve-

ment. But it does so by a greatly increased violation of the principle of equal representation; and this is what others call the reverse of an improvement.

I do not enter into the calculations which show how small a minority of the people may, under the proposed system, command the House of Representatives. The people are ciphering over these sums pretty busily, and getting more and more astonished at the answers they work out. There is another view of the subject which deserves a passing notice.

The doctrine of the Revolution was, that taxation and representation must go together. It was founded on the much more ancient English doctrine, that nobody but the subject, directly or by his representative, had a right to dispose of the subject's money; and that then only would a proper economy be practised, when the grantors of a tax were also the payers. Accordingly, a tax in England is a *grant* of the Commons to the Crown or Executive; and all money-bills must originate in the Lower House, — a provision which we have copied.

In our Constitution of 1780, there were arrangements for the basis of the Senate, specially designed to protect property. The number of Senators to which the districts respectively were entitled had reference to "the proportion of the public taxes paid by the said districts"; and this discrimination in favor of property was not disturbed by the proposed amendments of the Convention of 1820. It was, however, abolished by the amendment which went into effect in 1840; and the Senate, like the House, was placed upon a numerical basis.

But if there ought to be no discrimination in favor of property, is it for the public good that there should be a discrimination against it? Are rich men or rich towns, not only to have no more discretion in the public disposal of their own means than others who have little or nothing to bestow, but are they to have much less discretion in the matter? Are the possessors of the money which the public wants to have much the least voice — man for man and town for town — in the disposal of it? Is this justice? Is it policy?

The smaller towns are the poorer towns; poorer, relatively to their population. But the smaller towns, by the proposed Constitution, are to have at once a much greater power over

the public purse than the large towns, relatively to their population; and that larger power is still further to be increased at each successive census. For instance: the valuation of New Bedford in 1850 was $14,489,266; that of Hull was $117,823. New Bedford, by the proposed Constitution, would have fifty representatives in ten years; Hull would have six. New Bedford has 16,441 inhabitants; Hull has 262. A citizen of Hull has more than six times as much power in taxing New Bedford as belongs to a citizen of New Bedford; and this while the average property to be levied upon is in New Bedford more than $880 to a man, while in Hull it is less than $450.

Nor is even this the widest departure in the new plan from the time-hallowed principle that representation and taxation go together. From the beginning of things, it has been the rule in Massachusets that the payment of some tax (the lowest tax being only a fraction of a dollar) should be held as a condition of the right to vote. All this is abolished, as to voting in State elections, under the first article of Chapter IX. of the proposed Constitution. A man who pays nothing to the public is to have as much power (or, as in cases like that above mentioned, much more power) in levying contributions for the public service, as those whose contribution is to be largest. His own pocket is not to be at all touched, when he makes any amount of draft upon his neighbor's earnings. The Convention did not hold this to be equitable or politic in respect to voters on town affairs. They considered the strong disinclination that would be felt by the industrious people of the towns to having their money voted away in town-meeting by those who made no contribution whatever to the common stock. And therefore they refused to make that application of the principle. But they propose it for our adoption in respect to the election of those who are to administer upon the people's money in the General Court.

So the case stands thus. Formerly there was in the Senate a discrimination in favor of property, while the basis of the House of Representatives was population. The discrimination in favor of property was done away with, some years ago, for the Senate; while, in the House, a strong discrimination

against property is to be rendered permanent by the new Constitution, and to be extended every ten years.

The only way to attain a near approach to an equality of right in representation, is by a district system, dividing the large towns and aggregating the small. The small towns do not like to be debarred from representation in their corporate capacity; and their objection has been yielded to, to the utter abandonment of the principle of equality. On the other hand, the proposed Constitution districts the cities, depriving them of their privilege, hitherto enjoyed, of representation as corporations. Is this equitable? If the new system be good for one party, is it not good for the other?

By an article of the proposed Constitution (Chap. XIV. Art. 4), it is provided that the Legislature of the year 1856 shall district the Commonwealth for Representatives as well as Senators, and submit their plan to the people, to become a part of the Constitution if confirmed by the popular vote. As this article cannot prevail except along with the rest of the Constitution, it is much relied upon to propitiate to the instrument those who are the most opposed to that scheme of representation which it proposes for immediate adoption: to them the hope is held out of getting through it ultimately to the district system. I cannot but look upon that hope as utterly illusory. It is true that the provision makes it incumbent upon the Legislature of 1856 to pass a law presenting that scheme for the people's action. But the only way to pass it, is for the two Houses to agree. And what power can compel them to agree upon an act, which, from its nature, must go into much detail, involving a great variety of compromises, and into which has been introduced the option of "single or double districts," as if purposely for an element of discord? Into the House of Representatives of 1856, towns having less than one third of the population of the Commonwealth may throw a majority of fifty. Is it to be expected that a House so composed will pass such a districting bill as will have a fair chance for concurrence by the Senate, based, as that body is to be, on population? Reasoning on the common principles of human nature, is there much reason for confidence that the project will not be strangled in such hands? And if, in

any way, the system of districting falls through, that year, then the old system remains as the permanent arrangement; for the duty of proposing the district system to the people is limited by the Article to the Legislature *of the year* 1856.

Again: a person may be in favor of a districting system, and yet not of just such a one as the Article in question describes, and which alone it provides for. That Article directs that the districts shall be "as nearly equal as may be in the number of qualified voters resident in each," making the very material substitution of *qualified voters* for inhabitants. Moreover, a person may be in favor of the district system, without wishing to apply its principles with so much rigor as is proposed, where the districts are required to be "as nearly equal as may be." Mr. Dana made an exceedingly able speech in the Convention against the district system. Many, of whom I profess to be one, are much impressed by his remarks on the necessity of protecting the Commonwealth against certain dangerous influences in the great cities, without, however, being able to see that we should be justified in giving such an immense preponderance of power to the small towns as is proposed by the new Constitution. We are of the opinion, that in those crowded marts and thoroughfares an unpatriotic and hurtful policy has prevailed and prevails, and too probably will continue to prevail, by force of essential elements in the constitution of society in such places. At all events, such local accumulations of political power and influence as are involved in the strictly equal representation of dense masses of population, even when they should be broken up into city districts, seem to us not consistent with the public security. In his reply to Mr. Dana, Mr. Hillard very properly said, that he was willing "to yield something of the numerical proportion to which Boston was entitled"; and admitted that he should not expect Boston, with about a hundred and forty-four times as many inhabitants as Hatfield, and, at the same time, "with its larger proportion of the worthless classes, and larger proportion of the dangerous classes," to be clothed with a hundred and forty-four times as much representative power as Hatfield. A district system which should do this, is practically out of the question. Yet precisely such a district

