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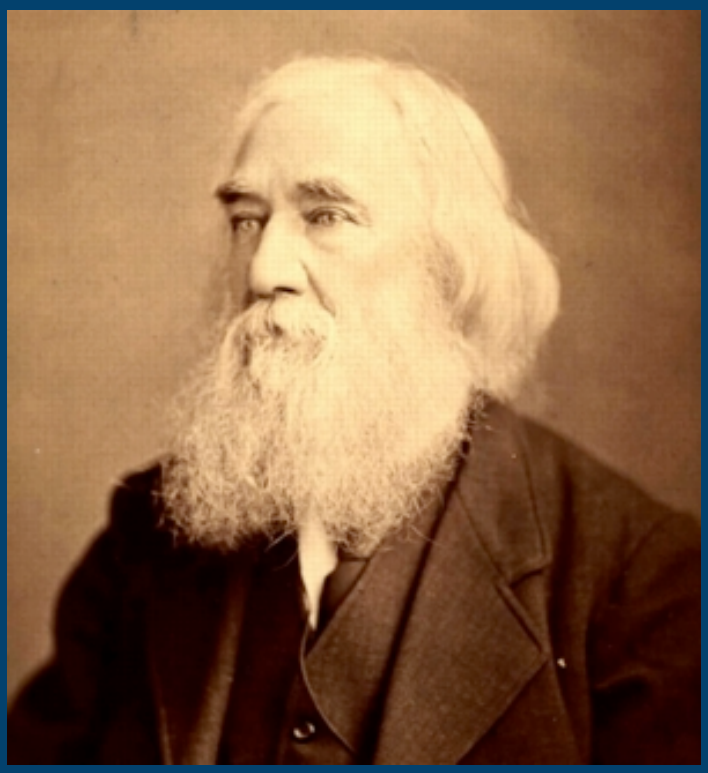

The Collected Works of Lysander Spooner (1834-1886), in 5 Volumes

Volume IV (1863-1873)

<oll.libertyfund.org/title/2297>

THE OLL "BLUE BOOK" ANTHOLOGIES
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THE "BLUE BOOK" ANTHOLOGIES, on the other hand, are collections of texts which we have drawn from the books in the OLL. We have taken material by a particular author or on a particular theme and created our own, original anthologies. We have done this in order to make material which was scattered and difficult to find more accessible to our readers.

AMAGI. The cuneiform inscription that appears in the logo and serves as a design element in all Liberty Fund books and websites is the earliest-known written appearance of the word freedom or liberty ("amagi" in Ancient Sumerian) It is taken from a clay document written about 2,300 B.C. in the Sumerian city-state of Lagash.

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LIBERTY FUND, INC.
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Indianapolis, IIndiana 46250-1684

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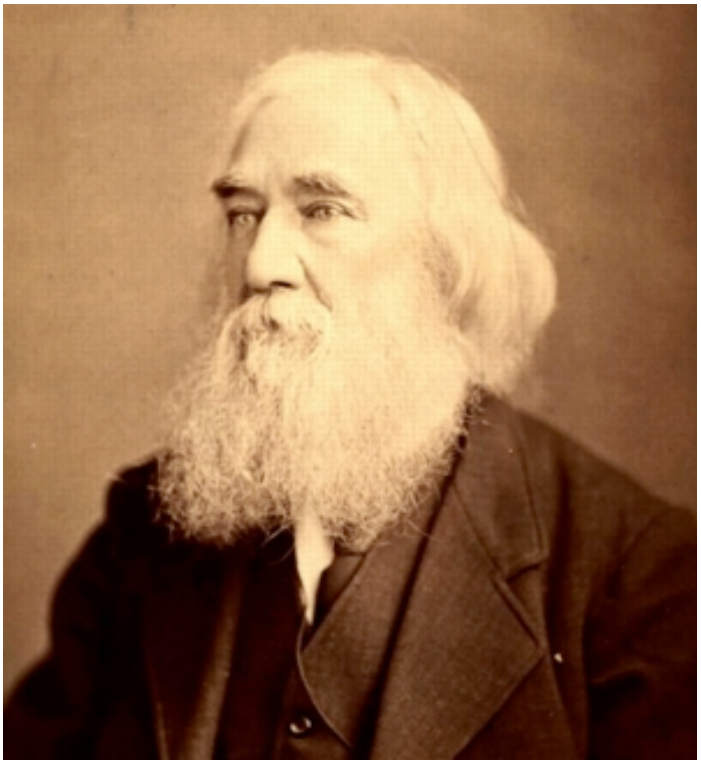

About Lysander Spooner (1808-1887)

Lysander Spooner (1808-1887) was a legal theorist, abolitionist, and radical individualist who started his own mail company in order to challenge the monopoly held by the US government. He wrote on the constitutionality of slavery, natural law, trial by jury, intellectual property, paper currency, and banking.

More information about Spooner and his work: <http://oll.libertyfund.org/person/4664>.

School of Thought: Abolition of Slavery <http://oll.libertyfund.org/collection/33>.

School of Thought: 19th Century Natural Rights Theorists <http://oll.libertyfund.org/collection/38>.

About The Collected Works of Lysander Spooner (1834-1886)

This a 5 volume collection of the works of the 19th century American legal theorist and abolitionist. It includes all his major published works as well as smaller pamphlets and tracts. They first appeared on the OLL website as individual books, such as *An Essay on the Trial by Jury* (1852) or as pamphlets, such as *No Treason. No. I.* (1867). The set was completed with a 2 volume collection of *The Shorter Works and Pamphlets of Lysander Spooner* 2 vols. (1834-1884). We thought it would be useful to arrange the texts in chronological order of date of publication which we have done here in this 5 volume collection of his works.

The Collected Works of Lysander Spooner (1834-1886), in 5 volumes (Indianapolis: Liberty Fund, 2010-2013).

- Vol. I (1834-1850) <http://oll.libertyfund.org/title/2294>.
- Vol. II (1853-1855) <http://oll.libertyfund.org/title/2295>.
- Vol. III (1858-1862) <http://oll.libertyfund.org/title/2296>.
- Vol. IV (1863-1873) <http://oll.libertyfund.org/title/2297>.
- Vol. V (1875-1886) <http://oll.libertyfund.org/title/2298>.

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A Thematic and Chronological Listing of Spooner's Works

1. Thematic List of the Works of Spooner

Religion

[1.] *The Deist's Immortality, and an Essay on Man's Accountability for his Belief* (Boston, 1834).

[3.] *The Deist's Reply to the Alleged Supernatural Evidences of Christianity* (Boston, 1836).

Economics, Money, and Banking

[7.] *Poverty: its Illegal Causes and Legal Cure. Part First.* (Boston: Bela Marsh, 1846).

[17.] *A New System of Paper Currency.* (Boston: Stacy and Richardson, 1861).

[18.] *Our Mechanical Industry, as Affected by our Present Currency System: An Argument for the Author's "New System of Paper Currency"* (Boston: Stacy & Richardson, 1862).

[20.] *Considerations for Bankers, and Holders of United States Bonds* (Boston: A. Williams & Co., 1864).

[26.] *A New Banking System: The Needful Capital for Rebuilding the Burnt District* (Boston: A. Williams & Co., 1873).

[28.] *Our Financiers: Their Ignorance, Usurpations, and Frauds. Reprinted from "The Radical Review"* (Boston: A. Williams & Co., 1877).

[29.] *The Law of Prices: A Demonstration of the Necessity for an Indefinite Increase of Money. Reprinted from "The Radical Review"* (Boston: A. Williams & Co., 1877).

[30.] *Gold and Silver as Standards of Value: The Flagrant Cheat in Regard to Them. Reprinted from "The Radical Review"* (Boston: A. Williams & Co., 1878).

[31.] *Universal Wealth shown to be Easily Attainable* (Boston: A. Williams & Co., 1879).

Slavery and Abolition

[10.] *A Defence for Fugitive Slaves, against the Acts of Congress of February 12, 1793, and September 18, 1850* (Boston: Bela Marsh, 1850).

[13.] *A Plan for the Abolition of Slavery, and To the Non-Slaveholders of the South* (n.p., 1858).

[14.] *Address of the Free Constitutionalists to the People of the United States* (Boston: Thayer & Eldridge, 1860).

[15.] *The Unconstitutionality of Slavery* (Boston: Bela Marsh, 1860).

[16.] *The Unconstitutionality of Slavery: Part Second* (Boston: Bela Marsh, 1860).

[21.] *A Letter to Charles Sumner* (n.p., 1864).

Law & the Constitution

[2.] "To the Members of the Legislature of Massachusetts." *Worcester Republican. - Extra*. August 26, 1835.

[4.] *Supreme Court of United States, January Term, 1839. Spooner vs. M'Connell, et al.* (n.p., 1839).

[5.] *Constitutional Law, relative to Credit, Currency, and Banking* (Worcester, Mass.: Jos. B. Ripley, 1843).

[6.] *The Unconstitutionality of the Laws of Congress, Prohibiting Private Mails* (New York: Tribune Printing Establishment, 1844).

[8.] *Who caused the Reduction of Postage? Ought he to be Paid?* (Boston: Wright and Hasty's Press, 1850).

[9.] *Illegality of the Trial of John W. Webster.* (Boston: Bela Marsh, 1850).

[11.] *An Essay on the Trial by Jury* (Boston: John P. Jewett and Co., 1852).

[12.] *The Law of Intellectual Property; or An Essay on the Right of Authors and Inventors to a Perpetual Property in their Ideas, Vol. 1* (Boston: Bela Marsh, 1855).

[19.] *Articles of Association of the Spooner Copyright Company for Massachusetts* (n.p., 1863).

[24.] *Senate-No. 824. Thomas Drew vs. John M. Clark* (n.p., 1869).

[35.] *A Letter to Scientist and Inventors, on the Science of Justice, and their Right of Perpetual Property in their Discoveries and Inventions* (Boston: Cupples, Upham & Co., 1884).

Political Thought

[22.] *No Treason, No. 1* (Boston: Published by the Author, 1867).

[23.] *No Treason. No II. The Constitution* (Boston: Published by the Author, 1867).

[25.] *No Treason. No VI. The Constitution of No Authority* (Boston: Published by the Author, 1870).

[27.] *Vices are Not Crimes: A Vindication of Moral Liberty* in Dio Lewis, *Prohibition a Failure, Or, The True Solution of the Temperance Question* (Boston: J.R. Osgood and Company, 1875), pp. 107-46.

[32.] *No. 1. Revolution: The only Remedy for the Oppressed Classes of Ireland, England, and Other Parts of the British Empire. A Reply to "Dunraven"* (Second Edition, n.p., 1880).

[33.] *Natural Law; or the Science of Justice: A Treatise on Natural Law, Natural Justice, Natural Rights, Natural Liberty, and Natural Society; showing that all Legislation whatsoever is an Absurdity, a Usurpation, and a Crime. Part First.* (Boston: A. Williams & Co., 1882).

[34.] *A Letter to Thomas F. Bayard: Challenging his Right - and that of all the Other So-called Senators and Representatives in Congress - to Exercise any Legislative Power whatever over the People of the United States* (Boston: Published by the Author, 1882).

[36.] *A Letter to Grover Cleveland, on his False Inaugural Address, the Usurpations and Crimes of Lawmakers and Judges, and the Consequent Poverty, Ignorance, and Servitude of the People* (Boston: Benj. R. Tucker, Publisher, 1886).

2. Chronological List of Spooner's Works

The following is a list in order of date of publication of Spooner's writings. The list also shows in what volume of this collection these texts can be found.

Volume I (1834-1850)

[1.] *The Deist's Immortality, and an Essay on Man's Accountability for his Belief* (Boston, 1834).

[2.] "To the Members of the Legislature of Massachusetts." *Worcester Republican. - Extra.* August 26, 1835.

[3.] *The Deist's Reply to the Alleged Supernatural Evidences of Christianity* (Boston, 1836).

[4.] *Supreme Court of United States, January Term, 1839. Spooner vs. M'Connell, et al.* (n.p., 1839).

[5.] *Constitutional Law, relative to Credit, Currency, and Banking* (Worcester, Mass.: Jos. B. Ripley, 1843).

[6.] *The Unconstitutionality of the Laws of Congress, Prohibiting Private Mails* (New York: Tribune Printing Establishment, 1844).

[7.] *Poverty: its Illegal Causes and Legal Cure. Part First.* (Boston: Bela Marsh, 1846).

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[9.] *Illegality of the Trial of John W. Webster* (Boston: Bela Marsh, 1850).

[10.] *A Defence for Fugitive Slaves, against the Acts of Congress of February 12, 1793, and September 18, 1850* (Boston: Bela Marsh, 1850).

Volume II (1852-1855)

[11.] *An Essay on the Trial by Jury* (Boston: John P. Jewett and Co., 1852).

[12.] *The Law of Intellectual Property; or An Essay on the Right of Authors and Inventors to a Perpetual Property in their Ideas, Vol. 1* (Boston: Bela Marsh, 1855).

Volume III (1858-1862)

[13.] *A Plan for the Abolition of Slavery, and To the Non-Slaveholders of the South* (n.p., 1858).

[14.] *Address of the Free Constitutionalists to the People of the United States* (Boston: Thayer & Eldridge, 1860).

[15.] *The Unconstitutionality of Slavery* (Boston: Bela Marsh, 1860).

[16.] *The Unconstitutionality of Slavery: Part Second* (Boston: Bela Marsh, 1860).

[17.] *A New System of Paper Currency.* (Boston: Stacy and Richardson, 1861).

[18.] *Our Mechanical Industry, as Affected by our Present Currency System: An Argument for the Author's "New System of Paper Currency"* (Boston: Stacy & Richardson, 1862).

Volume IV (1863-1873)

[19.] *Articles of Association of the Spooner Copyright Company for Massachusetts* (n.p., 1863).

[20.] *Considerations for Bankers, and Holders of United States Bonds* (Boston: A. Williams & Co., 1864).

[21.] *A Letter to Charles Sumner* (n.p., 1864).

[22.] *No Treason, No. 1* (Boston: Published by the Author, 1867).

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[24.] *Senate-No. 824. Thomas Drew vs. John M. Clark* (n.p., 1869).

[25.] *No Treason. No VI. The Constitution of No Authority* (Boston: Published by the Author, 1870).

[26.] *A New Banking System: The Needful Capital for Rebuilding the Burnt District* (Boston: A. Williams & Co., 1873).

Volume V (1875-1886)

[27.] *Vices are Not Crimes: A Vindication of Moral Liberty* in Dio Lewis, *Prohibition a Failure, Or, The True Solution of the Temperance Question* (Boston: J.R. Osgood and Company, 1875), pp. 107-46.

[28.] *Our Financiers: Their Ignorance, Usurpations, and Frauds. Reprinted from "The Radical Review"* (Boston: A. Williams & Co., 1877).

[29.] *The Law of Prices: A Demonstration of the Necessity for an Indefinite Increase of Money. Reprinted from "The Radical Review"* (Boston: A. Williams & Co., 1877).

[30.] *Gold and Silver as Standards of Value: The Flagrant Cheat in Regard to Them. Reprinted from "The Radical Review"* (Boston: A. Williams & Co., 1878).

[31.] *Universal Wealth shown to be Easily Attainable. Part First* (Boston: A. Williams & Co., 1879).

[32.] *No. 1. Revolution: The only Remedy for the Oppressed Classes of Ireland, England, and Other Parts of the British Empire. A Reply to "Dunraven"* (Second Edition, n.p., 1880).

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[34.] *A Letter to Thomas F. Bayard: Challenging his Right - and that of all the Other Socalled Senators and Representatives in Congress - to Exercise any Legislative Power whatever over the People of the United States* (Boston: Published by the Author, 1882).

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[36.] *A Letter to Grover Cleveland, on his False Inaugural Address, the Usurpations and Crimes of Lawmakers and Judges, and the Consequent Poverty, Ignorance, and Servitude of the People* (Boston: Benj. R. Tucker, Publisher, 1886).

19. Articles of Association of the Spooner Copyright Company for Massachusetts (1863).

Source

Articles of Association of the Spooner Copyright Company for Massachusetts (n.p., 1863).

HTML and other formats: <oll.libertyfund.org/title/2292/217120>.

ARTICLES OF ASSOCIATION OF THE SPOONER COPYRIGHT COMPANY FOR MASSACHUSETTS.

[Articles]

ARTICLE I.

This Association shall be called the Spooner Copyright Company for Massachusetts.

ARTICLE II.

The Trustees of the Capital of this Association shall be Robert E. Apthorp, and Charles Hale Browne, both of Boston, and Jacob B. Harris, of Abington, all in the State of Massachusetts, the survivors and survivor of them, and their successors appointed as hereinafter prescribed.

ARTICLE III.

The Capital of said Company shall consist of all the rights conveyed to said Trustees, by Lysander Spooner, by a trust deed, of this date, of which the following is a copy, to wit:

TRUST DEED.

Know all men by these presents, that I, Lysander Spooner, of Boston, in the County of Suffolk, and Commonwealth of Massachusetts, in consideration of one dollar to me paid by Robert E. Apthorp, of Boston, Esquire, Charles Hale Browne, of Boston, Physician, and Jacob B. Harris, of Abington, Esquire, all in the State of Massachusetts, Trustees of the Capital of the Spooner Copyright Company for Massachusetts, the receipt of which I hereby acknowledge, and in further consideration of the promises made and entered into, by said Trustees, in the Articles of Association of said Spooner Copyright Company for Massachusetts, (which Articles bear even date herewith,) have given, granted, and conveyed, and do hereby give, grant, and convey, to said Ap-

thorp, Browne, and Harris, and to the survivors and survivor of them, and to their successors duly appointed, in their capacity of Trustees as aforesaid, and not otherwise, all my right, title, and interest, for and within said Commonwealth of Massachusetts, (except as is hereinafter excepted,) in and to the "*Articles of Association of a Mortgage Stock Banking Company,*" for which a copyright was granted, under that title, to me, by the United States of America, in the year 1860.

I also, for the considerations aforesaid, hereby give, grant, and convey unto said Apthorp, Browne, and Harris, and to the survivors and survivor of them, and their successors in said trust, in their capacity as Trustees of said Spooner Copyright Company for Massachusetts, and not otherwise, all my right, title, and interest, for and within said Commonwealth of Massachusetts, (except as is hereinafter excepted,) in and to eleven other copyrighted papers, which are included in said "Articles of Association of a Mortgage Stock Banking Company," but for which separate copyrights were also granted to me by the United States of America, in the year 1860. Said papers are respectively entitled as follows, to wit: 1. Stock Mortgage. 2. Mortgage Stock Currency. 3. Transfer of Productive Stock in Redemption of Circulating Stock. 4. Re-conveyance of Productive Stock from a Secondary to a Primary Stockholder. 5. Primary Stockholder's Certificate of Productive Stock of the following named Mortgage Stock Banking Company. 6. Primary Stockholder's Sale of Productive Stock of the following named Mortgage Stock Banking Company. 7. Secondary Stockholder's Certificate of Productive Stock of the following named Mortgage Stock Banking Company. 8. Secondary Stockholder's Sale of Productive Stock of the following named Mortgage Stock Banking Company. 9. Sale, by a Primary Stockholder, of his right to Productive Stock in the hands of a Secondary Stockholder. 10. Trustee's Bond. 11. Trust Deed. And were copyrighted under those titles respectively.

I also, for the considerations aforesaid, hereby give, grant, and convey to said Apthorp, Browne, and Harris, and to the survivors and survivor of them, and to their successors in said trust, in their capacity as Trustees of said Spooner Copyright Company for Massachusetts, and not otherwise, all right, property, interest, and claim, of every name and nature whatsoever, which, as the inventor thereof, I have, or can have, (for and within the State of Massachusetts only,) either in law, equity, or natural right, in and to the banking system, or Currency system, (as an invention,) and every part thereof, which is embodied or described in the said "Articles of Association of a Mortgage Stock Banking Company," and in the other copyrighted papers hereinbefore mentioned, whether such right, property, interest, and claim now are, or ever hereafter may be, secured to me, my heirs, or assigns, by said copyrighted Articles and papers, or by patent, or by statute, or by common, or constitutional, or natural law—subject only to the exceptions and reservations hereinafter made in behalf of banking companies, whose capitals shall consist either of rail-roads and their appurtenances, or of mortgages or liens upon rail-roads and their appurtenances, (situated within the State of Massachusetts and elsewhere,) or of lands or other property situated outside of the State of Massachusetts.

It being my intention hereby to convey, and I do hereby convey, to said Apthorp, Browne, and Harris, and to the survivors and survivor of them, and to their successors in said trust, in their capacity as Trustees as aforesaid, and not otherwise, all my right, title, and interest, of every

name and nature whatsoever, either in law, equity, or natural right, (except as is hereinafter excepted,) in and to said "Articles of Association of a Mortgage Stock Banking Company," and in and to all the other beforementioned copyrighted papers, and in and to the invention embodied or described in said Articles and papers, so far as, and no farther than, the same may or can be used by Banking Companies, whose banking capital shall consist of lands, or other real property, (except rail-roads and their appurtenances,) or of mortgages or liens upon lands, or other real property, (except rail-roads and their appurtenances,) situate wholly within said Commonwealth of Massachusetts, and not elsewhere.

And I also, for the considerations aforesaid, hereby give, grant, and convey to said Apthorp, Browne, and Harris, and to the survivors and survivor of them, and to their successors in said trust, in their capacity as Trustees of the capital of said Spooner Copyright Company for Massachusetts, and not otherwise, full power and authority to grant to any and all Banking Companies that may hereafter be lawfully licensed by said Spooner Copyright Company for Massachusetts, and organized under said "Articles of Association of a Mortgage Stock Banking Company," or any modification thereof, within said Commonwealth of Massachusetts, and upon capital consisting of lands or other real property, (except rail-roads and their appurtenances,) or of mortgage or liens upon lands, or other real property, (except rail-roads and their appurtenances,) situate exclusively within said State of Massachusetts, the right and liberty to establish and maintain offices at pleasure in any and all other States and places within the United States of America, or any Territories or Districts thereto belonging, or supposed or believed to belong thereto, for the sale, loan, and redemption both of their Productive and Circulating Stock, without any charge, let, or hindrance by or from me, the said Spooner, or my heirs or assigns.

And I hereby expressly reserve to myself, my heirs and assigns, the full and exclusive right to grant to any and all Banking Companies, that may be organized under said "Articles of Association of a Mortgage Stock Banking Company," or any modification thereof, and whose capitals shall consist wholly of lands, or other property, or of mortgages upon lands, or other property, situate wholly outside of the State of Massachusetts, the right to establish and maintain at pleasure, within the State of Massachusetts, offices for the sale, loan, and redemption both of their Productive and Circulating Stock, without any charge, let, or hindrance by or from said Spooner Copyright Company for Massachusetts, or the Trustees thereof.

And I do also hereby expressly reserve to myself, my heirs, and assigns, the full and exclusive right to the sale and use of said "Articles of Association of a Mortgage Stock Banking Company," or any parts or modification thereof, so far as the same may or can be used by Banking Companies, whose capitals shall consist exclusively of rail-roads and their appurtenances, or of mortgages or liens upon rail-roads and their appurtenances, situate either within the State of Massachusetts, or elsewhere.

The rights hereby conveyed are to constitute, and are hereby conveyed solely that they may constitute, the capital, or capital stock, of said Spooner Copyright Company for Massachusetts, and are to be held, used, employed, managed, and disposed of by the Trustees of said Company in accordance, and only in accordance, with the Articles of Association of said Spooner Copy-

right Company for Massachusetts; which Articles have been agreed to by said Apthorp, Browne, and Harris, and me, the said Spooner, and bear even date herewith.

To have and to hold to said Apthorp, Browne, and Harris, and to the survivors and survivor of them, and to their successors in said trust, in their capacity as Trustees of said Spooner Copyright Company for Massachusetts, and not otherwise, all the rights hereinbefore described to be conveyed to them, to be held, used, employed, managed, and disposed of, in accordance, and only in accordance, with said Articles of Association of said Spooner Copyright Company for Massachusetts, forever.

And I do hereby covenant and agree to and with said Apthorp, Browne, and Harris, the survivors and survivor of them, and their successors in said trust, in their capacity as Trustees of said Spooner Copyright Company for Massachusetts, and not otherwise, that I am the true, sole, and lawful owner of all the rights hereinbefore mentioned as intended to be hereby conveyed; that they are free of all incumbrances; that I have good right to sell and convey the same as aforesaid; and that I will, and my heirs, executors, and administrators shall, forever warrant and defend the same to the said Apthorp, Browne, and Harris, and to the survivors and survivor of them, and to their successors in said trust, in their capacity as Trustees of said Spooner Copyright Company for Massachusetts, and not otherwise, against the lawful claims and demands of all persons.

In witness whereof, I, the said Lysander Spooner, have set my hand and seal to three copies of this deed, on this twentieth day of March, in the year eighteen hundred and sixty three.

Signed, sealed, and delivered in presence of
BELA MARSH, }
THOMAS MARSH. }

LYSANDER SPOONER. [SEAL.]

Suffolk, ss. 20 March, 1863.

Then Lysander Spooner personally acknowledged the above instrument to be his free act and deed.

Before me Geo. W. Searle, *Justice of the Peace.*

ARTICLE IV.

1. The aforesaid capital shall be held in joint stock by the Trustees of said Spooner Copyright Company for Massachusetts, at the nominal value of one million dollars, and divided into two thousand shares, of the nominal value of five hundred dollars each.

2. Said shares shall be numbered consecutively from one to two thousand inclusive.

3. They are all hereby declared to be the property of said Lysander Spooner, and shall be entered as such upon the books of the Trustees.

ARTICLE V.

Whenever any of the before-named shares of Stock shall be conveyed, the particular numbers borne by the shares conveyed shall be specified, both in the instrument of conveyance, (where that shall be reasonably practicable,) and on the books of the Trustees.

ARTICLE VI.

1. Any person, who shall, at any time, be a holder of fifty shares of the Stock of said Copyright Company, may, for the time being, either be a Director, or appoint one in his stead, at his election. And for every additional fifty shares, so owned by him, he may appoint an additional Director. Or he may, by himself or by proxy, give one vote, as Director, for each and every fifty shares of Stock of which he may, at the time, be the owner. Provided that no person, by purchasing Stock, shall have the right to be, or appoint, a Director for the same, so long as there shall be in office a Director previously appointed for the same Stock.

2. Any two or more persons, holders respectively of less than fifty shares, but holding collectively fifty or more shares, may, at any time, unite to appoint one Director for every fifty shares of their Stock. Provided, however, that no persons, purchasing Stock, shall have the right to appoint a Director on account of such Stock, so long as there shall be in office a Director previously appointed for the same Stock.

3. All appointments of Directors shall be made by certificates addressed to, and deposited with, the Trustees, and stating specifically the shares for which the Directors are appointed respectively. And such appointments shall continue until the first day of January next after they are made, unless they shall be, before that time, rescinded (as they may be), by those making them.

4. The Board of Directors may, by ballot, choose their President, who shall hold his office during the pleasure of the Board. Whenever there shall be no President in office, by election, the largest Stockholder who shall be, in person, a member of the Board, shall be the President.

5. The Directors, by a majority vote of their whole number, may fix their regular times of meeting, and the number that shall constitute a quorum for business.

6. The Directors shall exercise a general supervision, and so far as they may see fit, a general control, over the expenditures and all other business affairs of the Company. They may appoint a Treasurer, Attorney, and other clerks and servants of the Company; and take bonds, running to the Trustees, for the faithful performance of their duties.

7. The Directors shall keep a record of all their proceedings; and shall furnish to the Trustees written copies of all orders, rules, and regulations which may be adopted by the Directors, for the guidance of the Trustees.

8. The Directors shall receive no compensation for the performance of their ordinary duties. But they may vote a reasonable compensation to the President. And for any extraordinary services, performed by individual Directors, reasonable compensation may be paid.

ARTICLE VII.

1. With the consent of the Directors, the Trustees may grant to Banking Companies, whose capitals shall consist wholly of mortgages upon lands situated within the State of Massachusetts, and to none others, the right to use the aforesaid "Articles of Association of a Mortgage Stock Banking Company," and all the other before-mentioned copyrighted papers, (that are included in said Articles of Association,) so far as it may be convenient and proper for such Banking Companies to use said Articles and other copyrighted papers in carrying on the business of said Companies as bankers, and not otherwise.

2. The license granted to said Banking Companies to use said "Articles of Association of a Mortgage Stock Banking Company," and other copyrighted papers, shall be granted by an instrument in the following form, (names, dates, and numbers being changed to conform to the facts in each case,) to wit:

LICENSE TO A MORTGAGE STOCK BANKING COMPANY.

Be it known that we, A——— A———, B——— B———, and C——— C———, all of ———, in the State of Massachusetts, Trustees of the Spooner Copyright Company for Massachusetts, by virtue of the power and authority in us vested by the Articles of Association of said Spooner Copyright Company for Massachusetts, and having the consent of the Directors of said Company hereto, in consideration of one thousand dollars, to us paid by D——— D———, E——— E———, and F——— F———, all of Princeton, in the County of Worcester, and Commonwealth of Massachusetts, Trustees of the Princeton Banking Company,—a Mortgage Stock Banking Company, located in said town of Princeton, and having its capital of one hundred thousand dollars, made up of mortgages upon lands and buildings in said town of Princeton, and this day organized under the "Articles of Association of a Mortgage Stock Banking Company," for which a copyright was granted, by the United States of America, to Lysander Spooner, in the year 1860,—the receipt of which sum of one thousand dollars is hereby acknowledged, do hereby give, grant, and convey unto said Princeton Banking Company, and to said Trustees of said Princeton Banking Company, and to the survivors and survivor of them, and to their successors in said trust, in their capacity as trustees of said Princeton Banking Company, and not otherwise, the right, privilege, and license to use one set (a copy of which is hereto annexed) of said "Articles of Association of a Mortgage Stock Banking Company," and of eleven other papers, that were copyrighted by said Spooner, in 1860, and are included in said Articles, and are respectively entitled as follows, to wit: 1. Stock Mortgage. 2. Mortgage Stock Currency. 3. Transfer of Productive Stock in Redemption of Circulating Stock. 4. Re-conveyance of Produc-

tive Stock from a Secondary to a Primary Stockholder. 5. Primary Stockholder's Certificate of Productive Stock of the following named Mortgage Stock Banking Company. 6. Primary Stockholder's Sale of Productive Stock of the following named Mortgage Stock Banking Company. 7. Secondary Stockholder's Certificate of Productive Stock of the following named Mortgage Stock Banking Company. 8. Secondary Stockholder's Sale of Productive Stock of the following named Mortgage Stock Banking Company. 9. Sale, by a Primary Stockholder, of his right to Productive Stock in the hands of a Secondary Stockholder. 10. Trustee's Bond. 11. Trust Deed.

Said Princeton Banking Company, and the Trustees thereof, are hereby authorized to use said "Articles of Association of a Mortgage Stock Banking Company," and all the other copyrighted papers before mentioned, so far as the same may or can be legitimately used in doing the banking business of said Princeton Banking Company, and not otherwise; and to continue such use of them during pleasure.

The right, privilege, and license hereby granted, are granted subject to these express conditions, viz: that all copies of said "Articles of Association of a Mortgage Stock Banking Company," and of all the other before mentioned copyrighted papers, which may ever hereafter be printed or used by said Princeton Banking Company, or the Trustees thereof, shall be respectively exact and literal copies of those hereto annexed; and shall have the name of said Princeton Banking Company (and of no other Banking Company) printed in them; and shall also, each and all of them, bear the proper certificate of copyright in these words and figures, to wit: "Entered according to Act of Congress, in the year 1860, by Lysander Spooner, in the Clerk's Office of the District Court of the United States, for the District of Massachusetts." Said certificate to be printed immediately under, and next to, the titles of the articles and papers copyrighted, in the same manner as in the copies hereto annexed. Subject to these conditions, said Princeton Banking Company, and the Trustees thereof, are to have the right of printing so many copies of each and all the before mentioned papers, as they may find necessary or convenient in carrying on the business of said Company as bankers, under their present name and organization, and not otherwise.

And furthermore, for the consideration aforesaid, we, the aforesaid Trustees of the Spooner Copyright Company for Massachusetts, hereby give, grant, and convey to said Princeton Banking Company, and to the Trustees thereof, in their capacity as such Trustees, and not otherwise, the right, liberty, and privilege to establish at pleasure offices in any and all other towns and places, other than said Princeton, not only in said State of Massachusetts, but in any and all other States of the United States, and in any and all Territories, Districts, or other places, belonging, or supposed to belong, to the United States, for the sale, loan, and redemption both of their Circulating and Productive Stock, free of all charge, let, or hindrance by or from the said Lysander Spooner, or any other persons claiming by, through, or under him.

In Witness Whereof, we, the said A——— A———, B——— B———, and C——— C ———, Trustees of said Spooner Copyright Company for Massachusetts, have set our hands and the seal of said Copyright Company to ——— copies of this License, this ——— day of ———, in the year eighteen hundred and ———.

SEAL.A———A———, }*Trustees of the Spooner Copyright Company for Massachu-*
B———B———, }*setts*.
C———C———, }
Signed, sealed and delivered in presence of

3. The signatures of two of the Trustees (and of one, if at the time there shall be but one Trustee), to any license, shall be sufficient in law.

4. To every copy of the License granted as aforesaid shall be attached one complete set of the papers licensed by it to be used, to wit: one copy of the "Articles of Association of a Mortgage Stock Banking Company," and separate copies of each of the other eleven copyrighted papers hereinbefore described, and included in said Articles.

ARTICLE VIII.

1. Whenever the Trustees of said Spooner Copyright Company for Massachusetts, shall grant to any Banking Company the right to use said "Articles of Association of a Mortgage Stock Banking Company," and the other copyrighted papers included therein, they (the said Trustees), shall superintend the printing of said "Articles" and other copyrighted papers, (as well those that shall be printed together, as those that shall be printed separately,) and shall see that they are all correct in form, following strictly the copies of the same which are hereto annexed, (changing only dates, numbers, names of persons and places, &c., to make them correspond with the facts in each case,) and shall see that they all have printed in them the name of the particular Banking Company for whose use they are designed, and of no other; and shall also see that they each and all have the proper certificate of copyright printed on said "Articles" and other copyrighted papers, immediately under, and next to, the titles thereof respectively, in the following words and figures, to wit: "Entered according to Act of Congress, in the year 1860, by Lysander Spooner, in the Clerk's office of the District Court of the United States, for the District of Massachusetts."

2. And said Trustees of said Spooner Copyright Company for Massachusetts shall retain at least five copies (one for each of themselves, one for the Directors of said Copyright Company, and one for said Lysander Spooner, his heirs, executors, administrators, or assigns, if demanded by him or them), of every set of said "Articles" and other copyrighted papers, the use of which may be granted to any Banking Company, or Banking Companies; said copies to be verified by the certificate and signatures both of said Trustees themselves, and of the Trustees of the Banking Companies to whom the right of using said "Articles," and other copyrighted papers, shall be granted.

3. And the copies so retained by the Trustees and Directors of the Spooner Copyright Company for Massachusetts, (except those retained for said Spooner, his heirs, executors, administrators, and assigns, which shall be delivered to him or them on demand,) shall be forever preserved for the benefit, and as the property, of said Copyright Company; each Trustee retaining the custody of one copy; and all copies in the possession of any one Trustee being transferred to his immediate successor forever, and receipts taken therefor.

ARTICLE IX.

1. Previous to granting to any Banking Company the right to use said "Articles of Association of a Mortgage Stock Banking Company," and other copyrighted papers before mentioned, the Trustees of said Spooner Copyright Company for Massachusetts, and also the Directors of said last named Company, or a committee or agent thereof, (if the Directors shall see fit either to investigate the matter for themselves, or to appoint a committee or agent to act for them,) shall carefully and faithfully examine all the mortgages which shall be proposed as the capital of such Banking Company, and all certificates and other evidences that may be offered to prove the sufficiency of the mortgaged property, the validity of the mortgages themselves, and the freedom of the mortgaged premises from all incumbrances of every name and nature whatsoever, unless it be the liens of Mutual Insurance Companies for assessments on account of insurance of the premises.

2. And the right to use said "Articles of Association of a Mortgage Stock Banking Company," and other copyrighted papers shall not be granted to any Banking Company, unless two at least of the Trustees of the Spooner Copyright Company for Massachusetts (and also the Directors, or a committee or agent thereof, if the Directors, or a committee or agent thereof, shall act on the subject), shall be reasonably satisfied that each and every piece of mortgaged property is worth, at a fair and just valuation, double the amount for which it is mortgaged to the Trustees of the Banking Company, and that it is free of all prior incumbrance of every name and nature whatsoever, (except for insurance as aforesaid,) and that the title of the mortgagor is absolute and perfect.

3. The Trustees of said Spooner Copyright Company for Massachusetts (and also the Directors, or a committee or agent thereof, if they shall see fit to act on the subject), shall require each and every mortgagor to give to the Trustees of the Banking Company a good and ample policy of insurance against fire upon the buildings upon any and all property mortgaged as aforesaid, unless they shall be satisfied that the mortgaged property is worth, independently of the buildings, double the amount of the mortgage.

ARTICLE X.

1. The price or premium demanded or received, by said Spooner Copyright Company for Massachusetts, for the use of said "Articles of Association of a Mortgage Stock Banking Company," and the other copyrighted papers before mentioned, by any one Banking Company, shall not (except as hereinafter provided), exceed one per centum upon the capital of the Banking Company licensed to use said "Articles" and other copyrighted papers. By this is meant, not one per centum per annum, but one per centum outright; the Banking Company being then free to continue the use of said "Articles" and other copyrighted papers during pleasure.

2. In addition to the one per centum before mentioned, and as a preliminary to either granting or refusing to any proposed Banking Company the right to use said "Articles" and other

copyrighted papers, said Copyright Company may, by vote of the Directors, demand and receive a sum not exceeding one tenth of one per centum on the capital of such proposed Banking Company, as compensation for the labor of the Trustees, and Directors, and their committee or agent, in examining the mortgages and other papers of such Banking Company.

3. The Copyright Company aforesaid may also, by vote of the Directors, charge an additional sum, not exceeding one tenth of one per centum on the capital of any Banking Company, as a compensation for the labor of the Trustees of the former Company, (and of the Directors, or any committee, or agent thereof, if they shall act on the matter,) in superintending the printing, stereotyping, or engraving of said "Articles" and other copyrighted papers to be used by such Banking Company.

4. If said Copyright Company shall ever themselves (as they are hereby authorized to do), undertake the business of printing, stereotyping, or engraving the "Articles of Association of a Mortgage Stock Banking Company," and other before mentioned copyrighted papers, for the use of the Banking Companies that may be licensed to use said "Articles" and other copyrighted papers, said Copyright Company may demand and receive for such printing, stereotyping, and engraving, and for the paper consumed in so doing, and for any stereotype or engraved plates made by them, and sold to said Banking Companies, any sum not exceeding double the necessary and proper amount actually paid, by said Copyright Company, for the labor employed, and materials consumed, in printing, stereotyping, and engraving said "Articles" and other copyrighted papers, and in making such stereotype and engraved plates; but in ascertaining that amount, no account shall be taken of the rent of buildings owned or leased by said Copyright Company, and occupied in said printing, stereotyping, or engraving; nor of the wear or destruction of any of said Copyright Company's type, printing presses, or other material or machinery employed in the process of such printing, stereotyping, or engraving; nor of the labor of superintending such processes either by the Trustees, Directors, or agents of said Copyright Company (except as is provided for in the third clause of this Article).

5. Except as is provided for and authorized by the preceding clauses of this Article, said Copyright Company shall not, in any case whatever, neither directly nor indirectly, nor by any evasion, nor on any pretence, whatever, make any charge or demand upon any Banking Company, nor any addition to the before mentioned charges or prices, for the right to use said "Articles of Association of a Mortgage Stock Banking Company," and other copyrighted papers, nor for any printed, stereotyped, or engraved copies of said "Articles," or other copyrighted papers; nor for any stereotyped or engraved plates of said "Articles," or other copyrighted papers; nor shall said Copyright Company ever hereafter attempt, in any mode, or by any means, either directly or indirectly, to increase the receipts or profits of said Copyright Company, (beyond the amounts hereinbefore specified,) neither from the licenses granted to Banking Companies to use said "Articles of Association of a Mortgage Stock Banking Company," and other copyrighted papers; nor by furnishing to Banking Companies printed or engraved copies of said "Articles," or other copyrighted papers, or stereotyped or engraved plates of said "Articles," or other copyrighted papers, unless under the following circumstances and conditions, to wit: During the life-

time of said Lysander Spooner, and with his formal and written consent, or after his death, without his consent having ever been given, the prices of all kinds before mentioned may be increased at discretion by written and recorded resolutions or orders that shall have been personally signed both by Directors representing in the aggregate not less than three-fourths of the capital stock of said Copyright Company and also by Stockholders owning in the aggregate not less than three-fourths of all the capital stock of said Copyright Company. Provided, however, that, after the death of said Spooner, no such increase of prices or income shall be attempted or adopted, in the manner mentioned, by the votes of Directors and Stockholders, unless a similar increase shall have been first agreed upon to be adopted by similar votes of the Directors and Stockholders of a majority of all similar Copyright Companies that may then be in existence in all the States of the United States.

6. All the before mentioned prices may be reduced at discretion, from the highest amounts named, by votes of the Directors, or of the holders of a majority of the stock.

ARTICLE XI.

With the consent of the Directors, said Spooner Copyright Company for Massachusetts may hold so much real and personal estate as may be needful or convenient for the proper uses and business of said Company, and especially for carrying on the business of printing, stereotyping, and engraving the before mentioned "Articles of Association of a Mortgage Stock Banking Company," and other copyrighted papers, for the use of Banking Companies, that may be licensed, by said Copyright Company, to use said "Articles" and other copyrighted papers.

ARTICLE XII.

Neither said Spooner Copyright Company for Massachusetts, nor the Trustees, nor Directors, nor any agent or officer of said Company, shall have power to contract any debt that shall be binding upon the private property of any Stockholder, or compel the sale of his stock. But said Company, through the Trustees, and with the consent of the Directors, may, for legitimate and proper objects, pertaining directly to the proper business of said Company, contract debts that shall pledge, and be binding upon, and operate as a lien upon, all the receipts and revenues of the Company, and all the real and personal estate of the Company, other than the copyright property which constitutes the capital stock of the Company.

ARTICLE XIII.

Each one of the Trustees of said Spooner Copyright Company for Massachusetts shall receive, in each year, as compensation for his services as Trustee, five per centum of all the net income of the Company for the year, payable semi-annually, or oftener, at the discretion of the Directors.

ARTICLE XIV.

No dividend shall ever be paid to any Stockholder in said Spooner Copyright Company for Massachusetts, except from net income actually accumulated.

ARTICLE XV.

In granting to Banking Companies the right to use the aforementioned "Articles of Association of a Mortgage Stock Banking Company," and the other copyrighted papers before mentioned, no change shall ever be made from the copies of said "Articles" and other papers hereto annexed, (except the changes of names, dates, numbers, &c., to correspond to the facts in each case,) during the life time of said Lysander Spooner, unless with his formal consent given in writing, and particularly specifying the changes to which he consents. Nor shall any such changes be made, either before or after the death of said Spooner, unless in accordance with a written and recorded vote resolution, or order, signed by a Stockholder or Stockholders personally, (and not by any agent or attorney,) owning, in the aggregate, at least three-fourths of all the capital stock of said Spooner Copyright Company for Massachusetts. Nor shall any such changes be made, after the death of said Spooner, unless the same changes shall have been first agreed upon, (in the same manner,) to be adopted by a majority of all the similar Copyright Companies that may then be in existence in all the States of the United States.

ARTICLE XVI.

Any Trustee of said Spooner Copyright Company for Massachusetts, may be removed from his office of Trustee, by the vote or votes of any Stockholder or Stockholders owning, at the time, not less than three-fourths of all the stock of the Company. Said vote or votes shall be expressed by two records, one to be kept by the Trustees, the other by the Directors, and both subscribed by the Stockholder or Stockholders personally, (and not by any agent or attorney,) declaring his or their wish or determination that the Trustee be removed. And such records shall, from the moment of their being so subscribed, and the other Trustees or Trustee notified thereof, operate to cancel all his rights and powers as a Trustee, and vacate his place as Trustee, and make it liable to be filled by another. In subscribing such vote, each Stockholder shall affix to his signature the number of shares of which he shall be, at the time, the holder, and also the particular numbers borne by such shares.

ARTICLE XVII.

Whenever a vacancy shall occur in the office of a Trustee, it may be filled by the vote or votes of any Stockholder or Stockholders owning, at the time, not less than three-fourths of all the stock of the Company. Such vote shall be expressed by two records, one to be kept by the Direc-

tors, the other by the Trustees, and both subscribed by the Stockholder or Stockholders personally, and not by any agent or attorney, declaring his or their wish and choice that the individual named shall be the Trustee. And such records, on being deposited with the Directors and Trustees respectively, shall entitle the individual so elected to demand that his appropriate interest, as Trustee, in the capital stock of the Company, be at once conveyed to him by the other Trustees, or Trustee. And upon such interest being conveyed to him, he shall be, to all intents and purposes, a Trustee, equally with the other Trustees, or Trustee. And the instrument conveying to him his interest, as Trustee, in the capital stock of the Company, shall be acknowledged and recorded in accordance with the laws of the United States for the conveyances of copyrights, or any interest therein.