system as should do this — that system, and no other — is, by the proposed Constitution, to be offered to the people by the Legislature of 1856. Of course, it would be defeated, and there would be an end of the scheme of districting, so far as it has a semblance of being befriended by a contingent provision of the proposed Constitution. It is no essential feature of a district system, that the districts should be strictly "as nearly equal as may be," if the public good, as made manifest in other considerations, should require some partial departure from that principle. Our first Constitution gave one Representative to every hundred and fifty ratable polls, but required three hundred and seventy-five for two; and a discrimination of this nature, with a different ratio, still prevails. A similar sliding scale, with a ratio of increase not excessive, but sufficient for the common protection, might be applied to the great masses of population, as a feature of a districting system. But the prospective constitutional provision excludes every such arrangement. It presents the district system in what is very generally regarded as an ineligible form, and permits its adoption in no other. It is so worded as to insure defeat.

We constantly hear it said, that, under the present system, some of the small towns are "disfranchised," and more and more will be every ten years. Nothing can be further from the truth. The small towns may, every one of them, vote for a Representative every year under the existing Constitution. They have only — enough of them to make a certain aggregate of population — to associate themselves for that purpose, and they never need be without their Representative. If they are ever "disfranchised," it is by a voluntary waiver of a right which the existing Constitution secures to them.

Nor will the proposed Constitution do away with this "disfranchisement." Still, every town of less than 1,000 inhabitants will be "disfranchised" four years in ten. While, should the present Constitution continue in force, the evil which is complained of, as being created by it, would have a tendency to repair itself. It may well be supposed, that one reason why towns too small to be represented every year have not availed themselves, to a greater extent, of that constitutional

provision which allows them to associate together for the annual election of a Representative, is, that, being as yet few in number, they are comparatively remote and scattered. As the number increases with the decennial increase of the mean ratio, there will of course be more of them contiguous to each other; and, as the inconvenience of association is lessened by this cause, it is natural to suppose that the dislike to it may abate, and thus what is virtually a voluntary district system be gradually introduced.

I do not defend the representative system of the present Constitution. Far from it. It is bad. But I will not, because it is bad, vote to substitute another, which is worse than itself in its worst features; and when, still further, in order to make the substitution, I must vote at the same time for other provisions very important in my view, and very mischievous. I believe a districting system for the choice of Representatives is, on the whole, what justice and expediency require. But I do not esteem that system, which alone is contemplated in the prospective provision of the amended Constitution, to be either a correct or a practicable one; if ever so eligible, I have nothing which can be called a reasonable hope of attaining it in the manner proposed; and if entirely eligible and attainable in the manner proposed, I could not purchase it at the price which is demanded, of assent to other provisions of the same instrument.

The true course under such circumstances seems to be, to refuse to help in making things worse, and await a favorable time for making them better. Just as no treaty between nations is a good one, which leaves to either party occasions for future discontent and disturbance, so no Constitution can be a good one, which bears with oppressive weight on a large portion of the people, especially on the major number of them. A temporary majority may perhaps carry this Constitution. But majorities change, and that Constitution which is too unequal in its distributions of power cannot give permanent satisfaction or tranquillity. There is too much reason to fear, that, smarting under such injustice, a majority may some time feel entitled to right itself, even by disturbances such as, not long ago, were witnessed in Rhode Island.

IV.

THE JUDICIARY.

Hitherto the tenure of the judicial office in Massachusetts has been for good behaviour. "It is the right of every citizen," says Article XXIX. of the Bill of Rights of 1780, unaltered till now, "to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well," &c. This the Convention of 1853 proposes to alter so as to read in the following manner: — "It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices *by tenures established by the Constitution*," &c. And then it goes on to provide, in Chapter VIII., that Judges of the Supreme Court hereafter to be appointed, and also Judges of the Court of Common Pleas, as long as the law establishing that Court remains in force, shall hold their offices for ten years; at the end of which time, the Governor and Council may reappoint or supersede them at pleasure.

This measure has undeniably taken the people by surprise. In the speeches and other appeals of the different parties, while the measure of holding a Convention was pending, no plan of the kind was so much as suggested. Neither party expressed an intention to make any change in the judiciary system. By some of the leading men who had promoted the Convention, it was admitted, in the debate upon the subject in that body, that, if a design to make the Judiciary elective had been avowed, the proposal to hold a Convention would probably not have been sustained by the people; and in respect to any change in the term of judicial service, or the

manner of appointment, an equally cautious silence was preserved.

There is no more peremptory lesson of history, no better established doctrine of political science, than this: that, for free governments to be sustained and do their office, it is essential that the three departments be kept distinct. The executive must not be at the mercy of the judicial or legislative; nor the legislative at that of the judicial or executive; nor the judicial at that of the executive or legislative.

But this great lesson of the ages it is now proposed so far to set aside. There are six Judges of the Supreme Court. Oftener than once in two years, a vacancy on that bench is to be created by the new Constitution. Reckoning deaths and resignations, vacancies will occur nearer to once in every year than to once in two years. Not much less frequently than every year, it is to be in the power of the Governor, or of the Governor's party friends, to say to one sixth of the Court, that, unless they decide questions so as to suit the powers that be, one sixth of the Court shall presently be displaced. Every succeeding year or two years will bring up another to pass the same ordeal. What independence, what dignity, what weight, can there be in the character of a judge under such circumstances?

A Judge of the Supreme Court has come to be fifty or sixty years old. He has a family dependent on his earnings. He has been away from the bar ten or twenty years, and has changed his habits and parted from his clients. His period of official service is before long to expire. It is presently to be in the Governor's power to continue to him the means of comfortable living, or reduce him to poverty and shifts. On the common principles of human nature, how is it possible to say that a judge so situated is not under a dangerous influence so to act as that he may stand well with the Governor and the Governor's backers? Take such a case as that of the old Charlestown Bridge. Such cases may occur over and over again. On that occasion, strong feelings and interests, on the part of great numbers, were arrayed against what others considered to be private rights. No matter, for the present argument, which side was right and which was wrong. It