ARTICLE XVIII.

The signatures of any two of the Trustees (or of one, if at the time there shall be but one Trustee) to certificates of the Stock of the Company, shall be sufficient in law.

ARTICLE XIX.

If required by the Directors, the Trustees shall give reasonable bonds for the faithful performance of their duties. Said bonds shall run to the Directors, for and on behalf of the Stockholders collectively and individually.

ARTICLE XX.

The Trustees shall have a seal with which to seal certificates of stock, licenses, and any other papers, to which it may be proper to affix their seal.

ARTICLE XXI.

Transfers of the stock of the Company, not made originally in the books of the Company, shall not be valid, against innocent purchasers for value, until recorded on the books of the Company.

ARTICLE XXII.

The Trustees shall keep books fully showing, at all times, their proceedings, and the affairs of the Company. And these books shall, at all reasonable times, be open to the inspection both of the Directors, and of Stockholders.

ARTICLE XXIII.

Every Stockholder shall be entitled, of right, to one copy of the Articles of Association of the Company.

ARTICLE XXIV.

These Articles of Association of the Spooner Copyright Company for Massachusetts, may be altered by the vote or votes of any Stockholder or Stockholders owning, at the time, not less than four fifths of the stock of the Company. Such vote or votes shall be expressed by two records, one to be kept by the Trustees, the other by the Directors, and both subscribed by the Stockholder or Stockholders personally, (and not by any agent or attorney,) declaring in precise terms the alterations to be made. But no alteration shall ever be made, injuriously affecting the previous rights of any Stockholder relatively to any or all other Stockholders. Nor shall any change ever be made affecting the provisions of Articles X and XV. Nor shall any change ever be made in Article XII, without the vote of every Stockholder expressed in the manner aforesaid.

In Witness Whereof, I, the said Lysander Spooner, and we, the said Robert E. Apthorp, Charles Hale Browne, and Jacob B. Harris, Trustees as aforesaid, in token of our acceptance of said trust, and of our promise to fulfil the same faithfully and honestly, have set our hands and seals to six copies of these Articles of Association, consisting of twenty-two printed pages, and have also set our names upon each leaf of said Articles, this twentieth day of March, in the year eighteen hundred and sixty-three. We have also, on the same day, set our names upon each leaf of six copies of the "Articles of Association of a Mortgage Stock Banking Company," hereinbefore mentioned, one copy of which is hereto annexed, consisting of fifty-nine printed pages.

LYSANDER SPOONER. [seal.]

R. E. APTHORP. [seal.]

CHS. HALE BROWNE. [seal.]

J. B. HARRIS. [seal.]

Signed, sealed, and delivered in presence of

Saml. Batcheller, Jr., George M. Wollinger.

MEMORANDUM.

Be it remembered, that six original copies of the Trust Deed, made by Lysander Spooner to Robert E. Apthorp, Charles Hale Browne, and Jacob B. Harris, as Trustees of the capital of the

Spooner Copyright Company for Massachusetts, and bearing date the twentieth day of March, 1863, were really delivered, by said Spooner to said Apthorp, Browne, and Harris, (two copies to each,) this 15th day of April, 1863. Said copies of said Deed, besides being all signed by said Spooner in his own hand writing, are all attested by the original signatures of Bela Marsh and Thomas Marsh as witnesses, and of Geo. W. Searle as Justice of the Peace; and are all, therefore, of equal validity in law.

Be it also remembered, that six original copies of the "*Articles of Association of the Spooner Copyright Company for Massachusetts*," bearing date March 20th, 1863, and consisting of twenty-two printed pages, each copy being signed and sealed by said Spooner, Apthorp, Browne, and Harris, and also attested by the signatures of Sam'l Batcheller, Jr. and Geo. M. Wollinger, as witnesses, and still further verified by the signatures of said Spooner, Apthorp, Browne, and Harris, upon each leaf of each copy, were mutually delivered this 15th day of April, 1863—That is to say, three of said copies were delivered to said Apthorp, Browne, and Harris, (one copy to each,) and three copies to said Spooner. These copies are all of equal validity in law.

Be it also remembered, that one copy of the "*Articles of Association of a Mortgage Stock Banking Company*," which were copyrighted by Lysander Spooner in the year 1860, and bear date January 1st, 1860, consisting of fifty-nine printed pages—said one copy being verified by the signatures of said Spooner, Apthorp, Browne, and Harris, on each leaf—was attached to, and delivered with, each of the before mentioned six copies of the "*Articles of Association of the Spooner Copyright Company for Massachusetts*."

The objects of this Memorandum are, *first*, to fix the true date on which said Trust Deed and Articles of Association of the Spooner Copyright Company for Massachusetts were really delivered and received by the parties to the same, and became of legal effect; and, *secondly*, to make known to all concerned the means that have been adopted for verifying forever hereafter the original instruments, on which the rights of all Stockholders in the Spooner Copyright Company for Massachusetts will depend.

In Witness Whereof, we the said Spooner, Apthorp, Browne, and Harris, have set our hands to six copies of this Memorandum—three copies for said Spooner, and one copy each for said Apthorp, Browne, and Harris—this 15th day of April, 1863.

LYSANDER SPOONER,

R. E. APTHORP,

CHS. HALE BROWNE,

J. B. HARRIS.

20. Considerations for Bankers, and Holders of United States Bonds (1864).

Source

Considerations for Bankers, and Holders of United States Bonds (Boston: A. Williams & Co., 1864).

HTML and other formats: <oll.libertyfund.org/title/2292/217148>.

CONSIDERATIONS FOR BANKERS, and HOLDERS OF UNITED STATES BONDS.

BY LYSANDER SPOONER.

BOSTON: A. WILLIAMS & CO., 100 WASHINGTON STREET.

NEW-YORK: American News Company, 121 Nassau Street.

1864.

CHAPTER I. EXPLANATION OF THE AUTHOR'S NEW SYSTEM OF PAPER CURRENCY.

The principle of the system is, that the currency shall represent an *invested* dollar, instead of a specie dollar.

The currency will, therefore, be redeemable, *in the first instance*, by an invested dollar, unless the bankers *choose* to redeem it with specie.

The capital is made up of a given amount of property deposited with trustees.

This capital is never diminished; but is liable to pass into the hands of new holders, in redemption of the currency, if the trustees fail to redeem the currency with specie.

The amount of currency is precisely equal to the nominal amount of capital.

When the currency is returned for redemption, (otherwise than in payment of debts due the bank,) and the trustees are not able, or do not choose, to redeem it with specie, they redeem it by a *conditional* transfer of a corresponding portion of the capital. And the conditional holder of the capital thus transferred, holds it, *and draws interest upon it,* until the trustees redeem *it,* by paying him its nominal value in specie.

Under certain exceptional and extraordinary circumstances, this conditional transfer of a portion of the capital, becomes an absolute transfer; and the conditional holder of the capital transferred, becomes an absolute holder of it—that is, an absolute stockholder in the bank.

In such cases, therefore, the *final* redemption of the currency consists in making the holders of the currency *bona fide* stockholders in the bank itself.

To repeat, in part, what has now been said:

The currency, besides being receivable for debts due the bank, is redeemable, *first,* with specie, if the bankers so choose; or, *secondly,* by a conditional transfer of a part of the capital.

The capital, thus conditionally transferred, may be itself redeemed, by the bank, on paying its nominal value in specie, with interest from the time of the transfer.

Or, this conditional transfer, of a portion of the capital, may, under certain circumstances, become an absolute transfer.

A holder of currency, therefore, is sure to get for it, either specie on demand; or specie, with interest, from the time of demand; or an amount of the capital stock of the bank, corresponding to the nominal value of his currency.

In judging of the value of the currency, therefore, he judges of the value of the capital; because, in certain contingencies, he is liable to get nothing but the capital for his currency. But if the capital be worth par of specie, or more than par of specie, he infers that his currency will be redeemed, either in specie on demand, or by a temporary transfer of capital; which capital will afterwards be itself redeemed with specie.

All that is necessary to make a bank, under this system, a sound one, is, that its capital shall consist of productive property—its actual value fully equal to, or a little exceeding, its nominal value—and of a kind not perishable, or likely to depreciate in value.

Mortgages, rail-roads, and public stocks will probably be the best capital; and most likely they are the only capital which it will ever be expedient to use.

If further explanation of the nature of the system be needed, at this point, it can be given—more easily, perhaps, than in any other way—by supposing the capital to consist of *land*—as follows:

Suppose that A is the owner of one hundred, B of two hundred, C of three hundred, and D of four hundred, acres of land; that all these lands are of uniform value, to wit, one hundred dollars per acre; that they will always retain this value; and that they are all under perpetual leases at an annual rent of six dollars per acre.

A, B, C, and D, put all these lands into the hands of trustees, to be held as banking capital; making an aggregate capital of one hundred thousand dollars. Their rights, as lessors, going with the lands into the hands of the trustees—that is, the trustees being authorized to receive the rents, *and apply them to the uses of the bank, if they should be needed.*

A, B, C, and D, then, are the bankers, doing business through the trustees.

Their dividends, as bankers, it is important to be noticed, will consist *both of the rents of the lands,* and the profits of the banking; making dividends of twelve per cent. per annum, if the banking profits should be six per cent.

The banking will be done in this way—

The trustees will make certificates for one, two, three, five, ten dollars, and so on, to the aggregate amount of one hundred thousand dollars; corresponding to the whole value of the lands.

These certificates will be issued for circulation as currency, by discounting notes, &c.

Each certificate will be, in law, a lien upon the lands for one dollar, or for the number of dollars expressed in the certificate.

The conditions of this lien will be these—

1. That these certificates shall be a legal tender in payment of all debts due the bank.

2. That when *one hundred dollars* of these certificates shall be presented for redemption, the trustees, unless they shall redeem them with specie, shall give the holder a *conditional* title to one acre of land. This conditional title will empower the holder to demand of the trustees rent for that acre, at the rate of six dollars per annum, until they redeem the acre itself, by paying him an hundred dollars in specie for it. And no dividends shall be made by the trustees, to the bankers, (A, B, C, and D,) *either from the rents of any of the other lands, or from the profits of banking,* until this conditional title to the one acre, given to the holder of currency, shall have been cancelled, by the payment of the hundred dollars in specie, with interest, or rent, for the time the conditional title shall have been in his hands.

3. That when certificates are presented for redemption, in sums *less* than one hundred dollars, the trustees, unless they redeem them with specie on demand, shall redeem them with specie, (adding interest, except on small sums,) *before making any dividends, either of rents, or banking profits,* to the bankers (A, B, C, and D).

4. Whenever an acre of land shall have been conditionally transferred in redemption of currency, a corresponding amount of currency (one hundred dollars) must be reserved from circulation, until that acre shall have been redeemed by the bank; to the end that there may never be in circulation a larger amount of currency, than there is of land, in the hands of the bankers, with which to redeem it.

5. So long as *any* of the lands shall remain the property of the original bankers, (A, B, C, and D,)—*free of any conditional title, as before mentioned*—the trustees will have the right, as their agents, to cancel all conditional titles, by paying an hundred dollars in specie for each acre, with interest, (or

rent,) at the rate of six per cent. per annum, during the time the conditional title shall have been outstanding. *And the trustees must do this, before they make any dividends, either of rents, or banking profits, to the bankers themselves.*

But if, at any time, the banking shall be so badly managed, as that it shall become necessary for the trustees to give conditional titles *to the whole thousand acres,* (constituting the entire capital of the bank), the rights of the original bankers (A, B, C, and D) in the lands, shall then be absolutely forfeited into the hands of those holding the conditional titles; who will then become absolute owners of them (as banking capital, in the hands of the same trustees)—in the same manner as A, B, C, and D had been before; and will go on banking with them in the same way as A, B, C, and D had done, and through the agency of the same trustees.

This currency, it will be seen, must necessarily be forever solvent—supposing, as we have done, that the lands retain their original value. It will be absolutely incapable of insolvency; for there can never be a dollar of currency in circulation, without there being a dollar of land, in the hands of the bankers, (or their trustees,) which *must* be transferred (one acre of land for a hundred dollars of currency) in redemption of it, unless redemption be made in specie. All losses, therefore, fall upon the bankers, (in the loss of their lands,) and not upon the bill holders. If the bankers should fail—that is to say, if they should be compelled to transfer *all* their lands in redemption of their circulation—the result would simply be, that the lands would pass, *unincumbered,* into the hands of a new set of holders—to wit, the conditional holders—who would have received them in redemption of the currency—*and who would proceed to bank upon them,* (reissue the certificates, and redeem them, if necessary, by the transfer of the lands,) *in the same way that their predecessors had done.* And if they too, should lose *all* the lands, by the transfer of them in redemption of the currency, the lands would pass, *unincumbered,* into the hands of still another set of holders, (the second body of conditional holders, who will now become absolute holders,) who would bank upon them, as the others had done before them. And this process would go on indefinitely, as often as one set of bankers should fail (lose *all* their lands). Whenever one set of bankers should have made such losses as to compel the *conditional* transfer of *all* their lands, the conditional transfers would become absolute transfers, and the lands would pass absolutely into the hands of a new set of holders (the conditional holders); and the bank, *as a corporation,* would be just as solvent as at first. So that, however badly the banking business should be conducted, and however frequently the *bankers* might fail, (if transferring all their capital (lands), in redemption of their circulation, may be called failing,) the bank itself, *as a corporation, could not fail.* That is to say, its circulation could never fail of redemption. The lands (the capital) would forever remain intact; forever equivolent to the circulation; and forever subject to a compulsory demand in redemption of the circulation. In this way all losses necessarily fall upon the bankers, (in the loss of their capital, the lands,) and not upon the bill holders, who are sure to get the capital (lands), dollar for dollar, for their currency, if they do not get specie.

From the preceding explanation it will be seen that, *if all lands were of an uniform value, and were to retain that value in perpetuity,* it would be perfectly easy to use them as banking capital, under the author's system, and thus create the most abundant and solvent currency that could be desired.

But all lands are not of a uniform value; and, therefore, they cannot be used, *acre by acre,* as banking capital, under this system. Nevertheless, by means of mortgages, lands may be used as banking capital; since mortgages upon lands can be made to any desirable extent, and all of a uniform value; or at least nearly enough so for all practical purposes. And this value they will retain in perpetuity.

The real estate of this country amounts to some ten thousand millions of dollars. Mortgaged for only half its real value, it would furnish banking capital to the amount of five thousand millions of dollars.

The rail-roads that we now have, and those that we shall have, taken at only half their value, would furnish several hundred millions more of good banking capital.

There will probably also be two thousand millions, or more, of United States Stocks, which, *if they should stand permanently at par, or thereabouts,* will make good banking capital.

There is, therefore, no more occasion for a scarcity of currency, than for a scarcity of air.

And this currency would all be solvent, stable, and furnished at the lowest rate of interest at which the business of banking could be done.

Under such a system there could never be another *crisis;* the prices of property would be stable; the rate of interest would always be moderate; industry would be uninterrupted, and much more diversified than it ever hitherto has been; and prosperity would necessarily be universal.

No evils could result from the great amount of currency furnished by this system; for no more would remain in circulation than would be wanted for use. By returning it to the bank for redemption, the holder would either get specie for it, or have it redeemed by the conditional transfer to him of a part of the capital, *on which he would draw interest,* until the capital so transferred to him, should either be itself redeemed with specie, or made an absolute property in his hands. Currency, therefore, returned for redemption, and not redeemed with specie, *is really put on interest,* by being redeemed by the conditional transfer of interest-bearing capital. Whenever, therefore, if ever, the prices of property should become so high as not to yield as good an income as money at interest (the interest being paid in specie), the holders of currency would return it to the banks for redemption, beyond the ability of the banks to pay specie. The banks would be compelled to redeem it by the conditional transfer of interest-bearing capital; *and thus take it out of circulation.*

In short, the currency represents a dollar at interest, instead of a dollar in specie; and whenever it will not buy, in the market, property that is worth as much as money at interest, (the interest payable in specie,) it will be returned to the bank, and put on interest, (by being redeemed in interest-bearing capital,) *and thus taken out of circulation.* No more currency, therefore, would remain in circulation, than would be wanted for use, *the prices of property being measured by the value of an interest-bearing dollar, instead of a specie dollar, if there should be a difference between the two.*

Such is, perhaps, as good a view of the *general principles* of the system, as can be given in the space that can be spared for that purpose. For a more full description, reference must be had to the pamphlet containing the system itself, with the Articles of Association, that will be needed by

the banking companies. In the Articles of Association, the system is more fully developed, and the practical details more fully given, than they can be in any general description of the system.*

The recent experience of this country, under a currency redeemable only by being received for taxes, and made convertible at pleasure into interest-bearing bonds (U. S.), is sufficient to demonstrate practically—what is so nearly self-evident in theory as scarcely to need any practical demonstration—that under a system like the author's, where the currency (when not redeemed in specie on demand) is convertible at pleasure into solvent interest-bearing stocks, there could never be a redundant currency in actual circulation, nor any undue inflation in the prices of property. That experience proves that currency issued, and not needed for actual commerce, at legitimate prices, will be converted into the interest-bearing stocks which it represents, and thus taken out of circulation, rather than used to inflate prices beyond their legitimate standard.†

This experience of the United States, with a currency convertible into interest-bearing bonds, ought, therefore, to extinguish forever all the hard money theories as to the indefinite inflation of prices by any possible amount of *solvent* paper currency. It ought also to extinguish forever all pretence that a paper currency should always be redeemable *in specie on demand;* a pretence that is merely a branch of the hard money theory. This experience ought to be taken as proving that other values than those existing in gold and silver coins—values, for example, existing in lands, rail-roads, and public stocks—can be represented by a paper currency, that shall be adequate to all the ordinary necessities of domestic commerce; and consequently that we can have, *at all times,* as much paper currency as our domestic industry and commerce can possibly call for; and that the frequent revulsions we have hitherto had—owing to our dependence upon a currency legally payable in specie on demand, and therefore liable to contraction whenever specie leaves the country—are wholly unnecessary. This experience ought, therefore, to serve as a practical condemnation of all restraints upon the most unlimited paper currency, provided only that such currency be solvent, and actually redeemable, at the pleasure of the holder, in the property which it purports to represent.

Substantially the same things are proved by the experience of England. The immense amount of surplus money in that country is not used to inflate prices at home; but seeks investment abroad. It is sent all over the world, either in loans to governments, or as investments in private enterprises, rather than used to inflate prices at home beyond their true standard.

The experiences of the two countries, therefore, demonstrate that there is no such thing possible as an undue inflation of prices, by a *solvent* paper currency — that is, a currency always redeemable in the specific property it purports to represent. And such a currency is that which would be furnished by the author's system; for the property represented by it is always deliverable, dollar for dollar, in redemption of the currency itself.

CHAPTER II. THE AUTHOR'S SYSTEM CANNOT BE PROHIBITED BY THE STATES.

The author holds his system by a copyright on the Articles of Association, that will be needed by the banking companies. His system, therefore, stands on the same principle with patents and copyrights. And the use of it can no more be prohibited by the State governments, than can the use of a patented machine, or the publication of a copyrighted book.

The Constitution of the United States expressly gives to Congress "power to promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." And the laws passed by Congress, in pursuance of this power, are "the supreme law of the land, * * * any thing in the laws of any *State* to the contrary notwithstanding."

If the State governments could prohibit the use of an invention, or the publication of a book, which the United States patent or copyright laws have secured to an inventor or author, the whole "power of Congress to promote the progress of science and useful arts," by patent and copyright laws, could be defeated by the States.

Some persons may imagine that, whatever may be the right secured to inventors, by patents, the right secured to authors, by copyrights, is only a right to *publish* their ideas; leaving the State governments still free to prohibit the practical use of the ideas themselves. But this is a mistake. Of what avail would be the publication of ideas, if they could not be used? How utterly ridiculous and futile would be the idea of securing to the people a mere knowledge of "science and useful arts," with no right, on their part, to apply them to the purposes of life. How *could* Congress "promote the progress of science and useful arts," if the people were forbidden to practise them? The right secured, therefore, is not a mere right of publication, but also a right of use.

The objects of patents and copyrights are identical, viz.: to secure to inventors and authors, *and through them to the people* — against all adverse legislation by the States — *the practical enjoyment and use of the ideas patented and copyrighted.*

Copyrights, it must be observed, are not granted, as some may suppose, for mere words — for the words of all books were the common property of mankind before the books were copyrighted; and they remain common property afterwards. The copyright, therefore, is for the ideas, and only for the ideas, which the words are used to convey, or describe.

In copyrights, therefore, equally as in patents, the right secured is the right to ideas; that is, to those ideas that are *original* with the authors of the books copyrighted. And the right thus secured to ideas, is the right, on the part of the author, not only to reduce those ideas to practical use himself, but also to sell them to others for practical use.

If the right, secured to authors by copyrights, were simply a right to *publish* their ideas, but not to use them, nor sell them to others to be used, the most important knowledge, conveyed by books, might remain practically forbidden treasures, if the State governments should choose to forbid their use.

These conclusions are natural and obvious enough; but as the point is one of great importance, it may be excusable to enforce it still further.

The ground here taken, then, is, that a State government has no more constitutional power to prohibit the *practical use* of any knowledge conveyed by a copyrighted book, than it has to prohibit the publication or sale of the book itself.

The sole object of the copyright laws are to encourage the production of *ideas* for the enjoyment and use of the people; to secure to the people the right to enjoy and use those ideas; and to secure to authors compensation for their ideas. All these objects would be defeated, if the *States* could interfere to prevent the use of the ideas thus produced; because if the ideas could not be used, there would be no sale for the books; and consequently authors would get no pay for writing them; and would have no sufficient motive to write or print them.

It is an axiom in law, that where the means are secured, the end is secured; *that the means are secured solely for the sake of the end.* It would be as great an absurdity in law, as in business, to secure the means, and not the end; to plant the seed, and abandon the crop; to incur the expense, and neglect the profits. What an absurdity, for example, would it be for the law to secure a man in the *possession* of his farm, but not in his right to cultivate it, and enjoy the fruits. What an absurdity would it be for the law to secure men in the *possession* of steam engines, but not in the right to use them. But these would be no greater absurdities than it would be for the law to secure to the people a *knowledge* of "science and useful arts," but not the right to use them.

The sole object of the law in securing to all men the *possession* of their property of all kinds, is simply that they *may use it,* and have the benefit of it. And the sole object of the laws, that secure to the people *knowledge* — which is but a species of property, and a most valuable kind of property — is that they may use it, and promote their happiness and welfare by using it.

An illustration of the principle, that where the means are secured, the end is secured, is seen in the constitutional provision that "the right of the people to keep and bear arms shall not be infringed." This provision does not secure to the people a mere naked "right to keep and bear arms" — for that right would be of no practical value to them. But it secures the right also to *use* them in any and every way that is naturally and intrinsically just and lawful; for that is the only *end* the people can have in view in "keeping and bearing arms."

On the same principle, too, if the Constitution had declared that "the right of the people to buy and keep *food* should not be infringed," it would thus have guaranteed to them, not merely "the right to buy and keep food," but also the right to *eat* the food thus bought and kept; because the eating would be the only *end* that could be had in view in buying and keeping food.

Another illustration of the same principle is found in the constitutional provision that "Congress shall have power to coin money, and fix the standard of weights and measures." Have the States any power to forbid the people to buy and sell the money coined by the United States? Or to forbid the people to use the standard weights and measures fixed by the United States? Certainly not. Although the Constitution does not say it in express words, it does say, *by necessary implication,* that the money, coined by the United States, may be freely bought and sold by the people

(because that is one of the ends for which the money is coined); and that the standard weights and measures, fixed by the United States, may be freely used by the people (for that is one of the ends for which the standard of weights and measures was fixed); and that the States can neither forbid the use of the weights and measures, nor the buying or selling of the coin.

The sole object of books is to convey knowledge. If the knowledge cannot be *used,* of what use are the books themselves?

If a *State* government can prohibit the use of the knowledge conveyed in a copyrighted book, it might just as well prohibit the *buying* or *reading* of the book. The object of the book would be no more defeated in one case than in the other.

This power of "promoting the progress of science and useful arts," by means of patent and copyright laws, was given to Congress principally, if not solely, because it was feared that the State governments might, in some cases, be unfavorable to that end. But if the States can *now* prohibit the *use* of the knowledge conveyed by books, they have that very power of obstructing "the progress of science and useful arts," which the Constitution intended to take from them.

Furthermore, it is the *theory of the courts* that the nation *purchases* the ideas of authors and inventors; *that it purchases them solely for the use of the people;* and that it pays authors and inventors for their ideas, by giving them certain exclusive rights over them for a term of years.* By this theory, the ideas themselves are supposed to become the property of the nation, from the times when the patents or copyrights are granted; or from the times when the ideas are put upon the government records, in the patent office, or elsewhere. Now, suppose the United States government had been authorized, by the Constitution, to purchase the same ideas, *and pay the money for them,* instead of paying for them by giving the authors and inventors certain monoplies in the use of them. Could a State, in that case, have prohibited the practical use of the ideas, which the government had thus bought, and paid the nation's money for, solely for the use of the people? Clearly not. Suppose the United States government had been authorized (by the Constitution) to buy, and pay the money for, Morse's invention of the telegraph, for the use of the people. Could a State have prohibited the use of the invention, which the nation had thus bought for the use of the people, and paid the people's money for? Certainly not.

Suppose the United States government (being authorized by the Constitution), had bought books on agriculture, for the use of the people, and paid the nation's money for them—(instead of paying for them by copyrights, as it does now)—books on the chemical nature and treatment of soils, books on the various plants which the people wish to cultivate, and the various animals which the people wish to rear. Could a State have forbidden the people to read those books? Or to practically apply the knowledge conveyed by them? Clearly not. The idea would be preposterous. The principle that the United States Constitution, in securing to the people those means of agricultural progress, had, by necessary implication, secured to them the right to use those means against all interference by the States, would have been a complete answer to any such pretence on the part of the States.

We might as well say that a State has a right to forbid the people to use the post office, which the United States government has provided for their benefit, as to say that a State has a right to forbid the people to use any "science or useful art," which the United States government has bought for their benefit.

Any other principle than this would authorize the States to prohibit the practical use of all ideas patented and copyrighted by the United States; and thus utterly defeat the power given to Congress "to promote the progress of science and useful arts," by means of patents and copyright laws.

It is to be borne in mind that the people of a single State are not the only ones interested in the practical use of patented and copyrighted ideas within that State.

If, for example, the cotton growing States were to prohibit the use of Whitney's patented cotton gin within those States, the people of all the other States, that manufacture or wear cotton goods, would be made the poorer by the act. If Louisiana were to prohibit the use of Fulton's patented steamboat within her limits, a great blow would be struck at the commerce and industry of the whole Mississippi valley. If Ohio, Indiana, Illinois, Iowa, and Wisconsin, were to prohibit the use of McCormick's patented reaper within those States, the price of grain would be affected throughout the whole country. If Massachusetts were to prohibit the use of patented sewing machines, the prices of boots, shoes, and all other clothing, manufactured within the State, for the people of other States, would be enhanced. If New York were to prohibit the use of Hoe's patented printing press within that State, all the commercial intelligence that radiates from the city of New York, would be delayed, and made more expensive; and the commerce of the whole country would be injured. For these reasons no State can be permitted to prohibit, within her limits, the use of any of the "sciences and useful arts," which may be patented or copyrighted by the United States.

The same reasons apply to currency. If New York, for example, were to prohibit all but a metallic currency within her limits, the commerce of the whole country, so far as it is carried on within the city or State of New York, would be disturbed, obstructed, and injured. The industry of the whole country would be discouraged to a corresponding degree; and the whole country would be made the poorer. On the other hand, if the best systems of credit and currency, that can be invented, are allowed free course in the city and State of New York, that city and State can do very much, by the use of such credit and currency, to facilitate the commerce, and consequently to develop the industry, of every State in the Union. Even, therefore, if it were admitted that the State of New York might deprive her own citizens of useful inventions in currency and credit, it cannot be permitted to her to dictate in regard to the currency and credit used in the commerce of the whole country within her limits. She is not an independent nation in regard to commerce; and consequently not in regard to credit or currency.

The principle of the United States Constitution, in regard to ideas patented and copyrighted, or in regard to "the progress of science and useful arts," is, that authors, inventors, and people, shall have the free right to experiment with, and practically test, all ideas for themselves, without asking permission of the several State legislatures. It presumes that they (authors, inventors, and

people) are competent to determine, after experiment, what inventions are practically valuable to them, and what worthless.

How preposterous would be the principle—as a political or economical one—that *all* the ideas, which authors and inventors may originate, in "science and useful arts," must be submitted to, and approved by, the several State legislatures, (who are utterly incompetent to judge of either their truth or utility,) before the authors and inventors can be permitted to demonstrate their truth or utility to the people, or the people be permitted to adopt them. Such a principle would be manifestly absurd, ridiculous, destructive of men's natural rights, and destructive of all "progress in science and useful arts." It would be a tyranny that no people on earth could endure. On such a principle, not even an almanac could be published, or a new rat trap used, within any State, until the legislature of the State should have solemnly sat upon it, and given it the sanction of their profound wisdom, or profound ignorance. If any thing of this nature were to be tolerated in this country, it would plainly be most proper and expedient that Congress, as the legislature for the whole country, should take the matter in hand, and decide, for the whole country, upon the truth and utility of all new ideas offered for public adoption; instead of referring them to the several State legislatures. But Congress knows that they are utterly incompetent to any such task; and, therefore, they leave the whole matter—as the Constitution intended they should—to be determined by the authors, inventors, and people interested. And if this is the principle of the Constitution in regard to all other ideas in "science and useful arts," it is equally the principle of the Constitution in regard to currency (other than legal tender) and credit; for the Constitution makes no discrimination between inventions and ideas on these latter subjects, and those in relation to other matters (as we shall more fully see in subsequent chapters). The Constitution knows but one law for all new ideas in "science and useful arts." And that law is that authors and inventors may come freely face to face with the people, and test all ideas to their mutual satisfaction; leaving the people free to adopt or reject at their own discretion.

If there be any one of the "useful arts," to which the foregoing principles *ought* to be applied, banking is preëminently that one. (By banking is here meant the art of representing by paper—for loans and currency—other values than those existing in coin.) Banking is the art of arts. It is the art upon which nearly all other arts depend mainly for their efficiency; as experience has demonstrated continually for the last hundred years. Directly or indirectly it furnishes both the tools and materials for nearly every trade. Directly or indirectly it creates the demand for, and furnishes the supply of, every marketable commodity. For the want of such adequate credit and currency as banking is capable of supplying, all other arts, especially the mechanic arts, are at all times greatly crippled, and at frequent intervals paralyzed; the natural and normal demand for manufactured commodities suspended, and their prices struck down; the rich made poor, and the poor driven into idleness and destitution. The industry of almost any people—even of those among whom the mechanic arts have already made the greatest progress—would probably be doubled in value by such a diversity of production, such an increase of machinery, such uninterrupted activity, and such stability in prices, as an adequate system of banking would introduce. And the wealth thus produced would be far more equally and equitably distributed than wealth is now.

The imperfection or inadequacy of all former systems of banking is a thing on all hands confessed. There is no art, in which there is greater need of invention. Consequently there is none, in which invention is better entitled to all the protection which the constitutional power of Congress "to promote the progress of science and useful arts" can give.

For the reasons that have now been given, the right to use practically the author's system of banking, is absolutely secured to him and his assigns, by the United States copyright; and, as has already been said, can no more be prohibited by the State governments, than can the use of a patented machine, or the publication of a copyrighted book.

By what has been said, it is not meant that the patent or copyright laws of Congress are designed, or can be used, to shield a person in the commission of any acts that are fraudulent, or intrinsically criminal; but only that they are a protection for the free use of all ideas, that are patented and copyrighted by the United States, *and that are, naturally and intrinsically, innocent and lawful.*

That the author's system of banking is, naturally and intrinsically, innocent and lawful—as clearly so as any other system of banking that was ever invented—no one will dispute. The honest use of the system, therefore, cannot be prohibited by the States. But any frauds or crimes, committed under color of using the system, may be punished like any other frauds or crimes.

The same principles, of course, apply to any and every other system of banking, which is, naturally and intrinsically, innocent and lawful, and which men may invent, and choose to experiment with, and put in practice. Men have the same natural and constitutional rights to invent, experiment with, and get patented or copyrighted, and put in practice, new systems of banking, as they have to invent, experiment with, get patented, and put in operation, new churns and washing machines. And the only restraints, that can constitutionally be imposed upon them, by the State governments, are, that the natural "obligation of their contracts" must be enforced, and they must commit no frauds nor crimes.*

CHAPTER III. THE AUTHOR'S SYSTEM CANNOT BE TAXED, EITHER BY THE UNITED STATES, OR THE STATES.

Neither the United States, nor the States, can tax the author's system of banking, consistently with the theory which the courts hold in regard to patents and copyrights.

That theory is, that a patent or copyright, guaranteeing to an inventor or author, and his heirs and assigns, the free and exclusive right to use his invention, or publish his book, for a term of years, is the *price* which the United States government, as agent for the whole people, pays an inventor or author for his invention or book, for the benefit of the public.*

The courts hold that the reasons for granting patents and copyrights are these, namely, that an inventor has in his mind an invention, or an author has in his mind a book, which, it is supposed, may be of value to the public; but that neither the inventor nor the author has any sufficient inducement to make his invention or book known, unless he can derive some pecuniary ad-

vantage from it. The United States, therefore, says to the *inventor:* If you will secure your invention to the use of the public, by putting upon the government records such a description of it, and of the manner of using it, as that the public will be able, from your description, to make and use your machine, in defiance of you, (after your patent shall have expired,) the government will, as a compensation for your so doing, secure to you, and your heirs and assigns, the free and exclusive use of the invention for a given number of years. When, therefore, the inventor has put upon the government records such a description of his invention, and of the manner of using it, as the government stipulates for, the bargain is complete, and the faith of the government is pledged, that he shall have the free and exclusive use of his invention for the term of years agreed on.

The United States says also to the *author:* If you will secure to the public the right to your book, by depositing a copy with the government, so that it may be republished in defiance of you, (after your copyright term shall have expired,) the government will secure to you, and your heirs and assigns, the free and exclusive right to publish and sell it for a term of years. When, therefore, the author has deposited with the government a copy of his book, in pursuance of this stipulation on the part of the United States, the contract is complete, and the faith of the government is pledged, that he shall have the free and exclusive right to publish his book for the term of years agreed on.

The amount of these transactions—according to the theory of the courts—is, that the government *buys* an author's or inventor's ideas, and contracts to give him, as compensation for them, a certain exclusive use of them for a term of years.

The courts hold that the general government, on behalf of the whole country, makes this contract with authors and inventors; being specially authorized to do so by the Constitution of the United States.

On this theory, the government cannot consistently tax, either the ideas themselves, or the use of them. It cannot consistently tax the ideas themselves, as property, for they are supposed to be the property of the United States; and for the government to tax them, as property, would be taxing its own property; and would be as absurd as it would be to tax the National Capitol, or any other property of the government. It cannot consistently tax the author or inventor for his exclusive use of the ideas; for that exclusive use is the *price* which the government agrees to pay him for his ideas; and is, therefore, a debt, which it owes him. It, therefore, can no more consistently tax him for receiving this pay for his ideas, than it can tax any body else for receiving his pay for services rendered, or property sold, or money lent, to the government.

This *price,* be it observed, which the United States government agrees to pay, is not paid in full, until the patent or copyright term has expired; because the price itself consists in the exclusive use, *or in the government protection to the exclusive use,* of the invention or book, *for that term.* If, now, the government can tax this price, before it is fully paid, *it really taxes a debt which it owes.* And for the government to tax a debt, which it owes, is really keeping back a part of the debt.

In other words, if, before the inventor or author shall have had the free and exclusive use of his invention or book secured to him for the full term stipulated for, the general government can

tax this free and exclusive use, *which, for a valuable consideration paid to the United States, by the author or inventor, has been guaranteed to him,* it can wholly or partially invalidate the contract made with him. Such a tax is virtually withholding, or keeping back, or taking back, a part of the *price,* which the United States, on behalf of the whole country, had agreed to pay him. If the use of the invention or book can be taxed to the amount of one per cent., ten per cent., fifty per cent., or one hundred per cent., of its value, by the very government that promised to secure the use to him, then one per cent., ten per cent., fifty per cent., or one hundred per cent., of the *price,* agreed to be paid to him, is taken back, or virtually withheld from him, by the very party that promised to pay it to him.

Such a tax, according to the theory of the courts, would be a tax upon a *debt,* which the United States owes the author or inventor. And a right, on the part of the United States, to impose such a tax, would be as absurd, and as inconsistent with the obligation of a debt, as would be the right of any other debtor, to tax his creditor for the debt due by the former to the latter. If all debtors could tax their creditors at pleasure for the debts due by the former to the latter, the payment of debts would be a very easy matter. And if the United States can tax, at pleasure, all the debts they owe, the public debt may *legally,* and consistently with the public faith, be very easily paid.

When the United States government voluntarily becomes a debtor, by purchasing something valuable, and agreeing to pay for it at a future time, it voluntarily puts itself in the position of any and all other debtors. That is, it agrees to pay the amount *in full;* and not merely to pay all except what it may choose to withhold, or take back, under the name of taxation. A promise of this latter kind would amount to no promise at all.

Suppose the United States government (as agent for the whole country) were to purchase, of an individual, supplies for the United States army; and were to give him a contract to pay him in six months. And suppose that, before paying this debt, the government should tax it, to the amount of one hundred per cent., in the hands of this creditor of the United States. How much would this creditor have coming to him when the contract should be due? Or how much would he realize for the supplies he had furnished, and taken the government's contract for? Nothing. Yet a tax of one per cent. would be just as absurd in principle, and just as inconsistent with the obligation of a debt, as would be a tax of one hundred per cent. Such taxation would clearly be withholding a part of the debt, which the government owed him, and had agreed to pay him, for value received. The government might just as well have seized the supplies, without pretending to make any compensation at all, as to pretend to buy them, promise to pay for them, and then tax that debt or promise before it is fulfilled. It is for this reason, that the general government cannot, without a breach of faith, tax any portion of the debt it is now contracting. Such a tax would really be a mode of withholding payment of money it had agreed to pay. And for the same reason the general government cannot, consistently with the theory of the courts in regard to patents and copyrights, tax them, or the use of them. Such taxation, according to the theory of the courts, would be withholding a part of the *price,* which the general government, on behalf of the whole country, had agreed to pay for books and inventions.

And what the general government cannot, consistently with the public faith, do, in the way of taxing patents and copyrights, the States, counties, cities, and towns cannot consistently do; because any contract, made by the general government, is made for and on behalf of the whole country; and States, counties, cities, and towns are as much bound by it, as is the general government itself.

If States, counties, cities, and towns could tax patents and copyrights, they could wholly or partially, (according to the extent of the tax,) defeat the value of the contracts, which the United States, on behalf of the whole country, makes with authors and inventors.

The subscriber is not aware that inventions and copyrights, *or the use of inventions or copyrights,* have ever been taxed, either in this country, or in any other, until the recent tax upon telegraphic messages. And this tax, according to the theory of the courts, ought clearly to be held illegal, or at least inconsistent with the public faith.

The country has too great an interest in "the progress of science and useful arts," to tolerate Congress, or the State governments, in breaking faith with authors and inventors, by robbing them, either directly or indirectly, of the free and exclusive right to "their writings and discoveries" for the term of years that was stipulated for, when, relying upon the public faith, they sold their ideas to the government, (as they virtually did when they put their books and inventions beyond their own control, by putting them upon the government records.)*

For the reasons now given, the subscriber assumes that the use of his system of banking will never be taxed, either by the United States, or the States.

This freedom from taxation is perfectly just, for still another reason, namely, that the land, which constitutes the banking capital under the author's system, is liable to be taxed, *as land,* at its true value, equally with all other land. The fact that it is used as banking capital, is no reason for taxing it beyond its true value, when all other land is equally free to be used as banking capital, if the owners shall so choose.

This exemption from taxation is likely to be an important matter for many years, if not forever; and is sufficient, of itself, to challenge the consideration of bankers.

CHAPTER IV. THE STATE GOVERNMENTS CANNOT CONTROL, OR IN ANY MANNER INTERFERE WITH, THE AUTHOR'S SYSTEM.

The same reasons that have been already given against the right of the State governments to prohibit, or tax, the use of the author's system of banking, are equally weighty against all power, on the part of the States, to assume to control, or in any manner interfere with, the operation of the banks, either by restricting the rates of interest or exchange, or subjecting the banks to the oversight of Commissioners, or requiring them to keep on hand given amounts of specie, or to publish statements, or make returns, of their condition or proceedings.

A State, for example, would have no more power to fix the rates of interest or exchange, taken by these banks, than to fix the price paid for the use of a patented machine, or for the publication of a copyrighted book. Nor would it have any more power to subject the banks to the oversight of Commissioners appointed by the State, than it would to subject the use of all patented machines, and the publication of all copyrighted books, to the supervision of Commissioners appointed by the State. It would have no more right to require the banks to make returns, or publish statements, of their condition and proceedings, than it would to require the same things of all persons using patented machines, or publishing copyrighted books.

If the State governments can, *in any way,* obstruct or embarrass authors and inventors in the use of their copyrights and inventions, they can impair or destroy the value of the copyrights or patents granted by the United States; and so far defeat the Constitution of the United States, and the powers of Congress on this subject.

The Supreme Court of the United States has explicitly indorsed these principles, by declaring that the use of "*patent rights*" can neither be *taxed, retarded, impeded, burdened, nor in any manner controlled, by the State governments.* And the same principle obviously applies to *copyrights,* because these are intrinsically of the same nature with patent rights, and because also the rights of authors and inventors are placed upon the same grounds by the Constitution.

This declaration of the Supreme Court was made in the case of *McCulloch* vs. *Maryland,* 4 *Wheaton's Reports.* It was made incidently, but nevertheless explicitly, and as illustrating a principle which the court declared to be vital to the existence and operation of the general government.

The immediate question, before the court, was, whether the State of Maryland had a right to *tax* the Maryland branch of the United States Bank?

The court first determined that the United States had a constitutional right to create a bank to be employed *as an agent of the United States* in keeping and disbursing the public monies.

The court next declared "that the power to *tax* involves the power to destroy;" and that to allow the States to tax, or exercise any authority whatever over, any of the agencies employed by the United States in executing its constitutional powers, was incompatible with the supremacy of the United States, and was equivalent to subjecting the United States government to absolute destruction, whenever the State governments should please to destroy it.

And in this connexion, the court spoke of the United States mails, of the mint, *of patent rights,* of the papers of the Custom House, and of judicial process of the United States, as illustrations of the various means used by the United States, and which could not be taxed, nor in any manner interfered with, by the States.

Thus the court say,

> "If we apply the principle for which the State of Maryland contends [that the States *may* tax the means employed by the general government for executing its powers] to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of

the government, and prostrating it at the foot of the States. The American people have declared their Constitution, and the laws made in pursuance thereof to be supreme; but this principle would transfer the supremacy, in fact, to the States.

"If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; *they may tax patent rights;* they may tax the papers of the Custom House; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. *This was not intended by the American people. They did not design to make their government dependent on the States.*" Page 432.

Also the court say,

"The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation, or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has established." Page 436.

This was an *unanimous* opinion of the court—expressly declared by them to be such. And, as we have already seen, they expressly applied the principle to "*patent rights.*" And if the principle is applicable to patent rights, it is equally applicable to copyrights; because they are both of the same nature, and stand on the same grounds in the Constitution.*

We have, then, in effect, an explicit declaration of the Supreme Court of the United States, "that the States have no power, by taxation, or otherwise, to retard, impede, burden, or in any manner control," the use of patents and copyrights, granted by the United States.

If the bankers should commit any frauds, or any acts that were intrinsically criminal, they could be punished, as for any other frauds or crimes; because patents and copyrights do not authorize the commission of crimes. Or if they should not fulfil their contracts, they could be compelled to fulfil them. But so long as they should fulfil their contracts, and be charged with no acts intrinsically criminal, a State government could no more interfere with them as banks, than it could interfere with anybody else for using a patented machine, or publishing a copyrighted book. And thus the business of banking (including the rates of interest and exchange) would be entirely relieved from all that arbitrary and tyrannical State legislation, which has hitherto been so annoying, vexatious, and injurious both to bankers and to the public.

If there is any business whatever, that ought to be free from all arbitrary restraints and interference, it is banking; for the reason that, in this country, the credit and currency furnished by the banks, are the direct mainsprings of nearly all our industry and commerce. All arbitrary restrictions upon banking, are, therefore, nothing else than arbitrary restrictions upon industry and commerce; and are as absurd, injurious, and tyrannical as would be arbitrary restrictions upon the use of steam engines, water wheels, locomotives, or any other machinery or instrumentalities by which our industry and commerce are carried on.

If banking is an intrinsically criminal business, it should be prohibited altogether. If it is an innocent and useful one, it should be free from all arbitrary restrictions and interference, like any other honest business. Free competition, and freedom from all arbitrary interference, in banking, will furnish the best currency and credit, and at the cheapest rates, just as free competition, and freedom from all arbitrary interference, in all other business, furnish the best commodities, and at the lowest prices.

CHAPTER V. UNCONSTITUTIONALITY OF THE LEGAL TENDER ACTS OF CONGRESS.

The general government is attempting, by its legal tender acts, and its bank act, to force into circulation its own currency, and the currency of banks authorized by itself; and to force out of circulation all other currency; or to bring it down to a level with its own. This makes it necessary to consider the constitutionality of the legal tender acts of Congress.

Those, who imagine that the legal tender acts of Congress are constitutional, seem to imagine that Congress have power to fix, *and do fix,* the legal tender in payment of debts in all cases whatsoever; that they have power not only to prescribe *what* shall be the legal tender in payment of all debts, but also to say *how much of any thing whatever* (which they may choose to call a legal tender) shall be sufficient to satisfy any debt whatsoever; that, in short, Congress have power to declare arbitrarily what, and how much, all contracts, between man and man, shall amount to; and at their pleasure or discretion, to make them more, less, or other than the parties have made them.

Thus they hold, *in effect,* that men have no power, *of themselves,* to make obligatory contracts; and that men's contracts with each other have, of themselves, no validity at all, which the laws are bound to recognize and maintain; but that it rests with Congress, in their discretion, or at their will, to alter men's contracts, and make them valid for more, less, or other than the parties have agreed on.

All these enormous conclusions legitimately and necessarily follow from the idea that the late legal tender acts of Congress are constitutional.

But, in truth, Congress have no powers whatever of this kind. Parties make their own contracts; and Congress have no power whatever to make them more, less, or other than the parties have made them. Congress have no power to say *how much of any thing*—gold and silver coin, or any thing else—shall be sufficient to satisfy any contract whatever between man and man.*

Parties make their own contracts. Of course they, and they alone, fix the tender. That is, they agree what, and how much, is to be paid. Otherwise there would, in law, be no contract. A contract to pay no particular thing, and no particular quantity of any thing, would, in law, be no contract at all. To make a contract, then, is necessarily to fix the tender. Parties cannot make valid binding contracts otherwise than by themselves fixing the legal tender, both in kind and amount.†

What the debtor agrees to pay, and the creditor to receive, is the legal tender, and the only legal tender, both in kind and amount, in payment of that debt. And Congress have no authority in the matter, to alter the legal tender, or make the contract more, less, or other than the parties themselves have made it. If it were not so, men would be deprived of all power of making their own contracts.

Thus, where a contract is to pay one hundred bushels of wheat, one hundred bushels of wheat constitute the legal tender, and the only legal tender, in fulfilment of that contract, or in payment of that debt; and Congress have no power to alter it. Congress have nothing to do with the matter.

So, too, if one man contracts to convey his farm to another, that farm is the legal tender, and the only legal tender, in fulfilment of that contract.

So, if one man contracts to give his horse to another, for value received, that horse is the legal tender, and the only legal tender, in fulfilment of that contract; and Congress have nothing to do with the matter.

On the same principle, when one man has contracted to pay another a hundred dollars, a hundred dollars constitute the legal tender, and the only legal tender, there can be in the case. *Not because Congress have made the dollars a legal tender: but because the parties themselves made the dollars the tender in that particular case;* just as, in the cases before supposed, the parties made the wheat, the farm, and the horse, the legal tender in those cases respectively.

If Congress can fix the tender, in payment of a debt, independently of the agreement of the parties, they can make at least *a part* of a contract between the parties, without their consent. But Congress have no more power to make any part of a contract between two parties, without their consent, than they have to make a whole one.

Congress have no power whatever in regard to legal tender, beyond what can be found in these words of the Constitution, to wit: "The Congress shall have power to coin money, and regulate the value thereof, and of foreign coin."

This is the only power given to Congress on the subject. And here is no power given, *in express terms,* to make the coin mentioned, either domestic or foreign, "a legal tender in payment of debts." It is only by carefully analyzing all the terms of the provision, that, even by inference or implication, such an authority can be extracted from it. Let us see.

What is it "to coin money?" It is simply to weigh and assay pieces of gold, silver, or other metals, and stamp them in a manner to certify their quantity and quality—that is, their weight and fineness. This is the whole of it. And, *so far as this simple act of coining goes,* there is nothing that makes the coins a legal tender; or that gives Congress any authority to make them a legal tender.

After the pieces have been coined, they are sold by Congress in the market, and are afterwards sold by individuals in the market, for just what they may chance to bring, like any other merchandise; Congress having no control over their market value.

If a debtor agrees to pay, and a creditor to receive, these pieces of coin, the coins are thereby made the legal tender in payment of that particular debt. They thereby become necessarily the legal tender; *not because Congress have so prescribed, but because the parties have so agreed.* The parties, and not Congress, make them the legal tender.

Parties are under no legal obligation to make their contracts payable in coin—that is, in dollars. They are at perfect liberty to make them payable in wheat, corn, hay, iron, wool, cotton, pork, beef, or any thing else they choose. And when they do so make them, these other commodities become the tender; just as dollars become the tender when dollars are promised.

The whole object of coining money, therefore—*so far as a legal tender is concerned*—is, not to enforce any particular tender upon the parties to contracts, but that there may be in the community certain commodities, *suitable for a legal tender*—that is, whose quantities and qualities may be precisely known—*in order to facilitate the making and fulfilling of contracts by the parties, and the enforcing of them by the courts, with perfect certainty and precision.* It is to furnish something, known to the law, and fixed by the law, and about which there may be no controversy between parties, and no doubt on the part of the courts, as to whether or not it is the identical thing—in kind, quantity, and quality—that was promised to be delivered.

When contracts are made to be fulfilled by the payment of wheat, wool, cotton, iron, &c., disputes are liable to arise between the parties as to whether the commodities tendered are of the precise quality with the ones promised. Hence litigation arises; and litigation too, which it is extremely difficult for courts to settle justly; because it is very difficult, and often impossible, for a court to know the precise quality of the commodities promised, as understood by the parties themselves at the times of their contracts.

It is desirable, therefore, that there should be something, known to the law, and which may be promised to be delivered, and about the quality of which there can be no dispute. Such a commodity serves both to prevent controversy and litigation, and to enable courts to settle them justly and truly when they do arise.

So far, then, as a legal tender is concerned, the whole object of the Constitution, in giving Congress "power to coin money," is, not at all to take away from parties their natural power and right to make such contracts as they please, or to impair their contracts when made, *but to aid them in making precisely such contracts as they wish;* and to insure the enforcement of the contracts, by the courts, precisely as the parties made them.

The object of the Constitution is to give the people *additional facilities* (beyond what nature has provided) for making their own contracts, and having them accurately enforced; and not at all to take from them any natural power or right to make such contracts as they please; or to give Congress any power to interfere with, control, invalidate, or impair the contracts made.

But, secondly, Congress have power not only "to coin money," but also "to regulate the value thereof, and of foreign coin."

What is it "to regulate the value thereof, and of foreign coin?" Certainly it is not to fix the current value of the coins, *relatively to other commodities.* It is not, for example, to say how much wheat, wool, cotton, iron, hay, or any thing else, one dollar, or five dollars, in coin, shall buy.

For Congress to fix the value of the coins, relatively to other commodities, would be equivalent to their fixing the value of other commodities relatively to coin. But that, clearly, is a matter for parties to agree upon; and one with which Congress have nothing to do.

What, then, is this power of Congress "to regulate the value thereof, and of foreign coin?"

If the Constitution had said simply that Congress should have "power to coin money, and regulate the value thereof"—omitting the words "*and of foreign coin*"—the legal conclusion probably would have been, that Congress should only have power to coin money, and regulate the *intrinsic* value thereof—that is, fix, at their discretion, the quantity and quality of the metals of which the coins should be composed. But since Congress have "power to regulate *the value of foreign coin*"—the *intrinsic* value of which has already been fixed by the governments that coined them—we are, *perhaps,* under a necessity to *infer* that the power given to Congress "to coin money, and regulate the value thereof, and of foreign coin," is a power to fix the legal value of all these different coins *relatively with each other;* that is, a power to say how many coins of one kind or denomination, shall be equal in value to a given number of another kind, or denomination.

But, if we accept this inference, we are also under a necessity to infer that it is only in the single case of a "tender in payment of debts," that this legal value of the coins, as fixed by Congress, can be set up; for, in all other cases, it is clear that the parties to contracts are at perfect liberty to give and receive more or less for any one of the coins, than they would for any others of the same legal value.

It is, therefore, only by this *inference,* and this process of reasoning, that we can come to the conclusion that Congress have any power at all to fix the value of their own coins, and of foreign coins, for the purposes of a "tender in payment of debts."

And when we thus find that Congress may, perhaps, have a certain power relatively to "a legal tender in payment of debts," we find that, at most, it is only a power to fix the value of the different coins, *relatively to each other;* and not relatively to other things. In other words, we find that it is a power simply to say, for example, that five dollars, in silver, shall be equal to one half eagle in gold; that an English pound sterling, shall be equal to four dollars eighty-five cents of United States coin; and that a French Napoleon shall be equal to three dollars eighty-five cents of United States coin. And that it is only in the single case of "a *tender* in payment of debts," that even this legal value of the coins, *relatively to each other,* can be fixed by Congress. In all other cases, all the different coins may be legally bought and sold at just such values as the parties to contracts may choose to put upon them.

The most, therefore, that can be said, in favor of the power of Congress, is, that they have power to coin money, and regulate the value of the different pieces thereof, and of foreign coin, *relatively to each other, for the single purpose of a tender in payment of debts;* and that they have no other power over the subject.

This power of Congress, it is to be noticed, is not a power to *make* the coins a legal tender, (when the parties to contracts have not done so;) but only a power to fix the value of the different coins, *relatively to each other, when the parties to contracts shall have made them a tender.* In other words, it is only a power to say that, when the parties to contracts shall have agreed upon the amount of coin, or the number of dollars, to be paid, they shall be understood to have contracted for so much coin, or so many dollars, of any, or all, these different kinds, (at the option of the debtor,) and not for any one kind of coin, or one kind of dollars, rather than another of the same legal value.*

This power of Congress leaves parties at full liberty to make their own contracts; and consequently to fix their own tender, (without fixing which there can be no contract.) It only enables Congress virtually to prescribe beforehand what particular *words or terms*—such as dollar, eagle, dime, cent, and so forth—when used by the parties to contracts, shall be understood to mean. Just as Congress, in fixing the standard of weights and measures, virtually prescribe beforehand what the terms bushel, yard, rod, foot, acre, pound, gallon, &c., when used by the parties to contracts, shall be understood to mean.

This power of Congress to prescribe what certain terms, such as dollar, bushel, and the like, when used in contracts shall be understood to mean, is a power that can be exercised only within very narrow limits, to wit, the limits of prescribing that those terms shall be understood to mean either such coins and measures as Congress shall have previously established and designated by the same terms, or such coins and measures as Congress shall have previously designated as the equivalents of the coins and measures designated by those terms.

The object of giving to Congress these powers "to coin money, and regulate the value thereof, and of foreign coin, *and fix the standard of weights and measures,*" is not at all to give Congress any power to control parties in making their contracts; nor any power to alter or impair their contracts when made; but only to provide certain coins, weights, and measures, that shall be known alike to courts and people, in all the States, according to which contracts *may* be made, *if the parties shall so choose;* and according to which contracts may be fulfilled, *when the parties shall have so agreed.*

Congress have plainly no more right to alter the tender, when the parties have agreed on one, than they have to alter a measure, when the parties have agreed on one. Congress have no more power, for example, to say, when a man has promised to pay a hundred dollars, that he shall be required to pay but fifty, or that he may tender something else than dollars, (or other coin of equal legal value,) than they have to say that, when he has promised to deliver a hundred bushels of wheat, he shall be required to pay but fifty; or that he may tender oats, apples, or onions, instead of wheat.

In short, Congress have no power whatever over men's contracts, except simply to say that when men shall have agreed to pay a certain number of coins, of a denomination or denominations which Congress shall have previously designated as being of the same legal value with certain other coins, this legal value of all the coins, *relatively to each other,* shall be recognized by the parties and the courts, and the contracts shall be fulfilled and enforced accordingly; and that

when parties shall have agreed to pay a certain number of bushels, yards, or pounds, of any thing, it shall be understood that the bushels, yards, and pounds agreed upon, are such bushels, yards, and pounds as Congress shall have previously designated.

This power of Congress to designate beforehand certain coins, weights, and measures, with reference to which contracts may be made, (if the parties so choose,) with the certainty of having them accurately and truly fulfilled, is totally different from a power to control, alter, or impair men's contracts, by prescribing that more, less, or other than the parties have agreed on, shall be a legal tender in fulfillment of their contracts. The former power is a power *in aid* of men's natural power and right to make their own contracts, and have them truly and accurately enforced. The latter power would be a power wholly destructive of all men's natural rights to make their own contracts, or to have them enforced.

This attempt, on the part of Congress, to alter the tender, from what the parties to contracts have agreed on, and to require parties and courts to recognise any thing but "coin" as "a legal tender" in fulfilment of contracts for the payment of coin, is one of the most naked, impudent, and wicked usurpations that can be conceived. There is not a syllable in the Constitution that gives the slightest color of authority for any such enactment.

When a man has contracted, for value received, to deliver a plough, have Congress any constitutional power to enact that he may tender a gun, in fulfilment of that contract? Or if he has contracted to deliver a horse, have Congress power to enact that he may tender a bull? If a man has contracted to convey his farm, for value received, have Congress any power to enact that he may tender cats, dogs, snakes, and toads, in fulfilment of that contract? If a milliner has contracted to deliver a bonnet, have Congress power to enact that she may tender a wheelbarrow, or a handcart? If a jeweller has contracted to deliver a necklace, have Congress any power to enact that he may tender a coal hod? If a man has contracted, for value received, to deliver, to a lady, chairs, sofas, carpets, mirrors, and pictures, for her parlor, have Congress power to enact that he may tender tar, turpentine, oil, and lampblack, instead of the things agreed on? If a handsome and spirited young man has promised marriage with a young and beautiful woman, have Congress power to enact that he may tender a decrepid old man in his stead? Just as much constitutional power have Congress to do any and all these absurd and ridiculous things, as they have to alter men's contracts, or make any thing but "coin" a tender, where coin has been promised.

If Congress, under "the power to coin money, and regulate the value thereof, *and of foreign coin,*" have power to say that United States *notes* shall be a legal tender in payment of debts, they have evidently the same power to say that *foreign notes*—or the notes of foreign nations—shall also be a legal tender. If the word "*coin,*" as used in the Constitution, includes government notes, then certainly the words "*foreign coin*" include foreign government notes. So that, on the theory that Congress have power to make the United States *notes* a legal tender, it necessarily follows that they have equal power to make the notes of all other governments a legal tender.

Furthermore, the explicit provision of the Constitution, that "No *State* shall make any thing but *gold and silver coin* a tender in payment of debts," is additional and conclusive evidence, if any more could be needed, that *Congress* have no power to make any thing but *coin itself* a tender.

But it is said that Congress have power to debase the coin, and thus impair the value of existing contracts; and that, if Congress can impair existing contracts by debasing the coin, they have equal power to impair them by making something else than coin a tender.

It is true that Congress have power to debase the coin; but it is utterly untrue that they have any power to affect the value of existing contracts by so doing. It might as well be said that they have power to reduce the bushel, gallon, and yard measures; and by so doing reduce the value of existing contracts for the delivery of grain, spirits, and cloths.

It is an established principle in law, that the words of a contract are to be taken in the sense in which they are used at the time the contract is entered into; and that nothing subsequent can alter that meaning. Contracts for so many pieces of coin, are contracts for the things signified by those words at the time; and not for other and different things, that may be created afterwards, and made to bear the same names. In other words, contracts are for things, and not for mere names.

But the technical lawyer will, perhaps, inquire how can the original contract be enforced, or judgment be given for the coin contracted for, after the current coin of the country has been debased? The answer is, that in case of non-performance of contract, the principal has his option of two remedies, viz.: first, to bring suit for specific performance—that is, to compel the delivery of the identical thing promised, where its delivery is reasonably possible; and, second, where he does not desire the delivery of the identical thing promised, or where such delivery has become impossible, he can sue for the damage; the damage to be estimated and paid in the coin current at the time of the judgment.

Suppose, therefore, that from this day, the standard coin were to be debased to one half the value of the present standard; a creditor under a preexisting contract would have a right to demand payment of the original coin contracted for; and if payment were refused, he would have a right to sue for specific performance—that is, for the delivery of the particular coin contracted for. And it would be the duty of the court to enforce such delivery, if coin of the original standard were still in circulation so that its delivery was reasonably possible. But if the original coin had so far disappeared as to make its delivery practically impossible, then the creditor could sue for the damage; and it would be the duty of the jury, in estimating the damage, to take into account the relative value of the coin contracted for, and the debased coin, in which the damage was to be paid; and to give judgment for such an amount of the latter as would be equal in intrinsic value to the former.

There would be as much reason in saying that Congress have power, by *increasing* the value of the standard coin, to increase the value of existing contracts for coin, as there is in saying that they have power, by debasing the coin, to diminish the value of existing contracts for coin.

In short, contracts for the delivery of coin, at a future time, are not simply contracts for such coins as may, at that future time, happen to bear the names mentioned in the contracts. But they are contracts for such amounts of real gold and silver as the terms employed signify at the times when the contracts are entered into.

We will now consider the argument closed, so far as it relates to the power of Congress to make government notes a legal tender, under their "power to coin money, and regulate the value thereof, and of foreign coin."

But, inasmuch as some of the courts, that have acted upon the question, have pretended that the power to make the notes a legal tender is *included* in some of the other powers of Congress, such as the powers "to borrow money," "to lay and collect taxes," "to regulate commerce with foreign nations, and among the several States," and to carry on war, it may be proper to devote a few words to these points.

To determine whether the power to make the notes a tender is *included* in any, or all, the powers just mentioned, we must keep in mind that, when it is said that one power of Congress is *included* in another, it is meant that the former is a part of the latter; that the former is included in the latter, just as a part of any thing is included in the whole; for example, just as a peck of grain is included in the bushel of grain, of which it is a part; and just as an ounce of silver is included in the pound of silver, of which it is a part; and just as a rod of land is included in the acre of land, of which it is a part.

We must also keep constantly in mind—what has been already shown, in the former part of this chapter—that the whole idea of a tender arises out of the contract of the parties themselves; that what the debtor agrees to pay, and what the creditor agrees to receive, is the tender; and that, from the very nature of contracts themselves, (which are only the consent or agreements of the parties,) nothing else is the tender, or can be made so.

Congress have no more power to fix the tender, in any case, without the consent of the parties, than they have to make any or all other parts of a contract, without the consent of the parties. Unless, therefore, Congress have power to make contracts *ad libitum,* on behalf of individuals, and without their consent, they clearly have no power to make that part of their contracts, which fixes the tender, or the commodity in which their debts are to be paid.

The question, then, to be determined is equivalent to this, namely, whether the powers of Congress "to borrow money," "to lay and collect taxes," "to regulate commerce with foreign nations, and among the several States," and to carry on war, include, as a part of themselves, a general and unlimited power of attorney, or a general and unlimited authority, to make any and all contracts, binding upon individuals, and binding their property, when the individuals themselves have made no contracts at all, and given no consent to those made in their name by Congress?

Unless Congress have such a general and unlimited power of attorney, or such a general and unlimited authority, to make entire contracts, in the names and behalf of, and binding upon, individuals, without their consent, then they (Congress) have no manner of authority to make any contract whatever, *or any part of any contract whatever,* that shall be binding upon an individual, or that shall bind his property, when his own consent has not been given. And if they have no power to make any part of a contract for him, they have no power to contract that he will accept this, that, or the other thing, in payment of debts due him, when he himself has made no such

agreement; but has agreed only to receive such coin, grain, or other thing, as was specially mentioned in the contract.

Plainly the powers of Congress "to borrow money," "to lay and collect taxes," "to regulate commerce with foreign nations, and among the several States," and to carry on war, *include* no power at all to make or alter any contracts whatever for private individuals. They no more include a power to make or alter any part of a contract, for a private person, without his consent, than to make a whole contract for him, without his consent. They no more include a power to make any thing a tender in payment of debts due him, which he has not agreed to receive, than they include a power to make contracts, between individuals, to buy and sell, borrow and lend, give and receive, all kinds of property, when the individuals themselves have never agreed to any thing of the kind.

There would be just as much reason in saying that, in granting to Congress the powers "to borrow money," "to lay and collect taxes," "to regulate commerce with foreign nations, and among the several States," and to carry on war, the Constitution had given Congress an unlimited power of attorney to make any and all possible contracts whatsoever, on the part of private persons, for buying and selling, for borrowing and lending, for giving and receiving, their property of all kinds, as there is for saying that the Constitution has appointed Congress the attorney of private persons, for agreeing what they will receive in payment of their debts.

But let us consider these several powers separately—

1. The power of Congress "to borrow money on the credit of the United States."

The government notes, which Congress have declared to be a legal tender in payment of private debts, are issued under this power "to borrow money." And, therefore, this is the power that *ought*—if any of the powers of Congress ought—to include the power to make the notes a legal tender. But does it?

Certainly not; and for this reason, viz.: That there is no natural or logical connexion whatever between the power of Congress to borrow money of one man, and give him their note for it, and a power to make that note a legal tender in payment of a debt due to another man, who was not a party to the loan. As there is no natural or logical connexion between two such powers as these, it follows that one cannot be *included* in the other.

This power of Congress "to borrow money," is plainly a simple power to borrow it by private and voluntary contracts with those who choose to lend money to the United States. It has no reference to other persons, not parties to the loans, nor to the debts of individuals to each other. The act of borrowing is complete when Congress have obtained the money, and given their notes for it. There is an end of the whole transaction, so far as the "borrowing" of the money is concerned. And there is consequently the end of the power of Congress on that subject. It is preposterous to say that this power *includes, as a part of itself,* a power to make contracts, on behalf of other persons, not parties to the loan, as to what they will, or will not, receive, from *their debtors,* in payment of their debts.

When A lends money to B, and B gives his note for it, that contract *includes* no contract—and implies no power on the part of B to contract—that C, D, E, and every body else will receive his (B's) note in payment of any debts that may be due them. A and B, in this case, have no power whatever to make any contracts whatever affecting other men's rights.

So when Congress borrow money of A, and give him their notes for it, the contract is, in all respects, like that between two individuals. It includes no contract—and implies no power on the part of Congress to contract—that B, C, D, or any body else will accept the notes which Congress give to A for the money, as a legal tender in payment of debts due them.

The act of "borrowing money on the credit of the United States," is, in its nature, a wholly private and voluntary contract between Congress and the lender of the money. It is as much a private and voluntary transaction, as is the borrowing and lending of money between two individuals. No other persons, than Congress and the lender of the money, are parties to the loan. No other parties are consulted, nor allowed any voice, in regard to the matter. How, then, can it be said that the power of Congress to borrow money of A, by private and voluntary contract with him, *includes* a power to agree, on behalf of B, C, D, and every body else, who had nothing to do with the loan, that they will accept from their debtors, in satisfaction of the debts due them, something different from what they had agreed to receive, and their debtors had agreed to pay?

Plainly there is no manner of relation or connexion between two powers so utterly dissimilar and foreign to each other. Consequently one is not included in, and does not constitute a part of, the other.

The only other powers that could possibly be said to be naturally, logically, or impliedly *included* in this power of Congress "to borrow money," would be the powers to raise money by taxes or otherwise, and repay what they had borrowed. But these powers, instead of being left to implication, as being *included* in the power "to borrow money," are expressly conferred by the Constitution, in these other words, viz.: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, *to pay the debts,* and provide for the common defence and general welfare, of the United States."

Thus the Constitution has given to Congress, *in express terms,* all the powers that naturally belong together, or depend upon, or make parts of, each other, to wit: the powers to borrow money, and to raise money by taxes, &c., and pay what they have borrowed.

How absurd, then, is it, when the Constitution has been so explicit in granting all the powers on this subject, that are naturally related to each other, or in any way depend upon each other, to say that the power to borrow money *includes* still another power, and one, too, entirely foreign to the subject, viz.: a power to make the notes, given for borrowed money, a legal tender in payment of debts to persons who had nothing to do with the loan.

2. The power of Congress "to lay and collect taxes, duties, imposts, and excises."

It is said that this power includes a power to say in what coin, currency, or other things, the taxes, duties, &c., shall be paid. Very well; suppose it does. How does this power to designate the commodity in which taxes shall be paid to the government, include any power to make contracts,

on behalf of private persons, as to what commodities they will, or will not, accept in payment of debts due them?

For the sake of the argument, it may be granted that Congress have power to enact that all taxes, &c., to the United States shall be paid in *pigs.* But does that power *include* a general power of attorney, from every body in the United States, to agree that they will accept pigs in payment of all debts due them?

If a man owes the United States one, two, three, five, or ten pigs, as taxes, it may be practically necessary that he should either raise the pigs, or buy them. If he should not, Congress may have power to order the sale of so much of his property as will purchase pigs to the amount of his taxes. But all this implies no power whatever, on the part of Congress, to usurp his rights of making his own contracts, and to agree, on his behalf, and without his consent, that he will accept pigs in payment of any, or all, debts due him.

3. The power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

What is commerce? It is the purely voluntary act of two or more persons. It is the buying and selling, the borrowing and lending, the giving and receiving, of commodities by voluntary agreement between the buyer and seller, the borrower and lender, the giver and receiver.

What is it "to regulate commerce?" It is to secure and protect all voluntary commerce between individuals, that is *naturally and intrinsically just and lawful;* and to prohibit all commerce that is *naturally and intrinsically unjust and unlawful.*

This power of *Congress,* therefore, "to regulate commerce," is simply a power to secure and protect all commerce "with foreign nations, and among the several States, and with the Indian tribes," that is naturally and intrinsically just and lawful; and to prohibit all commerce that is naturally and intrinsically unjust and unlawful. And this is the whole of the power; unless possibly the power may include a power to render such *incidental aid* to the commerce of private persons, as it may be reasonable for Congress to render, and such as may be beneficial to the parties carrying on the commerce.

But the power of Congress "to regulate commerce," includes no power, on their part, to usurp the commerce of private persons. It includes no power to usurp the power of making contracts on behalf of private persons, without their consent. It includes, for example, no power to alter the contracts of private persons, and convert contracts for the delivery of grain, wool, or cotton, into contracts for the delivery of ice, iron, or coal. Of course, it includes no power to alter contracts for the delivery of coin, into contracts for the delivery of government notes.

It has been said by the Supreme Court of the United States, that the power of Congress "to regulate commerce," is a power "to prescribe the rule by which commerce is to be governed."*

Using the terms "prescribe," "rule," and "governed," in the senses in which the court evidently intended to use them—that is, to signify the exercise of arbitrary authority over commer-

ce—this definition is an utterly false and atrocious one. It would give Congress power arbitrarily to control, obstruct, impede, derange, prohibit, and destroy commerce.

It would also give Congress power to force men to carry on commerce against their will.

To force men to carry on commerce against their will, would be no more unjust or tyrannical than it is to prohibit, impede, or obstruct commerce, when men wish to carry it on.

It is a natural right of all men (who are mentally competent to make reasonable contracts) to make such contracts as they please, for buying and selling, borrowing and lending, giving and receiving, property, provided only that there be no fraud or force used, and that the contracts have in them nothing intrinsically criminal or unjust.

The free right of buying and selling, borrowing and lending, giving and receiving (by contracts naturally and intrinsically just and lawful) all property that is naturally a subject of bargain and sale, is among the most vital and valuable of all a man's natural rights. And this right Congress have no power to interfere with, under pretence of "regulating commerce."

Even the power of restraining commerce, otherwise just and lawful, in order to guard against contagious diseases and public enemies, is no exception to the principle laid down; for that commerce is not intrinsically just and lawful, which carries with it contagious diseases, or introduces, or opens the door to, public enemies.

The verb "to regulate," does not, as the court assert, imply the exercise of any arbitrary control over the thing regulated, nor any power "to prescribe [arbitrarily] the rule by which" the thing regulated "is to be governed." On the contrary, it comes from *regula,* a rule; and implies *the pre-existence of a rule, to which the thing regulated is made to conform.*

To regulate one's diet, for example, is not, on the one hand, to starve one's self to emaciation, nor, on the other, to cram one's self with all manner of indigestible and hurtful substances, in disregard of the natural laws of health. But it supposes the pre-existence of *natural laws of health,* to which the diet is made to conform.

A clock is not "regulated," when it is made to go, to stop, to go forwards, to go backwards, to go fast, and to go slow, at the mere will or caprice of the person who may have it in hand. It is "regulated" only when it is made to conform to, or mark truly, the diurnal revolutions of the earth. These revolutions of the earth constitute the pre-existing rule, by which alone a clock can be regulated.

A mariner's compass is not "regulated," when the needle is made to move this way and that, at the will of an operator, without reference to the north pole. But it is regulated when it is freed from all disturbing influences, and suffered to point constantly to the north, as it is its nature to do.

A locomotive is not "regulated," when it is made to go, to stop, to go forwards, to go backwards, to go fast, and to go slow, at the mere will and caprice of the engineer, and without regard to economy, utility, or safety. But it is regulated, when its motions are made to conform to a pre-existing rule, that is made up of economy, utility, and safety combined. What this rule is, in the

case of a locomotive, may not be known with such scientific precision, as is the rule in the case of a clock, or a mariner's compass; but it may be approximated with sufficient accuracy for practical purposes.

The pre-existing rule, by which alone commerce can be "regulated," is a matter of science; and is already known, so far as the natural principles of justice, in relation to contracts, is known. The natural right of all men to make all contracts whatsoever, that are naturally and intrinsically just and lawful, furnishes the pre-existing rule, by which *alone* commerce can be regulated. And it is the only rule, to which Congress have any constitutional power to make commerce conform.

When all commerce, that is intrinsically just and lawful, is secured and protected, and all commerce that is intrinsically unjust and unlawful, is prohibited, then commerce is regulated; and not before.

Of course this power of Congress "to regulate commerce," *includes* no power to pervert, alter, impair, or destroy the natural or intrinsic obligation of men's contracts. Consequently it includes no power to convert a contract for the payment of gold and silver, into a contract for the delivery of government notes, or any thing else, to which the parties have never agreed.

If the power of Congress to regulate commerce were such an absolute power, as the Supreme Court represents it to be, viz.: a power "to prescribe the rule by which commerce is to be governed," this absurd result would follow, viz.: that all the legislation of Congress on the subject would be *necessarily constitutional;* and the Supreme Court itself would have no right even to consider the question of its constitutionality. It would have no function to perform in regard to such legislation, except simply to interpret and execute it. In ascribing such absolute power to Congress, therefore, the Supreme Court is really denying and abjuring its own constitutional power to judge of the constitutionality of the laws of Congress. Who, before, ever imagined that the constitutionality of the laws of Congress, in regard to commerce, was not a proper subject for judicial consideration, and adjudication?

But even if the power of Congress "to regulate commerce" were of that arbitrary and tyrannical character, which the court declares it to be, it would still be insufficient to accomplish the object of making the government notes a legal tender in payment of debts *generally;* inasmuch as the power is only a power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." It is not a power to regulate the purely internal commerce of a State—that is, commerce between two persons living within the same State. It could, therefore, do nothing towards making the government notes a tender between two such persons. Its practical effect, therefore, would be, in a great measure, defeated by this limitation upon the power itself.

4. The power to carry on war.

The Constitution grants this general power to Congress in the form of the several separate powers given below, (with the limitations upon them,) to wit:

> "The Congress shall have power to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water: To raise and support ar-

mies; but no appropriations of money to that use shall be for a longer term than two years: To provide and maintain a navy: To make rules for the government and regulation of the land and naval forces: To provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasions: To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress."

In the name of common sense, how can it be said that any or all these powers *include* a power to meddle with, make, alter, or abolish the contracts of private individuals with each other? Or—what is equivalent thereto—to make any thing a legal tender in payment of private debts, which the parties themselves have never agreed to? The former powers are all naturally so entirely foreign to the latter, that, at first view, it would scarcely seem more ridiculous to say that the power of Congress "to define and punish piracies and felonies on the high seas, and offences against the law of nations," *included* a power to make government notes a legal tender in payment of private debts, than it does to say that the power of Congress to carry on war includes the power to make those notes a tender.

There would obviously be just as much reason, just as much congruity of ideas, and just as much natural and logical consistency, in saying that, because Congress have power to carry on war, and, in doing so, have occasion to sell old army stores, old horses, old muskets, old ships, and old war material in general, therefore the power of Congress to carry on war, *includes* a power to enact that whenever any old war material shall be sold, it shall become a legal tender, in the hands of the purchasers and their assigns, in payment of all private debts, as there is in saying that, because Congress have power to carry on war, therefore, that power must include a power to make the notes given by them for money to carry on the war, a legal tender in payment of private debts.

There is just as much natural connexion between the power of Congress to carry on war, and a power, on their part, to make old war material, thus sold by them, a legal tender in payment of private debts, as there is between their power to carry on war, and a power to make the notes, given by them for money borrowed for the war, a legal tender in payment of private debts.

But it is said that Congress can borrow money cheaper, if they make their notes a legal tender, in the hands of the holders, than if they do not. So, also, it may just as well be said, that they can sell their old horses, old knapsacks, old muskets, old cannon, and old ships at higher prices, if they make them legal tender, in the hands of the purchasers and their assigns, than if they do not. If, then, the argument of profit is a sound one, in favor of the power, in one case, it is equally sound in the other.

But there is still another absurdity in this matter. The Constitution does not give absolute and unqualified power to Congress for carrying on war. It does not even give all the powers, which—but for the special limitations mentioned—would have been *naturally and logically included* in the general power to carry on war. For example, it says "No appropriation of money to that use shall

be for a longer term than two years." It also "reserves to the States respectively the appointment of the officers [of the militia] and the authority of training the militia, according to the discipline prescribed by Congress."

When the Constitution is so jealous of the public rights that it expressly withholds from Congress certain powers, which otherwise would have been naturally and logically included in the general power to carry on war, how absurd is it to say that their power to carry on war includes—*without its being so mentioned*—a power so utterly foreign and irrelevant to it, and so destructive of the principles of justice, as is the power to alter and impair men's contracts by making government notes a tender in payment of private debts.

There would be just as much reason in saying that the power of Congress to carry on war, *includes* a power to make the speeches delivered in Congress in favor of the war, a tender in payment of men's debts, as there is in saying that it includes a power to make the government notes such a tender.

It will now be taken for granted that it has been shown that neither the power "to borrow money," "to lay and collect taxes," "to regulate commerce with foreign nations, and among the several States," nor to carry on war, gives Congress any power to make government notes a legal tender in payment of private debts.

But it is said, by some of those who attempt to uphold the legal tender acts, that Congress not only have certain specific powers granted to them by the Constitution—such as the powers to borrow money, carry on war, &c.—but that they have another, and a very comprehensive, power, viz.:

> 5. The "power to make all laws which shall be *necessary and proper* for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or any department thereof."

Some, or all, those persons, who have quoted this provision, as authorizing the legal tender acts, say that Congress are the sole judges of what laws are thus "necessary and proper," and have, therefore, unlimited powers to pass any laws they see fit, provided only that the laws will *tend* to carry into execution the other constitutional powers of Congress, and are not *actually forbidden* by the Constitution. Consequently they say that, as the Constitution has *not forbidden* Congress to make their notes a legal tender, and as the making them such will aid in borrowing money for the war, they necessarily have the power to make them such.

In other words, they say, in effect, (and without saying so, their argument would amount to nothing,) that all laws whatsoever—*no matter how unjust in themselves*—that will, *in any way,* serve to accomplish a constitutional end—such as borrowing money, carrying on war, &c.—are constitutional means to that end, if Congress shall decide to use them, *and if the Constitution has not forbidden those particular laws.*

In short, their argument is, that the simple injustice of the laws is, of itself, no argument against their being "necessary and proper," and, therefore, constitutional.

And they say, further, that, in the case of *McCulloch* vs. *Maryland*, the Supreme Court of the United States has declared this same doctrine.

One answer to these persons is, that the Supreme Court did not say, either expressly or impliedly, in the case of *McCulloch* vs. *Maryland*, that the injustice of a law could not be taken into consideration in determining whether it were "necessary and proper," and, therefore, constitutional—if it would but tend to accomplish a constitutional purpose, and if the Constitution had not forbidden it.

Another answer is, that if the Supreme Court had declared such a principle, they would have as much deserved to be hanged, as any criminal that ever mounted the gallows.

If all laws of Congress, *however unjust*, are nevertheless constitutional, *if not forbidden*, and if they will tend to accomplish any constitutional end, there is scarcely any conceivable injustice which Congress might not constitutionally authorize, as being "necessary and proper" means of accomplishing constitutional ends.

For example: The Constitution does not, in so many words, forbid Congress to prohibit all loaning of money to private persons, until Congress shall have borrowed all they wish, and at such rates as they please. The Constitution does not, in so many words, forbid Congress to prohibit matrimony on the part of each and every individual, until he or she shall have loaned one, five, ten, or fifty thousand dollars to the government. It does not, in so many words, forbid Congress to cause scalding water to be thrown upon the children of all persons who refuse to lend their money to the United States. It does not, in so many words, forbid Congress to make it a criminal offence—punishable with confiscation, imprisonment, or death—to refuse to lend money to the government, in such amounts, for such times, and at such rates of interest, as Congress may prescribe, or without any interest at all. Such laws might, perhaps, aid Congress in borrowing money at lower rates than they otherwise could. But would such laws be, therefore, constitutional? And would courts have no power to declare them unconstitutional? Certainly such laws would be, not simply unjust, but also unconstitutional. And certainly it would be the duty of the courts to declare them so. But they would be no more clearly unconstitutional, than are the laws making the government notes a legal tender in payment of private debts.

The Supreme Court, in the case mentioned, did not say one word in favor of Congress having power to pass *unjust laws*—as being "necessary and proper" to accomplish constitutional ends—if they were not forbidden.

The language of the court is not, perhaps, so explicit as it ought to be. And, without ascribing to that court any immaculate purity, it may be said that their opinion is, very likely, not so explicit as it would have been, if they had supposed there would ever come after them judges so ignorant, or so corrupt, as to cite their opinion in support of a proposition so infamous.

The precise words of the court are these:

> "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are *appropriate,* which are plainly adapted to that end, which are not prohibited, *but consist with the letter and the spirit of the Constitution,* are constitutional."—4 *Wheaton,* 421.

And the court said nothing inconsistent with these limitations, viz.: that all laws, in order to be "necessary and proper" for carrying into execution the constitutional powers of Congress, must be "*appropriate*" to the end in view, and must also "*consist with the letter and the spirit of the Constitution.*"

What, then, are "the letter and spirit of the Constitution" on these particular subjects of legal tender, and the inviolability of private contracts? They are to be found in these four provisions, viz.:

> 1. "Congress shall have power to coin money, and regulate the value thereof, and of foreign coin."
>
> 2. "Congress shall have power to establish uniform laws on the subject of bankruptcies, throughout the United States."
>
> 3. "No State shall make any thing but gold and silver coin a tender in payment of debts."
>
> 4. "No State shall pass any law impairing the obligation of contracts."

These provisions—and there are no others conflicting with them either in letter or spirit—give us fully and distinctly both "the letter and the spirit of the Constitution," relative to legal tender, and the inviolability of contracts. What countenance do they give to any power in Congress to impair or destroy men's contracts, by authorizing them to be paid in something which the debtor never agreed to pay, nor the creditor to receive?

But there is still another mode of ascertaining whether the Constitution authorizes Congress to pass any *unjust laws,* as being "necessary and proper" for carrying into execution the powers specifically granted. And that mode is furnished by the primary rule of interpretation, which is acknowledged to be authoritative for interpreting all legal instruments whatever which courts enforce. That rule is, that an innocent meaning—a meaning favorable to justice—*and no other,* must be given to all legal instruments—whether contracts, statutes, constitutions, or treaties—whose language will possibly bear that meaning.

The Supreme Court of the United States have laid down the rule in these words:

> "Where rights are infringed, where fundamental principles are overthrown, where the general system of the laws is departed from, the legislative intention must be expressed with irresistible clearness, to induce a court of justice to suppose a design to effect such objects."*

The same rule, in substance, but in different words, is continually laid down by courts, in their interpretations of constitutions, statutes, and contracts. Every judge, not an ignoramus, is perfectly familiar with the rule. And every judge, who ever violates the rule, is either ignorant or corrupt. The test is an infallible one.

This rule is as applicable to the interpretation of the Constitution as of any other instrument whatever; and is sufficient, of itself, to prove that the Constitution authorizes no *unjust laws* whatever (unless explicitly mentioned) as being "necessary and proper" for carrying into execution the general powers granted to the government.

Of course, the rule is sufficient to prove that the Constitution gives Congress no power to impair or destroy the obligation of men's private contracts, as a means of borrowing money a little cheaper than they otherwise could.

It is sickening to think that there can be found judges so ignorant or unprincipled, as to argue that the Constitution authorizes all manner of unjust laws, except those that it forbids. And yet this is what these judges have been necessitated to do, who have attempted to sustain the legal tender acts of Congress.

If those who framed the Constitution, had undertaken to enumerate—in order to forbid—all the unjust laws that Congress might otherwise devise and enact, under pretence of carrying out their constitutional powers, the instrument would never have been completed. They, therefore, contented themselves with framing an instrument that should grant certain important powers to the government, with "power to make all laws which shall be *necessary and proper* for carrying into execution the foregoing powers," &c.; trusting that the instrument, being avowedly instituted "to establish justice, insure domestic tranquility, promote the general welfare, and insure the blessings of liberty," would find interpreters honest enough to give it the benefit of a rule that would at least forbid all injustice, that was not specially licensed by it. And this was all that was really necessary, in a legal point of view.

Nevertheless, after the Constitution had been adopted, the country—having some knowledge of the propensity of legislative bodies to disregard all constitutional and moral restraints, and to resort to all manner of injustice, under the pretext of its being "necessary and proper" for accomplishing some desirable purpose or other—did append various amendments to the Constitution, specially enumerating, and forbidding, some of those unjust laws, which it was supposed Congress would otherwise be most likely to enact.

Among the laws thus explicitly forbidden, were laws "prohibiting the free exercise of religion;" "abridging the freedom of speech or of the press;" "infringing the right of the people to keep and bear arms;" "depriving persons of life, liberty, or property, without due process of law;" "taking private property for public use, without just compensation;" and several others. Having done this, the country then—as if aware of the impossibility of enumerating all laws that ought to be forbidden, and by way of imposing a general prohibition against all unjust laws not specially enumerated—added these two comprehensive amendments, viz.:

> "The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."
>
> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

These amendments are supplementary to all other provisions, and rules of interpretation, and are, of themselves, sufficient, if any thing more were needed, to prohibit any and every species of injustice, that is not (in the language of the Supreme Court) licensed in terms of "irresistible clearness."

The only argument, on which the legal tender acts are really attempted to be sustained, is equivalent to this: That Congress have constitutional power to license universal fraud, the violation of all faith, and the disregard of all justice, between man and man, in their private dealings, if the government can thereby borrow money cheaper than it otherwise could.

At the value at which the legal tender notes now stand in the market,* the government says to all debtors throughout the country: If you will lend to the government the money you honestly owe to your creditors, the government will license you to defraud them of some thirty or forty per cent. of what you owe them. The government holds this out as a standing offer to all debtors; and, perhaps, by so doing, it saves one, two, or three per cent. on the amount it borrows; *and perhaps not.*

If, now, the government may rightfully resort to such means as these to save a small per centage on its loans, it may, on the same principle, license those men, who lend money to the government, to commit all manner of crimes against their neighbors with impunity.†

But, were it not that Congress might attempt to pass new tender laws, all the preceding argument might have been spared; because their existing laws, declaring United States notes a legal tender, are utterly void for still another reason than the want of any constitutional power on the part of Congress to make any thing but "coin" such a tender. That other reason is, *that the acts do not declare the value of the notes; or how much they shall be a tender for.* Congress seem to have taken it for granted that by simply declaring that they "shall be lawful money, and a legal tender in payment of all debts public and private," they had virtually declared that these mere promises to pay dollars should be held equivalent to an equal number of real dollars. But such would not be the legal effect of the statute, even if we were to admit the constitutional power of Congress to make the notes a tender. It would still be necessary for Congress to specify precisely the *value* the notes should have, *relatively to coin.* Suppose that Congress (having power to do so) had enacted that apples, onions, and potatoes, "shall be lawful money, and a legal tender in payment of all debts public and private," it would not follow, from this form of words, that each apple, onion, or potato, was to be considered either a dollar, or the equivalent of a dollar. Neither, because Congress have declared that certain government promises to pay dollars, "shall be lawful money, and a legal tender in payment of all debts public and private," does it follow (without its being so specified) that these promises are to be considered, for the purposes of such tender, equal in value to the number of dollars promised.

But the men, who enacted these tender laws, and the judges, who have attempted to sustain them, have assumed that a promise to pay a dollar was to be considered the equivalent of a dollar, for the purposes of legal tender; when the acts themselves said nothing of the kind; and nothing from which any inference could *legally* be drawn, as to *what* value they were to have, as a tender.

The necessary consequence is that—for this reason alone, if there were no other—all the existing acts of Congress making United States notes a tender in payment of "*private* debts," are void.*

The fact that such a blunder as this should pass the ordeal of Congress, and of four or five courts, shows what brilliant and careful lawyers Congress and the courts are made up of.

CHAPTER VI. UNCONSTITUTIONALITY OF THE NATIONAL BANK ACT.