was doubtless for the interest of the public, in the long run, that justice should be done, wherever it might strike. Yet who can say, that, supposing the weaker party in that instance to have had justice on their side, they would have had a fair chance of getting it, if, within some greater or less fraction of ten years, every Judge of that Court was to retain or lose his place according to the chances of a Governor's election? There is no more appropriate business of courts of justice than to protect the rights of the weak and few against the usurpations of the strong and many; and it is impossible for them to do this, unless they are strong and independent themselves. Every man of a domineering majority may in time come to want that protection for himself, through an independent judiciary, which, in the pride and insolence of his party strength, he grudged to others. Who would like to see the judge who is to pass between him and his neighbor dancing attendance in the Governor's antechamber, as the expiration of his ten years draws nigh, and watching the signs of the times to know on what terms a re-nomination may be had? Who wants to see the judges calculating the chances of the political parties as a November election approaches, and musing on the prospect of being provided for or impoverished according as they decide questions before them this way or that? For our judges we must take men, imperfect men: that we cannot help. The most we can do is to take the best bonds for their integrity which we can get: first, from the upright character which we discern in them; secondly, from the safe and independent position in which we place them. Who can pretend, that, if tried by a judge liable to be retained or displaced at a not distant time, according as he decides one or another case, he enjoys his right "to be tried by judges as free, impartial, and independent as the lot of humanity will admit"? The advocates of the proposed Constitution talk of restricting the patronage of the Executive. But what a tremendous extension of its patronage is that which lays the Judiciary at its feet!

There is no question, in any quarter, about the right of the people to appoint and remove judges, as well as other magistrates, at their pleasure. The only question is, how can the

people exercise their undisputed power in this respect, so as to secure for themselves the most faithful and able discharge of the duties of the judicial office?

What sort of men is it for the public interest, and for every individual's interest, that we should have for judges? Without doubt, men of talents, learning, and character; and a rare succession of such men we have been fortunate enough to secure under the old system; though, from the very moderate income of judges, compared with that of eminent practitioners at the bar, it has often been found difficult to induce the proper man to take a vacant seat upon the bench. The great attractions of the place, which have induced the best men to accept it, to the sacrifice of other considerations, have been its independence, security, and seclusion from party clamor. These attractions we propose now to divest it of; and, when they are taken away, how can we hope any longer to enlist the highest character and talent in judicial service? Nothing in the future is more certain, than that we shall thenceforward see upon the bench men altogether inferior to those who have heretofore adorned it. The men whom we most want for the place will not look at it under such circumstances; there is no reason why they should, and all personal reasons to the contrary; and it will sink more and more into the condition of a prize for active partisans, claiming it as their share of the spoils after some hotly contested election. The court will become inferior to the bar, a state of things in which there can be no safe administration of the law; uneasiness, distrust, discontent, will take the place of the confidence which has hitherto been felt in the intelligence and uprightness of the tribunals; the judicial decisions of Massachusetts will sink everywhere from the high estimation in which they have been held. In short, it is simply impossible, that, with the proposed change, our administration of justice should be as able and impartial as it has been.

But it is argued that we ought to have some method of relief from incompetent and unfaithful judges. No doubt we ought; and we have it already in perfection. Passing by the process of impeachment, nothing can be easier nor more summary than that procedure provided by the present Constitu-

tion, of removal by address of the two Houses to the Governor. It is a prompt, efficient, infallible remedy for every case that can be supposed of general dissatisfaction. In its practical operation, it goes far to insure the object of delicacy, professed to be aimed at by the proposed new provision; viz. the retirement "to private life, without violence or ungracious circumstances, and scarcely with observation." For it can hardly happen that, when the public dissatisfaction becomes so manifest as to threaten the removal of a judge by address, his own feelings, or the interference of his friends, will not lead him to anticipate that step by a voluntary resignation. If it could ever happen, it would be only in a case of a judge who was so confident of the correctness of his course that he would stand by it to the last, defy the consequences, and, by giving the greatest possible solemnity and publicity to the issue made, throw himself on the judgment of posterity. And that is just the kind of judge that it concerns the public not to part with, on any terms.

Some of the judicial offices the new Constitution proposes to fill by local elections once in three years, instead of by appointment by the Commonwealth's authority, as heretofore. Such are the offices of Judges of Probate, Police Justices, and Trial Justices (Chap. VII. Art. 4; VIII. Art 7, 8).

The objections to this innovation are very weighty. In rich counties, where large sums of money pass under the jurisdiction of Judges of Probate every year, including not only executors' and administrators', but guardians' and trustees' accounts, they will have been diligent if they have learned their business well at the end of the first three years. Change them every three years (which is but too likely to come to pass if the places are thrown into the party scramble), and we shall never have a first-rate Judge of Probate for any fraction of the time. Judges of Probate stand between widows and orphans on the one hand, and those who have the custody of their estates on the other. Widows and orphans are protected by the correct accounts and sufficient bonds of executors, guardians, and trustees. The Judge of Probate has the cognizance and regulation of those accounts and bonds. Guardians and trustees are often of that class of solid

men, who have great weight in party operations. When I want the accounts of an estate in which I am interested strictly sifted, and the bonds put properly high, it will be a subject of uneasiness and regret to me if the Judge of Probate is presently to be elected in a county in which my trustees are influential men in the Conventions. There was lately in Norfolk a question of guardianship, which excited strong and general interest. I know nothing of its circumstances, except that one, at least, of the parties to the discussion was a gentleman of deservedly great political influence in the county. It is a thing infinitely to be deprecated, that the administration of justice in so interesting a department should be exposed to such a peril as would arise from the influence of interested parties over local elections.

So of Commissioners of Insolvency, a class of officers exercising very important quasi-judicial functions. They, too, are to be elected in the respective counties once in three years (Chap. VII. Art. 4). Among the many classes of citizens, there is probably no one, which, in proportion to its numbers, furnishes more of the active politicians, or acts a busier or more influential part in the primary and nominating Conventions, than that of insolvents. Is it for the interest of the public at large that the nomination of these officers should be liable to be in their hands. Will a person who holds an insolvent's note think that this arrangement will tend to increase its value, or the contrary?