The National Bank Act is unconstitutional in various particulars, as follows:

1. It proceeds throughout on the assumption that the notes of the government will be a legal tender in payment of all debts due to and by the banks. If, then, the Legal Tender Acts of Congress are unconstitutional, as shown in the preceding chapter, the Bank Act must fall with them; for the banks, authorized by the act, cannot sustain themselves for an hour, as practical business institutions, if liable to be sued on their notes for specie; nor can the customers of banks, if solvent men, afford to borrow depreciated currency, and give their notes for it, if they are liable to be sued on those notes for specie. The unconstitutionality of the Legal Tender Acts, therefore, settles at once all questions as to the *practicability* of the national banks.

2. The guaranty of the notes of the banks by the government is unconstitutional.

Where did Congress get their power to guarantee the notes of banks all over the country? In the same clause of the Constitution that gives them power to guarantee the notes of all the farmers, mechanics, merchants, and every body else, throughout the country; and in no other. And that clause will be found, if at all, in the Constitution manufactured by Congress themselves. It certainly exists in no Constitution that the country has ever known any thing of previous to the last Congress.

But it will be said that Congress secure the United States against loss, by requiring a deposit of their own bonds with the United States Treasurer. Well, suppose they do. Have Congress the power to guarantee the notes of all other persons, who will deposit bonds or other property, satisfactory to Congress, to indemnify the United States against loss? If not, then they have no power to guarantee the notes of bankers on those conditions. And if any officer of the government should ever pay a dollar of the public money on any such guaranty, or if the President should suffer any officer of the government to pay a dollar on any such guaranty, he ought to be impeached. And if any judge, having jurisdiction, should refuse to enjoin the United States Treasurer against thus paying the public money, he would deserve impeachment.

The idea that Congress have any constitutional power to guarantee the notes of bankers, or of any body else, is perfect idiocy.

3. As Congress have no constitutional power to guarantee the notes of bankers, or any body else, and as such guaranty, if given, is void, they have no constitutional power to require or accept

deposits of their own bonds, or of any other property, to indemnify the United States for such unconstitutional and void guaranty. Consequently all such deposits are, in law, void; and Congress have no authority to avail themselves of them. Any bonds actually deposited with the United States Treasurer, for such a purpose, are, in law, deposited with him as an individual, and not as an agent or officer of the United States; and Congress have no power to make the United States responsible for his safe keeping of the bonds. And he is in no manner responsible to the United States for the use he makes of the bonds. The owners of them may demand them at pleasure, on the ground that they were deposited for no lawful purpose, and that the United States have no lien upon them. Or the Treasurer may appropriate them to his own use, and Congress could call him to no account for so doing. The owners alone could have any action against him.

Suppose Congress were to appoint agents throughout the country, to receive deposits of property, from all persons who might choose to make them, and thereupon to furnish, to the depositors, notes guaranteed by the United States. We all know that all such transactions would be void in law, on the grounds that Congress had no power to make any such guaranty, or consequently to receive any deposits of property to protect the United States against it. Congress would have no power to make the United States responsible for the safe keeping of such deposits; or to hold their illegal agents to any legal responsibility for the property deposited with them. These pretended agents of the United States would be, in law, the agents of the depositors alone; and the depositors could recover their deposits at pleasure, without any interference from the United States. And the case is the same with these bankers, as it would be with any other persons, farmers, merchants, or others, who might deposit property with any pretended agent of the United States, and receive in exchange notes guaranteed by the United States.

Congress have just as much constitutional power to go into a general guarantee business, guaranteeing the notes of any body, and every body, as they have to guarantee the notes of bankers.

4. The undertaking of Congress to furnish the banks with the notes they are to use, is unconstitutional. Where did Congress find their power to go into the business of bank note engraving? In the same clause of the Constitution that gives them power to go into the daguerreotype business; and in no other. Congress have just as much power to furnish the banks with banking houses, with vaults, safes, desks, and stationery; and to appoint and pay their presidents, cashiers, and clerks, as they have to furnish the bills of the banks. And the fact that Congress are to be paid for the bills they furnish, and that the business may be a profitable one, does not at all alter the case. There are, perhaps, many kinds of business that might be made profitable, if Congress were to take it into their own hands, and suppress all competition. But it does not, therefore, follow that Congress can go into such business.

Congress have just as much power to go into the business of making farming utensils, and selling them to the farmers; of making machinery, and selling it to manufacturers; of making locomotives, and selling them to rail-road companies, as they have to go into the bank note business.

5. Congress have no power to incorporate these banking companies, or give them any corporate privileges, or hold them to any corporate responsibility whatever.

As long ago as 1819, in the case of *McCulloch* vs. *Maryland,* (4 Wheaton's Reports,) the Supreme Court of the United States gave an opinion, which fully covers the Bank Act of Congress, and declares it unconstitutional. In that case the court held that the law incorporating the old bank of the United States *was* constitutional. But they declared it so, *distinctly and solely,* on the ground that the bank was a necessary, or at least a proper and useful, agency to be employed in keeping and disbursing the public monies. And those services the bank was required, by its charter, to perform, free of expense to the government; transmitting money from one part of the country to another, without any charge for exchange.*

Thus the court say:

> "Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require that the treasure raised in the North should be transported to the South, *that* raised in the East conveyed to the West, or that this order should be reversed. Is that construction of the Constitution to be preferred which would render these operations difficult, hazardous, and expensive?" Page 408.
>
> "It is not denied that the powers given to the government imply the ordinary means of execution. That, for example, of raising revenue, and applying it to national purposes, is admitted to *imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance.* But it is denied [by the counsel opposed to the bank] that the government has its choice of means; or that it may employ the most convenient means, *if to employ them, it be necessary to erect a corporation.*
>
> "On what foundation does this argument rest? On this alone: The power of creating a corporation, is one appertaining to sovereignty, and is not expressly conferred on Congress. This is true. But all legislative powers appertain to sovereignty," &c. Page 409.
>
> "If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank, *if required for its fiscal operations.* To use one must be within the discretion of Congress, if it be an appropriate mode of executing the powers of the government. That it is a convenient, a useful, an essential instrument *in the prosecution of its fiscal operations,* is not now a subject of controversy. All those who have been concerned in the administration of our finances, have concurred in representing its importance and necessity; and so strongly have they been felt, that statesmen of the first class, whose previous opinions against it had been confirmed by every circumstance which can fix the human judgment, have yielded those opinions to the exigencies of the nation. Under the Confederation, Congress, justifying the measure

by its necessity, transcended perhaps its powers to obtain the advantages of a bank; and our own legislation attests the universal conviction of the utility of this measure." Page 422-3.

By the "fiscal operations" of the government, the court must be supposed to mean simply the keeping and disbursing of the public money; for those were the only "fiscal operations" the bank was required, by its charter, to perform for the government; and they were also the only "fiscal operations," *that were specially pointed out by the court,* as being such as the bank *could* perform as the agent of the government. The bank was, therefore, held constitutional solely upon the ground of its being a proper and useful agent of the government for keeping and disbursing the public money.

The point of the opinion was, that, if the government needed an agency of that kind, for executing any of its constitutional powers, it had a right to create one by an act of incorporation.

On this principle, if the government were to make a contract, with a body of men, to carry the mail, or furnish supplies for the army, it would have a right to incorporate them.

That was the *only* ground on which the court held that that bank charter was constitutional. The whole argument of the court proceeded upon the ground that Congress had no power to grant charters of incorporation, except to companies whose services were needed *by the government itself,* in performing some one or other of its constitutional duties.

If that opinion of the court was correct, it follows that the present Bank Act of Congress is *clearly unconstitutional;* inasmuch as the banks, authorized by it, are, in no sense, agencies of the government; and are not required, by the act, to perform any services whatever for the government. And Congress, therefore, have no more power to incorporate them, than they have to incorporate hospitals, schools, churches, rail-road, insurance, manufacturing, and mining companies.

It is worthy of notice, too, that notwithstanding the Supreme Court held that the charter of the old bank was constitutional, probably more than half the *people* of the United States have always believed it unconstitutional.

And it *was* unconstitutional, in so far as it licensed the stockholders to contract debts among the people, in their corporate capacity, and under a limited liability. Congress have no authority to pass any law impairing or limiting the obligation of men's contracts, or screening their property from liability for debt, unless it be a "uniform law on the subject of bankruptcies." A bank charter does not come within that definition; and therefore a bank charter is unconstitutional, in so far as it attempts to exempt the corporators from their liability as partners, no matter what services the bank may perform for the government.

The argument of the court does not at all sustain the conclusion that Congress have any such power. That argument was that Congress had authority to "pass all laws that were necessary and proper for carrying into execution" the substantive powers of the government; and that, therefore, if a corporation were a convenient and proper agent to be employed in keeping and disbursing the revenues, Congress had a right to create such an agent. That is to say, if Congress wished

to contract with a company of men to perform a certain service for the government, they had power to recognize them as a corporation, *so far as the performance of that particular service was concerned.* This all looks reasonable enough; and it is probably correct law that Congress may incorporate a company, and authorize them to do, in their corporate capacity, *any thing which they are to do for the government.* And Congress may undoubtedly limit, at discretion, the liability which the stockholders shall incur *to the government.* And the company may probably, in their corporate capacity, buy and sell bills of exchange, so far as it may be convenient to do so, in transmitting the public funds from one point of the country to another; because bills of exchange are the most usual, safe, cheap, and expeditious mode of transmitting money.

But all this is a wholly different thing from a charter authorizing the company, not only to perform these services for the government, but also to carry on the trade of bankers, in all its branches, and contract debts at pleasure *among the people,* without being liable to have payment of their debts enforced, either according to the natural obligation of contracts, or the laws of the States in which they live.

The argument of the court does not justify the grant of any such authority to the company. It goes only to the extent of authorizing the company to use their corporate rights in doing the business of the government alone; for the court say, that if an agent be needed to perform certain services for the government, the government may create an agent for that purpose. The court admit also, that the need or utility of such an agent for carrying into execution the powers of the government, is the only foundation of the authority to create the agent. This principle clearly excludes the idea of creating the corporation for any other purpose; and of course it excludes the idea of giving it any other corporate powers than that of performing the services required of it by the government. Now, in order that the company may keep and disburse the revenues (which were the only services the government required, or which the opinion of the court contemplated that the bank would perform) it plainly was not at all necessary that they should have the privilege of contracting debts among the people, as bankers, in their corporate capacity, or under a limited liability, or with an exemption from the operation of those State laws, to which all other citizens are liable.

If Congress may, by a charter, protect the private property of a company of bankers, from liability for their banking debts, according to the laws of the States, merely because, in addition to their banking business, they perform for the government the service of keeping and disbursing its revenues, then, by the same rule, Congress may by law forbid the State governments to touch the private property of any Collector of the Customs, or of any clerk in the Custom House, for the purpose of satisfying his debts. And the result of this doctrine would be, that every person, who should perform the slightest service of any kind for the government, might be authorized by Congress to contract private debts at pleasure among the people, and then claim the protection of Congress, not merely for his person, but also for his property, against the State laws which would enforce the obligation of his contracts. Every postmaster, for instance, and every mail contractor might have this privilege granted to them as part consideration for their services; for Congress have as much power to grant this privilege to postmasters and mail carriers, in considera-

tion of the particular services they perform for the government, as they have to grant it to a company of bankers, as a consideration for their keeping and disbursing the revenues.

But suppose that Congress should enact that the private property of all officers and agents of the government, and all persons having contracts to furnish supplies to the government, should be exempt from liability for debt. Would there not be one universal outcry that such a law was unconstitutional? Certainly there would. But it would be no more unconstitutional than a law exempting the private property of a company of bankers, on account of their being the agents of the government for keeping and disbursing its revenues.

In this particular, then, the charter of the old bank was unconstitutional. And if that charter was unconstitutional, still more, if possible, are the charters of the present banks unconstitutional, inasmuch as these banks perform no services at all for the government. They *entirely lack* the *only* element that was supposed, by the court, to make the charter of the old bank constitutional.

If the Constitution itself gives Congress no power to incorporate banks, their law, for that purpose, cannot be made constitutional by the consent of the State legislatures. The constitutional powers of Congress, within a State, cannot be increased by the consent of the State legislature. If they could, the general government might have much greater powers in one State than in another. It might increase its powers in each State just according as it could make bargains with the legislature of the State. In fact, a State legislature might, by a simple vote, surrender all the constitutional powers of the State to the general government.

If the Bank Act be unconstitutional, the banks can have no corporate existence under it; and can neither sue, nor be sued, by their corporate names. The bankers can sue and be sued, if at all, only as partners; and they will be liable as partners for all debts of the banks.

If the act be unconstitutional, then all its provisions for preventing frauds on the part of the bankers, are void, and the directors can commit all manner of frauds against both bill holders and stockholders, and no redress can be had, unless under the laws of the States relative to swindling; and even that redress would most likely prove of no practical value.

The directors, having obtained their bills of the United States Treasurer, by a deposit of bonds, would loan the bills to themselves, or to men confederated with them. They would then demand the bonds of the Treasurer, on the grounds that the Act was unconstitutional; that the United States were not holden for the bills, and had no lien upon the bonds, and were not even responsible for the safe keeping of the bonds. The Treasurer, unless he wished to embezzle the bonds himself, would give them up. If he should not give them up willingly, suit would be brought to compel him.

Having got the bonds, the directors would dispose of them, and put the proceeds in their pockets.

Having thus embezzled the capital and assets of a bank, if they should be indicted under the bank act itself, they would plead that the act was unconstitutional, and that there was, in law, no

corporation. After one, two, or three years delay, that plea would be sustained, unless the court should overrule the opinion in *McCulloch* vs. *Maryland*, which is not to be expected.

On the other hand, if they should be indicted under the *State* laws, they would plead that the bank act *was* constitutional; and that they were liable only under that act. In this way they would tie up the case with law questions for as long a period as possible.

And whether indicted in the United States or in the State courts, they would make all possible delay, under pretence of procuring testimony as to their having made loans in good faith, but on securities which unexpectedly proved worthless. And before a decision should be reached, the funds would have all gone to the four winds.

The result would be that neither the stockholders nor the bill holders would ever obtain any redress of any practical value. If the bill holders should ever obtain any redress, they would obtain it only by suing those innocent stockholders, who would have already been swindled out of their capital.

Nobody but dupes and swindlers would ever think either of investing in such banks, or of taking their bills.

6. Even if the Act in general were constitutional, the sixty-first section, declaring that any bank, incorporated under State laws, may "become an association under the provisions of this act," provided "the owners of two thirds of the capital stock of such banking corporation or association" shall consent to the change, would be unconstitutional.

When a body of men form themselves into a banking company, under a State charter, they legally enter into a *contract* with each other, that the capital, thus invested, shall be held and managed under that charter; and of course under that charter alone. For "the owners of two thirds the capital stock" of such a bank to divert that capital from the uses agreed upon, and invest it in banking under a charter granted by Congress, to which all the stockholders have not agreed, *is a breach of contract, and a breach of trust,* as against all non-concurring stockholders. And Congress have no more authority to authorize such a breach of contract, or trust, and such a diversion of the capital from the objects agreed upon, than they have to authorize "the owners of two thirds the capital stock" of a manufacturing company, an insurance company, or a church, to divert the whole capital from the objects for which it was contributed, and appropriate it to the establishment of a race course, a theatre, or a distillery.

And if the directors of a State bank should thus divert its funds, they would be liable, possibly to indictment, and certainly in civil actions for damages, on the part of the non-concurring stockholders.

There are some other provisions in the act, richly worthy of notice, as exhibiting the legal acumen, and the business sagacity, of the Congress that passed it. But space cannot here be spared to present them.

The bill now before Congress,* (and which is likely to pass, as being necessary to force the National Bank Act upon the country,) prohibiting, after one year, all banking, (issuing bills for cir-

culation,) except by bankers, "authorized thereto by act of Congress," is not merely unconstitutional; it is villainous. The Constitution does not require the people of this country to get *permits* from Congress for carrying on any innocent and lawful business. Nor does it give Congress any power to suspend all industry and commerce, except by persons "authorized thereto by act of Congress." If the Constitution did this, then, instead of spending so much blood and treasure to sustain it, we ought, (if it could not be otherwise abolished,) to spend the same blood and treasure to overthrow it. Congress have just as much constitutional power to say that no person shall *breathe* in this country, "unless authorized thereto by act of Congress," as they have to say that no man shall carry on the business of a banker, or any other innocent and lawful business, without being first licensed by act of Congress.

Congress have no more constitutional power to prohibit banking, than they have to prohibit farming, manufacturing, or commerce. They have no more power to prohibit banking, than they have to prohibit all the industry and commerce that are carried on by means of bank credits and currency. They have no more constitutional power to say that the people shall have no currency, except such as Congress shall have specially licensed, than they have to say that they shall have no farming utensils, no cattle, horses, sheep, pigs, or poultry, that they shall raise no crops, build no houses, eat no food, wear no clothing, except such as Congress shall have specially licensed. This proposition is so obviously and self-evidently true, that it would be wasting words and paper to expend any argument upon it.

But even if this bill should be considered constitutional, it would have no effect to prohibit the author's system of banking; because that has been already licensed by act of Congress—that is, by the copyright act. And that act is unquestionably *constitutional;* for it is *expressly* authorized by the Constitution. That license, therefore, must stand good, unless Congress commit a deliberate breach of faith. And even if Congress were to commit a deliberate breach of faith, by prohibiting the author's system, it would still be a question whether rights once vested and guaranteed, by a law that was unquestionably constitutional, could be destroyed by an act of wanton perfidy and spoliation? Whether that would not be "depriving a person of property without due process of law?" And whether it were not therefore expressly forbidden by the Constitution?

The other section of the same bill, imposing a discriminating tax of one-fourth of one per cent. a month upon all bills in circulation, issued by banks or bankers not "thereto authorized by act of Congress," is equally unconstitutional and villainous with the section that is to prohibit all banking after one year. Inasmuch as Congress have no power to require the people to get permits from Congress for carrying on any innocent and lawful business, they have no power to impose a discriminating tax upon those who do not get such permits.

If Congress can impose a discriminating tax upon all who do not get permits from Congress to carry on their business, all the industry and commerce of the country may be brought under the arbitrary control of Congress; and permits to carry them on may be given out as privileges only to Congressional favorites.

There is no reason why bankers should be singled out for all this unconstitutional, absurd, tyrannical, and villainous legislation. By furnishing credit and currency to keep industry and

commerce in motion, they do more for the wealth of the country than any other equal number of men, unless it be inventors. Their business is intrinsically as innocent and lawful as that of any other class of persons. The only complaints that can be made against them, are, that there are not half enough of them, and that their systems of banking are not good ones. But these faults are not the faults of the bankers themselves, but of the laws that limit the number of bankers, and prohibit the adoption of other and better systems.

All the laws that are necessary in regard to banking, are such as are applicable to all other business, viz.: laws giving inventors the benefit of their inventions, and laws compelling the bankers to fulfil their contracts, and punishing their frauds and crimes. Such laws as these will give us the benefit of the best systems of banking that men can invent; and those are the best that, in the nature of things, we can have.

CHAPTER VII. EXCHANGES UNDER THE AUTHOR'S SYSTEM.

It will be very easy, under the author's system, to give the currency a uniform value in all parts of the country; as follows:

In the first place, where the capital shall consist of mortgages, it will be very easy for all the banks, in any State, to make their solvency known *to each other.* There would be so many banks, that some system would naturally be adopted for this purpose.

Perhaps this system would be, that a standing committee, appointed by the banks, would be established, in each State, to whom each bank in the State would be required to produce satisfactory evidence of its solvency, before its bills should be received by the other banks of the State.

When the banks, or any considerable number of the banks, of any particular State—Missouri for example—shall have made themselves so far acquainted with each other's solvency, as to be ready to receive each other's bills, they will be ready to make a still further arrangement for their mutual benefit, viz.: to unite in establishing one general agency in St. Louis, another in New Orleans, another in Chicago, another in Cincinnati, another in New York, another in Philadelphia, another in Baltimore, and another in Boston, where the bills of *all* these Missouri banks shall be redeemed. And thus the bills of all Missouri banks, that belonged to the Association, would be placed at par at all the great commercial points.

Each bank, belonging to the Association, might print, on the back of its bills, "*Redeemable at the Missouri Agencies, in St. Louis, Chicago, Cincinnati,*" &c.

In this way all the banks of each State might unite to establish agencies in all the large cities for the redemption of their bills.

The banks might safely make *permanent* arrangements of this kind with each other; because the *permanent* solvency of all the banks might be relied on.

The permanent solvency of all the banks might be relied on, because, under this system, a bank, (whose capital consists of mortgages,) once solvent, is necessarily forever solvent, unless in contingencies so utterly improbable as not to need to be taken into account. In fact, in the ordinary course of things, every bank would be growing more and more solvent, because in the ordinary course of things, the mortgaged property would be constantly rising in value, as the wealth and population of the country should increase. The exceptions to this rule would be so rare as to be unworthy of notice.

There is, therefore, no difficulty in putting the currency, furnished by each State, at par throughout the United States.

At the general agencies in the great cities, the redemption would doubtless generally be made in specie *on demand*, because, at such points, especially in cities on the seaboard, there would always be an abundance of specie in the market as merchandize; and it would, therefore, be both for the convenience and interest of the banks to redeem in specie on demand, rather than by a conditional transfer of a portion of their capital, and then paying interest on that capital until it should be redeemed with specie.

Where rail-roads were used as capital, all the banks in the United States could form one Association, of the kind just mentioned, to establish agencies at all the great commercial points, for the redemption of their bills.

Where United States Stocks should be used as capital, the same system could be safely adopted, for redeeming their currency in all the great cities, as where mortgages were the capital; because, although United States stocks are below par of specie, yet every bank, using them as capital, could know that the currency of every other bank of the same kind was worth *at least as much* as the stocks it should represent. Since there would be always a dollar of the stocks in bank, for every dollar of currency that could be put in circulation, the banks could always know the lowest possible value of each other's currency, by knowing the market value of the stocks it should represent.

The currency might sometimes be worth *more* than the capital, dollar for dollar; because, although the capital (U. S. stocks) should be below par of specie in the market, yet the bank might have assets (in the shape of notes discounted, and profits accumulated) equal, or more than equal, to its capital. And these assets must all be exhausted, in the redemption of its bills with specie, before its bills could be worth less than par of specie. But suppose all these assets exhausted, the currency would still be worth *as much as the capital*, dollar for dollar; because the capital itself can be demanded for the currency, if specie be refused. Although, therefore, the currency of banks, based upon United States stocks, might be sometimes worth *more* than the stocks, (when these were below par of specie,) it can never be worth *less* than the stocks. And as the market value of the stocks would be always known, the lowest possible value of the currency (for the time being) could always be known. The bills of a bank, based upon United States stocks, would, therefore, be worth, all over the country, at least as much as the stocks.

It is doubtful, however, whether currency of that kind, always liable to be below par of specie, and variable at that, could be made a desirable one. It would, therefore, probably not be expedient to use United States stocks as banking capital, on the plan of issuing a dollar of currency for a dollar of stocks. The better way of using the stocks as banking capital, while they are so much below par of specie, would probably be to put in two dollars of bonds to make one of banking capital. This would make the bank capital worth a little more than par of specie; and would, of course, make the currency worth par of specie.

Using United States stocks in this way—that is, using two dollars of bonds to make one of banking capital—the United States bonds now extant, and those hereafter to be issued, would probably afford a basis for as much currency as the banks could keep in circulation; especially if mortgages or rail-roads should be used as a basis in competition with the bonds.

If, however, the stocks should ever rise to par, and stand there permanently, and it should be found desirable to issue more currency upon them, the banks using two dollars of bonds for one of capital could be dissolved, and new ones formed, that should use the stocks at their par value, and issue currency upon them accordingly.

APPENDIX. THE AUTHOR'S COPYRIGHT.

Inasmuch as some persons have suggested that the author's copyright of his Articles of Association may be evaded, he has thought proper to exhibit some of the obstacles, both practical and legal, in the way of any such evasion.

The practical obstacles—or at least some of them—are shown in the following "Note," republished from his "New System of Paper Currency."

NOTE.

The subscriber believes that the right of property in ideas, is as valid, in the view both of the Common and constitutional law of this country, as is the right of property in material things; and that patent and copyright laws, instead of superseding, annulling, or being a substitute for, that right, are simply aids to it.

In publishing this system of Paper Currency, he gives notice that he is the inventor of it, and that he reserves to himself all the exclusive property in it, which, in law, equity, or natural right, he can have; and, especially, that he reserves to himself the exclusive right to furnish the Articles of Association to any Banking Companies that may adopt the system.

To secure to himself, so far as he may, this right, he has drawn up and copyrighted, not only such general Articles of Association as will be needed, but also such other papers as it will be necessary to use separately from the Articles.

Even should it be possible for other persons to draw up Articles of Association, that would evade the subscriber's copyright, banking companies, that may adopt the system, will probable find it for their interest to adopt also the subscriber's Articles of Association: for the reason that it will be important that Companies should all have Articles precisely, legally, and verbally alike. If their Articles should all be alike, any legal questions that may arise, when settled for one Company, would be settled for all.

Besides, if each Company were to have Articles different from those of others, no two Companies could take each other's bills on precisely equal terms; because their legal rights, as bill holders, under each other's Articles, would not be precisely alike, and might be very materially different.

Furthermore, if each Company were to have Articles of Association peculiar to itself, one Company, if it could take another's bills at all, could not safely take them until the former had thoroughly examined, and satisfactorily ascertained, the *legal* meaning of the latter's Articles of Association. This labor among banks, if Companies should be numerous, would be intolerable and impossible. The necessity of studying, understanding, and carrying in the mind, each other's different Articles of Association, would introduce universal confusion, and make it impracticable for any considerable number of Companies to accept each other's bills, or to coöperate in furnishing a currency for the public. Each Company would be able to get only such a circulation as it could get, without having its bills received by other banks. But if all banks have precisely similar Articles of Association, then one Company, so soon as it understands its own Articles, understands those of all other Companies, and can exchange bills with them readily, safely, and on precisely equal terms.

Moreover, if each separate Company were to have its peculiar Articles of Association, it would be wholly impossible for *the public* to become acquainted with them all, or even with any considerable number of them. It would, therefore, be impossible for the public to become acquainted with their legal rights, as bill holders, under all the different Articles. Of course they could not safely accept the currency furnished by the various Companies. But if all the Companies should have Articles precisely alike, the public would soon understand them, and could then act intelligently, as to their legal rights, in accepting or rejecting the currency.

The subscriber conceives that the Articles of Association, which he has drawn up, and copyrighted, are so nearly perfect, that they will never need any, unless very trivial, alterations. In them he has intended to provide so fully for all exigencies and details, as to supersede the necessity of By-Laws. This object was important, not only for the convenience of the Companies themselves, but because any power, in the holders of Productive Stock, to enact By-Laws, might be used to embarrass the legal rights of the bill holders under the Articles of Association.

Besides, as the holders of Productive Stock are liable to be continually changing, any power, in one set of holders, to establish By-Laws, would be likely to be used to the embarrassment, or even injury, of their successors.

It is obviously important to all parties, that the powers of the Trustees, and the rights of all holders, both of Productive and Circulating Stock, should be legally and precisely fixed by the Articles of Association, so as to be incapable of modification, or interference, by any body of men less than the whole number interested.

LYSANDER SPOONER.

Boston, 1861.

Some of the *legal* obstacles, in the way of an evasion of the author's copyright, will be seen in the following Acts of Congress, and in the subjoined legal authorities as to what constitutes an infringement of copyright.

Act of Congress of 1819, Chap. 19, Sec. 1, authorizes the courts to grant injunctions against infringers.

Act of Congress of 1831, Chap. 16, Sec. 6, provides for the punishment of infringers as follows:—

> 1. "Such offender shall forfeit every copy of such book to the person legally, at the time, entitled to the copyright thereof."

Under this clause of the Act infringers would forfeit not merely those copies of their Articles of Association, which they should design to circulate, for the information of other banks and the public, but also those copies which should *bear their own signatures, and which alone should constitute them a company.* The forfeiture of these latter copies would dissolve the company; because there would then be no legal evidence of the existence of the company.

The company being dissolved, the holders of the currency would have no redress, except by suing the bankers for fraud.

The infringers would also forfeit their records of the transfers of the capital stock of the company; because the forms of transfer were necessarily peculiar, and are separately copyrighted, as well as included in the general copyright of the Articles of Association. By this forfeiture the legal evidence of the ownership of the stock would be lost.

The bills of the banks—that is, those found in the hands of the bankers, or of any other persons who should have taken them knowing of the infringement—would be forfeited; for the bills were necessarily peculiar, and are separately copyrighted.

The same would be true of copies of all the other papers that are separately copyrighted, comprising ten in all.

> 2. "Such offender * * shall also forfeit and pay fifty cents for every such *sheet* which may be found in his possession, either printed, or printing, published, or exposed to sale, contrary to the intent of this act, the one moiety thereof to such legal owner of the copyright as aforesaid, and the other to the use of the United States, to be recovered by action of debt in any court having competent jurisdiction thereof."

Under this clause of the Act, the infringers will be liable to pay fifty cents for each "sheet" of all copies of the Articles of Association, and also for each *sheet* of the papers separately copyrighted, such as the bills, certificates of stock, transfers, &c., &c. And each separate bill, certificate of stock, or other paper, however small, is a "sheet," within the meaning of this Act.

The following authorities are given to show what constitutes an infringement, (or "*piracy*," as the infringement of a copyright is technically called).

LEGAL AUTHORITIES RELATIVE TO COPYRIGHT.

1. "Where the adoption and use of the matter of an original author, whose work is under the protection of copyright, is direct and palpable, and nothing new is added but form or dress, or an immaterial change of arrangement, the law will treat the matter as merely colorable, and will stamp it with the character of piracy"—[infringement].—*Curtis on Copyright*, 188.

2. "Copying is not confined to literal repetition, but includes also the various modes in which the matter of any publication may be adopted, imitated, or transferred, with more or less colorable alterations to disguise the piracy."—*Curtis on Copyright*, 253.

3. "Where the resemblance does not amount to identity of parallel passages, the question [of piracy, or infringement] becomes, in substance, this—whether there be such a similitude and conformity between the two books, that the person who wrote the one must have used the other as a model, and must have copied or imitated it? In these cases the piracy is to be detected, through what have been called colorable alteration, and servile imitation."—*Curtis on Copyright*, page 256.

4. "If the court can see proof that the defendant had the work of the plaintiff before him, and used it as a model for his own, in copying and imitating it, without drawing from common sources, or common materials, it will hold the resemblances to be not accidental, and not necessary, notwithstanding the alterations and disguises that may have been introduced."—*Curtis on Copyright*, page 259.

5. "It is not necessary, to amount to piracy, that one work should be a copy of the other, and not an imitation. There may be a close imitation, so close as to be a mere evasion of the copyright, without being an exact and literal copy."—*Curtis on Copyright*, page 259.

6. "The general doctrine of the law is, that none are entitled to save themselves trouble and expense, by availing themselves, for their own profit, of other men's works, still entitled to the protection of Copyright."—*Curtis on Copyright*, page 264.

7. "In the analagous case of patent rights, the subject of an existing and valid patent cannot be taken as the superstructure of an improvement. If the improvement cannot be used, without the subject of an existing grant, the inventor of the improvement must wait until the grant has expired. But he may take out a patent for the improvement by itself, and sell it."—*Curtis on Copyright*, page 264, note.

8. Judge Thompson (U. S. Court) said:

"The law was intended to secure to authors the fruits of their skill, labor, and genius, for a limited time; and if, in this instance, the defendant had availed himself of the surveys of the plaintiff in compiling his chart, the plaintiff was entitled to a verdict."—*Blunt* vs. *Patten,* 2 *Paine's Circuit Court Reports,* p. 396.

9. Lord Mansfield said:

"The Act that secures copyrights to authors, guards against the piracy of the words and sentiments; but it does not prohibit writing on the same subjects. As in the case of histories and dictionaries."—*Quoted in note to Blunt* vs. *Patten,* 2 *Paine's C. C. R.,* page 402.

10. In regard to the copyright of a musical composition, Judge Nelson (U. S. Court) said:

"The composition of a new air or melody is entitled to protection; and the appropriation of the whole, *or of any substantial part of it,* without the license of the author, is a piracy [infringement]. * * If the new air be substantially the same as the old, it is no doubt a piracy. * * The original air requires genius for its construction; but a mere mechanic in music, it is said, can make the adaptation or accompaniment. The musical composition, contemplated by the statute, must doubtless be substantially a new and original work; and not a copy of a piece already produced, *with additions and variations, which a writer of music with experience and skill might readily make.* Any other construction of the Act would fail to afford the protection intended to the original piece from which the air is appropriated. The new arrangement and adaptation must not be allowed to incorporate such parts and portions of it as may seriously interfere with the right of the author; otherwise the copyright would be worthless."—*Jolie* vs. *Jaques et al,* 1 *Blatchford's Circuit Court Reports,* pp. 625-6.—*U. S. Digest for* 1852,—*Title Copyright.**

11. In the case of Folsom et al, *vs.* Marsh et al, Judge Story said:

"It is certainly not necessary, to constitute an invasion of copyright, that the whole work should be copied, or even a large portion of it, in form or in substance. If so much is taken that the value is sensibly diminished, or the labors of the original author are substantially, to an injurious extent, appropriated by another, that is sufficient in point of law, to constitute a piracy *pro tanto.* The entirety of the copyright is the property of the author; and it is no defence that another person has appropriated a part, and not the whole, of any property. Neither does it necessarily depend upon the quantity taken, whether it is an infringement of the copyright, or not. It is often affected by the value of the materials taken, and the importance of it to the sale of the original work. Lord Cottenham, in the recent cases of Bramhall *vs.* Halcomb, (3 Mylne and Craig, 737-738,) and Saunders *vs.* Smith, (3 Mylne and Craig, R. 711, 736, 737,) adverting to this point, said, 'When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small portion of the book in quantity. It is not only quantity, but value, that is always looked at. It is useless to refer to any particular cases, as to quantity.' In short, we must often, in deciding questions of this sort, look to the nature and object of the selections made, the quantity and value of the materials used, and the degree in

which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original works."—2 *Story's C. C. R.* p. 115.—*Curtis on Copyright,* p. 248, note.

12. Extracts from Judge Story's opinion in the case of Emerson *vs.* Davies, 3 Story's Circuit Court Reports, p. 768.

Head Notes to the Case.

1. "Any new and original plan, arrangement, or combination of materials, will entitle the author to a copyright therein, whether the materials themselves be new or old."

2. "Whoever by his own skill, labor, and judgment, writes a new work, may have a copyright therein, *unless* it be directly copied, or *evasively imitated* from another work."

4. "To constitute a piracy [infringement] of copyright, it must be shown that the original work has been either substantially copied, *or has been so imitated as to be a mere evasion of the copyright.*"

Extracts from the Opinion of Story, Judge.

"An author has as much right in his plan, and in his arrangements, and in the combination of his materials, *as he has in his thoughts, sentiments, opinions, and in his modes of expressing them.* The former, as well as the latter, may be more useful, or less useful, than those of another author; but that, although it may diminish or increase the relative values of their works in the market, *is no ground to entitle either to appropriate to himself the labor or skill of the other, as embodied in his own work.*" Page 782.

"No person had a right to borrow the same plan, and arrangement, and illustrations, and servilely copy them into any other work." Page 783.

"If the defendant, Davies, had before him, at the time, the work of the plaintiff, and used it as a model for his own plan, arrangement, examples, and tables, then I should say, following the doctrine of Lord Ellenborough, in Roworth *vs.* Wilkes, that it was an infringement of the plaintiff's copyright, *notwithstanding the alterations and disguises in the forms of the examples and the unit marks.*" Page 792.

"A man has a right to the copyright of a map of a State or country, which he has surveyed, or caused to be compiled from existing materials, at his own expense, or skill, or labor, or money. Another man may publish another map of the same State or country, by using the like means or materials, and the like skill, labor, and expense. *But then he had no right to publish a map taken substantially and designedly from the map of the other person, without any such exercise of skill, or labor, or expense. If he copies substantially from the map of the other, it is downright piracy;* although it is plain that both maps must, the more accurate they are, approach nearer in design and execution to each other. He, in short, who, by his own skill, judgment, and labor, writes a new work, and does not merely copy

that of another, is entitled to a copyright therein; *if the variations are not merely formal and shadowy,* from existing works." Page 781.

"In Trusler *vs.* Murray, (1 East R. p. 362, note,) Lord Kenyon put the point in the same light, and said: 'The main question here, was, *whether, in substance, the one work is a copy and imitation of the other.* * * The same doctrine was recognized by the Court of King's Bench, in Cary *vs.* Longman & Rees (1 East, p. 358); and it was finally acted on in Mathewson *vs.* Stockdale (12 Vesey, page 270), and Longman *vs.* Winchester (16 Vesey, p. 269), and Wilkins *vs.* Aiken (17 Vesey R., p. 422, 424, 425), in the Court of Chancery. So that, I think, it may be laid down as the clear result of the authorities in cases of this nature, *that the true test of piracy* [infringement] *or not, is to ascertain whether the defendant has, in fact, used the plan, arrangements, and illustrations of the plaintiff, as the model of his own book, with colorable alterations and variations only to disguise the use thereof;* or whether his work is the result of his own labor, skill, and use of common materials, and common sources of knowledge, open to all men, and the resemblances are either accidental, or arising from the nature of the subject. In other words, *whether the defendant's book is, quoad hoc,* a servile *or evasive imitation of the plaintiff's work,* or a *bona fide* original compilation from other common or independent sources." Page 793.

"The change of costume of the fencing figures, in the case before Lord Ellenborough, was treated as a mere evasion." Page 794.

"To amount to an infringement, it is not necessary that there should be a complete copy or imitation in use throughout; but only that there should be an important and valuable portion, which operates injuriously to the copyright of the plaintiff." Page 795.

He quotes Lord Eldon, as saying:

"If a man mixes what belongs to him with what belongs to me, and the mixture be forbidden by the law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion. If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which belongs to me; and if the parts of the work cannot be separated, and if by that means the injunction, which restrained the publication of my literary matter, prevents also the publication of his own literary matter, he has only himself to blame." Page 796.

"It has been said that, to amount to piracy [infringement] the work must be a copy, and not an imitation. That, as a general proposition, *cannot be admitted.* It is true the imitation may be very slight and shadowy. But, on the other hand, it may be very close, *and so close as to be a mere evasion of the copyright,* although not an exact and literal copy." Page 797.

"If it substantially includes the essential parts of the plaintiff's plan, of his arrangement, examples, and tables, *so as to supersede* the work of the plaintiff, it is a violation of his copyright." Page 797.

13. In the case of Webb, et al, *vs.* Powers, et al, Judge Woodbury said:

"The leading inquiry then arises, which is decisive of the general equities between these parties, whether the book of the defendant's taken as a whole, is substantially a copy of the plaintiff's? whether it has virtually the same plan and character throughout, and is intended to supersede the other in the market with the same class of readers and purchasers, by introducing no considerable new matter, or little or nothing new, except colorable deviations."—2 *Woodbury & Minot's Circuit Court R.,* page 514.

Endnotes

[*] In the Articles of Association, as published, the capital is supposed to be mortgages. If United States stocks should be used as capital, the Articles of Association would need to be the same as for mortgages, with but very trivial alterations. If rail-roads were to be used as capital, very considerable alterations would need to be made in the Articles of Association.

[†] The fact, that U. S. currency is now below par of specie, does not affect the principle stated in the text. That currency is worth, as all such currency must be worth, as much as the stocks into which it is convertible. The depreciation in the U. S. currency is to be accounted for, therefore, not at all on the ground of superabundance for the uses of commerce, but on one or more of the following grounds, to wit: 1. That the public credit is suffering from the apprehension that the U. S. bonds may never be paid; 2, that the loanable capital of the country is either becoming exhausted, or finds more lucrative investments in business than in U. S. stocks; or, 3, that the burdens imposed upon the use of U. S. stocks as banking capital, are so great as to depreciate the value of the bonds.

[*] I do not say that the theory of the courts, as given in the text, is the true theory. I think it is not. I think the true theory is one much more favorable, not only to authors and inventors, but also to the public. But the theory given in the text is the one that prevails in the courts, not only of this country, but of England, and, so far as I know, of most or all other countries in which patents and copyrights are granted. And whether true or false, the theory is likely to prevail, I apprehend, for a long time to come. But I think the true theory is that authors and inventors have the same natural and Common Law right of property, and consequently the same perpetual right of property, in their ideas, the products of their mental labor, that other men have in material things, the products of their manual labor; and that governments have no more right to forbid the sale or use of one of these two kinds of property, than they have to prohibit the sale or use of the other. Under this latter theory, authors and inventors would be stimulated much more than they are now to the production of valuable ideas; and the public would be enlightened and enriched in a proportionally greater degree.

[*] It will be seen in a subsequent chapter (the 4th) that the Supreme Court of the United States has expressly declared "that the States have no power, by taxation, or otherwise, to retard, impede, burden, or in any manner control" the use of ideas *patented* by the United States. And the same principle obviously applied to ideas copyrighted; for ideas copyrighted are intrinsically of

the same nature with those patented; and are placed by the Constitution upon the same ground. In the case of Wheaton *vs* Peters, the Supreme Court of the United States held in argument (though that was not the point to be decided) that a copyright was of the same nature as a patent. (8 *Peters' Rep., pp.* 657-8.)

The only difference between patents and copyrights is one of form, and not of substance; and has reference to the mode of securing compensation to the authors of the ideas patented and copyrighted, rather than to the right of the people to use those ideas. In both cases alike, the people have the right to use the ideas, *with the consent of the authors.* And, on the theory, that now prevails with the courts, (but which, as I have before said, I do not admit to be the true theory,) the people have the right, *without the consent of the authors,* to use patented and copyrighted ideas in any and every possible way, except in those particular modes that are reserved or granted, as an "exclusive right" to the authors, to compensate them for the ideas themselves.

The obvious *constitutional* duty of Congress is to secure, for limited times, to both authors and inventors, *all* "the exclusive rights" to their respective ideas, *that can be made practically valuable to them.* And such was the obvious intention of Congress in enacting the existing copyright laws; (although such may not, perhaps, be the legal effect of those laws in all possible cases.)

Thus the *patent* laws secure to the inventor of a machine, and to his assigns, "the exclusive right to make, use, and vend to others to be used," a machine of that kind, or one embodying *any* of the *original* ideas incorporated in it. But the ideas, embodied in the machine, may be written about, and printed, without the consent of the inventor, and used in any possible way, *except in making or using a machine;* which latter is supposed to be the only way in which the ideas can be made practically valuable to him. The copyright laws, on the other hand, secure to an author and his assigns the sole right of making and selling copies of his book, or any part of it that is original with himself. But other persons may use the ideas, without his consent, in any manner they can, *without making or selling a copy of the book, or any part of it;* which latter are supposed to be—and in most cases are—the only rights that can be made practically valuable to the author. In some cases, however, as in the case of dramatic compositions, the copyright laws secure to the authors and their assigns, not only the exclusive right of making copies of the pieces, but also the exclusive right of performing them in public.

As the copyright laws of Congress now stand, and are now interpreted by the courts, the ideas embodied in the author's banking system, could be used, in defiance of his copyright, if it were *practically possible* for such a banking company to have a legal existence, and carry on the business of banking, *without having any Articles of Association similar, in whole or in part, to those he has copyrighted.* But as neither of those things would be practically possible, and as he and his assigns have the exclusive right secured to them of making copies, either in whole, or in part, of the Articles of Association, his copyright gives him a legal control over the system.

The system is undoubtedly a legitimate subject of patent; for banking is as much an "art" as is the spinning or weaving of wool or cotton. But the copyright accomplishes all that a patent could; and is, in some respects, preferable.

[*] I have before said that I do not believe that the theory of the courts is the true one. But it is the one *least favorable* to the rights of authors and inventors; and is likely to prevail, for the present at least, if not forever. I think the true theory is, that authors and inventors have the same natural and common law right of property in their ideas, the products of their labor, that other men have in material things, the products of their labor; and that government is as much bound to protect the former as the latter. If this theory were to prevail, authors and inventors could very well afford to have their property in ideas taxed; because their property would not only be protected by the criminal law, but it would be protected in perpetuity, like other property. But now the government virtually says to authors and inventors, "Sell your ideas to the government for such price as the government chooses to pay, or you shall have no protection at all for your rights in them." Saying this, and having its offer accepted, it clearly cannot, in good faith, tax the *price* which it has promised to pay.

[*] We shall see, in the next section, that the Supreme Court of the United States have expressly said that *patent rights* cannot be taxed *by the States.* And if the States cannot tax patent rights, they cannot tax copyrights, for both are of the same nature intrinsically, and both are put upon the same basis by the Constitution. The Supreme Court of the United States has also expressed the opinion that they are of the same nature. (*Wheaton et al,* vs. *Peters et al.* 8 *Peters' Reports,* 657-8.)

[*] In the case of Wheaton et al, *vs.* Peters et al, the Supreme Court of the United States incidentally expressed the opinion that a copyright was of the same nature as a patent right. (8 *Peters' Reports, pp.* 657-8.)

[*] Unless it be that, under the "power to pass uniform laws on the subject of bankruptcy," they can say how much or little of a bankrupt's effects, shall be sufficient to entitle him to a discharge from his debts.

[†] The case where one man promises to pay another what the latter's labor, for example, *shall be worth,* leaving the precise amount to be ascertained afterward, is no exception to the principle stated in the text; for, in law, that is certain, which can be made certain. And in the case of all contracts, of the kind mentioned, it is presumed that the value of the labor can be ascertained, or made certain.