The administration of justice ought to be uniform throughout the Commonwealth. One way of securing this is to have the administrators of justice, in every part of the jurisdiction, appointed, not by any local authority, but by the authority of the Commonwealth. And this is the method which has been hitherto strictly observed, but which it is now proposed to change. Cities elect their Mayors and Aldermen, because Mayors and Aldermen are to carry into effect the charter provisions and by-laws of the cities respectively. But Massachusetts as yet appoints judicial officers in all her cities, because her laws are to have effect alike in all those cities. It is her business that those magistrates are to do, and not that of the municipal corporations. If I am a citizen of Rox-

bury in Norfolk, it interests me about as much to have criminal law rightly administered in Boston in Suffolk, as it interests a citizen of Boston itself. At all events, Massachusetts, which is a body politic, cannot wisely or safely leave her cities to their own judicial administration, any more than she can leave them to their own legislation. Think of Boston choosing a Police Justice on an average once a year, and the pro and anti Maine Law parties, the pro and anti lottery, the pro and anti hack-regulation parties, and so on, which would be struggling for the possession of him. The Recorder's Court in the city of New York is a criminal court. He sits with two of the Aldermen, chosen at the annual charter election. If report says true, a serviceable partisan of the Aldermen who made two thirds of the Court, having been convicted recently on a criminal charge, the Aldermen prevented his being sentenced, by absenting themselves from the bench. It is impossible to be at the trouble of ascertaining the truth of such a story. But it seems too probable not to be true. At all events, the general likelihood of a perversion of justice under the like circumstances is so great, and so serious, as to make the proposed change appear to the last degree ineligible. Hitherto, in every part of her dominion, Massachusetts has administered her laws by her own agents. Her people have meant to hold their whip over evil-doers, just the same in Suffolk as in Berkshire. She will consult for her security and good order as little as for her dignity, when, in so important a department as that of the jurisdiction of Police and Trial Justices, she exposes her judicial administration to the influence of local interests and excitements.

In respect to the Clerks of Courts, what interest have the public? Clearly this very material one: that the business of the courts, so far as depends on the recording and corresponding officers, shall be promptly, diligently, and correctly done. How may that interest best be secured? Apparently by the method, hitherto pursued, of allowing the courts to appoint and remove their own clerks, and so to hold them to a direct and strict accountability. If a clerk is incompetent or remiss, we, the people, are in no position to know of it, except at secondhand; and then we may be doubtful or divided about

it. The court know it at once, because it interferes with the regular going of their machinery. Their personal convenience and credit are deeply concerned in having the business of the clerk's office well and thoroughly done; and they are the persons who will immediately and certainly know whether it is so done. It is evidently and eminently for the public advantage, then, that they should be charged with seeing it done, and accordingly with designating the persons to do it. To make these offices elective in the counties, as is now proposed (Chap. VII. Art. 4), would be just as much out of the safe and regular course of business, as it would be for the Secretary of the Senate, or the Clerk of the House, to be chosen by general ticket, or for the stockholders in a bank to appoint and remove the book-keepers and tellers. To subject the clerkships to election in the counties, is to throw so many more prizes into the heap to be fought for by county demagogues; but it is not a measure for the advantage of us who have, or may have, business in the courts.

V.

THE EXECUTIVE.

In respect to the Chief Executive, the new Constitution quietly makes one change of no inconsiderable moment, though it is so put away in another place, and wrapped up in a mass of other things, without the usual *italics* to call attention to it, that it may escape observation. In case of a failure of popular election of the Governor or Lieutenant-Governor, the old Constitution provides that the House of Representatives shall select two names from the *four* having the largest number of votes; from which two, the Senate is to designate one for the vacant office. In other words, the old Constitution allows such a latitude of choice, as that there may be four parties entitled to have their claims considered in this kind of election, and to have their share in the compromise which such a case may make necessary. The new Constitution changes this, and provides (Chap. IX. Art. 5) that, for

the choice of Governor, Lieutenant-Governor, and other high executive officers, *three* parties, and no more, shall henceforward be recognized in Massachusetts. We have at present, in Massachusetts, three large and well-organized parties; so that the proposed monopoly in three parties may seem to have a suitableness to the immediate state of things, and to the satisfaction of the managers of those parties. But perhaps there is, or may be, some other party which may aspire to be fourth in numbers; as some Old Line Democratic party, some Maine Law party, or some Hoosac Tunnel party. And would such a party feel that justice was done it by the proposed exclusion? The fourth party might be nearly equal in numbers to the third, and it might be more in unison than the third with the first, or with the second. Would not such a state of things, should it occur, create a wish that the old constitutional provision was still in force, with its larger liberty of choice? The proposed provision looks like a blow aimed in the dark at the existence of a fourth party.

When the first case occurred of the succession of a Vice-President to the Supreme Magistracy of the Union, and the Cabinet wished to get hold of Mr. Tyler by his weak side, they caused him to call himself, and be called, "President of the United States." This hardly seemed accordant with the language of the Constitution. But it pleased at least one person, and it harmed nobody; so it met with general acquiescence, and went into precedent. In respect to the Lieutenant-Governor of Massachusetts, the old Constitution provides, that, in case of the vacancy of the Governor's chair, "the Lieutenant-Governor for the time being shall, during such vacancy, perform all the duties incumbent upon the Governor," &c.; and, accordingly, Gill, Lincoln, Armstrong, &c. styled themselves "Lieutenant-Governor and Commander-in-Chief." The proposed Constitution provides that, "whenever the chair of the Governor shall be vacant, &c., the Lieutenant-Governor *shall be Governor of the Commonwealth.*" It plucks away a feather from his present pomp, but it offers him a contingent dignity instead. It forbids him to be saluted any longer as "his Honor," but it indemnifies him with a "Hail! King that shalt be!" The improvement may seem to be scarcely worth

changing the Constitution for; but there is no harm in it, and it may be agreeable to persons who have the office in contemplation. If it should be thought trifling, it is as innocent trifling as could be wished.

In respect to the position of this officer, there is another change, which also is not indicated by any difference in the type. By the existing Constitution, the Lieutenant-Governor is to perform all the duties of the Governor "whenever *the chair of the Governor shall be vacant*, by reason of his death, or absence from the Commonwealth, or otherwise." This is definite. The proposed provision is not equally so. It is (Chap. V. Art. 3), that, "whenever, by reason of sickness, or absence from the Commonwealth, or otherwise, the Governor shall be *unable to perform his official duties*, the Lieutenant-Governor, for the time being, shall have and excercise all the powers and authorities and perform all the duties of Governor." What degree or duration of inability in the Governor, from a headache or a broken right-arm to an apoplexy, shall authorize the Lieutenant-Governor to assume his superior's functions? The Governor may be able to do some official things, and not others. He may be able to sign a commission, but not to meet his Council. Who is to be Chief Magistrate then? It is not difficult to imagine cases of possible dispute as to the authority of that signature which binds inferior officers. "Under which king, Bezonian?" John Adams knew better what language was fit to be used for such a case, than the experimenters upon this part of the State Constitution.

The change in the constitution of the Executive Council, making its members to be eight in number instead of nine, and to be eligible by a plurality of votes in single districts, instead of by the Legislature, as heretofore, is in some respects an improvement; though causing, as it will, the party of the Governor's opponents to be represented in his Council (an arrangement certainly not without its benefits), it may sometimes tend to lessen his responsibility, by giving to that body something of the character of an Executive Directory. At all events, it is not an improvement of that urgent importance that it is worth while to obtain it next year at a great sacrifice

in other things, instead of obtaining it the year after at no sacrifice at all. We can have it in 1854 by adopting the proposed Constitution, with all its exceptionable features. We can have it in 1855, as an independent measure, by the successive votes of two Legislatures and of the people. As there was next to no opposition to it in the Convention, there appears no reason to apprehend serious opposition to it in any quarter. When all parties are substantially of one consent about a thing, and it may be had for nothing, it cannot be wise to get it at a high price.

There is one proposed change in the executive department, of far more material importance. Massachusetts has intended to have her laws efficiently and uniformly executed in every part of her territory. And, to that end, she has taken care herself, by her highest delegated appointing power, her Governor and Executive Council, to appoint her highest executive officers respectively in all and each of her counties. All this, it is proposed henceforward to do away. The counties are severally to elect their own Sheriffs (Chap. VII. Art. 4), and by that election to determine how much and how little of the law of the Commonwealth shall be executed within their bounds. Dukes County may not like the pilot laws of Massachusetts. Suffolk County may not like the liquor laws of Massachusetts. Of course they choose their Sheriffs, when they get the power, with a view to nullify those laws in respect to themselves; for when and where the executive power fails, the law is a dead letter. Massachusetts has now a heavy hand, which on occasion she can make felt in any part of her domain. Make the change proposed, and we disarm her at once in any contumacious county. As the Constitution now stands, if a Sheriff of Suffolk, in supposed deference to a Boston interest, refuses to serve process under any Sims case, or the like, or to make a seizure under the Liquor Law, he stands a chance of being dismissed immediately and finally by the Governor, — the representative, for such purposes, of the State's sovereignty. Make the Sheriff the officer, not of the Commonwealth, but of the county, and it will be the county's will, rather than the Commonwealth's, which he may feel concerned to execute. The population of Boston is not worse than that

of other great cities. It is much better than that of most others. But it embraces elements such as cannot prudently be trusted with control over the question, whether or not the laws of Massachusetts shall be faithfully administered and executed within it. To take an illustration from a sister State, what chance of execution would a process for collecting rent have in an *anti-rent* county, with the constitutional power to choose its Sheriff?

So the efficient execution of the laws depends mainly on the faithfulness of the prosecuting officers. If they will, they shut their eyes to crimes and abuses; and those crimes and abuses the law then does not see, and does not punish nor remedy. Under the existing provisions, the Commonwealth, through her Governor and Council, appoints and removes at pleasure the District Attorneys, and thus holds them strictly responsible to herself for the due execution of the trust. It is proposed henceforward to choose the District Attorneys by vote of the districts respectively in which they are to act (Chap. VII. Art. 4). The district which can choose its prosecuting officer will have rather more power than is consistent with the general good, to determine what offences and what persons shall be prosecuted within its limits; and men who have sway at nominating conventions may occasionally prove to be invested with too much discretion over the question whether they will themselves be prosecuted or not.

It is no reply to these remarks to say, that, by another provision (Chap. XIII. Art. 4, 5), prosecuting officers and sheriffs may be removed or suspended by the Governor, and substitutes appointed. The remedy is not adequate. The substitute, on the proposed plan, can only hold office till the next annual election. The county or district then re-elects the faithless officer, or some other person who will equally serve its purposes; and by the time there has been again sufficient malversation, and sufficient proof of it, to justify another executive interference, great part of another year has gone, carrying with it another long period of hurtful maleadministration. And this is a process to be repeated endlessly, or as long as the spirit of opposition in the county or district holds out.

The offices of Secretary of the Commonwealth, Treasurer, and Auditor are by the new Constitution made elective by the people directly (Chap. VII. Art. 1), instead of, as hitherto, by the people through its Legislature. As a matter of convenience, this may be an improvement; and if so, the change would be easily made, and probably without opposition, as an independent measure, by the method pointed out by the existing Constitution: though one naturally asks why this rule should not be made to apply to some other State officers, as well as to those specified; as, for instance, to the Land officer, or to the Secretary and members of the Board of Education. Even the office of Warden of the State Prison is, I believe, made elective in some States, where it is intended to give to the general State scramble the greatest possible comprehension and activity.

VI.

MISCELLANEOUS.

The question whether more than half the votes given in elections shall be required to fill an office, or whether a mere plurality shall prevail, is one of material importance. The former method is most consistent with the republican theory. It may be reasonably argued, that no one should be held to be elected, when there is a larger number of votes against than for him, even though the majority against him should be an aggregate of votes cast for different persons. But, on the other hand, there may at any time be more than two parties, each tenacious of its principles and candidates, and no one of them more numerous than the sum of the rest. In that case will occur the inconvenience of repeated fruitless trials to elect; offices may remain vacant; and it is even supposable that the government shall be brought to a stand.

This class of considerations has led extensively to the introduction of the *plurality* principle in the elections of other States. Massachusetts has adhered steadfastly to the method of electing by majority. Two years ago, the Legislature en-

acted that a plurality should choose electors of President and Vice-President and (on the second trial) Representatives in Congress; there being, as to these matters, no provision in the Constitution. But the Constitution and laws, down to this day, recognize no election of state, county, or town officers, except by a majority of all the votes.

It would seem that, however the Constitution should determine the main question, its arrangement should be uniform and permanent. The existing constitutional and legal provisions have both these qualities. That of the proposed Constitution has neither. By the proposed provision (Chap. IX. Art. 5, 6, 7), a plurality cannot, until further legislation, elect the Governor nor other executive state officers, Representatives to the General Court, nor town officers. In other words, in these elections, when there are three powerful parties, there must be a bargain between two of them to effect a choice. But pluralities are to elect Councillors, Senators, and county and district officers (Art. 8). The relation of this twofold arrangement to the existing state of parties in this Commonwealth, and to the compromises which have grown out of that state of things, is apparent. But upon what constitutional doctrine, or what demand of the public welfare, the distinction is founded, and why the plurality rule has not precisely the same applicability to all cases alike, is not so obvious.