Neither is the case, where the particular kind of thing to be paid, is not specially mentioned by the parties, an exception to the principle stated in the text. In such a case the law presumes, *on the ground of probability,* that it was understood between the parties that coin was to be paid; because that is the thing most commonly agreed by the parties to contracts, to be paid. But that probability can be rebutted, in any particular case, if it can be shown, from any circumstances, such, for example, as previous dealings between the parties, that it was more probably understood between them, at the time of the contract, that payment should be made in something else than coin.

[*] It was no doubt the intention that the legal value of the coins, relatively to each other, should correspond precisely with their mercantile value, relatively to each other. But as such

might not always happen to be the fact, *it would seem* that if a contract were made for the delivery of coins of a specific kind, those coins only could be a legal tender in fulfilment of that contract; and that the legal value of the coins could be set up only in cases where the specific coins to be delivered had not been designated by the contract.

By this it is not meant that the particular name or denomination of the coin, as used in the contract, is always *necessarily* to determine the denomination in which the tender is to be made. As, for example, if a contract were simply for the delivery of "a hundred dollars," it is not meant that a hundred *separate* coins, of one dollar each, must be paid; and that ten eagles would not be a legal tender; because ten eagles *are* "a hundred dollars." That is, they include a hundred dollars; just as twenty five bushels include a hundred pecks. An eagle *is* ten dollars; that is, ten dollars consolidated, or united. The law considers a "dollar," or "*unit,*" (as the act of Congress expresses it,) *to be, not necessarily a separate coin, but a given quantum of gold or silver.* And an eagle contains, or consists of, ten of these "dollars," or "units." Therefore, if a contract were made simply for "a hundred dollars," ten eagles would be a tender of the precise number of "dollars," or "units," contracted for.

But if a contract were made for "a hundred *silver* dollars," then ten gold eagles would *probably not* be a legal tender in fulfilment of that contract; because the mercantile value of the former might exceed that of the latter; or the promisee might have some special use for the particular coins he had contracted for.

[*]Gibbons vs. Ogden, 9 Wheaton, 196.

[*]United States vs. Fisher et al. 2 Cranch, 390.

[*] This is written in March, 1864.

[†] Having considered, in the text, as fully as was intended, the power of *Congress* in regard to legal tender, it may be necessary to say a few words in regard to the power of the *States.*

Whatever the powers or duties of the States may be on this subject, *Congress* have nothing to do with them, and can constitutionally prescribe no rules to the States, beyond what has already been shown in the text.

The *Constitution itself* forbids the States to "make any thing but gold and silver coin a tender in payment of debts."

The meaning—or at least one meaning—of this is, that when the parties to a contract have agreed upon *coin,* as the thing to be paid, the States shall not alter that agreement, and authorize the debtor to cancel his debt with something else than coin.

But the question arises, what is the power of the States in regard to contracts,in which coin is *not* promised; but in which grain, or some other thing, is the tender agreed upon?

Here plainly the States cannot interfere to alter the tender, even to make it coin; because the States are forbidden to "pass any law impairing the obligation of contracts."

But if the debtor do not tender the thing agreed on, and tender it too within the time agreed on, the creditor is under no obligation to accept it afterwards. He may then, at his option, either sue for specific performance—that is, to compel the delivery of the identical thing promised; or he may sue, not technically for the debt itself, but for the damage resulting from the non-performance of the contract. This damage, of course, includes not only an amount equal to the debt, but also any other damage the creditor may have sustained from the non-payment of the debt at the time agreed on.

In these suits for damage, it is customary (whether law requires it, or not,) for the creditor to estimate his damages in coin, and to claim that they be paid in coin.

But, technically at least, debt and damage are two different things; and, therefore, there may, perhaps, be a question whether, when the creditor sues in damage, and not in debt, the States are constitutionally required to cause damage to be paid in coin? or whether they may require the creditor to accept other property of the debtor at a fair valuation? This question I will not attempt to settle. The *spirit* of the constitutional provision, that "No State shall make any thing but gold and silver coin a tender in payment of debts," would obviously require, as a general rule, that damage, no less than debt, should be paid in coin. And probably the word "debts," in the provision mentioned, ought to be interpreted to include dues of all kinds. Yet possibly a narrower interpretation may be admitted. And if it may, cases may, possibly, be supposed, where, owing to a dearth of coin, occasioned by war, famine, or other great public calamity, it being practically impossible for a debtor to pay coin, a State would be justified in making other property a tender in payment of *damage*, even though the Constitution forbids the making it a tender in payment of *debt*.

But whether a *State* has any discretion of this kind, or not, *Congress* certainly have none at all.

[*] Even if a promissory note were written, for example, (as I believe some notes are) for "*a hundred dollars payable in United States legal tender notes*," that is not, as the makers of such notes seem to suppose, a promise to deliver a hundred legal tender notes for one dollar each, (or their equivalents,) but it is a promise to pay so many legal tender notes as, *at their market value*, will be equal in value to a hundred dollars in coin. If a man give his note for "a hundred dollars, *payable in wheat*," that is not a promise that the wheat shall be delivered *at the rate of a bushel for each dollar promised;* but it is a promise that so much wheat shall be delivered, *at its market value*, as shall make the amount paid equal in value to a hundred dollars in coin. So a promissory note for "a hundred dollars, payable in United States legal tender notes," is, in law, a promise to pay so many notes as, at their market rate, will be equal in value to a hundred dollars in coin. Men may, therefore, well be careful how they write their promissory notes, if they intend to pay them in legal tender notes.

[*] Section 15 of the charter is in these words:—"That during the continuance of this Act, and whenever required by the Secretary of the Treasury, the said corporation shall give the necessary facilities for transferring the public funds from place to place, within the United States, or the Territories thereof, and for distributing the same in payment of the public creditors, without charging commissions or claiming allowance on account of difference of exchange, and shall also

do and perform the several and respective duties of the Commissioners of loans for the several States, or any one or more of them, whenever required by law."

[*] Introduced April 12.

[*] On the point of title, the court say:—"A copyright is given for the contents of a work, not for its mere title. There need be no novelty in that which is but an appendage."—Page 627.

21. A LETTER TO CHARLES SUMNER (1864).

Source

A Letter to Charles Sumner (n.p., 1864).

HTML and other formats: <oll.libertyfund.org/title/2233>.

A LETTER TO CHARLES SUMNER. Boston,Oct. 12, 1864.

Hon. Charles Sumner,

Sir:

Some four or five weeks ago, as I was in conversation with Dr. S. G. Howe and James M. Stone, they both mentioned that, on their first reading my argument on "the Unconstitutionality of Slavery," they had been convinced of its truth; and Dr. Howe added, "Sumner always said it was true, but somehow or other he could not think it was practical."

A few days afterwards I saw Dr. Howe, and repeated to him what I had understood him to say of you, as above, and asked him whether I had understood him correctly. He said that I had; "that is, he had understood you to say, in effect, that you did not see how my argument could be met." I gave him some of my reasons for wishing his explicit testimony on the point, and he added, "I think I cannot be mistaken about it." He finally said, "I will put the question distinctly to him tomorrow."

On the 23d ult. I met him again, and he said that he did put the question to you the next day, in this way: "Mr. Sumner, I have heretofore understood you to say that Mr. Spooner's position was logical, and that you did not see how it could be answered;" and appealed to you to know whether he had understood you correctly. He said you acknowledged that he had, and that you added that "a judge, who was inclined to decide doubtful questions in favor of liberty, would be obliged to decide that question [of the constitutionality of slavery] in the same way."

At this last conversation, Francis W. Bird was present, and corroborated Dr. Howe's statement by saying that you had made a similar statement about my argument to him, at Washington, some few years ago. He added that he said to you, "Why, then, in Heaven's name, do you not take that position?" *And that you made no reply?*

In the foregoing account I have given faithfully the substance of their testimony, and very nearly their precise words, as taken down immediately after the last conversation.

I cannot doubt that their statements are true, for I had testimony, nearly as direct and conclusive, to the same point, a dozen years ago, from two or three different sources.

Since December 1851, you have been under oath, as a Senator, to support the Constitution; and have made the subject of Slavery your principal topic of discussion; and have made, during all that time, the loudest professions of devotion to liberty. Yet during all the same period you have been continually conceding that the constitution recognized the Slaveholder's right of property in his slaves; that those held in slavery had no rights under the constitution; and that the general government could not interfere for their liberation.

It now appears from the testimony of Dr. Howe and Mr. Bird, that all these concessions against liberty, have been made in violation of your own convictions of truth, and consequently in violation of your official oath; and that while for a dozen years, you have been making the most bombastic pretensions of zeal for freedom, you have really been, all that time, a deliberately perjured traitor to the constitution, to liberty, and to truth.

And this you have been, that you might be a Senator from Massachusetts, rather than remain in private life, and do your part towards educating the people into a knowledge of the true character of the constitution. And having once entered the Senate through the door of perjury, and treason to liberty, you have been obliged to adhere to that position, because, by advocating the truth, you would be convicting yourself of your previous falsehood.

A Senator, who, from such motives, with loud professions of liberty on his lips, falsifies, in behalf of slavery, the constitution of his country, which he has sworn to support, is as base a traitor as any professed soldier of liberty can be, who should, for money, deliver up a post which he had sworn to defend. This treason, it appears, you have been continually guilty of for twelve long years; and your ostentatious professions of zeal for liberty during that time, have, as I think, been made, in great part, with a view to hide the real treason you were committing.

My argument, in its leading features, was published in 1845. And several additions to, and confirmations of it, have been made at intervals since.

If that argument is true, slavery, from its first introduction into this country, to this time, has never had any legal or constitutional existence; but has been a mere abuse, tolerated by the strongest party, without any color of legality, except what was derived from false interpretations of the constitution, and from practices, statutes, and adjudications, that were in plain conflict with the fundamental constitutional law. And these views have been *virtually* confessed to be true by John C. Calhoun, James M. Mason, Jefferson Davis, and many other Southern men; while such professed advocates of liberty as Charles Sumner, Henry Wilson, William H. Seward, Salmon P. Chase, and the like, have been continually denying them.

Had all those men at the North, who believed these ideas to be true, promulgated them, as it was their plain and obvious duty to do, it is reasonable to suppose that we should long since have had freedom, without shedding one drop of blood; certainly without one tithe of the blood that has now been shed; for the slaveholders would never have dared, in the face of the world, to attempt to overthrow a government that gave freedom to all, for the sake of establishing in its place

one that should make slaves of those who, by the existing constitution, were free. But so long as the North, and especially so long as the professed (though hypocritical) advocates of liberty, like those named, conceded the constitutional right of property in slaves, they gave the slaveholders the full benefit of the argument that they were insulted, disturbed, and endangered in the enjoyment of their *acknowledged* constitutional rights; and that it was therefore necessary to their honor, security, and happiness that they should have a separate government. And this argument, conceded to them by the North, has not only given them strength and union among themselves, but has given them friends, both in the North and among foreign nations; and has cost the nation hundreds of thousands of lives, and thousands of millions of treasure.

Upon yourself, and others like you, professed friends of freedom, who, instead of promulgating what you believed to be the truth, have, for selfish purposes, denied it, and thus conceded to the slaveholders the benefit of an argument to which they had no claim,—upon your heads, more even, if possible, than upon the slaveholders themselves, (who have acted only in accordance with their associations, interests, and avowed principles as slaveholders.) rests the blood of this horrible, unnecessary, and therefore guilty, war.

Your concessions, as to the pro-slavery character of the constitution, have been such as, if true, would prove the constitution unworthy of having one drop of blood shed in its support. They have been such as to withhold from the North all the benefit of the argument, that a war for the constitution was a war for liberty. You have thus, to the extent of your ability, placed the North wholly in the wrong, and the South wholly in the right. And the effect of these false positions in which the North and the South have respectively been placed, not only with your consent, but, in part, by your exertions, has been to fill the land with blood.

The South could, consistently with honor, and probably would, long before this time, *and without a conflict*, have surrendered their slavery to the demand of the constitution, (if that had been pressed upon them,) and to the moral sentiment of the world; while they could not with honor, or at least certainly would not, surrender anything to a confessedly unconstitutional demand, especially when coming from mere demagogues, who were so openly unprincipled as to profess the greatest moral abhorrence of slavery, and at the same time, for the sake of office, swear to support it, by swearing to support a constitution which they declared to be its bulwark.

You, and others like you have done more, according to your abilities, to prevent the peaceful abolition of slavery, than any other men in the nation; for while honest men were explaining the true character of the constitution, as an instrument giving freedom to all, you were continually denying it, and doing your utmost (and far more than any avowed pro slavery man could do) to defeat their efforts. And it now appears that all this was done by you in violation of your own convictions of truth.

In your pretended zeal for liberty, you have been urging on the nation to the most frightful destruction of human life; but your love of liberty has never yet induced you to declare publicly, but has permitted you constantly to deny, a truth that was sufficient for, and vital to, the speedy and peaceful accomplishment of freedom. You have, with deliberate purpose, and through a se-

ries of years, betrayed the very citadel of liberty, which you were under oath to defend. And there has been, in the country, no other treason at all comparable with this.

That such is the character that history will give you, I have very little doubt. And I wish you to understand that there is one who has long believed such to be your true character, and that he now has the proof of it. And unless you make some denial or explanation of the testimony of Dr. Howe and Mr. Bird, I shall feel at liberty to use it at my discretion.

LYSANDER SPOONER.

22. No Treason, No. I (1867).

Source

No Treason, No. 1 (Boston: Published by the Author, 1867).

HTML and other formats: <oll.libertyfund.org/title/2195>.

No Treason, No. I

INTRODUCTORY.

The question of treason is distinct from that of slavery; and is the same that it would have been, if free States, instead of slave States, had seceded.

On the part of the North, the war was carried on, not to liberate the slaves, but by a government that had always perverted and violated the Constitution, to keep the slaves in bondage; and was still willing to do so, if the slaveholders could be thereby induced to stay in the Union.

The principle, on which the war was waged by the North, was simply this: That men may rightfully be compelled to submit to, and support, a government that they do not want; and that resistance, on their part, makes them traitors and criminals.

No principle, that is possible to be named, can be more self-evidently false than this; or more self-evidently fatal to all political freedom. Yet it triumphed in the field, and is now assumed to be established. If it be really established, the number of slaves, instead of having been diminished by the war, has been greatly increased; for a man, thus subjected to a government that he does not want, is a slave. And there is no difference, in principle—but only in degree—between political and chattel slavery. The former, no less than the latter, denies a man's ownership of himself and the products of his labor; and asserts that other men may own him, and dispose of him and his property, for their uses, and at their pleasure.

Previous to the war, there were some grounds for saying that—in theory, at least, if not in practice—our government was a free one; that it rested on consent. But nothing of that kind can be said now, if the principle on which the war was carried on by the North, is irrevocably established.

If that principle be *not* the principle of the Constitution, the fact should be known. If it *be* the principle of the Constitution, the Constitution itself should be at once overthrown.

NO TREASON. NO. 1.

I.

Notwithstanding all the proclamations we have made to mankind, within the last ninety years, that our government rested on consent, and that that was the only rightful basis on which any government could rest, the late war has practically demonstrated that our government rests upon force—as much so as any government that ever existed.

The North has thus virtually said to the world: It was all very well to prate of consent, so long as the objects to be accomplished were to liberate ourselves from our connexion with England, and also to coax a scattered and jealous people into a great national union; but now that those purposes have been accomplished, and the power of the North has become consolidated, it is sufficient for us—as for all governments—simply to say: *Our power is our right.*

In proportion to her wealth and population, the North has probably expended more money and blood to maintain her power over an unwilling people, than any other government ever did. And in her estimation, it is apparently the chief glory of her success, and an adequate compensation for all her own losses, and an ample justification for all her devastation and carnage of the South, that all pretence of any necessity for consent to the perpetuity or power of the government, is (as she thinks) forever expunged from the minds of the people. In short, the North exults beyond measure in the proof she has given, that a government, professedly resting on consent, will expend more life and treasure in crushing dissent, than any government, openly founded on force, has ever done.

And she claims that she has done all this in behalf of liberty! In behalf of free government! In behalf of the principle that government should rest on consent!

If the successors of Roger Williams, within a hundred years after their State had been founded upon the principle of free religious toleration, and when the Baptists had become strong on the credit of that principle, had taken to burning heretics with a fury never before seen among men; and had they finally gloried in having thus suppressed all question of the truth of the State religion; and had they further claimed to have done all this in behalf of freedom of conscience, the inconsistency between profession and conduct would scarcely have been greater than that of the North, in carrying on such a war as she has done, to compel men to live under and support a government that they did not want; and in then claiming that she did it in behalf of the principle that government should rest on consent.

This astonishing absurdity and self-contradiction are to be accounted for only by supposing, either that the lusts of fame, and power, and money, have made her utterly blind to, or utterly reckless of, the inconsistency and enormity of her conduct; or that she has never even understood

what was implied in a government's resting on consent. Perhaps this last explanation is the true one. In charity to human nature, it is to be hoped that it is.

II.

What, then, is implied in a government's resting on consent?

If it be said that the consent of the *strongest party,* in a nation, is all that is necessary to justify the establishment of a government that shall have authority over the weaker party, it may be answered that the most despotic governments in the world rest upon that very principle, viz: the consent of the strongest party. These governments are formed simply by the consent or agreement of the strongest party, that they will act in concert in subjecting the weaker party to their dominion. And the despotism, and tyranny, and injustice of these governments consist in that very fact. Or at least that is the first step in their tyranny; a necessary preliminary to all the oppressions that are to follow.

If it be said that the consent of the *most numerous party,* in a nation, is sufficient to justify the establishment of their power over the less numerous party, it may be answered:

First. That two men have no more natural right to exercise any kind of authority over one, than one has to exercise the same authority over two. A man's natural rights are his own, against the whole world; and any infringement of them is equally a crime, whether committed by one man, or by millions; whether committed by one man, calling himself a robber, (or by any other name indicating his true character,) or by millions, calling themselves a government.

Second. It would be absurd for the most numerous party to talk of establishing a government over the less numerous party, unless the former were also the strongest, as well as the most numerous; for it is not to be supposed that the strongest party would ever submit to the rule of the weaker party, merely because the latter were the most numerous. And as matter of fact, it is perhaps never that governments are established by the most numerous party. They are usually, if not always, established by the less numerous party; their superior strength consisting in their superior wealth, intelligence, and ability to act in concert.

Third. Our Constitution does not profess to have been established simply by the majority; but by "the people;" the minority, as much as the majority.

Fourth. If our fathers, in 1776, had acknowledged the principle that a majority had the right to rule the minority, we should never have become a nation; for they were in a small minority, as compared with those who claimed the right to rule over them.

Fifth. Majorities, *as such,* afford no guarantees for justice. They are men of the same nature as minorities. They have the same passions for fame, power, and money, as minorities; and are liable and likely to be equally—perhaps more than equally, because more boldly—rapacious, tyrannical and unprincipled, if intrusted with power. There is no more reason, then, why a man should either sustain, or submit to, the rule of a majority, than of a minority. Majorities and minorities cannot rightfully be taken at all into account in deciding questions of justice. And all talk about

them, in matters of government, is mere absurdity. Men are dunces for uniting to sustain any government, or any laws, *except those in which they are all agreed.* And nothing but force and fraud compel men to sustain any other. To say that majorities, as such, have a right to rule minorities, is equivalent to saying that minorities have, and ought to have, no rights, except such as majorities please to allow them.

Sixth. It is not improbable that many or most of the worst of governments—although established by force, and by a few, in the first place—come, in time, to be supported by a majority. But if they do, this majority is composed, in large part, of the most ignorant, superstitious, timid, dependent, servile, and corrupt portions of the people; of those who have been over-awed by the power, intelligence, wealth, and arrogance; of those who have been deceived by the frauds; and of those who have been corrupted by the inducements, of the few who really constitute the government. Such majorities, very likely, could be found in half, perhaps in nine-tenths, of all the countries on the globe. What do they prove? Nothing but the tyranny and corruption of the very governments that have reduced so large portions of the people to their present ignorance, servility, degradation, and corruption; an ignorance, servility, degradation, and corruption that are best illustrated in the simple fact that they *do* sustain the governments that have so oppressed, degraded, and corrupted them. They do nothing towards proving that the governments themselves are legitimate; or that they ought to be sustained, or even endured, by those who understand their true character. The mere fact, therefore, that a government chances to be sustained by a majority, of itself proves nothing that is necessary to be proved, in order to know whether such government should be sustained, or not.

Seventh. The principle that the majority have a right to rule the minority, practically resolves all government into a mere contest between two bodies of men, as to which of them shall be masters, and which of them slaves; a contest, that—however bloody—can, in the nature of things, never be finally closed, so long as man refuses to be a slave.

III.

But to say that the consent of either the strongest party, or the most numerous party, *in a nation,* is a sufficient justification for the establishment or maintenance of a government that shall control the whole nation, does not obviate the difficulty. The question still remains, how comes such a thing as "a nation" to exist? How do many millions of men, scattered over an extensive territory—each gifted by nature with individual freedom; required by the law of nature to call no man, or body of men, his masters; authorized by that law to seek his own happiness in his own way, to do what he will with himself and his property, so long as he does not trespass upon the equal liberty of others; authorized also, by that law, to defend his own rights, and redress his own wrongs; and to go to the assistance and defence of any of his fellow men who may be suffering any kind of injustice—how do many millions of such men *come to be a nation,* in the first place? How is it that each of them comes to be stripped of all his natural, God-given rights, and to be incorporated, compressed, compacted, and consolidated into a mass with other men, whom he never saw; with whom he has no contract; and towards many of whom he has no sentiments but

fear, hatred, or contempt? How does he become subjected to the control of men like himself, who, by nature, had no authority over him; but who command him to do this, and forbid him to do that, as if they were his sovereigns, and he their subject; and as if their wills and their interests were the only standards of his duties and his rights; and who compel him to submission under peril of confiscation, imprisonment, and death?

Clearly all this is the work of force, or fraud, or both.

By what right, then, did *we* become "a nation?" By what right do we continue to be "a nation?" And by what right do either the strongest, or the most numerous, party, now existing within the territorial limits, called "The United States," claim that there really *is* such "a nation" as the United States? Certainly they are bound to show the rightful existence of "a nation," before they can claim, *on that ground,* that they themselves have a right to control it; to seize, for their purposes, so much of every man's property within it, as they may choose; and, at their discretion, to compel any man to risk his own life, or take the lives of other men, for the maintenance of their power.

To speak of either their numbers, or their strength, is not to the purpose. The question is by what *right* does the nation exist? And by what *right* are so many atrocities committed by its authority? or for its preservation?

The answer to this question must certainly be, that at least *such a nation* exists by no right whatever.

We are, therefore, driven to the acknowledgment that nations and governments, if they can rightfully exist at all, can exist only by consent.

IV.

The question, then, returns, What is implied in a government's resting on consent?

Manifestly this one thing (to say nothing of others) is necessarily implied in the idea of a government's resting on consent, viz: *the separate, individual consent of every man who is required to contribute, either by taxation or personal service, to the support of the government.* All this, or nothing, is necessarily implied, because one man's consent is just as necessary as any other man's. If, for example, A claims that his consent is necessary to the establishment or maintenance of government, he thereby necessarily admits that B's and every other man's are equally necessary; because B's and every other man's rights are just as good as his own. On the other hand, if he denies that B's or any other particular man's consent is necessary, he thereby necessarily admits that neither his own, nor any other man's is necessary; and that government need not be founded on consent at all.

There is, therefore, no alternative but to say, either that the separate, individual consent of every man, *who is required to aid, in any way, in supporting the government,* is necessary, or that the consent of no one is necessary.

Clearly this individual consent is indispensable to the idea of treason; for if a man has never consented or agreed to support a government, he breaks no faith in refusing to support it. And if he makes war upon it, he does so as an open enemy, and not as a traitor—that is, as a betrayer, or treacherous friend.

All this, or nothing, was necessarily implied in the Declaration made in 1776. If the necessity for consent, then announced, was a sound principle in favor of three millions of men, it was an equally sound one in favor of three men, or of one man. If the principle was a sound one in behalf of men living on a separate continent, it was an equally sound one in behalf of a man living on a separate farm, or in a separate house.

Moreover, it was only as separate individuals, each acting for himself, and not as members of organized governments, that the three millions declared their consent to be necessary to their support of a government; and, at the same time, declared their dissent to the support of the British Crown. The governments, then existing in the Colonies, had no constitutional power, *as governments*, to declare the separation between England and America. On the contrary, those governments, *as governments*, were organized under charters from, and acknowledged allegiance to, the British Crown. Of course the British king never made it one of the chartered or constitutional powers of those governments, *as governments*, to absolve the people from their allegiance to himself. So far, therefore, as the Colonial Legislatures acted as revolutionists, they acted only as so many individual revolutionists, and not as constitutional legislatures. And their representatives at Philadelphia, who first declared Independence, were, in the eye of the constitutional law of that day, simply a committee of Revolutionists, and in no sense constitutional authorities, or the representatives of constitutional authorities.

It was also, in the eye of the law, only as separate individuals, each acting for himself, and exercising simply his natural rights as an individual, that the people at large *assented to, and ratified the Declaration.*

It was also only as so many individuals, each acting for himself, and exercising simply his natural rights, that they revolutionized the *constitutional character* of their local governments, (so as to exclude the idea of allegiance to Great Britain); changing their forms only as and when their convenience dictated.

The whole Revolution, therefore, as a Revolution, was declared and accomplished by the people, acting separately as individuals, and exercising each his natural rights, and not by their governments in the exercise of their constitutional powers.

It was, therefore, as individuals, and only as individuals, each acting for himself alone, that they declared that their consent—that is, their individual consent, for each one could consent only for himself—was necessary to the creation or perpetuity of any government that they could rightfully be called on to support.

In the same way each declared, for himself, that his own will, pleasure, and discretion were the only authorities he had any occasion to consult, in determining whether he would any longer support the government under which he had always lived. And if this action of each individual

were valid and rightful when he had so many other individuals to keep him company, it would have been, in the view of natural justice and right, equally valid and rightful, if he had taken the same step alone. He had the same natural right to take up arms alone to defend his own property against a single tax-gatherer, that he had to take up arms in company with three millions of others, to defend the property of all against an army of tax-gatherers.

Thus the whole Revolution turned upon, asserted, and, in theory, established, the right of each and every man, at his discretion, to release himself from the support of the government under which he had lived. And this principle was asserted, not as a right peculiar to themselves, or to that time, or as applicable only to the government then existing; but as a universal right of all men, at all times, and under all circumstances.

George the Third called our ancestors traitors for what they did at that time. But they were not traitors *in fact,* whatever he or his laws may have called them. They were not traitors in fact, because they betrayed nobody, and broke faith with nobody. They were his equals, owing him no allegiance, obedience, nor any other duty, except such as they owed to mankind at large. Their political relations with him had been purely voluntary. They had never pledged their faith to him that they would continue these relations any longer than it should please them to do so; and therefore they broke no faith in parting with him. They simply exercised their natural right of saying to him, and to the English people, that they were under no obligation to continue their political connexion with them, and that, for reasons of their own, they chose to dissolve it.

What was true of our ancestors, is true of revolutionists in general. The monarchs and governments, from whom they choose to separate, attempt to stigmatize them as traitors. But they are not traitors in fact; inasmuch as they betray, and break faith with, no one. Having pledged no faith, they break none. They are simply men, who, for reasons of their own—whether good or bad, wise or unwise, is immaterial—choose to exercise their natural right of dissolving their connexion with the governments under which they have lived. In doing this, they no more commit the crime of treason—which necessarily implies treachery, deceit, breach of faith—than a man commits treason when he chooses to leave a church, or any other voluntary association, with which he has been connected.

This principle was a true one in 1776. It is a true one now. It is the only one on which any rightful government can rest. It is the one on which the Constitution itself professes to rest. If it does not really rest on that basis, it has no right to exist; and it is the duty of every man to raise his hand against it.

If the men of the Revolution designed to incorporate in the Constitution the absurd ideas of allegiance and treason, which they had once repudiated, against which they had fought, and by which the world had been enslaved, they thereby established for themselves an indisputable claim to the disgust and detestation of all mankind.

In subsequent numbers, the author hopes to show that, under the principle of individual consent, the little government that mankind need, is not only practicable, but natural and easy; and

that the Constitution of the United States authorizes no government, except one depending wholly on voluntary support.

23. NO TREASON. NO II. THE CONSTITUTION (1867).

Source

No Treason. No II. The Constitution (Boston: Published by the Author, 1867).

HTML and other formats: <oll.libertyfund.org/title/2213>.

NO TREASON. NO. II.

I.

The Constitution says:

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

The meaning of this is simply: We, the people of the United States, *acting freely and voluntarily as individuals, consent and agree* that we will coöperate with each other in sustaining such a government as is provided for in this Constitution.

The necessity for the consent of "the people" is implied in this declaration. *The whole authority of the Constitution rests upon it. If they did not consent, it was of no validity. Of course it had no validity, except as between those who actually consented.* No one's consent could be presumed against him, without his actual consent being given, any more than in the case of any other contract to pay money, or render service. And to make it binding upon any one, his signature, or other positive evidence of consent, was as necessary as in the case of any other contract. If the instrument meant to say that any of "the people of the United States" would be bound by it, who did not consent, it was a usurpation and a lie. The most that can be inferred from the form, "*We, the people,*" is, that the instrument *offered* membership to *all* "the people of the United States;" leaving it for them to accept or refuse it, at their pleasure.

The agreement is a simple one, like any other agreement. It is the same as one that should say: We, the people of the town of A—, agree to sustain a church, a school, a hospital, or a theatre, for ourselves and our children.

Such an agreement clearly could have no validity, except as between those who actually consented to it. If a portion only of "the people of the town of A—," should assent to this contract, and should then proceed to *compel* contributions of money or service from those who had not consented, they would be mere robbers; and would deserve to be treated as such.

Neither the conduct nor the rights of these signers would be improved at all by their saying to the dissenters: We offer you equal rights with ourselves, in the benefits of the church, school, hospital, or theatre, which we propose to establish, and equal voice in the control of it. It would be a sufficient answer for the others to say: We want no share in the benefits, and no voice in the control, of your institution; and will do nothing to support it.

The number who actually consented to the Constitution of the United States, at the first, was very small. Considered as the act of the whole people, the adoption of the Constitution was the merest farce and imposture, binding upon nobody.

The women, children, and blacks, of course, were not asked to give their consent. In addition to this, there were, in nearly or quite all the States, property qualifications that excluded probably one half, two thirds, or perhaps even three fourths, of the white male adults from the right of suffrage. And of those who were allowed that right, we know not how many exercised it.

Furthermore, those who originally agreed to the Constitution, could thereby bind nobody that should come after them. They could contract for nobody but themselves. They had no more natural right or power to make political contracts, binding upon succeeding generations, than they had to make marriage or business contracts binding upon them.

Still further. Even those who actually voted for the adoption of the Constitution, did not pledge their faith *for any specific time;* since no specific time was named, in the Constitution, during which the association should continue. It was, therefore, merely an association during pleasure; even as between the original parties to it. Still less, if possible, has it been any thing more than a merely voluntary association, during pleasure, between the succeeding generations, who have never gone through, as their fathers did, with so much even as any outward formality of adopting it, or of pledging their faith to support it. Such portions of them as pleased, and as the States permitted to vote, have only done enough, by voting and paying taxes, (and unlawfully and tyrannically extorting taxes from others,) to keep the government in operation for the time being. And this, in the view of the Constitution, they have done voluntarily, and because it was for their interest, or pleasure, and not because they were under any pledge or obligation to do it. Any one man, or any number of men, have had a perfect right, at any time, to refuse his or their further support; and nobody could rightfully object to his or their withdrawal.

There is no escape from these conclusions, if we say that the adoption of the Constitution was the act of the people, as individuals, and not of the States, as States. On the other hand, if we say that the adoption was the act of the States, as States, it necessarily follows that they had the right to secede at pleasure, inasmuch as they engaged for no specific time.

The consent, therefore, that has been given, whether by individuals, or by the States, has been, at most, only a consent for the time being; not an engagement for the future. In truth, in

the case of individuals, their actual voting is not to be taken as proof of consent, *even for the time being.* On the contrary, it is to be considered that, without his consent having ever been asked, a man finds himself environed by a government that he cannot resist; a government that forces him to pay money, render service, and forego the exercise of many of his natural rights, under peril of weighty punishments. He sees, too, that other men practise this tyranny over him by the use of the ballot. He sees further that, if he will but use the ballot himself, he has some chance of relieving himself from this tyranny of others, by subjecting them to his own. In short, he finds himself, without his consent, so situated that, if he use the ballot, he may become a master; if he does not use it, he must become a slave. And he has no other alternative than these two. In self-defence, he attempts the former. His case is analogous to that of a man who has been forced into battle, where he must either kill others, or be killed himself. Because, to save his own life in battle, a man attempts to take the lives of his opponents, it is not to be inferred that the battle is one of his own choosing. Neither in contests with the ballot—which is a mere substitute for a bullet—because, as his only chance of self-preservation, a man uses a ballot, is it to be inferred that the contest is one into which he voluntarily entered; that he voluntarily set up all his own natural rights, as a stake against those of others, to be lost or won by the mere power of numbers. On the contrary, it is to be considered that, in an exigency, into which he had been forced by others, and in which no other means of self-defence offered, he, as a matter of necessity, used the only one that was left to him.

Doubtless the most miserable of men, under the most oppressive government in the world, if allowed the ballot, would use it, if they could see any chance of thereby ameliorating their condition. But it would not therefore be a legitimate inference that the government itself, that crushes them, was one which they had voluntarily set up, or ever consented to.

Therefore a man's voting under the Constitution of the United States, is not to be taken as evidence that he ever freely assented to the Constitution, *even for the time being.* Consequently we have no proof that any very large portion, even of the actual voters of the United States, ever really and voluntarily consented to the Constitution, *even for the time being.* Nor can we ever have such proof, until every man is left perfectly free to consent, or not, without thereby subjecting himself or his property to injury or trespass from others.

II.

The Constitution says:

> "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

This is the only definition of treason given by the Constitution, and it is to be interpreted, like all other criminal laws, in the sense most favorable to liberty and justice. Consequently the treason here spoken of, must be held to be treason *in fact,* and not merely something that may have been falsely called by that name.

To determine, then, what is treason *in fact*, we are not to look to the codes of Kings, and Czars, and Kaisers, who maintain their power by force and fraud; who contemptuously call mankind their "subjects;" who claim to have a special license from Heaven to rule on earth; who teach that it is a religious duty of mankind to obey them; who bribe a servile and corrupt priesthood to impress these ideas upon the ignorant and superstitious; who spurn the idea that their authority is derived from, or dependent at all upon, the consent of their people; and who attempt to defame, by the false epithet of traitors, all who assert their own rights, and the rights of their fellow men, against such usurpations.

Instead of regarding this false and calumnious meaning of the word treason, we are to look at its true and legitimate meaning in our mother tongue; at its use in common life; and at what would necessarily be its true meaning in any other contracts, or articles of association, which men might voluntarily enter into with each other.

The true and legitimate meaning of the word *treason*, then, necessarily implies treachery, deceit, breach of faith. Without these, there can be no treason. A traitor is a betrayer—one who practices injury, *while professing friendship.* Benedict Arnold was a traitor, solely because, *while professing friendship for the American cause*, he attempted to injure it. An open enemy, however criminal in other respects, is no traitor.

Neither does a man, who has once been my friend, become a traitor by becoming an enemy, if before doing me an injury, he gives me fair warning that he has become an enemy; and if he makes no unfair use of any advantage which my confidence, in the time of our friendship, had placed in his power.

For example, our fathers—even if we were to admit them to have been wrong in other respects—certainly were not traitors *in fact, after* the fourth of July, 1776; since on that day they gave notice to the King of Great Britain that they repudiated his authority, and should wage war against him. And they made no unfair use of any advantages which his confidence had previously placed in their power.

It cannot be denied that, in the late war, the Southern people proved themselves to be open and avowed enemies, and not treacherous friends. It cannot be denied that they gave us fair warning that they would no longer be our political associates, but would, if need were, fight for a separation. It cannot be alleged that they made any unfair use of advantages which our confidence, in the time of our friendship, had placed in their power. Therefore they were not traitors in fact: and consequently not traitors within the meaning of the Constitution.

Furthermore, men are not traitors *in fact*, who take up arms against the government, *without having disavowed allegiance to it*, provided they do it, either to resist the usurpations of the government, *or to resist what they sincerely believe to be such usurpations.*

It is a maxim of law that there can be no crime without a criminal intent. And this maxim is as applicable to treason as to any other crime. For example, our fathers were not traitors in fact, for resisting the British Crown, *before* the fourth of July, 1776—that is, *before* they had thrown off allegiance to him—provided they *honestly believed* that they were simply defending their rights

against his usurpations. Even if they were mistaken in their law, that mistake, if an innocent one, could not make them traitors in fact.

For the same reason, the Southern people, if they sincerely believed—as it has been extensively, if not generally, conceded, at the North, that they did—in the so-called constitutional theory of "State Rights," did not become traitors *in fact,* by acting upon it; and consequently not traitors within the meaning of the Constitution.

III.

The Constitution does not say *who* will become traitors, by "levying war against the United States, or adhering to their enemies, giving them aid and comfort."

It is, therefore, only by inference, or reasoning, that we can know *who* will become traitors by these acts.

Certainly if Englishmen, Frenchmen, Austrians, or Italians, making no professions of support or friendship to the United States, levy war against them, or adhere to their enemies, giving them aid and comfort, they do not thereby make themselves traitors, within the meaning of the Constitution; and why? Solely because they would not be traitors *in fact.* Making no professions of support or friendship, they would practice no treachery, deceit, or breach of faith. But if they should voluntarily enter either the civil or military service of the United States, and pledge fidelity to them, (*without* being naturalized,) and should then betray the trusts reposed in them, either by turning their guns against the United States, or by giving aid and comfort to their enemies, they would be traitors *in fact;* and therefore traitors within the meaning of the Constitution; and could be lawfully punished as such.

There is not, in the Constitution, a syllable that implies that persons, born within the territorial limits of the United States, have allegiance imposed upon them on account of their birth in the country, or that they will be judged by any different rule, on the subject of treason, than persons of foreign birth. And there is no power, in Congress, to add to, or alter, the language of the Constitution, on this point, so as to make it more comprehensive than it now is. Therefore treason in fact—that is, actual treachery, deceit, or breach of faith—must be shown in the case of a native of the United States, equally as in the case of a foreigner, before he can be said to be a traitor.

Congress have seen that the language of the Constitution was insufficient, *of itself,* to make a man a traitor—on the ground of birth in this country—who levies war against the United States, but practices no treachery, deceit, or breach of faith. They have, therefore—although they had no constitutional power to do so—apparently attempted to enlarge the language of the Constitution on this point. And they have enacted:

> "That if any person or persons, *owing allegiance to the United States of America,* shall levy war against them, or shall adhere to their enemies, giving them aid and comfort,

* * * such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death."—*Statute, April* 30, 1790, *Section* 1.

It would be a sufficient answer to this enactment to say that it is utterly unconstitutional, if its effect would be to make any man a traitor, who would not have been one under the language of the Constitution alone.

The whole pith of the act lies in the words, "*persons owing allegiance to the United States.*" But this language really leaves the question where it was before, for it does not attempt to show or declare who *does* "owe allegiance to the United States;" although those who passed the act, no doubt thought, or wished others to think, that allegiance was to be presumed (as is done under other governments) against all born in this country, (unless possibly slaves).

The Constitution itself, uses no such word as "allegiance," "sovereignty," "loyalty," "subject," or any other term, such as is used by other governments, to signify the services, fidelity, obedience, or other duty, which the people are assumed to owe to their government, regardless of their own will in the matter. As the Constitution professes to rest wholly on consent, no one can owe allegiance, service, obedience, or any other duty to it, or to the government created by it, except with his own consent.

The word *allegiance* comes from the Latin words *ad* and *ligo,* signifying *to bind to.* Thus a man under allegiance to a government, is a man *bound to it;* or bound to yield it support and fidelity. And governments, *founded otherwise than on consent,* hold that all persons born under them, are under allegiance to them; that is, are bound to render them support, fidelity, and obedience; and are traitors if they resist them.

But it is obvious that, *in truth and in fact,* no one but himself can bind any one to support any government. And our Constitution admits this fact when it concedes that it derives its authority wholly from the consent of the people. And the word treason is to be understood in accordance with that idea.

It is conceded that a person of foreign birth comes under allegiance to our government only by special voluntary contract. If a native has allegiance imposed upon him, against his will, he is in a worse condition than the foreigner; for the latter can do as he pleases about assuming that obligation. The accepted interpretation of the Constitution, therefore, makes the foreigner a free person, on this point, while it makes the native a slave.

The only difference—*if there be any*—between natives and foreigners, in respect of allegiance, is, that a native has a *right*—offered to him by the Constitution—to come under allegiance to the government, if he so please; and thus entitle himself to membership in the body politic. His allegiance cannot be refused. Whereas a foreigner's allegiance can be refused, if the government so please.

IV.

The Constitution certainly supposes that the crime of treason can be committed only by man, as an individual. It would be very curious to see a man indicted, convicted, or hanged, otherwise than as an individual; or accused of having committed his treason otherwise than as an individual. And yet it is clearly impossible that any one can be personally guilty of treason, can be a traitor *in fact,* unless he, as an individual, has in some way voluntarily pledged his faith and fidelity to the government. Certainly no man, or body of men, could pledge it for him, without his consent; and no man, or body of men, have any right to presume it against him, when he has not pledged it himself.

V.

It is plain, therefore, that if, when the Constitution says treason, it means treason—treason in fact, and nothing else—there is no ground at all for pretending that the Southern people have committed that crime. But if, on the other hand, when the Constitution says treason, it means what the Czar and the Kaiser mean by treason, then our government is, in principle, no better than theirs; and has no claim whatever to be considered a free government.

VI.

One essential of a free government is that it rest wholly on voluntary support. And one certain proof that a government is not free, is that it coerces more or less persons to support it, against their will. All governments, the worst on earth, and the most tyrannical on earth, are free governments to that portion of the people who voluntarily support them. And all governments—though the best on earth in other respects—are nevertheless tyrannies to that portion of the people—whether few or many—who are compelled to support them against their will. A government is like a church, or any other institution, in these respects. There is no other criterion whatever, by which to determine whether a government is a free one, or not, than the single one of its depending, or not depending, solely on voluntary support.

VII.

No middle ground is possible on this subject. Either "taxation without consent is robbery," or it is not. If it is *not,* then any number of men, who choose, may at any time associate; call themselves a government; assume absolute authority over all weaker than themselves; plunder them at will; and kill them if they resist. If, on the other hand, "taxation without consent *is* robbery," it necessarily follows that every man who has not consented to be taxed, has the same natural right to defend his property against a taxgatherer, that he has to defend it against a highwayman.

VIII.

It is perhaps unnecessary to say that the principles of this argument are as applicable to the State governments, as to the national one.

The opinions of the South, on the subjects of allegiance and treason, have been equally erroneous with those of the North. The only difference between them, has been, that the South has held that a man was (primarily) under involuntary allegiance to the *State* government; while the North held that he was (primarily) under a similar allegiance to the United States government; whereas, in truth, he was under no involuntary allegiance to either.

IX.

Obviously there can be no law of treason more stringent than has now been stated, consistently with political liberty. In the very nature of things there can never be any liberty for the weaker party, on any other principle; and political liberty always means liberty for the weaker party. It is only the weaker party that is ever oppressed. The strong are always free by virtue of their superior strength. So long as government is a mere contest as to which of two parties shall rule the other, the weaker must always succumb. And whether the contest be carried on with ballots or bullets, the principle is the same; for under the theory of government now prevailing, the ballot either signifies a bullet, or it signifies nothing. And no one can consistently use a ballot, unless he intends to use a bullet, if the latter should be needed to insure submission to the former.

X.

The practical difficulty with our government has been, that most of those who have administered it, have taken it for granted that the Constitution, *as it is written,* was a thing of no importance; that it neither said what it meant, nor meant what it said; that it was gotten up by swindlers, (as many of its authors doubtless were,) who said a great many good things, which they did not mean, and meant a great many bad things, which they dared not say; that these men, under the false pretence of a government resting on the consent of the whole people, designed to entrap them into a government of a part, who should be powerful and fraudulent enough to cheat the weaker portion out of all the good things that were said, but not meant, and subject them to all the bad things that were meant, but not said. And most of those who have administered the government, have assumed that all these swindling intentions were to be carried into effect, in the place of the written Constitution. Of all these swindles, the treason swindle is the most flagitious. It is the most flagitious, because it is equally flagitious, in principle, with any; and it includes all the others. It is the instrumentality by which all the others are made effective. A government that can at pleasure accuse, shoot, and hang men, as traitors, for the one general offence of refusing to surrender themselves and their property unreservedly to its arbitrary will, can practice any and all special and particular oppressions it pleases.

The result—and a natural one—has been that we have had governments, State and national, devoted to nearly every grade and species of crime that governments have ever practised upon their victims; and these crimes have culminated in a war that has cost a million of lives; a war carried on, upon one side, for chattel slavery, and on the other for political slavery; upon neither for liberty, justice, or truth. And these crimes have been committed, and this war waged, by men, and the descendants of men, who, less than a hundred years ago, said that all men were equal, and could owe neither service to individuals, nor allegiance to governments, except with their own consent.

XI.

No attempt or pretence, that was ever carried into practical operation amongst civilized men—unless possibly the pretence of a "Divine Right," on the part of some, to govern and enslave others—embodied so much of shameless absurdity, falsehood, impudence, robbery, usurpation, tyranny, and villany of every kind, as the attempt or pretence of establishing a government *by consent,* and getting the actual consent of only so many as may be necessary to keep the rest in subjection by force. Such a government is a mere conspiracy of the strong against the weak. It no more rests on consent than does the worst government on earth.

What substitute for their consent is offered to the weaker party, whose rights are thus annihilated, struck out of existence, by the stronger? Only this: *Their consent is presumed!* That is, these usurpers condescendingly and graciously *presume* that those whom they enslave, *consent* to surrender their all of life, liberty, and property into the hands of those who thus usurp dominion over them! And it is pretended that this presumption of their consent—when no actual consent has been given—is sufficient to save the rights of the victims, and to justify the usurpers! As well might the highwayman pretend to justify himself by presuming that the traveller *consents* to part with his money. As well might the assassin justify himself by simply *presuming* that his victim consents to part with his life. As well might the holder of chattel slaves attempt to justify himself by presuming that they consent to his authority, and to the whips and the robbery which he practises upon them. The presumption is simply a presumption that the weaker party consent to be slaves.

Such is the presumption on which alone our government relies to justify the power it maintains over its unwilling subjects. And it was to establish that presumption as the inexorable and perpetual law of this country, that so much money and blood have been expended.

24. SENATE-NO. 824. THOMAS DREW VS. JOHN M. CLARK (1869).

Source

Senate-No. 824. Thomas Drew vs. John M. Clark (n.p., 1869).

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THOMAS DREW *vs.* JOHN M. CLARK.

ARGUMENT FOR PETITIONER.

The alleged contempt for which the petitioner was condemned consisted in his refusal *to be sworn* before a committee of the legislature; not in his refusal to answer questions after he had been sworn, but in his refusal *to be sworn.*

His objection to being sworn did not arise from any conscientious scruples as to taking an oath; nor from any fear of criminating himself; nor from any objection whatever to testifying before a committee of the legislature; nor from any objection to testifying in regard to any subject-matter whatever which the legislature has authority to investigate by *compulsory* testimony. He concedes fully that, if *anybody* could be *compelled* to be sworn in this case, he could be. Nor does he now seek to draw in question the right of the legislature to investigate any subject they please, by merely *voluntary* testimony. He only questions the *extent* of their power to investigate by *compulsory* testimony.

His whole objection to being sworn, in the present case, rested simply upon the fact that it did not appear from any papers furnished to him, nor from any authority or information legally in his possession, that the *subject-matter* of the investigation was one which the legislature had authority to investigate by *compulsory* testimony.

We suppose the rule is imperative everywhere, in the judicial tribunals as well as before committees of the legislature, that, before a person can be required to be sworn, he is entitled, if he desires it, to be informed of the *subject-matter* in regard to which he is to testify, in order that he may judge whether he can take the oath with a conscientious intention to fulfil it. We suppose that no one can be required to swear blindly; that is, that no one can be required to swear to testify, without knowing what he is to testify about. Such a requirement and such an oath would be

absurd as well as immoral, because they would involve the taking of an oath which he not only *might not* conscientiously intend to fulfil, but which he even *could not* conscientiously fulfil.

If, then, a person has a right, before he is sworn, to know the subject-matter in regard to which he is to testify, he has the further right to judge, *at his peril of course*, whether that subject-matter be one in regard to which he can lawfully be compelled to testify. If the subject-matter be one in regard to which he *may* lawfully be compelled to testify, and he refuses to be sworn, he must take the consequences. But, if the subject-matter be one in regard to which he could *not* lawfully be compelled to testify, he stands justified in his refusal *even to be sworn.* He cannot be required to take an oath which he will be under no obligation to fulfil after he has taken it. He cannot be required to swear that he will testify, either fully or partially, in regard to a particular subject-matter, when he cannot lawfully be required to testify *to anything at all in regard to it.*

If, for example, a man cannot lawfully be required to give the legislature any information at all as to what he and his family usually eat at breakfast, dinner and supper, he cannot lawfully be required to swear that he will give them any such information. It would be manifestly absurd and immoral for them to require him to swear, and for him to swear, that he would give them any such information at all on this subject, when they could not afterwards lawfully require him to fulfil his oath, and when he had no intention of fulfilling it.

To require him to be sworn in such a case is equivalent to requiring him to swear falsely.

The ground taken by the Senate, as all their proceedings show, is, that, in the case just supposed, he could lawfully be required to take the oath that he would give them this information in regard to breakfast, dinner and supper, even though he could not afterwards be required to give it.

The position of the Senate is really this,—that they have a right to compel a man to take as many oaths as they can invent and propound to him, even though they have not the right to compel him to fulfil one of them.

The Senate absurdly require that a man shall *first* surrender his conscience wholly into their keeping, so far as to take all the oaths they may proffer him. When he has done that,—when he has acknowledged their authority over his conscience to *the extent of making him take the oath,*—they may then perhaps from choice, or they may be compelled by law, to give back to him his conscience, and say to him, "You may now do as you please about fulfilling these oaths. The law does not require you to fulfil them; but it did require you to take them."

Placed in the best possible light, the position of the Senate is this,—that they will compel him *to be sworn,* while they wholly ignore and postpone the question whether he will be under any obligation to testify after he has been sworn.

The position of the prisoner, on the other hand, is this,—that inasmuch as the subject-matter is, on the face of it, one in regard to which he cannot lawfully be required to give any testimony at all, he cannot lawfully be required to swear that he will give any.

This case may be illustrated by another. Suppose a man were required to be sworn to give testimony in a trial of his wife for murder; and he should object that his being sworn could be of no avail, inasmuch as he could not be required to testify after he had so sworn. Must not the court, before insisting that he be sworn, decide whether he could be required to testify after he has been sworn? And, if they decide that he could not be required to testify, must they not then excuse him from being sworn? Clearly so.

The whole object of the law, in requiring the oath, is to get true and lawful testimony. If the law does not require the testimony, it would be absurd to say that it required the oath.

Where the law does not require a man to give his testimony, it is mere senseless, useless, brutal tyranny to require him to be sworn.

It is just as easy for any tribunal to decide, before a man is sworn, whether he can be required to testify, as it is to decide it afterwards.

Suppose a judicial court should summons a man before them as a witness, and then, instead of requiring him to swear that he will testify to all he knows in the case of John Doe *vs.* Richard Roe, or the case of the Commonwealth *vs.* John Smith, should require him to swear that he will testify to all he knows about the Chinese Embassy, the approaching Ecumenical Council, the Alabama claims, the revolution in Spain, the war in Crete, the rebellion in Cuba, the late eruption of Vesuvius, the late earthquakes in South America, and the war in Japan; and suppose he should object that the court had no jurisdiction of those matters, and therefore could not require him to testify to anything at all in regard to them,—would it be the right of the court to say: "We now require you only to swear that you will testify on these subjects; after you shall have done that, we will consider and decide whether we have the further right to compel you to fulfil your oath?" Clearly the court must first decide whether he can be required to testify on those subjects; and if he cannot be required to testify, he cannot be required to swear that he will.

We hold, then, the following propositions to be demonstrated, viz.:—

1. That the law can, in no case whatever, require a man to be sworn until he is legally informed of the subject-matter in regard to which he is to be sworn.

2. That a man cannot lawfully be required to take any oath that he cannot lawfully be required to fulfil.

3. That a man cannot lawfully be compelled to be sworn before any tribunal that has no lawful authority to investigate, by *compulsory* testimony, the particular subject-matter in regard to which he is to be sworn.

From the preceding propositions it necessarily follows, that, before any person can be compelled to be sworn before a committee of the legislature, he must have *legal notice* that the subject-matter, in regard to which he is to be sworn, is one which the legislature has a right to investigate by means of *compulsory* testimony; that it is not competent for the legislature to compel a person to be sworn in a case in which they would have no authority to require him to testify after he was sworn.

In this case, the prisoner claims that he had no legal information that the subject-matter, in regard to which he was required to testify was one which the legislature had any authority to investigate by *compulsory* testimony. The only legal information he had on this point was a certified copy of the following Order and summons, to wit:—

COMMONWEALTH OF MASSACHUSETTS.

In Senate, February 23, 1869.

Ordered, That the Joint Special Committee to inquire into charges of corruption against corporations, parties and persons, be authorized to send for persons and papers.

Sent down for concurrence.

S. N. Gifford,*Clerk.*

House of Representatives, February 24, 1869.

Concurred.

W. S. Robinson,*Clerk.*

State House, Boston, April 7, 1869.

To Thomas Drew, of Newton, in the County of Middlesex:—

Pursuant to the above Order you are required to appear before the committee therein mentioned, at the State House in Boston, on Wednesday, the fourteenth day of April current, at nine o'clock, A. M., then and there to give evidence of what you know relating to the subject-matter of said investigation, and also have with you such papers, writings and documents, relating thereto, as may be in your possession.

By order of the Committee,

Daniel Needham,*Chairman.*

A true copy.

Attest:

John Morissey,Sergeant-at-Arms.

The petitioner claims that this Order, on the face of it, discloses no case which the legislature has a right to investigate by *compulsory* testimony.

It clearly shows no case that is within the *judicial* power of the legislature or of either branch of it,—that is to say, it is not a summons to testify in any case where the election or qualifications of a member of the House or Senate is to be settled; it is not a summons to testify in any case of impeachment; it is not a summons to testify in any case of the expulsion or punishment of a member of the House or Senate; it is not a summons to testify in any case of alleged contempt that had previously arisen, and which it was within the *judicial* power of the House or Senate to

try and punish by virtue of the constitution, part second, chapter 1, section 3, articles 10 and 11, which are given in the note.*

Furthermore, this Order is not a summons to testify in regard to any matters or acts done in any State office or institution, as for example, the offices of the Secretary, Treasurer or Auditor, or the State Prison, the public jails, the lunatic asylum, the State alms-houses, the Reform School, or any other public institution which is under the immediate control of the legislature.

The only remaining question, then, that can arise as to the legality of this Order, is, whether the legislature has power, by means of *compulsory* testimony, "to inquire into charges of corruption against corporations, parties and persons."

The petitioner says that these words utterly fail to present any case, in regard to which the legislature can *compel* any one to testify, either before the legislature itself, or any of its committees.

The words certainly cannot be said to present any *criminal* case on the part of either "corporations, parties or persons;" for, if by the word "corruption" was meant *legal criminality*, it is clear that the case—not being within the special judicial power given to the legislature, or either branch of it—could not lawfully be "inquired into" by the legislature, by means of compulsory testimony, but must go before the regular judicial tribunals: and it has the right to go there unembarrassed and unprejudiced by any investigations or disclosures on the part of the legislature.

If, then, it must be admitted that the word "corruption," as used in this Order, does not mean any *legal criminality*, it must be conceded to mean only some one or more other kinds of "corruption," as for example, moral, religious, political, or even physical "corruption." And inasmuch as it designates no one kind of "corruption," and designates no particular "corporations, parties or persons" that are suspected of it, the Order is, on the face of it, a mere wild, roving commission to search for anything and everything, physical, moral, religious and political, which the committee may see fit to designate by the term "corruption," on the part of any and all "corporations," such as colleges, academies and churches, as well as railroad, banking, insurance, manufacturing and mining "corporations," and also on the part of any and all "parties and persons," men, women and children, within the limits of the Commonwealth.

Under this commission, full inquisition, open or secret, could be made into the physical cleanliness or filthiness, the moral purity or impurity, the religious sincerity or hypocrisy, and the religious and political orthodoxy and heterodoxy, of every individual, and every association of individuals, in the Commonwealth.

No narrower limits than these can be assigned to the investigations of the Committee, if they can act under the Order at all. Don Quixote himself, in the height of his folly, never conceived of an enterprise so absurd and ridiculous as this inugurated by the legislature of Massachusetts, if we are to take this Order as the exponent of their intentions.

Whether the legislature can carry on this illimitable inquiry, by means of merely *voluntary* testimony, the petitioner is not now concerned to inquire. But that they can carry it on by means of *compulsory* testimony, he denies. The Senate, on the other hand, insists that the legislature can not only make such inquiry, but also that they can even *compel* testimony for that purpose. And that is

the issue that has been made up between the petitioner and the Senate, and is now before this court.

The constitution (Part II. Chap. 1, Sect. 1, Art. 4,) contains these words:—

> "And, further, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain and establish, all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, either with penalties or without; *so as the same be not repugnant or contrary to this Constitution,* as they shall judge to be for the good and welfare of this Commonwealth, and for the governing and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof," etc., etc.

This legislative power would seem to be as ample as any reasonable body of legislators could desire. At any rate, it is the utmost that the people of Massachusetts have seen fit to give to their legislature; and if the legislature desire more power, they must ask the people to give them more, by an amendment to the constitution, instead of usurping it themselves.

The constitution, having given this liberal power to the legislature *in the making of laws,* has been explicit in declaring that the enforcement of these laws upon the people, and all questions as to whether these laws have been violated by the people, shall be determined by the judicial tribunals alone, (except in the few cases where special judicial power is given to the legislature, governor and council.)

And the petitioner insists that all that the constitution requires of the people is, that they shall obey these laws, as interpreted, sanctioned and enforced by the judiciary.

But if, in addition to all this power of making laws, and requiring obedience to them on the part of the people, the legislature can institute inquisitions, either open, or (as in this case) secret, into the moral and religious character, either of the people generally, or of particular individuals, and can *compel* persons to come before these inquisitorial bodies, and tell everything they may know of their neighbors and fellow-citizens, which can be classed under so indefinite and comprehensive a term as "corruption," the same to be reported and spread abroad, under the sanction of the legislature, to damage the interests, blacken the reputations and destroy the happiness of persons charged with no violation of law, our government is a thoroughly infamous and detestable one,—such an one as no people could ever reasonably be presumed to have consented to, and such as no people ought to tolerate for a moment.

Such a power on the part of the legislature would be ample to open the floodgates of detraction and slander upon any and all whom the suspicion, prejudice, envy or malice of members of the legislature, or of those of whom they were the tools, might seek to destroy. And all this could be done under the protection of their legislative privileges. Both witnesses and legislators would be under this protection, and consequently free of all liability to answer before the judicial tribunals for their crimes.

If such really be the powers of our legislature, it is certain, though not remarkable, that we have never, *until now,* had a legislature that saw fit to exercise, or even to assert, these infamous

powers with which they were intrusted. That these powers should now be asserted and insisted on, to the extent of sending a man to prison for refusing to become a tool of the legislature in this behalf, is, thank God, a phenomenon as rare as it is disgusting.

The petitioner, then, holds it clear that the legislature have no power, at least by means of *compulsory* testimony, to institute any *general* inquisition, either open or secret, into the physical, moral, religious and political purity or "corruption" of the people at large in this Commonwealth.

The only remaining question is, whether they have this right in regard to "corporations."

On this point the petitioner has only this to say, viz.:—

1. That a "corporation" is not a creature of the legislature, in any such sense as would give the legislature any *judicial* power over it. The legislature cannot possibly *get judicial* power over it by any bargain or contract for that purpose incorporated in its charter. If it could get this power by a bargain with a number of individuals, granting them privileges on that condition, it could get it over single individuals by the same means. It could get it over every individual to whom they could offer sufficient inducements. And thus the judicial power, which is expressly denied to the legislature by the constitution, might nevertheless be wholly or partially acquired by it by means of contracts with individuals. And to that extent the constitution would be circumvented and nullified.

2. A corporation, as stated by the petitioner before the Senate, is necessarily only a number of citizens, having the same rights, and subject to the same liabilities, as other citizens, with only this difference, viz., that the legislature has granted them, and they have accepted, certain privileges, subject only to specific conditions. Whether they have violated these conditions, and incurred the penalties annexed to such violation, must always be a *judicial* question, which the legislature can no more try than it can try any other judicial question. And, if the legislature has no power to try any such question, it can *compel* no one to testify in regard to it.

3. If no violation of law be charged upon a corporation, but the legislature nevertheless contemplates amending or repealing its charter, or making new laws concerning it, in accordance with the discretionary power reserved by Revised Statutes, chap. 68, sect. 41, and desires to have its discretion enlightened as to the needful or appropriate legislation in this behalf, then the petitioner claims that the power thus reserved by the legislature is only the same as, *and a part of,* that general discretionary power which the legislature first exercised in granting the charter, and such as the legislature has in regard to any and all other subjects of legislation; and that the legislature, therefore, can no more *compel* a person to enlighten their discretion on the subject of amending or repealing the charters of "corporations," than it can *compel* him to enlighten their discretion on any other ordinary subject of legislation. It can certainly have no more power in regard to amending or repealing a charter than it had originally in granting it. And, as it had no power to *compel* testimony to enlighten their discretion as to granting the charter, it can have no power to compel testimony to enlighten their discretion as to amending or repealing it.

The legislature certainly cannot *compel* Agassiz to enlighten their discretion as to the legislation necessary or proper in regard to the culture of fish, merely because they propose to legislate upon that subject. Neither can it *compel* either a scientific or practical agriculturist to enlighten their discretion as to the expediency of a State agricultural college, merely because the legislature contemplate establishing such a college. If the legislature do not feel themselves competent, of their own knowledge, to legislate on the ordinary subjects of legislation, they must enlighten themselves either by such information at other persons may freely and voluntarily give them, or such as can be obtained by offering proper rewards. They certainly cannot adopt the preposterous course of bringing against individuals the loose and indefinite charge of "corruption," and then, under color of investigating that charge, *compel* persons to come before them, and enlighten their general ignorance, and thus qualify them for their legislative duties. So infamous a proceeding can no more be resorted to, for the purpose of enlightening their discretion as to any general legislation relating to "corporations," than it can be to enlighten their discretion as to any general legislation relating to the people at large.

The petitioner has thus presented his case as he claims it must stand on the Order before quoted, for refusing to obey which he was tried, condemned and imprisoned; and as he therefore claims that it must stand before this court, whatever other testimony, *of a subsequent nature,* may be attempted to be brought into it.

That Order to appear before the Committee, and give evidence of what he knew relating simply to "charges of corruption against corporations, parties and persons," was the only *legal information* he had as to the subject-matter in regard to which he was required to be sworn.

On his first arraignment before the Senate, he asked for a certified copy of the other and original Order *under which the Committee was appointed,* which he informed the Senate he had never seen, and which he supposed might give him further light as to the subject-matter of the investigation, and consequently as to his duty, or not, to be sworn. He also asked for time in which to consult counsel, and ascertain his rights, all of which appears in the copy of his defence, among the papers now submitted to the court.

But less than twenty-four hours' time was granted him, and during that time no certified copy of the original Order was furnished him; and he never saw a certified copy of it until after he had been tried, condemned and imprisoned.

He therefore claims that that original Order cannot now be brought into the case under any circumstances whatever.

Even if the court should be of opinion that this original Order, under which the Committee was appointed, would have modified or did modify, the powers of the Committee, so as to give them a *legal* subject-matter of investigation; or, supposing it to have been seen by the petitioner, that it would have given him ample information of a *legal* subject-matter of investigation, and thus have imposed upon him the duty of being sworn,—still he says that, inasmuch as he had never seen any certified copy of it, he cannot be said to have been legally informed of its con-

tents, or consequently to have been under any obligation at all in regard to it, unless it were simply to request a certified copy of it, which he did, but was refused until it was too late to be used in his defence.

He therefore had no legal information as to the subject-matter of the investigation, except what was contained simply in the supplementary Order, already given, authorizing the Committee to send for persons and papers.

Since he has been in prison, he has been furnished with a certified copy of the original Order for raising the Committee. It is as follows:

COMMONWEALTH OF MASSACHUSETTS.

In Senate, Feb. 23, 1869.

Ordered, That a joint special committee, to consist of five members on the part of the House, with such as the Senate may join, be appointed to inquire if any railroad company, chartered by, and receiving aid from, this Commonwealth, has paid large sums of money, either to aid legislation in their behalf, or suppress legislation adverse to their corporate interests, and that such committee have power to send for persons and papers; and said committee is also further authorized to inquire if any other railroad company, or other corporation chartered here, or if any other party or person has, at any time, used any improper means or influence to aid or to suppress legislation.

It will be seen that this Order is in very different terms from the one in reference to which the petitioner was tried and condemned. But he nevertheless holds that it is equally futile with the other; that it utterly fails to set forth any *legal* subject-matter of *compulsory* investigation; and that it could have been no authority for the Committee to require him to be sworn, even if it had been produced.

This Order, it will be noticed, is in two parts. The first part is in these words:—

> "*Ordered,* That a joint special committee, to consist of five members on the part of the House, with such as the Senate may join, be appointed to inquire if any railroad company, chartered by and receiving aid from this Commonwealth, has paid large sums of money, either to aid legislation in their behalf, or suppress legislation adverse to their corporate interests; and that such committee have power to send for persons and papers."

This part of the Order, it will be seen, is not for an inquiry as to whether the money so paid "to aid legislation in their behalf, or suppress legislation adverse to their corporate interests," was paid for any *corrupt* purpose, or in any *corrupt* manner, whatever, *but only as to whether it was paid at all.*

If money has been paid at all for those purposes, it must certainly be presumed to have been paid honestly, at least until the contrary is either proved, or charged, or ordered to be inquired into.

Now, it is obvious that when a railroad corporation, like the Boston, Hartford and Erie, or the Troy and Greenfield, comes before the legislature to ask them to aid the corporation by the loan of millions of money or credit, it must not only be proper, but indispensably necessary, that they should spend "large sums of money" in collecting and arranging all the data necessary to enable the legislature to act with reasonable discretion in judging whether the loan would be a safe, judicious and proper one. Comprehensive and reliable data must be obtained as to the amount already expended on the road, the probable future cost of the road, the prospective business of the road, its relations to the interest of the Commonwealth, and the security the road can offer for the loan, before the legislature could reasonably be asked to loan a shilling, not to say millions, of the money or credit of the State. Does any one suppose that all these data can be procured and arranged, and properly presented to the legislature, otherwise than by the payment of "large sums of money"? Of course not. The simple fact that the legislature will even seriously entertain the question of making the loan, presupposes that "large sums of money" have been already "paid," in order to enlighten the discretion of the legislature on the subject.

Since, then, this *first part* of the Order does not even mention such a thing as an inquiry as to whether "large sums of money" have been paid *corruptly,* but only as to whether they *have been paid,* and as it must be presumed, at least until the contrary has been either proved, or charged, or ordered to be inquired into, that the money was paid honestly,—the prisoner holds that this *first part* of the Order presents no *legal* subject-matter for investigation by means of *compulsory* testimony. He holds that he—a person holding no office or employment under any railroad corporation, and holding no stock in any railroad corporation, and consequently not required by its charter to join in any report of its doings to the legislature—might as well be *compelled* to testify whether, to his knowledge, a railroad company had paid large sums of money for running their road, for locomotives, for cars, for railroad iron, for wood or coal, or as compensation to their employees, as for aiding legislation in their favor. The whole inquiry is, on the face of it, absurd and ridiculous as a subject-matter for *compulsory* investigation, so long as the Order makes no charge, and directs no inquiry, as to whether the money was *corruptly* paid.

The same reasons will apply to the case of "large sums of money paid" by any railroad corporation "to suppress (or prevent) legislation adverse to its corporate interests."

Does the legislature suppose that a railroad corporation, like the "Western" (that was,) or the Boston and Albany (that is now,) is going to sit still, and see the State charter, or lend millions of money or credit to, rival roads, like the Troy and Greenfield, or the Boston, Hartford and Erie, without spending "large sums of money" to protect their "corporate interests" against such "adverse legislation?" And, so long as no charge is made, or inquiry ordered, as to whether this money is paid *corruptly,* have the legislature any more power to *compel* a stranger, having no concern in these roads, to testify to what he knows as to these expenditures, than they have to *compel* him to testify what he knows as to their expenditures for wood, coal, locomotives, railroad iron, or any of the other ordinary and proper expenses of a railroad? Clearly not.

The petitioner, therefore, holds it to be perfectly clear that, so long as the Order makes no charge, and directs no inquiry, as to whether any railroad corporation has expended any of its

money *corruptly* for the purposes named, the Order presents no *legal* subject-matter for any *compulsory* testimony on the subject, and especially not for any *compulsory* testimony from one who is no officer or employee of, or stockholder in, the corporation, and consequently has no duty imposed upon him, by the charter, or other laws of the Commonwealth, in regard to making returns to the legislature as to the doings of the corporation.

But although he conceives it wholly unnecessary for him to do so, the petitioner goes still further, and claims that, even if this Order has made the charge, or directed the inquiry, as to whether money had been paid *corruptly,* he could not have been *compelled* to testify on the subject before a committee of the legislature; and for this reason, viz.: If such corrupt payment of money were in the nature of a criminal offence, under the laws of the Commonwealth,—such, for example, as bribing members of the legislature,—then he holds that the act of bribery could not have been done by the corporation in its corporate capacity (for a corporation cannot commit a crime,) but must have been done by individuals in their private capacity; and that he could be *compelled* to testify in regard to it only before a judicial tribunal. But if, on the other hand, such payment, whether corrupt or not, was not a legal offence under the laws of the Commonwealth, then he holds that he can no more be *compelled* to testify in regard to such corrupt (but not criminal) payment of money, by a corporation, than he can be compelled to testify as to similar corrupt (but not criminal) payments of money by private persons.

And this is all he feels it necessary to say in regard to the *first branch* of this Order.

The *second branch* of this Order is in these words, viz.:—

> "And said committee is also further authorized to inquire if any other railroad company, or other corporation chartered here, or if any other party or person, has, *at any time,* used any *improper means or influence* to aid or suppress legislation."

These terms, "*improper means or influence,*" are certainly very mild ones to be employed in describing any conduct that can be made the subject-matter of any *compulsory* investigation by the legislature. As the Order gives no definition of what it intends by the words, "*any improper means or influence,*" the petitioner is compelled to conclude that no *violation of law,* such as bribery, or illegal voting, is intended; for, if it were, the case could only be tried, either in another form, or before a judicial tribunal, and he could not be compelled to testify elsewhere or otherwise in regard to it.

Assuming, therefore, that no *violation of law* is directed by this branch of the Order to be inquired into, the petitioner is necessitated to infer that the Order intends only such *other* "improper means and influences," as "corporations, parties and persons" may employ "to aid or suppress legislation;" as, for example, such "improper means and influences" (other than criminal) as "corporations, parties and persons" may employ to carry elections, to secure the election of this man who will favor their interests and wishes, and defeat the election of that man who will oppose their interests or wishes; and also such "improper means and influences" (other than criminal) as may be employed to influence members of the legislature in favor of, or against, this law or that, after they are elected.

Placing this construction upon this branch of the Order,—the only construction, he claims, that can reasonably be put upon it,—he insists that it presents no *legal* subject-matter for any investigation by the Committee; at least by means of *compulsory* testimony.

From his own special acquaintance with politics and politicians, as well as from that general knowledge on the subject which is open to all, he has no manner of doubt that "improper," mean, selfish, jealous, tyrannical, ambitious, mercenary, and even malicious motives and influence are rife everywhere in promoting the election of this man, and opposing the election of that; and in this as well as in various other ways, aiding such legislation as individuals and coporations desire, and in suppressing (or preventing) such legislation as they oppose. He has never heard that the ballot-box was certain to purify men of their natural selfishness. On the contrary, the very nature of our institutions opens wide the door to the employment of "improper means and influences" in any and every possible degree short of crime. These means and influences abound in all parties, and with nearly or quite all individuals who have anything to do, either with electing men to the legislature, or with influencing legislation afterwards. So perfectly notorious is all this, that some very sensible persons suppose it to be hardly possible for a man even to touch politics anywhere (by way of participating in them) without being defiled. And, if such persons ever take part in them, they do so only on the principle of choosing the least between two or more enormous evils.

Nobody but a blockhead supposes politics to be pure. There is no reasonable doubt that "improper means and influences to aid or suppress legislation" entered into the election of every member of the present legislature, and have heretofore entered into the election of every member of every other legislature that has ever sat under our State Constitution. And now this (second) branch of this Order purports to authorize this Committee to inquire what "means and influences" of this kind have "*at any time*," *since the foundation of this government*, been brought to bear on legislation!

The matter would be supremely farcical if the Senate had not shown its determination to push this investigation, even to the extent of sending men to prison for refusing to testify.

The whole inquiry is, on the face of it, to the last degree quixotic, absurd and ridiculous, considered as a *legal* subject-matter, in regard to which the legislature can *compel* the people to come before their committees, and testify as to their personal knowledge.

For these reasons, the petitioner claims that, even if he had been served with a certified copy of this Order, he would have been under no legal obligation to pay the least attention to it. But, inasmuch as he never saw a certified copy of it until he had been tried, condemned and imprisoned, he claims that the Order itself can have nothing to do with the legality or illegality of his imprisonment, unless to show more fully even, if possible, than had been done before, how utterly baseless, in both law and reason, this whole proceeding against him has been, from first to last.

The petitioner claims that the principles laid down by this court, in the *first two paragraphs* of their opinion in the case of *Burnham* vs. *Morrissey* (14 Gray, 238,) are ample to entitle him to be discharged by this court.

Those paragraphs are in these words, to wit:—

> "The House of Representatives is not the final judge of its own powers and privileges in cases in which the rights and liberties of the subject are concerned; but the legality of its action may be examined and determined by this court. That House is not the legislature, but only a part of it, and is therefore subject in its action to the laws, in common with all other bodies, officers and tribunals within the Commonwealth. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the Constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine, in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity with the Constitution, and, if they have not been, to treat their acts as null and void.
>
> "The House of Representatives has the power, under the Constitution, to imprison for contempt; but this power is limited to cases expressly provided for by the Constitution, or to cases where the power is necessarily implied from those constitutional functions and duties, to the performance of which it is essential. The power is directly conferred by the Constitution, chap. 1, sect. 3, arts. 10, 11; and the cases there enumerated are the only ones in which a sentence of imprisonment for a term extending beyond the session of the House can be imposed as a punishment."

The only exception or suggestion he cares to offer, in regard to any portion of that opinion, is in regard to the meaning of certain language used by the court in the *fourth paragraph,* as follows:—

> "The House of Representatives has many duties to perform which necessarily require it to receive evidence, and examine witnesses. . . . It may inquire into the doings of corporations which are subject to the control of the legislature, with a view to modify or repeal their charters. . . . It has often occasion to acquire a certain knowledge of facts, in order to the proper performance of legislative duties."

What the court may have intended by this language is not clear. It is evidently mere *dicta,* not specially relating to the case then before them; for Burnham was a public officer, and the investigation was in regard to his official conduct. Such is not the case here; for the petitioner holds no office whatever.

If, in this language, the court meant to intimate that the legislature *might* have power to *compel* a man to come before them, and give them any and all information which he may possess, and which they may think would facilitate the performance of their *general* "legislative duties," either

in regard to "corporations," or the people at large, the petitioner wholly objects, for the reasons already given, to any such power being conceded to the legislature.

He thinks the case is one that requires that a clear line should be drawn between those cases in which the legislature have, and those in which they have not, the right to *compel* testimony.

The petitioner utterly denies that the legislature has any general power to set up any standards whatever as to what is, or is not, "corruption," or as to what is, or is not, "improper," on the part of the people of this Commonwealth, otherwise than by enacting laws to be enforced by the judiciary. Until such standards are put into the form of statutes, they must necessarily be unknown and unknowable by the people. They must also necessarily be merely personal ideas in the minds of the members of the legislature, and as such entitled to no authority over, and no consideration or even cognizance by, the people. He also utterly denies the power of the legislature to compel him to become their instrument, to supply them with testimony, to be used by them for the purpose of defaming and injuring the people of the Commonwealth, on account of their not having conformed their conduct in all respects to these unknown and unknowable and merely personal ideas of the members of the legislature, on the infinite and indefinite subjects of purity and "corruption," of propriety and "impropriety."

Endnotes

[*] "The House of Representatives shall be the judge of the returns, elections, and qualifications of its own members, as pointed out in the Constitution; shall choose their own speaker, appoint their own officers, and settle the rules and orders of proceeding in their own House. They shall have authority to punish by imprisonment every person, not a member, who shall be guilty of any disrespect to the House by any disorderly or contemptuous behavior in its presence; or who, in the town where the General Court is sitting, and during the time of its sitting, shall threaten to harm the body or estate of any of its members, for anything said or done in the House, or who shall assault any of them therefor; or who shall assault or arrest any witness or other person ordered to attend the House, in his way in going or returning; or who shall rescue any person arrested by order of the House.

"And no member of the House of Representatives shall be arrested or held to bail on mesne process, during his going into, returning from, or his attending, the General Assembly.

"XI. The Senate shall have the same powers in the like cases; and Governor and Council shall have the same authority to punish in like cases; provided that no imprisonment on the warrant or order of the Governor, Council, Senate, or House of Representatives, for either of the above described offences, be for a time exceeding thirty days.

"And the Senate and House of Representatives may try and determine all cases where their rights and privileges are concerned, and which, by the Constitution, they have authority to try

and determine, by Committees of their own members, or in such other way as they may respectively think best."

25. NO TREASON. NO VI. THE CONSTITUTION OF NO AUTHORITY (1870).

Source

No Treason. No VI. The Constitution of No Authority (Boston: Published by the Author, 1870).

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NO TREASON. NO. VI. THE CONSTITUTION OF NO AUTHORITY.

The first and second numbers of this series were published in 1867. For reasons not necessary to be explained, the *sixth* is now published in advance of the third, fourth and fifth.

I.

The Constitution has no inherent authority or obligation. It has no authority or obligation at all, unless as a contract between man and man. And it does not so much as even purport to be a contract between persons now existing. It purports, at most, to be only a contract between persons living eighty years ago. And it can be supposed to have been a contract then only between persons who had already come to years of discretion, so as to be competent to make reasonable and obligatory contracts. Furthermore, we know, historically, that only a small portion even of the people then existing were consulted on the subject, or asked, or permitted to express either their consent or dissent in any formal manner. Those persons, if any, who did give their consent formally, are all dead now. Most of them have been dead forty, fifty, sixty, or seventy years. *And the Constitution, so far as it was their contract, died with them.* They had no natural power or right to make it obligatory upon their children. It is not only plainly impossible, in the nature of things, that they *could* bind their posterity, but they did not even attempt to bind them. That is to say, the instrument does not purport to be an agreement between any body but "the people" *then* existing; nor does it, either expressly or impliedly, assert any right, power, or disposition, on their part, to bind any body but themselves. Let us see. Its language is:

> "We, the people of the United States [that is, the people *then existing* in the United States], in order to form a more perfect union, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of

liberty to ourselves *and our posterity,* do ordain and establish this Constitution for the United States of America."

It is plain, in the first place, that this language, *as an agreement,* purports to be only what it at most really was, viz: a contract between the people *then existing;* and, of necessity, binding, as a contract, only upon those *then existing.* In the second place, the language neither expresses nor implies that they had any intention or desire, nor that they imagined they had any right or power, to *bind* their "posterity" to live under it. It does not say that their "posterity" will, shall, or must live under it. It only says, in effect, that their hopes and motives in adopting it were that it might prove useful to their posterity, as well as to themselves, by promoting their union, safety, tranquillity, liberty, etc.

Suppose an agreement were entered into, in this form:

We, the people of Boston, agree to maintain a fort on Governor's Island, to protect ourselves *and our posterity* against invasion.

This agreement, *as an agreement,* would clearly bind nobody but the people then existing. Secondly, it would assert no right, power, or disposition, on their part, to *compel* their "posterity" to maintain such a fort. It would only indicate that the supposed welfare of their posterity was one of the motives that induced the original parties to enter into the agreement.

When a man says he is building a house for himself *and his posterity,* he does not mean to be understood as saying that he has any thought of *binding* them, nor is it to be inferred that he is so foolish as to imagine that he has any right or power to *bind* them, to live in it. So far as they are concerned, he only means to be understood as saying that his hopes and motives, in building it, are that they, or at least some of them, may find it for their happiness to live in it.

So when a man says he is planting a tree for himself *and his posterity,* he does not mean to be understood as saying that he has any thought of *compelling* them, nor is it to be inferred that he is such a simpleton as to imagine that he has any right or power to compel them, to eat the fruit. So far as they are concerned, he only means to say that his hopes and motives, in planting the tree, are that its fruit may be agreeable to them.

So it was with those who originally adopted the Constitution. Whatever may have been their personal intentions, the legal meaning of their language, so far as their "posterity" was concerned, simply was, that their hopes and motives, in entering into the agreement, were that it might prove useful and acceptable to their posterity; that it might promote their union, safety, tranquillity, and welfare; and that it might tend "to secure to them the blessings of liberty." The language does not assert nor at all imply, any right, power, or disposition, on the part of the original parties to the agreement, to *compel* their "posterity" to live under it. If they had intended to *bind* their posterity to live under it, they should have said that their object was, not "to secure to them the blessings of liberty," but to make slaves of them; for if their "posterity" are bound to live under it, they are nothing less than the slaves of their foolish, tyrannical, and dead grandfathers.

It cannot be said that the Constitution formed "the people of the United States," for all time, into a corporation. It does not speak of "the people" as a corporation, but as individuals. A corporation does not describe itself as "we," nor as "people," nor as "ourselves." Nor does a corporation, in legal language, have any "posterity." It supposes itself to have, and speaks of itself as having, perpetual existence, as a single individuality.

Moreover, no body of men, existing at any one time, have the power to create a perpetual corporation. A corporation can become practically perpetual only by the voluntary accession of new members, as the old ones die off. But for this voluntary accession of new members, the corporation necessarily dies with the death of those who originally composed it.

Legally speaking, therefore, there is, in the Constitution, nothing that professes or attempts to bind the "posterity" of those who establish it.

If, then, those who established the Constitution, had no power to bind, and did not attempt to bind, their posterity, the question arises, whether their posterity have bound themselves? If they have done so, they can have done so in only one or both of these two ways, viz. by voting, and paying taxes.

II.

Let us consider these two matters, voting and tax paying, separately. And first of voting.

All the voting that has ever taken place under the Constitution, has been of such a kind that it not only did not pledge the whole people to support the Constitution, but it did not even pledge any one of them to do so, as the following considerations show.

1. In the very nature of things, the act of voting could bind nobody but the actual voters. But owing to the property qualifications required, it is probable that, during the first twenty or thirty years under the Constitution, not more than one tenth, fifteenth, or perhaps twentieth of the whole population (black and white, men, women, and minors) were permitted to vote. Consequently, so far as voting was concerned, not more than one tenth, fifteenth, or twentieth of those then existing, could have incurred any obligation to support the Constitution.

At the present time, it is probable that not more than one sixth of the whole population are *permitted* to vote. Consequently, so far as voting is concerned, the other five-sixths can have given no pledge that they will support the Constitution.

2. Of the one-sixth that are *permitted* to vote, probably not more than two-thirds (about one-ninth of the whole population) have *usually* voted. Many never vote at all. Many vote only once in two, three, five, or ten years, in periods of great excitement.

No one, by voting, can be said to pledge himself for any longer period than that for which he votes. If, for example, I vote for an officer who is to hold his office for only a year, I cannot be said to have thereby pledged myself to support the government beyond that term. Therefore, on the

ground of actual voting, it probably cannot be said that more than one-ninth, or one-eighth, of the whole population are *usually* under any pledge to support the Constitution.

3. It cannot be said that, by voting, a man pledges himself to support the Constitution, unless the act of voting be a perfectly voluntary one on his part. Yet the act of voting cannot properly be called a voluntary one on the part of any very large number of those who do vote. It is rather a measure of necessity imposed upon them by others, than one of their own choice. On this point I repeat what was said in a former number,* viz:

> "In truth, in the case of individuals, their actual voting is not to be taken as proof of consent, *even for the time being.* On the contrary, it is to be considered that, without his consent having even been asked a man finds himself environed by a government that he cannot resist; a government that forces him to pay money, render service, and forego the exercise of many of his natural rights, under peril of weighty punishments. He sees, too, that other men practise this tyranny over him by the use of the ballot. He sees further, that, if he will but use the ballot himself, he has some chance of relieving himself from this tyranny of others, by subjecting them to his own. In short, he finds himself, without his consent, so situated that, if he use the ballot, he may become a master; if he does not use it, he must become a slave. And he has no other alternative than these two. In self-defence, he attempts the former. His case is analogous to that of a man who has been forced into battle, where he must either kill others, or be killed himself. Because, to save his own life in battle, a man attempts to take the lives of his opponents, it is not to be inferred that the battle is one of his own choosing. Neither in contests with the ballot—which is a mere substitute for a bullet—because, as his only chance of self-preservation, a man uses a ballot, is it to be inferred that the contest is one into which he voluntarily entered; that he voluntarily set up all his own natural rights, as a stake against those of others, to be lost or won by the mere power of numbers. On the contrary, it is to be considered that, in an exigency into which he had been forced by others, and in which no other means of self-defence offered, he, as a matter of necessity, used the only one that was left to him.
>
> "Doubtless the most miserable of men, under the most oppressive government in the world, if allowed the ballot, would use it, if they could see any chance of thereby meliorating their condition. But it would not, therefore, be a legitimate inference that the government itself, that crushes them, was one which they had voluntarily set up, or ever consented to.
>
> "Therefore, a man's voting under the Constitution of the United States, is not to be taken as evidence that he ever freely assented to the Constitution, *even for the time being.* Consequently we have no proof that any very large portion, even of the actual voters of the United States, ever really and voluntarily consented to the Constitution, *even for the time being.* Nor can we ever have such proof, until every man is left perfectly free to consent, or not, without thereby subjecting himself or his property to be disturbed or injured by others."

As we can have no legal knowledge as to who votes from choice, and who from the necessity thus forced upon him, we can have no legal knowledge, *as to any particular individual,* that he voted from choice; or, consequently, that by voting, he consented, or pledged himself, to support the government. Legally speaking, therefore, the act of voting utterly fails to pledge *any one* to support the government. It utterly fails to prove that the government rests upon the voluntary support of any body. On general principles of law and reason, it cannot be said that the government has any voluntary supporters at all, until it can be distinctly shown *who* its voluntary supporters are.

4. As taxation is made compulsory on all, whether they vote or not, a large proportion of those who vote, no doubt do so to prevent their own money being used against themselves; when, in fact, they would have gladly abstained from voting, if they could thereby have saved themselves from taxation alone, to say nothing of being saved from all the other usurpations and tyrannies of the government. To take a man's property without his consent, and then to infer his consent because he attempts, by voting, to prevent that property from being used to his injury, is a very insufficient proof of his consent to support the Constitution. It is, in fact, no proof at all. And as we can have no legal knowledge as to *who* the particular individuals are, if there are any, who are willing to be taxed for the sake of voting, or who would prefer freedom from taxation to the privilege of voting, we can have no legal knowledge that any particular individual consents to be taxed for the sake of voting; or, consequently, consents to support the Constitution.

5. At nearly all elections, votes are given for various candidates for the same office. Those who vote for the unsuccessful candidates cannot properly be said to have voted to sustain the Constitution. They may, with more reason, be supposed to have voted, not to support the Constitution, but specially to prevent the tyranny which they anticipate the successful candidate intends to practise upon them under color of the Constitution; and therefore may reasonably be supposed to have voted against the Constitution itself. This supposition is the more reasonable, inasmuch as such voting is the only mode allowed to them of expressing their dissent to the Constitution.

6. Many votes are usually given for candidates who have no prospect of success. Those who give such votes may reasonably be supposed to have voted as they did, with a special intention, not to support, but to obstruct the execution of, the Constitution; and, therefore, against the Constitution itself.

7. As all the different votes are given secretly (by secret ballot), there is no legal means of knowing, from the votes themselves, *who* votes for, and *who* against, the Constitution. Therefore voting affords no legal evidence that *any particular individual* supports the Constitution. And where there can be no legal evidence that *any particular individual* supports the Constitution, it cannot legally be said that anybody supports it. It is clearly impossible to have any legal proof of the intentions of large numbers of men, where there can be no legal proof of the intentions of any particular one of them.

8. There being no legal proof of any man's intentions, in voting, we can only conjecture them. As a conjecture, it is probable that a very large proportion of those who vote, do so on this principle, viz., that if, by voting, they could but get the government into their own hands (or that of their friends), and use its powers against their opponents, they would then willingly support the

Constitution; but if their opponents are to have the power, and use it against them, then they would *not* willingly support the Constitution.

In short, men's voluntary support of the Constitution is doubtless, in most cases, wholly contingent upon the question whether, by means of the Constitution, they can make themselves masters, or are to be made slaves.

Such contingent consent as that is, in law and reason, no consent at all.

9. As every body who supports the Constitution by voting (if there are any such) does so secretly (by secret ballot), and in a way to avoid all personal responsibility for the acts of his agents or representatives, it cannot legally or reasonably be said that anybody at all supports the Constitution by voting. No man can reasonably or legally be said to do such a thing as to assent to, or support, the Constitution, *unless he does it openly, and in a way to make himself personally responsible for the acts of his agents, so long as they act within the limits of the power he delegates to them.*

10. As all voting is secret, (by secret ballot,) and as all secret governments are necessarily only secret bands of robbers, tyrants, and murderers, the general fact that our government is practically carried on by means of such voting, only proves that there is among us a secret band of robbers, tyrants and murderers, whose purpose is to rob, enslave, and, so far as necessary to accomplish their purposes, murder, the rest of the people. The simple fact of the existence of such a band does nothing towards proving that "the people of the United States," or any one of them, voluntarily supports the Constitution.