At all events, this might seem certain, that the great question of majority or plurality elections is one to be settled in some way by the Constitution, and not to be left to the caprice and party calculations of successive Legislatures; — a majority system to be enacted by one Legislature, and a plurality system by the next, according as one or the other may be thought best to subserve, for the moment, the purposes of party. But the proposed Constitution expressly provides (Chap. IX. Art. 5, 6, 7), that, in all cases in which majority elections are still retained, it shall be competent to the Legislature to substitute a plurality, and again to go back to a majority vote, at its pleasure. It is true that the provision is, that a law of this description, so far as it relates to state officers, shall not take effect till a year has expired from the time

of its enactment. But party calculations are apt to look forward beyond the term of twelve months. And, further, if a law on this subject cannot go into effect till after twelve months, neither can its repeal do so. So that a party in power is able to determine irrevocably, for its own uses, the principles on which the elections for the second following year shall be made. The people may be ever so much disgusted with a wrong that has been done, and may send ever so strong a representation to the General Court the next year to set it right; but to set it right is no longer in their power. The Constitution precludes them from getting any remedy till after the second year; till after the time has passed to which the corrupt legislation they desire to rebuke and repair was contrived to apply.

The provision respecting *Secret Ballot* (Chap. IX. Art. 2) recognizes a sound principle, and enforces an important practice. The gross abuses which have existed loudly demand its adoption. It should have been presented as a separate article, so that we could vote for it without at the same time making great sacrifices in other respects. But the Secret Ballot, in precisely the effective form proposed, is within our reach by mere legislative enactment. Its reasonableness and popularity are such, that it must presently be re-enacted, whatever party is in power; and when re-enacted, it will stand firm. The Whigs, it is true, repealed it last winter; but they have been sitting on the stool of repentance ever since. Nothing did more than their foolish stand on that question, to throw them into the miserable minority in which they appeared in the Convention. They will not try it again. They will have to yield the Secret Ballot by law, Constitution or no Constitution.

The obligation of the General Court to receive pay *for one hundred days only* (Chap. I. Art. 3) is interpreted as a virtual prohibition to sit longer. In that view, it might be good, if accompanied by a provision that no more business should ever come before the Legislature than would be well and carefully done in that time. Some years ago, on account of some alleged bequests to public charities, supposed to have been

wheedled out of legatees in the weakness of their last hours, there was a proposition in the Legislature, that no will should be admitted to probate, if made within six months of the testator's death. An amendment was moved of an additional clause, providing that no man should die till six months after making his will; upon which the measure subsided. If the business is left unfinished at the end of a hundred days, and the Governor has to call an extra session to complete it, with the cost of extra travel added to pay, there will be little money saved. This case has actually occurred during the present year in New York, under a constitutional provision similar to that now proposed to be introduced among us.

If a limitation of the Legislature to sessions of a hundred days be a good object, why not so provide in direct language? It would be the better and safer way. Who knows that the stoppage of pay would in every case send the Legislature home? Suppose a different state of things. Suppose, as the end of the hundred days approaches, a measure to be pending, involving large pecuniary interests. The Senate and House cannot agree about adjourning. Some members hostile to the measure, but not able to work for nothing and find themselves, ask leave of absence, and easily get it. Others, favorable to it, are able at their own expense, or at the expense of somebody behind the scene, to hold out and legislate some days longer. I can easily imagine cases in which I should not think it for my advantage to have my representative starved away from his post.

As to the *Militia*, the subordination of the military to the civil authority has always been held to be a necessity of our institutions. It stands prominent in the Bill of Rights (Art. 17). One way which our ancestors took to secure it was by giving the appointment of the Major-Generals to the people assembled in their Legislature. It is now proposed to expunge this feature of the militia organization, and to have an armed force wholly officered by itself, with the exception of the Commander-in-Chief (Chap. XI. Art. 5.) On the other hand, soldierly honor is delicate, and some rather strong experiments upon it are projected. Henceforward an officer is,

every three years, to have the continuance of his commission subject to the vote of the inferior officers or the privates of his command (Art. 11). It may be that offices in the militia, on these terms, may continue to be attractive to men of character; but I should not like to guarantee it. Suppose a company to be in actual service at the time when the captain's commission is about to expire by limitation; he will be under the command of his men, instead of their being under his. And so of the commanders of regiments, brigades, and divisions, who are to have respectively inferior officers for their constituents. The judicious arrangements of an expedition or a campaign may be all frustrated by the advancement, at the critical moment, of a new man over the head of their projector. And, when an ambitious subordinate may intrigue with his command to supplant his superior, does it not follow that the arm of military discipline will be very essentially crippled?

There is another change in the constitutional provisions relating to the militia, of greater importance. The Constitution, as it has stood from 1780 to 1853, after making the Governor Commander-in-Chief "of all the military forces of the State, by sea and land," goes on to provide that he shall never "transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the General Court." The idea of those who framed this prohibition was, that, when soldiers should be wanted for foreign wars, they could be hired, and that the citizen was not to be forced away from his home on such service; that conscriptions, the odious resort of military tyrannies, should not be permitted here. It is now proposed to do away with this restriction, and to impose no limit to the Governor's power over the militia, except as implied in this, that the authority expressly given him goes no further than "to call out any part of the military force to aid in the execution of the laws, to suppress insurrection, and to repel invasion." "To suppress insurrection." Where? In Florida? "To repel invasion." Where? In California? "To aid in the execution of the laws." Where? At Trieste and Venice, when we have quarrelled with Austria? For

undoubtedly a declaration of war is a "law." The Constitution of the United States confers on Congress power over the militia in these terms; but it is in no such breadth of meaning, nor does either that instrument, or the Constitution of Massachusetts hitherto, confer it on the Governor. The proposed alteration may be interpreted so as to invest that magistrate with a terrible power. When the time shall come that a reckless partisan Governor, ambitious of a "national" name and promotion, shall "call out" some Massachusetts regiments, under the penalties of martial law, for an expedition to Nicaragua, the Sandwich Islands, or Japan, we may wish, when it is too late, that we had the old constitutional security for ourselves and our children. In all times, the power to compel the service of the subject in distant wars has been held to be one of the most intolerable attributes of despotism.

The proposed provision (Chap. XII. Art. 1) which authorizes the Legislature "to grant any further powers to the President and Fellows of *Harvard College*, or to alter, limit, annul, or restrain any of the powers now vested in them, provided the obligation of contracts shall not be impaired," appears to have encountered little opposition, as indeed might have been expected; for it is merely sounding words. It makes no change in the condition or liabilities of that institution. Corporations have no existence, and no rights, but what are given by their charter. Except so far as that protects them, they are wholly at the Legislature's mercy. The Constitution of the United States — the supreme law of the land — secures the inviolability of contracts. If the charter of Harvard College is not a contract, then the State government may now do with Harvard College whatever in its wisdom and justice and mercy, or whatever in temporary injustice and folly, it will. If that charter is a contract, then any act of the Legislature infringing it is null; it has no validity in law; it is not worth the parchment it is written on. The relations of the Legislature and Harvard College will be not a jot or tittle different, whether the proposed provision in respect to them is sanctioned or set aside.

The revised Constitution proposes (Chap. XII. Art. 3) to

repeal the legislation of the last forty or fifty years in respect to the Board of Overseers of the College, and reinstate that Board as it was established by the Constitution of 1780; viz. so as to have it consist of the Governor, Lieutenant-Governor, Council, and Senate, the President of the College, and the Congregational ministers of Boston, Cambridge, Watertown, Charlestown, Roxbury, and Dorchester. In the result of previous legislation in 1810 and 1812, an act was passed by the General Court in 1814, providing that, with the consent of the Corporation and Overseers (which was subsequently given), the Speaker of the House, and fifteen ministers of Congregational churches, with fifteen laymen, to be elected by the Overseers as vacancies should occur, should be substituted in the Board for the Congregational ministers of the six neighboring towns. In 1834, with the same consent of the Corporation and Overseers (made a condition by the act), the Overseers were empowered to choose clerical members of their body, being ministers of other than Congregational churches. In 1851, the act was passed, now in force, which, with the same consent, constituted the Board of five high officers of the Commonwealth, the President and Treasurer of the College, and thirty persons to be chosen from time to time by joint ballot of the Legislature. The Board thus formed, the proposed Constitution, copying the article of the Constitution of 1780, now proposes to dissolve, — to displace all the recently and previously elected members, consisting of different religious denominations, and seat in their places, among others, the Congregational ministers of Boston and the vicinity; these Congregational ministers being in number some sixty or seventy, a clear majority of the whole Board.

As far as I have looked into the debates of the Convention, I find no light on the history of this proceeding. Did the Convention — for reasons unexplained, and not to be guessed at — actually decide to reaffirm the original provision of 1780, overriding and annulling all subsequent legislation on the subject? Or is it possible, on the other hand, that here is a mistake in the Convention's declaration to the people of its own doings? Who is authorized to say this? Here is the formal document in our hands, signed by the President of the

Convention, and countersigned by its Secretaries. So far as the public knows, there is nothing behind this document — no engrossed instrument — for us to appeal to, as more authentic and certain evidence of what the Convention actually proposes for our votes; and, even if there be any thing of that kind, this pamphlet is what is laid by the Convention before the people, for them to vote upon. This part of the revised Constitution is known, by all the proof by which any other part is known, to have been approved, and presented for ratification, by the action of that body. If this part of the revised instrument does not truly represent the will of the Convention, how do we know that any other part does? Where is our proof, that, in casting our affirmative vote, we shall really confirm what the Convention designed?

At all events, if we vote for this project of a Constitution, one thing, among others, which we aid in doing, is this: we recreate the old Board of Overseers of Harvard College, with all its circumstances so little in harmony with the views of the present day. We turn out Episcopalians, Baptists, Universalists, and Methodists, — laymen and ministers, — and put in their places a large number of Congregational clergymen. If this provision, included in and inseparable from the new Constitution, takes effect, then the Board of Overseers will be constituted agreeably to it, after the first Monday of next February (Chap. XIII. Art. 7). Is it said that subsequent legislation may correct the blunder (if blunder it be), and restore the present organization? But it may be presumed, that subsequent legislation will resemble previous legislation, in making its provisions contingent on the consent of the Overseers. If so, what Overseers will be competent to give that consent? The proposed Constitution, if it prevails, assumes to supersede and displace the present Board. If its provision is ratified and is valid, there will be no Board after February, except that after the pattern of former centuries; and whether the sixty or more Congregational ministers will consent voluntarily to abdicate the trust thus unexpectedly thrust upon them, is what no one can pretend certainly to know.

However these matters may be viewed, they do not tend to heighten our confidence in the careful deliberation and exact-

ness with which our business was done in the Convention. They rather go to create a suspicion, that in other particulars, where the lapse is less obvious, the Convention may not have proceeded with that circumspection which the transaction of such great affairs demands.

Chap. IX. Art. 8 is mere *surplusage*. It simply repeats Chap. II. Art. 3, Chap. VI. Art. 4, and Chap. VII. Art. 4. It stands, however, as another evidence of the haste with which the instrument was digested. So in Chap. V. Art. 1, a paragraph is designated by the change of type as not among "existing provisions of the Constitution," when, in fact, it does make a part of that instrument, by the tenth amendment, adopted in 1831.

The provision (Chap. XII. Art. 4) "for the enlargement of the *School Fund* of the Commonwealth, until it shall amount to a sum not less than two millions of dollars," is a good one. The money could be well used in that way. But there is no occasion to disturb the Constitution for it. A common legislative act will answer all the purpose; and that there will be no opposition to such an act, whatever party is in power, is proved by the fact, that in the Convention the vote for the proposition was unanimous. The present fund was established, not by constitutional provision, but by common legislation. The Statute of 1834 (Chap. 169) appropriated a million of dollars for the purpose. The Statute of 1851 (Chap. 112) added half a million. A Statute of 1854 may add another half-million (which all parties are agreed to), and the work of this part of the proposed Constitution is done.

The Fourteenth Chapter contains certain provisions in respect to *Future Amendments* of the Constitution.

In the first place, specific and particular amendments may be made by certain action of two successive Legislatures, sanctioned by a subsequent popular vote (Chap. XIV. Art. 3). Here, the existing constitutional provision to this effect is incorporated into the new Constitution. There is no change.

Another Article (2) recognizes "the power of the Legislature to take action for calling a Convention," "as heretofore prac-

tised in this Commonwealth." This (which comes in a *proviso*) may be thought superfluous, as the practice has sufficiently established the right, which indeed did not need practice to establish it; and if, in a hot party discussion, it has been professedly called in question within the last two or three years, the fact that, after all the objection made, the practice has been followed up in yet another instance, establishes it on a firmer basis than before. The party which recently opposed it and denied its legitimacy has given in. At its more recent State Convention, it declared itself in favor of certain constitutional amendments, "to be obtained, if possible, through the action of the Legislature; and, failing thereby, *a new popular Convention*, based upon an equality of representation."