For all the reasons that have now been given, voting furnishes no legal evidence as to who the particular individuals are (if there are any), who *voluntarily* support the Constitution. It therefore furnishes no legal evidence that any body supports it *voluntarily.*

So far, therefore, as voting is concerned, the Constitution, legally speaking, has no supporters at all.

And, as matter of fact, there is not the slightest probability that the Constitution has a single *bona fide* supporter in the country. That is to say, there is not the slightest probability that there is a single man in the country, who both understands what the Constitution really is, *and sincerely supports it for what it really is.*

The ostensible supporters of the Constitution, like the ostensible supporters of most other governments, are made up of three classes, viz.: 1. Knaves, a numerous and active class, who see in the government an instrument which they can use for their own aggrandizement or wealth. 2. Dupes—a large class, no doubt—each of whom, because he is allowed one voice out of millions in deciding what he may do with his own person and his own property, and because he is permitted to have the same voice in robbing, enslaving, and murdering others, that others have in robbing, enslaving, and murdering himself, is stupid enough to imagine that he is a "free man," a "sovereign"; that this is "a free government"; "a government of equal rights," "the best government on earth,"* and such like absurdities. 3. A class who have some appreciation of the evils of government, but either do not see how to get rid of them, or do not choose to so far sacrifice

their private interests as to give themselves seriously and earnestly to the work of making a change.

III.

The payment of taxes, being compulsory, of course furnishes no evidence that any one voluntarily supports the Constitution.

It is true that the *theory* of our Constitution is, that all taxes are paid voluntarily; that our government is a mutual insurance company, voluntarily entered into by the people with each other; that each man makes a free and purely voluntary contract with all others who are parties to the Constitution, to pay so much money for so much protection, the same as he does with any other insurance company; and that he is just as free not to be protected, and not to pay any tax, as he is to pay a tax, and be protected.

But this theory of our government is wholly different from the practical fact. The fact is that the government, like a highwayman, says to a man: *Your money, or your life.* And many, if not most, taxes are paid under the compulsion of that threat.

The government does not, indeed, waylay a man in a lonely place, spring upon him from the road side, and, holding a pistol to his head, proceed to rifle his pockets. But the robbery is none the less a robbery on that account; and it is far more dastardly and shameful.

The highwayman takes solely upon himself the responsibility, danger, and crime of his own act. He does not pretend that he has any rightful claim to your money, or that he intends to use it for your own benefit. He does not pretend to be anything but a robber. He has not acquired impudence enough to profess to be merely a "protector," and that he takes men's money against their will, merely to enable him to "protect" those infatuated travellers, who feel perfectly able to protect themselves, or do not appreciate his peculiar system of protection. He is too sensible a man to make such professions as these. Furthermore, having taken your money, he leaves you, as you wish him to do. He does not persist in following you on the road, against your will; assuming to be your rightful "sovereign," on account of the "protection" he affords you. He does not keep "protecting" you, by commanding you to bow down and serve him; by requiring you to do this, and forbidding you to do that; by robbing you of more money as often as he finds it for his interest or pleasure to do so; and by branding you as a rebel, a traitor, and an enemy to your country, and shooting you down without mercy, if you dispute his authority, or resist his demands. He is too much of a gentleman to be guilty of such impostures, and insults, and villanies as these. In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave.

The proceedings of those robbers and murderers, who call themselves "the government," are directly the opposite of these of the single highwayman.

In the first place, they do not, like him, make themselves individually known; or, consequently, take upon themselves personally the responsibility of their acts. On the contrary, they secretly (by

secret ballot) designate some one of their number to commit the robbery in their behalf, while they keep themselves practically concealed. They say to the person thus designated:

Go to A— B—, and say to him that "the government" has need of money to meet the expenses of protecting him and his property. If he presumes to say that he has never contracted with us to protect him, and that he wants none of our protection, say to him that that is our business, and not his; that we *choose* to protect him, whether he desires us to do so or not; and that we demand pay, too, for protecting him. If he dares to inquire who the individuals are, who have thus taken upon themselves the title of "the government," and who assume to protect him, and demand payment of him, without his having ever made any contract with them, say to him that that, too, is our business, and not his; that we do not *choose* to make ourselves *individually* known to him; that we have secretly (by secret ballot) appointed you our agent to give him notice of our demands, and, if he complies with them, to give him, in our name, a receipt that will protect him against any similar demand *for the present year.* If he refuses to comply, seize and sell enough of his property to pay not only our demands, but all your own expenses and trouble beside. If he resists the seizure of his property, call upon the bystanders to help you (doubtless some of them will prove to be members of our band). If, in defending his property, he should kill any of our band who are assisting you, capture him at all hazards; charge him (in one of our courts) with murder, convict him, and hang him. If he should call upon his neighbors, or any others who, like him, may be disposed to resist our demands, and they should come in large numbers to his assistance, cry out that they are all rebels and traitors; that "our country" is in danger; call upon the commander of our hired murderers; tell him to quell the rebellion and "save the country," cost what it may. Tell him to kill all who resist, though they should be hundreds of thousands; and thus strike terror into all others similarly disposed. See that the work of murder is thoroughly done, that we may have no further trouble of this kind hereafter. When these traitors shall have thus been taught our strength and our determination, they will be good loyal citizens for many years, and pay their taxes without a why or a wherefore.

It is under such compulsion as this that taxes, so called, are paid. And how much proof the payment of taxes affords, that the people *consent* to support "the government," it needs no further argument to show.

2. Still another reason why the payment of taxes implies no consent, or pledge, to support the government, is that the tax payer does not know, and has no means of knowing, who the particular individuals are who compose "the government." To him "the government" is a myth, an abstraction, an incorporeality, with which he can make no contract, and to which he can give no consent, and make no pledge. He knows it only through its pretended agents. "The government" itself he never sees. He knows indeed, by common report, that certain persons, of a certain age, are *permitted* to vote; and thus to *make* themselves parts of, or (if they choose) opponents of, the government, for the time being. But who of them do thus vote, and especially *how* each one votes (whether so as to aid or oppose the government), he does not know; the voting being all done secretly (by secret ballot). Who, therefore, practically compose "the government," for the time being, he has no means of knowing. Of course he can make no contract with them, give them no

consent, and make them no pledge. Of necessity, therefore, his paying taxes to them implies, on his part, no contract, consent, or pledge to support them—that is, to support "the government," or the Constitution.

3. Not knowing who the particular individuals are, who call themselves "the government," the tax payer does not know whom he pays his taxes to. All he knows is that a man comes to him, representing himself to be the agent of "the government"—that is, the agent of a secret band of robbers and murderers, who have taken to themselves the title of "the government," and have determined to kill every body who refuses to give them whatever money they demand. To save his life, he gives up his money to this agent. But as this agent does not make his principals individually known to the tax payer, the latter, after he has given up his money, knows no more who are "the government"—that is, who were the robbers—than he did before. To say, therefore, that by giving up his money to their agent, he entered into a voluntary contract with them, that he pledges himself to obey them, to support them, and to give them whatever money they should demand of him in the future, is simply ridiculous.

4. All political power, as it is called, rests practically upon this matter of money. Any number of scoundrels, having money enough to start with, can establish themselves as a "government;" because, with money, they can hire soldiers, and with soldiers extort more money; and also compel general obedience to their will. It is with government, as Cæsar said it was in war, that money and soldiers mutually supported each other; that with money he could hire soldiers, and with soldiers extort money. So these villains, who call themselves governments, well understand that their power rests primarily upon money. With money they can hire soldiers, and with soldiers extort money. And, when their authority is denied, the first use they always make of money, is to hire soldiers to kill or subdue all who refuse them more money.

For this reason, whoever desires liberty, should understand these vital facts, viz.: 1. That every man who puts money into the hands of a "government" (so called), puts into its hands a sword which will be used against himself, to extort more money from him, and also to keep him in subjection to its arbitrary will. 2. That those who will take his money, without his consent, in the first place, will use it for his further robbery and enslavement, if he presumes to resist their demands in the future. 3. That it is a perfect absurdity to suppose that any body of men would ever take a man's money without his consent, for any such object as they profess to take it for, viz., that of protecting him; for why should they wish to protect him, if he does not wish them to do so? To suppose that they would do so, is just as absurd as it would be to suppose that they would take his money without his consent, for the purpose of buying food or clothing for him, when he did not want it. 4. If a man wants "protection," he is competent to make his own bargains for it; and nobody has any occasion to rob him, in order to "protect" him against his will. 5. That the only security men can have for their political liberty, consists in their keeping their money in their own pockets, until they have assurances, perfectly satisfactory to themselves, that it will be used as they wish it to be used, for their benefit, and not for their injury. 6. That no government, so called, can reasonably be trusted for a moment, or reasonably be supposed to have honest purposes in view, any longer than it depends wholly upon voluntary support.

These facts are all so vital and so self-evident, that it cannot reasonably be supposed that any one will *voluntarily* pay money to a "government," for the purpose of securing its protection, unless he first makes an explicit and purely voluntary contract with it for that purpose.

It is perfectly evident, therefore, that neither such voting, nor such payment of taxes, as actually takes place, proves anybody's consent, or obligation, to support the Constitution. Consequently we have no evidence at all that the Constitution is binding upon anybody, or that anybody is under any contract or obligation whatever to support it. And nobody *is* under any obligation to support it.

IV

The Constitution not only binds nobody now, but it never did bind anybody. It never bound anybody, because it was never agreed to by any body in such a manner as to make it, on general principles of law and reason, binding upon him.

It is a general principle of law and reason, that a *written* instrument binds no one until he has signed it. This principle is so inflexible a one, that even though a man is unable to write his name, he must still "make his mark," before he is bound by a written contract. This custom was established ages ago, when few men could write their names; when a clerk—that is, a man who could write—was so rare and valuable a person, that even if he were guilty of high crimes, he was entitled to pardon, on the ground that the public could not afford to lose his services. Even at that time, a written contract must be signed; and men who could not write, either "made their mark," or signed their contracts by stamping their seals upon wax affixed to the parchment on which their contracts were written. Hence the custom of affixing seals, that has continued to this time.

The law holds, and reason declares, that if a written instrument is not signed, the presumption must be that the party to be bound by it, did not choose to sign it, or to bind himself by it. And law and reason both give him until the last moment, in which to decide whether he will sign it, or not. Neither law nor reason requires or expects a man to agree to an instrument, *until it is written;* for until it is written, he cannot know its precise legal meaning. And when it is written, and he has had the opportunity to satisfy himself of its precise legal meaning, he is then expected to decide, and not before, whether he will agree to it or not. And if he do not *then* sign it, his reason is supposed to be, that he does not choose to enter into such a contract. The fact that the instrument was written *for him to sign,* or with the hope that he would sign it, goes for nothing.

Where would be the end of fraud and litigation, if one party could bring into court a written instrument, *without any signature,* and claim to have it enforced, upon the ground that it was written for another man to sign? that this other man had promised to sign it? that he ought to have signed it? that he had had the opportunity to sign it, if he would? but that he had refused or neglected to do so? yet that is the most that could ever be said of the Constitution.* The very judges, who profess to derive all their authority from the Constitution—from an instrument that nobody ever signed—would spurn any other instrument, not signed, that should be brought before them for adjudication.

Moreover, a written instrument must, in law and reason, not only be signed, but must also be delivered to the party (or to some one for him), in whose favor it is made, before it can bind the party making it. The signing is of no effect, unless the instrument be also delivered. And a party is at perfect liberty to refuse to deliver a written instrument, after he has signed it. He is as free to refuse to deliver it, as he is to refuse to sign it. The constitution was not only never signed by anybody, but it was never delivered by anybody to anybody, or to anybody's agent or attorney. It can therefore be of no more validity as a contract, than can any other instrument, that was never signed or delivered.

V

As further evidence of the general sense of mankind, as to the practical necessity there is that all men's *important* contracts, especially those of a permanent nature, should be both written and signed, the following facts are pertinent.

For nearly two hundred years—that is, since 1677—there has been on the statute book of England, and the same, in substance, if not precisely in letter, has been re-enacted, and is now in force, in nearly or quite all the States of this Union, a statute, the general object of which is to declare that no action shall be brought to enforce contracts of the more important class, *unless they are put in writing, and signed by the parties to be held chargeable upon them.**

The principle of the statute, be it observed, is, not merely that written contracts shall be signed, but also that all contracts, except those specially exempted—generally those that are for small amounts, and are to remain in force but for a short time—*shall be both written and signed.*

The reason of the statute, on this point, is, that it is now so easy a thing for men to put their contracts in writing, and sign them, and their failure to do so opens the door to so much doubt, fraud, and litigation, that men who neglect to have their contracts—of any considerable importance—written and signed, ought not to have the benefit of courts of justice to enforce them. And this reason is a wise one; and that experience has confirmed its wisdom and necessity, is demonstrated by the fact that it has been acted upon in England for nearly two hundred years, and has been so nearly universally adopted in this country, and that nobody thinks of repealing it.

We all know, too, how careful most men are to have their contracts written and signed, even when this statute does not require it. For example, most men, if they have money due them, of no larger amount than five or ten dollars, are careful to take a note for it. If they buy even a small bill of goods, paying for it at the time of delivery, they take a receipted bill for it. If they pay a small balance of a book account, or any other small debt previously contracted, they take a written receipt for it.

Furthermore, the law everywhere (probably) in our country, as well as in England, requires that a large class of contracts, such as wills, deeds, etc., shall not only be written and signed, but also sealed, witnessed, and acknowledged. And in the case of married women conveying their rights in real estate, the law, in many States, requires that the women shall be examined separate

and apart from their husbands, and declare that they sign their contracts free of any fear or compulsion of their husbands.

Such are some of the precautions which the laws require, and which individuals—from motives of common prudence, even in cases not required by law—take, to put their contracts in writing, and have them signed, &c., to guard against all uncertainties and controversies in regard to their meaning and validity. And yet we have what purports, or professes, or is claimed, to be a contract—the Constitution—made eighty years ago, by men who are now all dead, and who never had any power to bind *us,* but which (it is claimed) has nevertheless bound three generations of men, consisting of many millions, and which (it is claimed) will be binding upon all the millions that are to come; but which nobody ever signed, sealed, delivered, witnessed, or acknowledged; and which few persons, compared with the whole number that are claimed to be bound by it, have ever read, or even seen, or ever will read, or see. And of those who ever have read it, or ever will read it, scarcely any two, perhaps no two, have ever agreed, or ever will agree, as to what it means.

Moreover, this supposed contract, which would not be received in any court of justice sitting under its authority, if offered to prove a debt of five dollars, owing by one man to another, is one by which—*as it is generally interpreted by those who pretend to administer it*—all men, women and children throughout the country, and through all time, surrender not only all their property, but also their liberties, and even lives, into the hands of men who by this supposed contract, are expressly made wholly irresponsible for their disposal of them. And we are so insane, or so wicked, as to destroy property and lives without limit, in fighting to compel men to fulfil a supposed contract, which, inasmuch as it has never been signed by anybody, is, on general principles of law and reason—such principles as we are all governed by in regard to other contracts—the merest waste paper, binding upon nobody, fit only to be thrown into the fire; or, if preserved, preserved only to serve as a witness and a warning of the folly and wickedness of mankind.

VI.

It is no exaggeration, but a literal truth, to say that, by the Constitution—*not as I interpret it, but as it is interpreted by those who pretend to administer it*—the properties, liberties, and lives of the entire people of the United States are surrendered unreservedly into the hands of men who, it is provided by the Constitution itself, shall never be "questioned" as to any disposal they make of them.

Thus the Constitution (Art. 1, Sec. 6) provides that, "for any speech or debate [or vote,] in either house, they [the senators and representatives] shall not be questioned in any other place."

The whole law-making power is given to these senators and representatives, [when acting by a two-thirds vote]* ; and this provision protects them from all responsibility for the laws they make.

The Constitution also enables them to secure the execution of all their laws, by giving them power to withhold the salaries of, and to impeach and remove, all judicial and executive officers, who refuse to execute them.

Thus the whole power of the government is in their hands, and they are made utterly irresponsible for the use they make of it. What is this but absolute, irresponsible power?

It is no answer to this view of the case to say that these men are under oath to use their power only within certain limits; for what care they, or what should they care, for oaths or limits, when it is expressly provided, by the Constitution itself, that they shall never be "questioned," or held to any responsibility whatever, for violating their oaths, or transgressing those limits?

Neither is it any answer to this view of the case to say that the particular individuals holding this power can be changed once in two or six years; for the power of each set of men is absolute during the term for which they hold it; and when they can hold it no longer, they are succeeded only by men whose power will be equally absolute and irresponsible.

Neither is it any answer to this view of the case to say that the men holding this absolute, irresponsible power, must be men chosen by the people (or portions of them) to hold it. A man is none the less a slave because he is allowed to choose a new master once in a term of years. Neither are a people any the less slaves because permitted periodically to choose new masters. What makes them slaves is the fact that they now are, and are always hereafter to be, in the hands of men whose power over them is, and always is to be, absolute and irresponsible.*

The right of absolute and irresponsible dominion is the right of property, and the right of property is the right of absolute, irresponsible dominion. The two are identical; the one necessarily implying the other. Neither can exist without the other. If, therefore, Congress have that absolute and irresponsible law-making power, which the Constitution—according to their interpretation of it—gives them, it can only be because they own us as property. If they own us as property, they are our masters, and their will is our law. If they do not own us as property, they are not our masters, and their will, *as such,* is of no authority over us.

But these men who claim and exercise this absolute and irresponsible dominion over us, dare not be consistent, and claim either to be our masters, or to own us as property. They say they are only our servants, agents, attorneys, and representatives. But this declaration involves an absurdity, a contradiction. No man can be my servant, agent, attorney, or representative, and be, at the same time, uncontrollable by me, and irresponsible to me for his acts. It is of no importance that I appointed him, and put all power in his hands. If I made him uncontrollable by me, and irresponsible to me, he is no longer my servant, agent, attorney, or representative. If I gave him absolute, irresponsible power over my property, I gave him the property. If I gave him absolute, irresponsible power over myself, I made him my master, and gave myself to him as a slave. And it is of no importance whether I *called him* master or servant, agent or owner. The only question is, what power did I put into his hands? Was it an absolute and irresponsible one? or a limited and responsible one?

For still another reason they are neither our servants, agents, attorneys, nor representatives. And that reason is, that we do not make ourselves responsible for their acts. If a man is my servant, agent, or attorney, I necessarily make myself responsible for all his acts done within the limits of the power I have intrusted to him. If I have intrusted him, as my agent, with either absolute

power, or any power at all, over the persons or properties of other men than myself, I thereby necessarily make myself responsible to those other persons for any injuries he may do them, so long as he acts within the limits of the power I have granted him. But no individual who may be injured in his person or property, by acts of Congress, can come to the individual electors, and hold them responsible for these acts of their so-called agents or representatives. This fact proves that these pretended agents of the people, of everybody, are really the agents of nobody.

If, then, nobody is individually responsible for the acts of Congress, the members of Congress are nobody's agents. And if they are nobody's agents, they are themselves individually responsible for their own acts, and for the acts of all whom they employ. And the authority they are exercising is simply their own individual authority; and, by the law of nature—the highest of all laws—anybody injured by their acts, anybody who is deprived by them of his property or his liberty, has the same right to hold them individually responsible, that he has to hold any other trespasser individually responsible. He has the same right to resist them, and their agents, that he has to resist any other trespassers.

VII.

It is plain, then, that on general principles of law and reason—such principles as we all act upon in courts of justice and in common life—the Constitution is no contract; that it binds nobody, and never did bind anybody; and that all those who pretend to act by its authority, are really acting without any legitimate authority at all; that, on general principles of law and reason, they are mere usurpers, and that everybody not only has the right, but is morally bound, to treat them as such.

If the people of this country wish to maintain such a government as the Constitution describes, there is no reason in the world why they should not sign the instrument itself, and thus make known their wishes in an open, authentic manner; in such manner as the common sense and experience of mankind have shown to be reasonable and necessary in such cases; *and in such manner as to make themselves* (*as they ought to do*) *individually responsible for the acts of the government.* But the people have never been asked to sign it. And the only reason why they have never been asked to sign it, has been that it has been known that they never would sign it; that they were neither such fools nor knaves as they must needs have been to be willing to sign it; that (at least as it has been practically interpreted) it is not what any sensible and honest man wants for himself; nor such as he has any right to impose upon others. It is, to all moral intents and purposes, as destitute of obligation as the compacts which robbers and thieves and pirates enter into with each other, but never sign.

If any considerable number of the people believe the Constitution to be good, why do they not sign it themselves, and make laws for, and administer them upon, each other; leaving all other persons (who do not interfere with them) in peace? Until they have tried the experiment for themselves, how can they have the face to impose the Constitution upon, or even to recommend it to, others? Plainly the reason for such absurd and inconsistent conduct is that they want the

Constitution, not solely for any honest or legitimate use it can be of to themselves or others, but for the dishonest and illegitimate power it gives them over the persons and properties of others. But for this latter reason, all their eulogiums on the Constitution, all their exhortations, and all their expenditures of money and blood to sustain it, would be wanting.

VIII.

The Constitution itself, then, being of no authority, on what authority does our government practically rest? On what ground can those who pretend to administer it, claim the right to seize men's property, to restrain them of their natural liberty of action, industry, and trade, and to kill all who deny their authority to dispose of men's properties, liberties, and lives at their pleasure or discretion?

The most they can say, in answer to this question, is, that some half, two-thirds, or three-fourths of the male adults of the country have a *tacit understanding* that they will maintain a government under the Constitution; that they will select, by ballot, the persons to administer it; and that those persons who may receive a majority, or a plurality, of their ballots, shall act as their representatives, and administer the Constitution in their name, and by their authority.

But this tacit understanding (admitting it to exist) cannot at all justify the conclusion drawn from it. A tacit understanding between A, B, and C, that they will, by ballot, depute D as their agent, to deprive me of my property, liberty, or life, cannot at all authorize D to do so. He is none the less a robber, tyrant, and murderer, because he claims to act as their agent, than he would be if he avowedly acted on his own responsibility alone.

Neither am I bound to recognize him as their agent, nor can he legitimately claim to be their agent, when he brings no *written* authority from them accrediting him as such. I am under no obligation to take his word as to who his principals may be, or whether he has any. Bringing no credentials, I have a right to say he has no such authority even as he claims to have: and that he is therefore intending to rob, enslave, or murder me on his own account.

This tacit understanding, therefore, among the voters of the country, amounts to nothing as an authority to their agents. Neither do the ballots by which they select their agents, avail any more than does their tacit understanding; for their ballots are given in secret, and therefore in a way to avoid any personal responsibility for the acts of their agents.

No body of men can be said to authorize a man to act as their agent, to the injury of a third person, unless they do it in so open and authentic a manner as to make themselves personally responsible for his acts. None of the voters in this country appoint their political agents in any open authentic manner, or in any manner to make themselves responsible for their acts. Therefore these pretended agents cannot legitimately claim to be really agents. Somebody must be responsible for the acts of these pretended agents; and if they cannot show any open and authentic credentials from their principals, they cannot, in law or reason, be said to have any principals. The maxim applies here, that what does not appear, does not exist. If they can show no principals, they have none.

But even these pretended agents do not themselves know who their pretended principals are. These latter act in secret; for acting by secret ballot is acting in secret as much as if they were to meet in secret conclave in the darkness of the night. And they are personally as much unknown to the agents they select, as they are to others. No pretended agent therefore can ever know by whose ballots he is selected, or consequently who his real principals are. Not knowing who his principals are, he has no right to say that he has any. He can, at most, say only that he is the agent of a secret band of robbers and murderers, who are bound by that faith which prevails among confederates in crime, to stand by him, if his acts, done in their name, shall be resisted.

Men honestly engaged in attempting to establish justice in the world, have no occasion thus to act in secret; or to appoint agents to do acts for which they (the principals) are not willing to be responsible.

The secret ballot makes a secret government; and a secret government is a secret band of robbers and murderers. Open despotism is better than this. The single despot stands out in the face of all men, and says: I am the State: My will is law: I am your master: I take the responsibility of my acts: The only arbiter I acknowledge is the sword: If any one denies my right, let him try conclusions with me.

But a secret government is little less than a government of assassins. Under it, a man knows not who his tyrants are, until they have struck, and perhaps not then. He may *guess,* beforehand, as to some of his immediate neighbors. But he really *knows* nothing. The man to whom he would most naturally fly for protection, may prove an enemy, when the time of trial comes.

This is the kind of government we have; and it is the only one we are likely to have, until men are ready to say: We will consent to no Constitution, except such an one as we are neither ashamed nor afraid to sign; and we will authorize no government to do any thing in our name which we are not willing to be personally responsible for.

IX.

What is the motive to the secret ballot? This, and only this: Like other confederates in crime, those who use it are not friends, but enemies; and they are afraid to be known, and to have their individual doings known, even to each other. They can contrive to bring about a sufficient understanding to enable them to act in concert against other persons; but beyond this they have no confidence, and no friendship, among themselves. In fact, they are engaged quite as much in schemes for plundering each other, as in plundering those who are not of them. And it is perfectly well understood among them that the strongest party among them will, in certain contingencies, murder each other by the hundreds of thousands (as they lately did do) to accomplish their purposes against each other. Hence they dare not be known, and have their individual doings known, even to each other. And this is avowedly the only reason for the ballot: for a secret government; a government by secret bands of robbers and murderers. And we are insane enough to call this liberty! To be a member of this secret band of robbers and murderers is esteemed a privilege and an honor! Without this privilege, a man is considered a slave; but with it a free man!

With it he is considered a free man, because he has the same power to secretly (by secret ballot) procure the robbery, enslavement, and murder of another man, that that other man has to procure his robbery, enslavement, and murder. And this they call equal rights!

If any number of men, many or few, claim the right to govern the people of this country, let them make and sign an open compact with each other to do so. Let them thus make themselves individually known to those whom they propose to govern. And let them thus openly take the legitimate responsibility of their acts. How many of those who now support the Constitution, will ever do this? How many will ever dare openly proclaim their right to govern? or take the legitimate responsibility of their acts? Not one!

X.

It is obvious that, on general principles of law and reason, there exists no such thing as a government created by, or resting upon, any consent, compact, or agreement of "the people of the United States" with each other; that the only visible, tangible, responsible government that exists, is that of a few individuals only, who act in concert, and call themselves by the several names of senators, representatives, presidents, judges, marshals, treasurers, collectors, generals, colonels, captains, &c., &c.

On general principles of law and reason, it is of no importance whatever that these few individuals *profess* to be the agents and representatives of "the people of the United States"; since they can show no credentials from the people themselves; they were never appointed as agents or representatives in any open authentic manner; they do not themselves know, and have no means of knowing, and cannot prove, who their principals (as they call them) are individually; and consequently cannot, in law or reason, be said to have any principals at all.

It is obvious, too, that if these alleged principals ever did appoint these pretended agents, or representatives, they appointed them secretly (by secret ballot), and in a way to avoid all personal responsibility for their acts; that, at most, these alleged principals put these pretended agents forward for the most criminal purposes, viz.: to plunder the people of their property, and restrain them of their liberty; and that the only authority that these alleged principals have for so doing, is simply a *tacit understanding* among themselves that they will imprison, shoot, or hang every man who resists the exactions and restraints which their agents or representatives may impose upon them.

Thus it is obvious that the only visible, tangible government we have is made up of these professed agents or representatives of a secret band of robbers and murderers, who, to cover up, or gloss over, their robberies and murders, have taken to themselves the title of "the people of the United States;" and who, on the pretence of being "the people of the United States," assert their right to subject to their dominion, and to control and dispose of at their pleasure, all property and persons found in the United States.

XI.

On general principles of law and reason, the oaths which these pretended agents of the people take "to support the Constitution," are of no validity or obligation. And why? For this, if for no other reason, viz. *that they are given to nobody.* There is no privity, (as the lawyers say),—that is, no mutual recognition, consent and agreement—between those who take these oaths, and any other persons.

If I go upon Boston Common, and in the presence of a hundred thousand people, men, women and children, with whom I have no contract on the subject, take an oath that I will enforce upon them the laws of Moses, of Lycurgus, of Solon, of Justinian, or of Alfred, that oath is, on general principles of law and reason, of no obligation. It is of no obligation, not merely because it is intrinsically a criminal one, *but also because it is given to nobody,* and consequently pledges my faith to nobody. It is merely given to the winds.

It would not alter the case at all to say that, among these hundred thousand persons, in whose presence the oath was taken, there were two, three, or five thousand male adults, who had *secretly*—by secret ballot, and in a way to avoid making themselves *individually* known to me, or to the remainder of the hundred thousand—designated me as their agent to rule, control, plunder, and, if need be, murder, these hundred thousand people. The fact that they had designated me *secretly,* and in a manner to prevent my knowing them *individually,* prevents all *privity* between them and me; and consequently makes it impossible that there can be any contract, or pledge of faith, on my part towards them; for it is impossible that I can pledge my faith, in any legal sense, to a man whom I neither know, nor have any means of knowing, *individually.*

So far as I am concerned, then, these two, three, or five thousand persons are a secret band of robbers and murderers, who have secretly, and in a way to save themselves from all responsibility for my acts, designated me as their agent; and have, through some other agent, or pretended agent, made their wishes known to me. But being, nevertheless, individually unknown to me, and having no open, authentic contract with me, my oath is, on general principles of law and reason, of no validity as a pledge of faith *to them.* And being no pledge of faith *to them,* it is no pledge of faith to anybody. It is mere idle wind. At most, it is only a pledge of faith to an unknown band of robbers and murderers, whose instrument for plundering and murdering other people, I thus publicly confess myself to be. And it has no other obligation than a similar oath given to any other unknown body of pirates, robbers, and murderers.

For these reasons the oath taken by members of Congress, "to support the Constitution," are, on general principles of law and reason, of no validity. They are not only criminal in themselves, and therefore void; but they are also void for the further reason *that they are given to nobody.*

It cannot be said that, in any legitimate or legal sense, they are given to "the people of the United States;" because neither the whole, nor any large proportion of the whole, people of the United States ever, either openly or secretly, appointed or designated these men as their agents to carry the Constitution into effect. The great body of the people—that is, men, women and children—were never asked, or even permitted, to signify, in any *formal* manner, either openly or se-

cretly, their choice or wish on the subject. The most that these members of Congress can say, in favor of their appointment, is simply this: Each one can say for himself:

I have evidence satisfactory to myself, that there exists, scattered throughout the country, a band of men, having a tacit understanding with each other, and calling themselves "the people of the United States," whose general purposes are to control and plunder each other, and all other persons in the country, and, so far as they can, even in neighboring countries; and to kill every man who shall attempt to defend his person and property against their schemes of plunder and dominion. Who these men are, *individually*, I have no certain means of knowing, for they sign no papers, and give no open, authentic evidence of their *individual* membership. They are not known individually even to each other. They are apparently as much afraid of being individually known to each other, as of being known to other persons. Hence they *ordinarily* have no mode either of exercising, or of making known, their individual membership, otherwise than by giving their votes *secretly* for certain agents to do their will. But although these men are individually unknown, both to each other and to other persons, it is generally understood in the country that none but male persons, of the age of twenty-one years and upwards, can be members. It is also generally understood that *all* male persons, born in the country, having certain complexions, and (in some localities) certain amounts of property, and (in certain cases) even persons of foreign birth, are *permitted* to be members. But it appears that usually not more than one-half, two-thirds, or, in some cases, three-fourths, of all who are thus *permitted* to become members of the band, ever exercise, or consequently prove, their actual membership, in the only mode in which they ordinarily can exercise or prove it, viz., by giving their votes *secretly* for the officers or agents of the band. The number of these secret votes, so far as we have any account of them, varies greatly from year to year, thus tending to prove that the band, instead of being a permanent organization, is a merely *pro tempore* affair with those who choose to act with it for the time being. The gross number of these secret votes, or what purports to be their gross number, in different localities, is occasionally published. Whether these reports are accurate or not, we have no means of knowing. It is generally supposed that great frauds are often committed in depositing them. They are understood to be received and counted by certain men, who are themselves appointed for that purpose by the same secret process by which all other officers and agents of the band are selected. According to the reports of these receivers of votes (for whose accuracy or honesty, however, I cannot vouch), and according to my best knowledge of the whole number of male persons "in my district," who (it is supposed) were *permitted* to vote, it would appear that one-half, two-thirds or three-fourths actually did vote. Who the men were, *individually*, who cast these votes, I have no knowledge, for the whole thing was done secretly. But of the secret votes thus given for what they call a "member of Congress," the receivers reported that I had a majority, or at least a larger number than any other one person. And it is only by virtue of such a designation that I am now here to act in concert with other persons similarly selected in other parts of the country. It is understood among those who sent me here, that all the persons so selected, will, on coming together at the City of Washington, take an oath in each other's presence "to support the Constitution of the United States." By this is meant a certain paper that was drawn up eighty years ago. It was never signed by anybody, and apparently has no obligation, and never had any obligation, as a

contract. In fact, few persons ever read it, and doubtless much the largest number of those who voted for me and the others, never even saw it, or now pretend to know what it means. Nevertheless, it is often spoken of in the country as "the Constitution of the United States;" and for some reason or another, the men who sent me here, seem to expect that I, and all with whom I act, will swear to carry this Constitution into effect. I am therefore ready to take this oath, and to cooperate with all others, similarly selected, who are ready to take the same oath.

This is the most that any member of Congress can say in proof that he has any constituency; that he represents anybody; that his oath "to support the Constitution," *is given to anybody,* or pledges his faith *to anybody.* He has no open, written, or other authentic evidence, such as is required in all other cases, that he was ever appointed the agent or representative of anybody. He has no written power of attorney from any single individual. He has no such legal knowledge as is required in all other cases, by which he can identify a single one of those who pretend to have appointed him to represent them.

Of course his oath, professedly given to them, "to support the Constitution," is, on general principles of law and reason, an oath given to nobody. It pledges his faith to nobody. If he fails to fulfil his oath, not a single person can come forward, and say to him, you have betrayed *me,* or broken faith with *me.*

No one can come forward and say to him: I appointed you *my* attorney to act for *me.* I required you to swear that, as *my* attorney, you would support the Constitution. You promised *me* that you would do so; and now you have forfeited the oath you gave to *me.* No single individual can say this.

No open, avowed, or responsible association, or body of men, can come forward and say to him: *We* appointed you *our* attorney, to act for *us. We* required you to swear that, as *our* attorney, you would support the Constitution. You promised *us* that you would do so; and now you have forfeited the oath you gave to *us.*

No open, avowed, or responsible association, or body of men, can say this to him; because there is no such association or body of men in existence. If any one should assert that there is such an association, let him prove, if he can, who compose it. Let him produce, if he can, any open, written, or other authentic contract, signed or agreed to by these men; forming themselves into an association; making themselves known as such to the world; appointing him as their agent; and making themselves individually, or as an association, responsible for his acts, done by their authority. Until all this can be shown, no one can say that, in any legitimate sense, there is any such association; or that he is their agent; or that he ever gave his oath *to them;* or ever pledged his faith *to them.*

On general principles of law and reason, it would be a sufficient answer for him to say, to all individuals, and all pretended associations of individuals, who should accuse him of a breach of faith to them:

I never knew you. Where is your evidence that *you,* either individually or collectively, ever appointed me *your* attorney? that *you* ever required me to swear *to you,* that, as *your* attorney, I would

support the Constitution? or that I have now broken any faith I ever pledged *to you?* You may, or you may not, be members of that secret band of robbers and murderers, who act in secret; appoint their agents by a secret ballot; who keep themselves *individually* unknown even to the agents they thus appoint; and who, therefore, cannot claim that they have any agents; or that any of their pretended agents ever gave his oath, or pledged his faith, *to them.* I repudiate you altogether. My oath was given to others, with whom you have nothing to do; or it was idle wind, given only to the idle winds. Begone!

XII.

For the same reasons, the oaths of all the other pretended agents of this secret band of robbers and murderers are on general principles of law and reason, equally destitute of obligation. They are given to nobody; but only to the winds.

The oaths of the tax-gatherers and treasurers of the band, are, on general principles of law and reason, of no validity. If any tax gatherer, for example, should put the money he receives into his own pocket, and refuse to part with it, the members of this band could not say to him: You collected that money as *our* agent, and for *our* uses; and you swore to pay it over to *us,* or to those *we* should appoint to receive it. You have betrayed *us,* and broken faith with *us.*

It would be a sufficient answer for him to say to them:

I never knew you. You never made yourselves *individually* known to me. I never gave my oath to you, as individuals. You may, or you may not, be members of that secret band, who appoint agents to rob and murder other people; but who are cautious not to make themselves individually known, either to such agents, or to those whom their agents are commissioned to rob. If you are members of that band, you have given me no proof of it, and you have no proof that you ever commissioned me to rob others for your benefit. I never knew you, as individuals, and of course never promised you that I would pay over to you the proceeds of my robberies. I committed my robberies on my own account, and for my own profit. If you thought I was fool enough to allow you to keep yourselves concealed, and use me as your tool for robbing other persons; or that I would take all the personal risk of the robberies, and pay over the proceeds to you, you were particularly simple. As I took all the risk of my robberies, I propose to take all the profits. Begone! You are fools, as well as villains. If I gave my oath to anybody, I gave it to other persons than you. But I really gave it to nobody. I only gave it to the winds. It answered my purposes at the time. It enabled me to get the money I was after, and now I propose to keep it. If you expected me to pay it over to you, you relied only upon that honor that is said to prevail among thieves. You now understand that that is a very poor reliance. I trust you may become wise enough to never rely upon it again. If I have any *duty* in the matter, it is to give back the money to those from whom I took it; not to pay it over to such villains as you.

XIII.

On general principles of law and reason, the oaths which foreigners take, on coming here, and being "naturalized" (as it is called), are of no validity. They are necessarily given to nobody; because there is no open, authentic association, to which they *can* join themselves; or to whom, as individuals, they *can* pledge their faith. No such association, or organization, as "the people of the United States," having ever been formed by any open, written, authentic, or voluntary contract, there is, on general principles of law and reason, no such association, or organization, in existence. And all oaths that purport to be given to such an association are necessarily given only to the winds. They cannot be said to be given to any man, or body of men, as individuals, because no man, or body of men, can come forward *with any proof* that the oaths were given to them, as individuals, or to any association of which they are members. To say that there is a tacit understanding among a portion of the male adults of the country, that they will call themselves "the people of the United States," and that they will act in concert in subjecting the remainder of the people of the United States to their dominion; but that they will keep themselves personally concealed by doing all their acts secretly, is wholly insufficient, on general principles of law and reason, to prove the existence of any such association, or organization, as "the people of the United States;" or consequently to prove that the oaths of foreigners were given to any such association.

XIV.

On general principles of law and reason, all the oaths which, since the war, have been given by Southern men, that they will obey the laws of Congress, support the Union, and the like, are of no validity. Such oaths are invalid, not only because they were extorted by military power, and threats of confiscation, and because they are in contravention of men's natural right to do as they please about supporting the government, *but also because they were given to nobody.* They were nominally given to "the United States." But being nominally given to "the United States," they were necessarily given to nobody, because, on general principles of law and reason, there were no "United States," to whom the oaths could be given. That is to say, there was no open, authentic, avowed, legitimate association, corporation, or body of men, known as "the United States," or as "the people of the United States," to whom the oaths could have been given. If anybody says there was such a corporation, let him state who were the individuals that composed it, and how and when they became a corporation. Were Mr. A, Mr. B, and Mr. C members of it? If so, where are their signatures? Where the evidence of their membership? Where the record? Where the open, authentic proof? There is none. Therefore, in law and reason, there was no such corporation.

On general principles of law and reason, every corporation, association, or organized body of men, having a legitimate corporate existence, and legitimate corporate rights, must consist of certain known individuals, *who can prove, by legitimate and reasonable evidence, their membership.* But nothing of this kind can be proved in regard to the corporation, or body of men, who call themselves "the United States." Not a man of them, in all the Northern States, can prove by any legitimate evidence, such as is required to prove membership in other legal corporations, that he himself, or

any other man whom he can name, is a member of any corporation or association called "the United States," or "the people of the United States," or, consequently, that there is any such corporation. And since no such corporation can be proved to exist, it cannot of course be proved that the oaths of Southern men were given to any such corporation. The most that can be claimed is that the oaths were given to a secret band of robbers and murderers, who called themselves "the United States," and extorted those oaths. But that certainly is not enough to prove that the oaths are of any obligation.

XV.

On general principles of law and reason, the oaths of soldiers, that they will serve a given number of years, that they will obey the orders of their superior officers, that they will bear true allegiance to the government, and so forth, are of no obligation. Independently of the criminality of an oath, that, for a given number of years, he will kill all whom he may be commanded to kill, without exercising his own judgment or conscience as to the justice or necessity of such killing, there is this further reason why a soldier's oath is of no obligation, viz. that, like all the other oaths that have now been mentioned, *it is given to nobody.* There being, in no legitimate sense, any such corporation, or nation, as "the United States," nor, consequently, in any legitimate sense, any such government as "the government of the United States," a soldier's oath given to, or contract made with, such nation or government, is necessarily an oath given to, or a contract made with, nobody. Consequently such oath or contract can be of no obligation.

XVI.

On general principles of law and reason, the treaties, so called, which purport to be entered into with other nations, by certain persons calling themselves ambassadors, secretaries, presidents, and senators of the United States, in the name, and on behalf, of "the people of the United States," are of no validity. These so-called ambassadors, secretaries, presidents, and senators, who claim to be the agents of "the people of the United States," for making these treaties, can show no open, written, or other authentic evidence that either the whole "people of the United States," or any other open, avowed, responsible body of men, calling themselves by that name, ever authorized these pretended ambassadors and others to make treaties in the name of, or binding upon any one of, "the people of the United States." Neither can they show any open, written, or other authentic evidence that either the whole "people of the United States," or any other open, avowed, responsible body of men, calling themselves by that name, ever authorized these pretended ambassadors, secretaries, and others, in their name and behalf, to recognize certain other persons, calling themselves emperors, kings, queens, and the like, as the rightful rulers, sovereigns, masters, or representatives of the different peoples whom they assume to govern, to represent, and to bind.

The "nations," as they are called, with whom our pretended ambassadors, secretaries, presidents and senators profess to make treaties, are as much myths as our own. On general principles

of law and reason, there are no such "nations." That is to say, neither the whole people of England, for example, nor any open, avowed, responsible body of men, calling themselves by that name, ever, by any open, written, or other authentic contract with each other, formed themselves into any *bona fide*, legitimate association or organization, or authorized any king, queen, or other representative to make treaties in their name, or to bind them, either individually, or as an association, by such treaties.

Our pretended treaties, then, being made with no legitimate or *bona fide* nations, or representatives of nations, and being made, on our part, by persons who have no legitimate authority to act for us, have intrinsically no more validity than a pretended treaty made by the Man in the Moon with the king of the Pleiades.

XVII.

On general principles of law and reason, debts contracted in the name of "the United States," or of "the people of the United States," are of no validity. It is utterly absurd to pretend that debts to the amount of twenty-five hundred millions of dollars are binding upon thirty-five or forty millions of people, when there is not a particle of legitimate evidence—such as would be required to prove a private debt—that can be produced against any one of them, that either he, or his properly authorized attorney, ever contracted to pay one cent.

Certainly, neither the whole people of the United States, nor any number of them, ever separately or individually contracted to pay a cent of these debts.

Certainly, also, neither the whole people of the United States, nor any number of them, ever, by any open, written, or other authentic and voluntary contract, united themselves as a firm, corporation, or association, by the name of "the United States," or "the people of the United States," and authorized their agents to contract debts in their name.

Certainly, too, there is in existence no such firm, corporation, or association as "the United States," or "the people of the United States," formed by any open, written, or other authentic and voluntary contract, and having corporate property with which to pay these debts.

How, then, is it possible, on any general principle of law or reason, that debts that are binding upon nobody individually, can be binding upon forty millions of people collectively, when, on general and legitimate principles of law and reason, these forty millions of people neither have, nor ever had, any corporate property? never made any corporate or individual contract? and neither have, nor ever had, any corporate existence?

Who, then, created these debts, in the name of "the United States?" Why, at most, only a few persons, calling themselves "members of Congress," &c. who pretended to represent "the people of the United States," but who really represented only a secret band of robbers and murderers, who wanted money to carry on the robberies and murders in which they were then engaged; and who intended to extort from the future people of the United States, by robbery and threats of murder (and real murder, if that should prove necessary), the means to pay these debts.

This band of robbers and murderers, who were the real principals in contracting these debts, is a secret one, because its members have never entered into any open, written, avowed, or authentic contract, by which they may be individually known to the world, or even to each other. Their real or pretended representatives, who contracted these debts in their name, were selected (if selected at all) for that purpose secretly (by secret ballot), and in a way to furnish evidence against none of the principals *individually;* and these principals were really known *individually* neither to their pretended representatives who contracted these debts in their behalf, nor to those who lent the money. The money, therefore, was all borrowed and lent in the dark; that is, by men who did not see each other's faces, or know each other's names; who could not then, and cannot now, identify each other as principals in the transactions; and who consequently can prove no contract with each other.

Furthermore, the money was all lent and borrowed for criminal purposes; that is, for purposes of robbery and murder; and for this reason the contracts were all intrinsically void; and would have been so, even though the real parties, borrowers and lenders, had come face to face, and made their contracts openly, in their own proper names.