These two methods of obtaining constitutional amendments, which from time to time may be desired, are already in force. Are they sufficient? Because, if so, it is not worth while to provide for keeping the question of constitutional amendments perpetually in the field, as a football for parties. A constitution of government is supposed to have a degree of stability and permanency. We expect to make it productive of a maximum of public good by wise applications of it, not by frequent revisals and alterations, involving critical experiments. One interest may perhaps profit by it peculiarly at one time, and another at another. But we do not expect to be taking it to pieces on every momentary dissatisfaction, to adjust its machinery to the interests, passions, or fancies of the hour. It is not worth while to encourage ourselves or others, on every passing occasion of disappointment or defeat, to go to work on a reconstruction of the whole frame of government. That was the way they did in the Italian republics of the Middle Age, till the people were always making constitutions, instead of making and enjoying laws; and a man needed to have a quick memory to tell what government he lived under this year, and could have merely a guess as to what government he would be living under the next. Florence, before her frolics of this kind were brought to an end by the Grand Ducal despotism, had at one time, if I remember aright, five constitutions in ten years. It was not the way to a quiet life.

There is some danger that, should the fundamental law

hold out a formal invitation to frequent and easy revolutions, it will be too readily thought, whenever any thing goes wrong, that a flaw in the Constitution is the cause; from which it may probably follow, that, in patching one supposed breach, another will be made, and so on; the process being attended at every step with much exasperation, anxiety, and discontent. As with violent, so with peaceable revolutions: there is no good done, but some harm, by anticipating occasions for them. When the necessity comes, it will manifest itself and take care of itself. And, as often as constitutional amendments in Massachusetts are necessary, the methods already in use for obtaining them seem abundantly sufficient for the need.

But the framers of the proposed Constitution view these things differently. Their treatment supposes an incurable chronic distemper of the body politic, requiring attention to be turned periodically to the application of pharmacy. Once in every twenty years the people must, perforce, sit in judgment on their Constitution (Chap. XIV. Art. 1). The child now ten years old, if he survives threescore and ten, must four times, since he was of an age to know what government means, have witnessed long and sharp agitations of the most momentous questions a community can entertain.

But even this does not satisfy our Constitution-makers. It is not enough for them to have the question perpetually pending a quarter of the time (for five years in every twenty are little enough to allow, from the opening to the closing of the argument); they have made arrangements for throwing it in, every year, among the elements of partisan strife and intrigue. That is to say, they have provided (Chap. XIV. Art. 2), that, "whenever towns or cities containing not less than one third of the qualified voters of the Commonwealth" shall, at the autumnal election, request the Legislature to take the sense of the people on the calling of a Convention to revise the Constitution, it shall be the duty of the Legislature to bring the people to that vote. There may be no occasion whatever for the step. There may be no decent pretence of occasion for it. The people, if called to vote, may vote it down by vast majorities. The less than fifth part of the voters of the Commonwealth necessary to bring the people to that

vote (for less than a fifth part may be so distributed as to give lean majorities in "towns or cities containing not less than one third of the qualified voters") may not be forthcoming, nor one tenth of that small fraction. But how often will it happen, that a faint prospect of gaining a sufficient number of the people to the movement will be motive enough with unquiet spirits to prompt them to make the attempt? And how often will the suggestion of such an agitation, thrown in as a make-weight with other matters, be an instrument in the hands of crafty party managers in getting what they may choose to claim? How often, under this invitation, which the proposed Constitution throws out, will the promise or the threat of attempting to work up the requisite fragment of the people to such action, be an element in the annual electioneering? Will it be every year, or every other year, or one year in three? And will our government be the safer; or, if not required by the safety of our government, will our party divisions be less irritating, and our lives more comfortable, for this new invitation to party turbulence and chicane, which it is proposed annually henceforward to extend? Should we not invite by this provision some uncompensated annoyances of a perpetual state of revolution?

CONCLUSION.

In the foregoing pages, I have set down some of the reasons which compel me to vote NO on the first of the questions presented to the people by the recent Convention, — the question relating to that part of the revised Constitution which embraces the Frame of Government for the Commonwealth. In my view, some of the innovations which it proposes — and, among them, some of the most important — are entirely unsustained by good reasons, and can only be fruitful of evil; while, of the really beneficial changes which it offers, there is not one which cannot be obtained, or which would not probably be obtained, with a very little delay, through simple legislative action, or through the method of amendment provided by the existing Constitution. Under these circumstances, I can-

not think I should be acting the part of a man of common sense, to make any considerable sacrifice of other just constitutional principles and provisions for their attainment; certainly not to buy them at the cost of such mischievous provisions as those of the new Constitution relating to the Judiciary and the basis of representation.

The provisions of the existing Constitution, in respect to the House of Representatives, are far from good; but that is no reason why we should supersede them by others more subject than themselves to the same class of objections, — more unjust, and, what is worse, increasingly more unjust from census to census. If we are not at present prepared to apply a full remedy to the evil, let us not, in blind impatience, extend and aggravate it. And, meanwhile, it is by no means beyond reasonable expectation, that, as from time to time, by the operation of the existing Constitution, more and more of the small towns exchange their annual representation for representation only a part of the time (which is the great evil complained of), that provision of the Constitution will work its way into extensive use, which authorizes them to associate together for annual representation, — thus approximating a universal district system.

I have surveyed the subject from the point of view of one opposed, in all political action, to the Slave Power which governs this country. I am a member of that party (of whomsoever composed) which aims, under the Federal Constitution, to nationalize and fortify liberty, to localize and discourage slavery. But I cannot undertake to act on all other questions with this or that man who sympathizes with me on this question. In my belief, history will presently be saying, that the course of Massachusetts Whigs, in these last years, has been one of extreme folly, interspersed with complicity in some great national crimes. But I am not going to take part in bringing discredit on our excellent Massachusetts, and trouble on my fellow-citizens and my posterity, for the sake of punishing the sins of the Whigs. When I attached myself to the Free Soil party, I came under no engagement in respect to changes in the Constitution of this Commonwealth. If my memory serves me, the State Committee of that party,

in their address published early in this year, declared that this question of constitutional amendments was not a party question. At all events, with or without the leave of that Committee, such is my opinion. It is, or should be, a question quite aside from party; rather, a question altogether above it. And so far as the Free Soil party should be connected with the support of some of the specific amendments now proposed, the party would, I think, be injured by that connection, and its great objects be prejudiced and obstructed.

While I have spoken freely of the proposed experiments upon the Great Charter of our Massachusetts liberties, it must be superfluous to say, that it has been without the slightest intimation of want of respect for any to whom these experiments appear in a different light. In the majority of the Convention were men eminently virtuous, disinterested, and patriotic. I would not say that a man of that majority was wanting in those qualities. But that is not the question which we are presently to vote upon. The question is, whether the great changes proposed will conduce to the honor and prosperity of Massachusetts, to the safety, welfare, and satisfaction of ourselves and our children.

THE END.

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