Furthermore, this secret band of robbers and murderers, who were the real borrowers of this money, having no legitimate corporate existence, have no corporate property with which to pay these debts. They do indeed pretend to own large tracts of wild lands, lying between the Atlantic and Pacific Oceans, and between the Gulf of Mexico and the North Pole. But, on general principles of law and reason, they might as well pretend to own the Atlantic and Pacific Oceans themselves; or the atmosphere and the sunlight; and to hold them, and dispose of them, for the payment of these debts.

Having no corporate property with which to pay what purports to be their corporate debts, this secret band of robbers and murderers are really bankrupt. They have nothing to pay with. In fact, they do not propose to pay their debts otherwise than from the proceeds of their future robberies and murders. These are confessedly their sole reliance; and were known to be such by the lenders of the money, at the time the money was lent. And it was, therefore, virtually a part of the contract, that the money should be repaid only from the proceeds of these future robberies and murders. For this reason, if for no other, the contracts were void from the beginning.

In fact, these apparently two classes, borrowers and lenders, were really one and the same class. They borrowed and lent money from and to themselves. They themselves were not only part and parcel, but the very life and soul, of this secret band of robbers and murderers, who borrowed and spent the money. Individually they furnished money for a common enterprise; taking, in return, what purported to be corporate promises for individual loans. The only excuse they had for taking these so-called corporate promises of, for individual loans by, the same parties, was that they might have some apparent excuse for the future robberies of the band (that is, to pay the debts of the corporation), and that they might also know what shares they were to be respectively entitled to out of the proceeds of their future robberies.

Finally, if these debts had been created for the most innocent and honest purposes, and in the most open and honest manner, by the real parties to the contracts, these parties could thereby

have bound nobody but themselves, and no property but their own. They could have bound nobody that should have come after them, and no property subsequently created by, or belonging to, other persons.

XVIII.

The Constitution having never been signed by anybody; and there being no other open, written, or authentic contract between any parties whatever, by virtue of which the United States government, so called, is maintained; and it being well known that none but male persons, of twenty-one years of age and upwards, are allowed any voice in the government; and it being also well known that a large number of these adult persons seldom or never vote at all; and that *all* those who do vote, do so secretly (by secret ballot), and in a way to prevent their individual votes being known, either to the world, or even to each other; and consequently in a way to make no one openly responsible for the acts of their agents, or representatives,—all these things being known, the questions arise: *Who* compose the real governing power in the country? Who are the men, *the responsible men,* who rob us of our property? Restrain us of our liberty? Subject us to their arbitrary dominion? And devastate our homes, and shoot us down by the hundreds of thousands, if we resist? How shall we find these men? How shall we know them from others? How shall we defend ourselves and our property against them? Who, of our neighbors, are members of this secret band of robbers and murderers? How can we know which are *their* houses, that we may burn or demolish them? Which *their* property, that we may destroy it? Which *their* persons, that we may kill them, and rid the world and ourselves of such tyrants and monsters?

These are questions that must be answered, before men can be free; before they can protect themselves against this secret band of robbers and murderers, who now plunder, enslave, and destroy them.

The answer to these questions is, that only those who have the will and the power to shoot down their fellow men, are the real rulers in this, as in all other (so called) civilized countries; for by no others will civilized men be robbed, or enslaved.

Among savages, mere physical strength, on the part of one man, may enable him to rob, enslave, or kill another man. Among barbarians, mere physical strength, on the part of a body of men, disciplined, and acting in concert, though with very little money or other wealth, may, under some circumstances, enable them to rob, enslave, or kill another body of men, as numerous, or perhaps even more numerous, than themselves. And among both savages and barbarians, mere want may sometimes compel one man to sell himself as a slave to another. But with (so called) civilized peoples, among whom knowledge, wealth, and the means of acting in concert, have become diffused; and who have invented such weapons and other means of defence as to render mere physical strength of less importance; and by whom soldiers in any requisite number, and other instrumentalities of war in any requisite amount, can always be had for money, the question of war, and consequently the question of power, is little else than a mere question of

money. As a necessary consequence, those who stand ready to furnish this money, are the real rulers. It is so in Europe, and it is so in this country.

In Europe, the nominal rulers, the emperors and kings and parliaments, are anything but the real rulers of their respective countries. They are little or nothing else than mere tools, employed by the wealthy to rob, enslave, and (if need be) murder those who have less wealth, or none at all.

The Rothschilds, and that class of money-lenders of whom they are the representatives and agents,—men who never think of lending a shilling to their next-door neighbors, for purposes of honest industry, unless upon the most ample security, and at the highest rate of interest,—stand ready, at all times, to lend money in unlimited amounts to those robbers and murderers, who call themselves governments, to be expended in shooting down those who do not submit quietly to being robbed and enslaved.

They lend their money in this manner, knowing that it is to be expended in murdering their fellow men, for simply seeking their liberty and their rights; knowing also that neither the interest nor the principal will ever be paid, except as it will be extorted under terror of the repetition of such murders as those for which the money lent is to be expended.

These money-lenders, the Rothschilds, for example, say to themselves: If we lend a hundred millions sterling to the Queen and Parliament of England, it will enable them to murder twenty, fifty, or a hundred thousand people in England, Ireland, or India; and the terror inspired by such wholesale murder, will enable them to keep the whole people of those countries in subjection for twenty, or perhaps fifty, years to come; to control all their trade and industry; and to extort from them large amounts of money, under the name of taxes; and from the wealth thus extorted from them, they (the Queen and Parliament) can afford to pay us a higher rate of interest for our money than we can get in any other way. Or, if we lend this sum to the Emperor of Austria, it will enable him to murder so many of his people as to strike terror into the rest, and thus enable him to keep them in subjection, and extort money from them, for twenty or fifty years to come. And they say the same in regard to the Emperor of Russia, the King of Prussia, the Emperor of France, or any other ruler, so called, who, in their judgment, will be able, by murdering a reasonable portion of his people, to keep the rest in subjection, and extort money from them, for a long time to come, to pay the interest and principal of the money lent him.

And why are these men so ready to lend money for murdering their fellow men? Solely for this reason, viz., that such loans are considered better investments than loans for purposes of honest industry. They pay higher rates of interest; and it is less trouble to look after them. This is the whole matter.

The question of making these loans is, with these lenders, a mere question of pecuniary profit. They lend money to be expended in robbing, enslaving, and murdering their fellow men, solely because, on the whole, such loans pay better than any others. They are no respecters of persons, no superstitious fools, that reverence monarchs. They care no more for a king, or an emperor, than they do for a beggar, except as he is a better customer, and can pay them better interest for their money. If they doubt his ability to make his murders successful for maintaining his

power, and thus extorting money from his people in future, they dismiss him as unceremoniously as they would dismiss any other hopeless bankrupt, who should want to borrow money to save himself from open insolvency.

When these great lenders of blood-money, like the Rothschilds, have loaned vast sums in this way, for purposes of murder, to an emperor or a king, they sell out the bonds taken by them, in small amounts, to anybody, and everybody, who are disposed to buy them at satisfactory prices, to hold as investments. They (the Rothschilds) thus soon get back their money, with great profits; and are now ready to lend money in the same way again to any other robber and murderer, called an emperor or a king, who, they think, is likely to be successful in his robberies and murders, and able to pay a good price for the money necessary to carry them on.

This business of lending blood-money is one of the most thoroughly sordid, cold-blooded and criminal that was ever carried on, to any considerable extent, amongst human beings. It is like lending money to slave-traders, or to common robbers and pirates, to be repaid out of their plunder. And the men who loan money to governments, so called, for the purpose of enabling the latter to rob, enslave, and murder their people, ar among the greatest villains that the world has ever seen. And they as much deserve to be hunted and killed (if they cannot otherwise be got rid of) as any slave-traders, robbers, or pirates that ever lived.

When these emperors and kings, so called, have obtained their loans, they proceed to hire and train immense numbers of professional murderers, called soldiers, and employ them in shooting down all who resist their demands for money. In fact, most of them keep large bodies of these murderers constantly in their service, as their only means of enforcing their extortions. There are now, I think, four or five millions of these professional murderers constantly employed by the so-called sovereigns of Europe. The enslaved people are, of course, forced to support and pay all these murderers, as well as to submit to all the other extortions which these murderers are employed to enforce.

It is only in this way that most of the so-called governments of Europe are maintained. These so-called governments are in reality only great bands of robbers and murderers, organized, disciplined, and constantly on the alert. And the so-called sovereigns, in these different governments, are simply the heads, or chiefs, of different bands of robbers and murderers. And these heads or chiefs are dependent upon the lenders of blood-money for the means to carry on their robberies and murders. They could not sustain themselves a moment but for the loans made to them by these blood-money loan-mongers. And their first care is to maintain their credit with them; for they know their end is come, the instant their credit with them fails. Consequently the first proceeds of their extortions are scrupulously applied to the payment of the interest on their loans.

In addition to paying the interest on their bonds, they perhaps grant to the holders of them great monopolies in banking, like the Banks of England, of France, and of Vienna; with the agreement that these banks shall furnish money whenever, in sudden emergencies, it may be necessary to shoot down more of their people. Perhaps also, by means of tariffs on competing imports, they give great monopolies to certain branches of industry, in which these lenders of blood-money are engaged. They also, by unequal taxation, exempt wholly or partially the property of

these loan-mongers, and throw corresponding burdens upon those who are too poor and weak to resist.

Thus it is evident that all these men, who call themselves by the high-sounding names of Emperors, Kings, Sovereigns, Monarchs, Most Christian Majesties, Most Catholic Majesties, High Mightinesses, Most Serene and Potent Princes, and the like, and who claim to rule "by the grace of God," by "Divine Right,"—that is, by special authority from Heaven,—are intrinsically not only the merest miscreants and wretches, engaged solely in plundering, enslaving, and murdering their fellow men, but that they are also the merest hangers on, the servile, obsequious, fawning dependents and tools of these blood-money loan-mongers, on whom they rely for the means to carry on their crimes. These loan-mongers, like the Rothschilds, laugh in their sleeves, and say to themselves: These despicable creatures, who call themselves emperors, and kings, and majesties, and most serene and potent princes; who profess to wear crowns, and sit on thrones; who deck themselves with ribbons, and feathers, and jewels; and surround themselves with hired flatterers and lickspittles; and whom we suffer to strut around, and palm themselves off, upon fools and slaves, as sovereigns and lawgivers specially appointed by Almighty God; and to hold themselves out as the sole fountains of honors, and dignities, and wealth, and power,—all these miscreants and impostors know that we make them, and use them; that in us they live, move, and have their being; that we require them (as the price of their positions) to take upon themselves all the labor, all the danger, and all the odium of all the crimes they commit for our profit; and that we will unmake them, strip them of their gewgaws, and send them out into the world as beggars, or give them over to the vengeance of the people they have enslaved, the moment they refuse to commit any crime we require of them, or to pay over to us such share of the proceeds of their robberies as we see fit to demand.

XIX.

Now, what is true in Europe, is substantially true in this country. The difference is the immaterial one, that, in this country, there is no visible, *permanent* head, or chief, of these robbers and murderers, who call themselves "the government." That is to say, there is no *one man,* who calls himself the state, or even emperor, king, or sovereign; no one who claims that he and his children rule "by the Grace of God," by "Divine Right," or by special appointment from Heaven. There are only certain men, who call themselves presidents, senators, and representatives, and claim to be the authorized agents, *for the time being, or for certain short periods,* of *all* "the people of the United States;" but who can show no credentials, or powers of attorney, or any other open, authentic evidence that they are so; and who notoriously are not so; but are really only the agents of a secret band of robbers and murderers, whom they themselves do not know, and have no means of knowing, individually; but who, they trust, will openly or secretly, when the crisis comes, sustain them in all their usurpations and crimes.

What is important to be noticed is, that these so-called presidents, senators, and representatives, these pretended agents of *all* "the people of the United States," the moment their exactions meet with any formidable resistance from any portion of "the people" themselves, are obliged,

like their co-robbers and murderers in Europe, to fly at once to the lenders of blood money, for the means to sustain their power. And they borrow their money on the same principle, and for the same purpose, viz., to be expended in shooting down all those "people of the United States"—their own constituents and principals, as they profess to call them—who resist the robberies and enslavement which these borrowers of the money are practising upon them. And they expect to repay the loans, if at all, only from the proceeds of the future robberies, which they anticipate it will be easy for them and their successors to perpetrate through a long series of years, upon their pretended principals, if they can but shoot down *now* some hundreds of thousands of them, and thus strike terror into the rest.

Perhaps the facts were never made more evident, in any country on the globe, than in our own, that these soulless blood-money loan-mongers are the real rulers; that they rule from the most sordid and mercenary motives; that the ostensible government, the presidents, senators, and representatives, so-called, are merely their tools; and that no ideas of, or regard for, justice or liberty had anything to do in inducing them to lend their money for the war. In proof of all this, look at the following facts.

Nearly a hundred years ago we professed to have got rid of all that religious superstition, inculcated by a servile and corrupt priesthood in Europe, that rulers, so called, derived their authority directly from Heaven; and that it was consequently a religious duty on the part of the people to obey them. We professed long ago to have learned that governments could rightfully exist only by the free will, and on the voluntary support, of those who might choose to sustain them. We all professed to have known long ago, that the only legitimate objects of government were the maintenance of liberty and justice equally for all. All this we had professed for nearly a hundred years. And we professed to look with pity and contempt upon those ignorant, superstitious, and enslaved peoples of Europe, who were so easily kept in subjection by the frauds and force of priests and kings.

Notwithstanding all this, that we had learned, and known, and professed, for nearly a century, these lenders of blood money had, for a long series of years previous to the war, been the willing accomplices of the slave-holders in perverting the government from the purposes of liberty and justice, to the greatest of crimes. They had been such accomplices *for a purely pecuniary consideration*, to wit, a control of the markets in the South; in other words, the privilege of holding the slave-holders them-selves in industrial and commercial subjection to the manufacturers and merchants of the North (who afterwards furnished the money for the war). And these Northern merchants and manufacturers, these lenders of blood-money, were willing to continue to be the accomplices of the slave-holders in the future, for the same pecuniary consideration. But the slave-holders, either doubting the fidelity of their Northern allies, or feeling themselves strong enough to keep their slaves in subjection without Northern assistance, would no longer pay the price which these Northern men demanded. And it was to enforce this price in the future—that is, to monopolize the Southern markets, to maintain their industrial and commercial control over the South—that these Northern manufacturers and merchants lent some of the profits of their former monopolies for the war, in order to secure to themselves the same, or greater, monopolies in the future. The-

se—and not any love of liberty or justice—were the motives on which the money for the war was lent by the North. In short, the North said to the slave-holders: If you will not pay us our price (give us control of your markets) for our assistance against your slaves, we will secure the same price (keep control of your markets) by helping your slaves against you, and using them as our tools for maintaining dominion over you; for the control of your markets we will have, whether the tools we use for that purpose be black or white, and be the cost, in blood and money, what it may.

On this principle, and from this motive, and not from any love of liberty or justice, the money was lent in enormous amounts, and at enormous rates of interest. And it was only by means of these loans that the objects of the war were accomplished.

And now these lenders of blood-money demand their pay; and the government, so called, becomes their tool, their servile, slavish, villanous tool, to extort it from the labor of the enslaved people both of the North and the South. It is to be extorted by every form of direct, and indirect, and unequal taxation. Not only the nominal debt and interest—enormous as the latter was—are to be paid in full; but these holders of the debt are to be paid still further—and perhaps doubly, triply, or quadruply paid—by such tariffs on imports as will enable our home manufacturers to realize enormous prices for their commodities; also by such monopolies in banking as will enable them to keep control of, and thus enslave and plunder, the industry and trade of the great body of the Northern people themselves. In short, the industrial and commercial slavery of the great body of the people, North and South, black and white, is the price which these-lenders of blood money demand, and insist upon, and are determined to secure, in return for the money lent for the war.

This programme having been fully arranged and systematized, they put their sword into the hands of the chief murderer of the war, and charge him to carry their scheme into effect. And now he, speaking as their organ, says: "*Let us have peace.*"

The meaning of this is: Submit quietly to all the robbery and slavery we have arranged for you, and you can have "peace." But in case you resist, the same lenders of blood-money, who furnished the means to subdue the South, will furnish the means again to subdue you.

These are the terms on which alone this government, or, with few exceptions, any other, ever gives "peace" to its people.

The whole affair, on the part of those who furnished the money, has been, and now is, a deliberate scheme of robbery and murder; not merely to monopolize the markets of the South, but also to monopolize the currency, and thus control the industry and trade, and thus plunder and enslave the laborers, of both North and South. And Congress and the president are to-day the merest tools for these purposes. They are obliged to be, for they know that their own power, as rulers, so called, is at an end, the moment their credit with the blood-money loan-mongers fails. They are like a bankrupt in the hands of an extortioner. They dare not say nay to any demand made upon them. And to hide at once, if possible, both their servility and their crimes, they attempt to divert public attention, by crying out that they have "Abolished Slavery!" That they have

"Saved the Country!" That they have "Preserved our Glorious Union!" and that, in now paying the "National Debt," as they call it (as if the people themselves, *all of them who are to be taxed for its payment*, had really and voluntarily joined in contracting it), they are simply "Maintaining the National Honor!"

By "maintaining the national honor," they mean simply that they themselves, open robbers and murderers, assume to be the nation, and will keep faith with those who lend them the money necessary to enable them to crush the great body of the people under their feet; and will faithfully appropriate, from the proceeds of their future robberies and murders, enough to pay all their loans, principal and interest.

The pretence that the "abolition of slavery" was either a motive or justification for the war, is a fraud of the same character with that of "maintaining the national honor." Who, but such usurpers, robbers, and murderers as they, ever established slavery? Or what government, except one resting upon the sword, like the one we now have, was ever capable of maintaining slavery? And why did these men abolish slavery? Not from any love of liberty in general—not as an act of justice to the black man himself, but only "as a war measure," and because they wanted his assistance, and that of his friends, in carrying on the war they had undertaken for maintaining and intensifying that political, commercial, and industrial slavery, to which they have subjected the great body of the people, both white and black. And yet these impostors now cry out that they have abolished the chattel slavery of the black man—although that was not the motive of the war—as if they thought they could thereby conceal, atone for, or justify that other slavery which they were fighting to perpetuate, and to render more rigorous and inexorable than it ever was before. There was no difference of principle—but only of degree—between the slavery they boast they have abolished, and the slavery they were fighting to preserve; for all restraints upon men's natural liberty, not necessary for the simple maintenance of justice, are of the nature of slavery, and differ from each other only in degree.

If their object had really been to abolish slavery, or maintain liberty or justice generally, they had only to say: All, whether white or black, who want the protection of this government, shall have it; and all who do not want it, will be left in peace, so long as they leave us in peace. Had they said this, slavery would necessarily have been abolished at once; the war would have been saved; and a thousand times nobler union than we have ever had would have been the result. It would have been a voluntary union of free men; such a union as will one day exist among all men, the world over, if the several nations, so called, shall ever get rid of the usurpers, robbers, and murderers, called governments, that now plunder, enslave, and destroy them.

Still another of the frauds of these men is, that they are now establishing, and that the war was designed to establish, "a government of consent." The only idea they have ever manifested as to what is a government of consent, is this—that it is one to which everybody must consent, or be shot. This idea was the dominant one on which the war was carried on; and it is the dominant one, now that we have got what is called "peace."

Their pretences that they have "Saved the Country," and "Preserved our Glorious Union," are frauds like all the rest of their pretences. By them they mean simply that they have subju-

gated, and maintained their power over, an unwilling people. This they call "Saving the Country;" as if an enslaved and subjugated people—or as if any people kept in subjection by the sword (as it is intended that all of us shall be hereafter)—could be said to have any country. This, too, they call "Preserving our Glorious Union;" as if there could be said to be any Union, glorious or inglorious, that was not voluntary. Or as if there could be said to be any union between masters and slaves; between those who conquer, and those who are subjugated.

All these cries of having "abolished slavery," of having "saved the country," of having "preserved the union," of establishing "a government of consent," and of "maintaining the national honor," are all gross, shameless, transparent cheats—so transparent that they ought to decieve no one—when uttered as justifications for the war, or for the government that has succeeded the war, or for now compelling the people to pay the cost of the war, or for compelling anybody to support a government that he does not want.

The lesson taught by all these facts is this: As long as mankind continue to pay "National Debts," so-called,—that is, so long as they are such dupes and cowards as to pay for being cheated, plundered, enslaved, and murdered,—so long there will be enough to lend the money for those purposes; and with that money a plenty of tools, called soldiers, can be hired to keep them in subjection. But when they refuse any longer to pay for being thus cheated, plundered, enslaved, and murdered, they will cease to have cheats, and usurpers, and robbers, and murderers and blood-money loan-mongers for masters.

APPENDIX.

Inasmuch as the Constitution was never signed, nor agreed to, by anybody, as a contract, and therefore never bound anybody, and is now binding upon nobody; and is, moreover, such an one as no people can ever hereafter be expected to consent to, except as they may be forced to do so at the point of the bayonet, it is perhaps of no importance what its true legal meaning, as a contract, is. Nevertheless, the writer thinks it proper to say that, in his opinion, the Constitution is no such instrument as it has generally been assumed to be; but that by false interpretations, and naked usurpations, the government has been made in practice a very widely, and almost wholly, different thing from what the Constitution itself purports to authorize. He has heretofore written much, and could write much more, to prove that such is the truth. But whether the Constitution really be one thing, or another, this much is certain—that it has either authorized such a government as we have had, or has been powerless to prevent it. In either case, it is unfit to exist.

Endnotes

[*] See "No Treason, No. 2," pages 5 and 6.

[*] Suppose it be "the best government on earth," does that prove its own goodness, or only the badness of all other governments?

[*] The very men who drafted it, never signed it in any way to bind themselves by it, *as a contract.* And not one of them probably ever would have signed it in any way to bind himself by it, *as a contract.*

[*] I have personally examined the statute books of the following States, viz.: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Michigan, Indians, Illinois, Wisconsin, Texas, Arkansas, Missouri, Iowa, Minnesota, Nebraska, Kansas, Nevada, California, and Oregon, and find that in all these States the English statute has been re-enacted, sometimes with modifications, but generally enlarging its operations, and is now in force.

The following are some of the provisions of the Massachusetts statute:

"No action shall be brought in any of the following cases, that is to say: . . . .

"To charge a person upon a special promise to answer for the debt, default, or misdoings of another: . . . .

"Upon a contract for the sale of lands, tenements, hereditaments, or of any interest in, or concerning them; or

"Upon an agreement that is not to be performed within one year from the writing thereof:

"Unless the promise, contract, or agreement, upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged therewith, or by some person thereunto by him awfully authorized: . . . .

"No contract for the sale of goods, wares, or merchandise, for the price of fifty dollars or more, shall be good or valid, unless the purchaser accepts and receives part of the goods so sold, or gives something in earnest to bind the bargain, or in part payment; or unless some note or memorandum in writing of the bargain is made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized."

[*] And this two-thirds vote may be but two-thirds of a quorum—that is two-thirds of a majority—instead of two-thirds of the whole.

[*] Of what appreciable value is it to any man, as an individual, that he is allowed a voice in choosing these public masters? His voice is only one of several millions.

26. A NEW BANKING SYSTEM: THE NEEDFUL CAPITAL FOR REBUILDING THE BURNT DISTRICT (1873).

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A NEW BANKING SYSTEM the NEEDFUL CAPITAL FOR REBUILDING THE BURNT DISTRICT.

By LYSANDER SPOONER.

BOSTON: SOLD BY A. WILLIAMS & CO.

135 Washington Street.

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The reader will understand that the ideas presented in the following pages admit of a much more thorough demonstration than can be given in so small a space. Such demonstration, if it should be necessary, the author hopes to give at a future time.

Boston, March, 1873.

CHAPTER I. A NEW BANKING SYSTEM.

Under the banking system—an outline of which is hereafter given— the real estate of Boston alone—taken at only three-fourths its value, as estimated by the State valuation* —is capable of furnishing three hundred millions of dollars of loanable capital.

Under the same system, the real estate of Massachusetts—taken at only three-fourths its estimated value† —is capable of furnishing seven hundred and fifty millions of loanable capital.

The real estate of the Commonwealth, therefore, is capable of furnishing an amount of loanable capital more than twelve times as great as that of all the "*National*" Banks in the State‡ ; more than twice as great as that of all the "National" banks of the whole United States ($353,917,470); and equal to the entire amount ($750,000,000, or thereabouts) both of greenback and "National" bank currency of the United States.

It is capable of furnishing loanable capital equal to one thousand dollars for every male and female person, of sixteen years of age and upwards, within the Commonwealth; or two thousand five hundred dollars for every male adult.

It would scarcely be extravagant to say that it is capable of furnishing ample capital for every deserving enterprise, and every deserving man and woman, within the State; and also for all such other enterprises in other parts of the United States, and in foreign commerce, as Massachusetts men might desire to engage in.

Unless the same system, or some equivalent one, should be adopted in other States, the capital thus furnished in this State, could be loaned at high interest at the West and the South.

If adopted here earlier than in other States, it would enable the citizens of this State to act as pioneers in the most lucrative enterprises that are to be found in other parts of the country.

All this capital is now lying dead, so far as being loaned is concerned.

All this capital can be loaned in the form of currency, if so much can be used.

All the profits of banking, under this system, would be clear profits, inasmuch as the use of the real estate as banking capital, would not interfere at all with its use for other purposes.

The use of this real estate as banking capital would break up all monopolies in banking, and in all other business depending upon bank loans. It would diffuse credit much more widely than it has ever been diffused. It would reduce interest to the lowest rates to which free competition could reduce it. It would give immense activity and power to industrial and commercial enterprise. It would multiply machinery, and do far more to increase production than any other system of credit and currency that has ever been invented. And being furnished at low rates of interest, would secure to producers a much larger share of the proceeds of their labor, than they now receive.

All this capital can be brought into use as fast as the titles to real estate can be ascertained, and the necessary papers be printed.

Legally, the system (as the author claims, and is prepared to establish) stands upon the same principle as a patented machine; and is, therefore, already legalized by Congress; and cannot, unless by a breach of the public faith, any more be prohibited, *or taxed,* either by Congress or this State, than can the use of a patented machine.

Every dollar of the currency furnished by this system would have the same value in the market as a dollar of gold; or so nearly the same value that the difference would be a matter of no appreciable importance.

The system would, therefore, restore specie payments at once, by furnishing a great amount of currency, that would be equal in value to specie.

The system would not inflate prices above their true and natural value, relatively to specie; for no possible amount of paper currency, every dollar of which is equal in value to specie, *can* inflate prices above their true and natural value, relatively to specie.

Whenever, if ever, the paper should not buy as much in the market as specie, it would be returned to the banks for redemption, and thus taken out of circulation. So that no more could be kept in circulation than should be necessary for the purchase and sale of property at specie prices.

The system would not tend to drive specie out of the country; although very little of it would be needed by the banks. It would rather tend to bring specie into the country, because it would immensely increase our production. We should, therefore, have much more to sell, and much less to buy. This would always give a balance in our favor, which would have to be paid in specie.

It is, however, a matter of no practical importance whether the system would bring specie into the country, or drive it out; for the volume and value of the currency would be substantially unaffected either by the influx or efflux of specie. Consequently industry, trade, and prices would be undisturbed either by the presence or absence of specie. The currency would represent property that could not be exported; that would always be here; that would always have a value as fixed and well known as that of specie; that would always be many times more abundant than specie can ever be; and that could always be delivered (in the absence of specie) in redemption of the currency. These attributes of the currency would render all financial contractions, revulsions, and disorders forever impossible.

The following is

An Outline of the System.

The principle of the system is that the currency shall represent an *invested* dollar, instead of a specie dollar.

The currency will, therefore, be redeemable by an *invested* dollar, except when redeemed by specie, or by being received in payment of debts due the banks.

The best capital will probably be mortgages and railroads; and these will very likely be the only capital which it will ever be expedient to use.

Inasmuch as railroads could not be used as capital, without a modification of their present charters, mortgages are probably the best capital that is immediately available.

Supposing mortgages to be the capital, they will be put into joint stock, held by trustees, and divided into shares of one hundred dollars each.

This stock may be called the Productive Stock, and will be entitled to the dividends.

The dividends will consist of the interest on the mortgages, and the profits of banking.

The interest on the mortgages should be so high—say six or seven per cent—as to make the Productive Stock worth ordinarily par of specie in the market, *independently of the profits of banking.*

Another kind of stock, which may be called *Circulating Stock*, will be created, *precisely equal in amount to the*Productive Stock, and divided into shares of *one dollar each.*

This *Circulating Stock* will be represented by certificates, scrip, or bills, of various denominations, like our present bank bills—that is, *representing one, two, three, five, ten, or more shares, of one dollar each.*

These certificates, scrip, or bills of the *Circulating Stock*, will be issued for circulation as currency, as our bank bills are now.

In law, this *Circulating Stock* will be in the nature of a lien on the Productive Stock. It will be entitled to no dividends. Its value will consist, *first,* in its title to be received in payment of all dues to the bank; *second,* in its title to be redeemed, either in specie on demand, or in specie, with interest from the time of demand, before any dividends can be made to the bankers; and, *third,* in its title, when not redeemed with specie, to be redeemed (in sums of one hundred dollars each) by a transfer of a corresponding amount of the capital itself; that is, of the Productive Stock.

The holders of the *Circulating Stock* are, therefore, sure, *first,* to be able to use it (if they have occasion to do so) in payment of their dues to the bank; *second,* to get, in exchange for it, either specie on demand, or specie, with interest from the time of demand; or, *third,* a share of the capital itself, the Productive Stock; a stock worth par of specie in the market, and as merchantable as a share of railroad stock, or government stock, or any other stock whatever is now.

Whenever Productive Stock shall have been transferred in redemption of *Circulating Stock*, it (the Productive Stock) may be itself redeemed, or bought back, at pleasure, by the bankers, on their paying its face in specie, with interest (or dividends) from the time of the transfer; and *must* be so bought back, before any dividends can be paid to the original bankers.

The fulfilment of all these obligations, on the part of the bank, is secured by the fact that the capital and all the resources of the bank are in the hands of trustees, who are legally bound—before making any dividends to the bankers—to redeem all paper in the manner mentioned; and also to buy back all Productive Stock that shall have been transferred in redemption of the circulation.

Such are the general principles of the system. The details are too numerous to be given here. They will be found in the "*Articles of Association of a Mortgage Stock Banking Company,*" which the author has drawn up and copyrighted.

CHAPTER II. SPECIE PAYMENTS.

Although the banks, under this system, make no absolute promise to pay specie *on demand,* the system nevertheless affords a much better *practical* guaranty for specie payments, than the old specie paying system (so called); and for these reasons, viz:

1. The banks would be so universally solvent, and so universally known to be solvent, that no runs would ever be made upon them for specie, through fear of their insolvency. They could, therefore, maintain specie payments with much less amounts of specie, than the old specie paying banks (so called) could do.

2. As there would be no fears of the insolvency of the banks, and as the paper would be more convenient than specie for purposes of trade, bills would rarely be presented for redemption—otherwise than in payment of debts due the banks—except in those cases where the holders desired to invest their money; and would therefore *prefer* a transfer of Productive Stock, to a payment in specie. If they wanted specie for exportation, they would buy it in the market (with the bills), as they would any other commodities for export.* It would, therefore, usually be only when they wanted an investment, and could find none so good as the Productive Stock, that they would return their bills for redemption. And then they would return them, not really for the purpose of having them redeemed with specie, but in the hope of getting a transfer of Productive Stock, and holding it awhile, and drawing interest on it.

3. The banks would probably find it for their interest, as promoting the circulation of their bills, to pay, at all times, such *small* amounts of specie, as the public convenience might require.

4. If there should be any suspensions of specie payments, they would be only temporary ones, by here and there a bank separately, and not by all the banks simultaneously, as under the so called specie paying system. No general public inconvenience would therefore ever be felt from that cause.

5. If the banks should rarely, or never, pay specie *on demand,* that fact would bring no discredit upon their bills, and be no obstacle to their circulation at par with specie. It would be known that—unless bad notes had been discounted—all the bills issued by the banks, would be wanted to pay the debts due the banks. This would ordinarily be sufficient, of itself, to keep the bills at par with specie. It would also be known that, if specie were not paid *on demand,* it would either be paid afterwards, with interest from the time of demand; or Productive Stock, equal in value to specie in the market, would be transferred in redemption of the bills. The bills, therefore, would never depreciate in consequence of specie not being paid *on demand;* nor would any contraction of the currency ever be occasioned on that account.

For the reasons now given, the system is practically the best specie paying system that was ever invented. That is to say, it would require less specie to work it; and also less to keep its bills always at par with specie. In proportion to the amount of currency it would furnish, it would not require so much as one dollar in specie, where the so called specie paying system would require a

hundred. It would also, by immensely increasing our production and exports, do far more than any other system, towards bringing specie into the country, and preventing its exportation.

If it should be charged that the system supplies no specie for *exportation;* the answer is, that it is really no part of the legitimate business of a bank to furnish specie for exportation. Its legitimate business is simply to furnish credit and currency for home industry and trade. And it can never furnish these constantly, and in adequate amounts, unless it can be freed from the obligation to supply specie on demand for exportation. Specie should, therefore, always be merely an article of merchandise in the market, like any other; and should have no special—or, at least, no important—connection with the business of banking, except as furnishing the measure of value. If a paper currency is made payable in specie, *on demand,* very little of it can ever be issued, or kept in circulation; and that little will be so irregular and inconstant in amount as to cause continual and irremediable derangements. But if a paper currency, instead of promising to pay specie *on demand,* promises only an alternative redemption, viz: specie on demand, or specie with interest from the time of demand, or other merchantable property of equal market value with specie—it can then be issued to an amount equal to such property; and yet keep its promises to the letter. It can, therefore, furnish all the credit and currency that can be needed; or at least many times more than the so called specie paying system ever did, or ever can, furnish. And then the interest, industry and trade of a nation will never be disturbed by the exportation of specie. And yet the standard of value will always be maintained.

The difference between the system here proposed, and the so called specie paying system—in respect to their respective capacities for furnishing credit and currency, and at the same time fulfilling their contracts to the letter—is as fifty to one, at the least, in favor of the former; probably much more than that.

Thus under the system now proposed, the real estate and railroads of the United States, at their present values, are capable of furnishing twenty thousand millions ($20,000,000,000) of paper currency; and furnishing it constantly, and without fluctuation, and every dollar of it will have an equal market value with gold. The contracts or certificates comprising it, can always be fulfilled to the letter; that is, the capital itself, (the Productive Stock,) represented by these certificates, can always be delivered, *on demand,* in redemption of the certificates, if the banks should be unable to redeem in specie.

On the other hand, it would be impossible to have so much as four hundred millions, ($400,000,000)—one fiftieth of the amount before mentioned—of so called specie paying paper currency; that is, a paper promising to pay specie *on demand; and constantly able to fulfil its obligations.*

It is of no appreciable importance that a paper currency should be payable *on demand* with specie. It is sufficient, if it be payable *according to its terms, if only those terms are convenient and acceptable.* For then the value of the currency will be known, *and its contracts will be fulfilled to the letter.* And when these contracts are fulfilled to the letter, then, *to all practical purposes, specie payments are maintained.* When, for example, a man promises to pay wheat, either on demand, or at a time specified, and he fulfils that contract to the letter, *that, to all practical purposes, is specie payments;* as much so as if the promise and payment had been made in coin. It is, therefore, the specific and literal ful-

filment of contracts, that constitutes specie payments; and not the particular kind of property that is promised and paid.

The great secret, then, of having an abundant paper currency, and yet maintaining all the while specie payments, consists in having the paper represent property—like real estate, for example—that exists in large amounts, and can always be delivered, on demand, in redemption of the paper; and also in having this paper issued by the persons who actually own the property represented by it, and who can be compelled by law to deliver it in redemption of the paper. And the great secret—if it be a secret—of having only a scanty currency, and of *not* having specie payments, consists in having the paper issued by a government that cannot fulfil its contracts, and has no intention of fulfilling them; and by banks that are not even required to fulfil them.

It is somewhat remarkable that after ten years experiment, we have not yet learned these apparently self-evident truths.

The palpable fact is that the advocates of the present "National" currency system,—that is, the stockholders in the present "National" banks,—*do not wish for specie payments.* They wish only to maintain, in their own hands, a monopoly of banking, and, as far as possible also, a monopoly of all business depending upon bank loans. They wish, therefore, to keep the volume of the currency down to its present amount. As an excuse for this, they profess a great desire for specie payments; and at the same time practice the imposture of declaring that specie payments will be impossible, if the amount of the currency be increased.

But all this is sheer falsehood and fraud. It is, of course, impossible to have specie payments, so long as the only currency issued is issued by a government that has nothing to redeem with, and has no intention of redeeming; and by banks that are not even required to redeem. But there is no obstacle to our having twenty times as much currency as we now have, and yet having specie payments—or the literal fulfilment of contracts—if we will but suffer the business of banking to go into the hands of those who have property with which to redeem, and can be compelled by law to redeem.

It is with government paper, and bank paper, as it is with the paper of private persons; that is, it is worth just what can be delivered in redemption of it, and no more. We all understand that the notes of the Astors, and Stewarts, and Vanderbilts, though issued by millions, and tens of millions, are really worth their nominal values. And why? Solely because the makers of them have the property with which to redeem them in full, and can be made to redeem them in full. We also all understand that the notes of Sam Jones, and Jim Smith, and Bill Nokes, though issued for only five dollars, are not worth two cents on the dollar. And why? Solely because they have nothing to pay with; and cannot be made to pay.

Suppose, now, that these notes of Sam Jones, and Jim Smith, and Bill Nokes, for five dollars, were the only currency allowed by law; and that they were worth in the market but two cents on the dollar. And suppose that the few holders of these notes, wishing to make the most of them, at the expense of the rights of everybody else, should keep up a constant howl for specie payments; and should protest against any issue of the notes of the Astors, the Stewarts, and the Vanderbilts,

upon the ground that such issue would inflate the currency, and postpone specie payments! What would we think of men capable of uttering such absurdities? Would we in charity to their weakness, call them idiots? or would we in justice to their villainy, denounce them as impostors and cheats of the most transcendent and amazing impudence? And what would we think of the wits of forty millions of people, who could be duped by such preposterous falsehoods?

And yet this is scarcely an exaggerated picture of the fraud that has been practiced upon the people for the last ten years. A few men have secured to themselves the monopoly of a few irredeemable notes; and not wishing to have any competition, either in the business of banking, or in any business depending upon bank loans, they cry out for specie payments; and declare that no *solvent* or *redeemable* notes must be put into circulation, in competition with their *insolvent* and *irredeemable* ones, lest the currency be inflated, and specie payments be postponed!

And this imposture is likely to be palmed off upon the people in the future, as it has been in the past, if they are such dunces as to permit it to be done.

It is perfectly evident, then, that specie payments—or the literal fulfilment of contracts—does not depend at all upon the amount of paper in circulation as currency; but solely upon the fact whether, on the one hand, it be issued by those who have property with which to redeem it, and can be made to redeem it; or whether, on the other hand, it be issued by those who cannot redeem it, and cannot be made to redeem it.

When the people shall understand these simple, manifest truths, they will soon put an end to the monopoly, extortion, fraud, and tyranny of the existing "National" system.

The "National" system, so called, is, in reality, no national system at all; except in the mere facts that it is called the national system, and was established by the national government. It is, in truth, only a private system; a mere privilege conferred upon a few, to enable them to control prices, property, and labor; and thus to swindle, plunder, and oppress all the rest of the people.

CHAPTER III. NO INFLATION OF PRICES.

Section 1.

In reality there is no such thing as an inflation of prices, relatively to gold. There is such a thing as a depreciated paper currency. That is to say, there is such a thing as a paper currency, that is called by the same names as gold—to wit, money, dollars, &c.—but that cannot be redeemed in full; and therefore has not the same value as gold. Such a currency does not circulate at its nominal, but only at its real, value. And when such a currency is in circulation, and prices are measured by it, instead of gold, they are said to be inflated, relatively to gold. But, in reality, the prices of property are not thereby inflated at all relatively to gold. It is only the measuring of prices by a currency, that is called by the same names as gold, but that is really inferior in value to gold, that causes the *apparent,* not *real,* inflation of prices, relatively to gold.

To measure prices by a currency that is called by the same names as gold, but that is really inferior in value to gold, and then—because those prices are nominally higher than gold prices—to say that they are inflated, relatively to gold, is a perfect absurdity.

If we were to call a foot measure a yard, and were then to say that all cloth measured by it became thereby stretched to three times its length, relatively to a true yard-stick, we should simply make ourselves ridiculous. We should not thereby prove that the foot measure had really stretched the cloth, but only that it had taxed our brains beyond their capacity.

It is only irredeemable paper—irredeemable in whole or in part,—that ever *appears* to inflate prices, relatively to gold. But that it really causes no inflation of prices, relatively to gold, is proved by the fact that it no more inflates the prices of other property, than it does the price of gold itself. Thus we say that irredeemable paper, that is worth but fifty cents on the dollar, inflates the prices of commodities in general to twice their real value. By this we mean, that they are inflated to twice their value relatively to gold. And why do we say this? Solely because it takes twice as many of these irredeemable paper dollars to buy any commodity,—a barrel of flour for example,—as it would if the paper were equal in value to gold. But it also takes twice as many of these irredeemable paper dollars to buy gold itself, as it would if the paper were equal in value to gold. There is, therefore, just as much reason for saying that the paper inflates the price of gold, as there is for saying that it inflates the price of flour. It inflates neither. It is, itself, worth but fifty cents on the dollar; and it, therefore, takes twice as much of it to buy either flour or gold, as it would if the paper were of equal value with gold.

The value of the coins—in any nation that is open to free commerce with the rest of the world—is fixed by their value in the markets of the world; and can neither be reduced below that value, in that nation, by any possible amount of paper currency, nor raised above that value, by the entire disuse of a paper currency. Any increase of the currency, therefore, by means of paper representing other property than the coins—but having an equal value with the coins—is an absolute *bona fide* increase of the currency to that extent; and not a mere depreciation of it, as so many are in the habit of asserting.

Practically and commercially speaking, a dollar is not necessarily a specific thing, made of silver, or gold, or any other single metal, or substance. *It is only such a quantum of market value as exists in a given piece of silver or gold.* And it is the same quantum of value, whether it exist in gold, silver, houses, lands, cattle, horses, wool, cotton, wheat, iron, coal, or any other commodity that men desire for use, and buy and sell in the market.

Every dollar's worth of vendible property in the world is equal in value to a dollar in gold. And if it were possible that every dollar's worth of such property, in the world, could be represented, in the market, by a contract on paper, promising to deliver it on demand; and if every dollar's worth could be delivered on demand, in redemption of the paper that represented it, the world could then have an amount of currency equal to the entire property of the world. And yet clearly every dollar of paper would be equal in value to a dollar of gold; specie payments—or the literal fulfilment of contracts—could forever be maintained; and yet there could be no inflation of prices, relatively to gold. Such a currency would no more inflate the price of one thing, than of

another. It would as much inflate the price of gold, as of any thing else. Gold would stand at its true and natural value as a metal; and all other things would also stand at their true and natural values, for their respective uses.

On this principle, if every dollar's worth of vendible property in the United States could be represented by a paper currency; and if the property could all be delivered on demand, in redemption of the paper, such a currency would not inflate the prices of property at all, relatively to gold. Gold would still stand at its true and natural value as a metal, or at its value in the markets of the world. And all the property represented by the paper, would simply be measured by the gold, and would stand at its true and natural value, relatively to the gold.

We could then have some thirty thousand millions ($30,000,000,) of paper currency,—taking our property at its present valuation. And yet every dollar of it would be equal to a dollar of gold; and there could evidently be no inflation of prices, relatively to gold. No more of the currency could be kept in circulation, than should be necessary or convenient for the purchase and sale of property at specie prices.

It is probably not practicable to represent the entire property of the country by such contracts on paper as would be convenient and acceptable as a currency. This is especially true of the *personal* property; although large portions even of this are being constantly represented by such contracts as bank notes, private promissory notes, checks, drafts, and bills of exchange; all of which are in the nature of currency; that is, they serve for the time as a substitute for specie; although some of them do not acquire any extensive, or even general, circulation.

But that it is perfectly practicable to represent nearly all the *real estate* of the country—including the railroads—by such contracts on paper as will be perfectly convenient and acceptable as a currency; and that every dollar of it can be kept always at par with specie throughout the entire country—that all this is perfectly practicable, the author offers the system already presented in proof.

Section 2.

To sustain their theory, that an abundant paper currency—though equal in value to gold—inflates prices, relatively to gold, its advocates assert that, *for the time being,* the paper depreciates the gold itself below its true value; or at least below that value which it had before the paper was introduced. But this is an impossibility; for in a country open to free commerce with the rest of the world, gold must always have the same value that it has in the markets of the world; neither more, nor less. No possible amount of paper can reduce it below that value; as has been abundantly demonstrated in this country for the last ten years. Neither can any possible amount of paper currency reduce gold below its only true and natural value, viz.: its value as a metal, for uses in the arts. The paper cannot reduce the gold below this value, because the paper does not come at all in competition with it for those uses. We cannot make a watch, a spoon, or a necklace, out of the paper; and therefore the paper cannot compete with the gold for these uses.

That gold and silver now have, and can be made to have, no higher value, as a currency, than they have as metals for uses in the arts, is proved by the fact that doubtless not more than one tenth, and very likely not more than a twentieth, of all the gold and silver in the world (out of the mines), is in circulation as currency. In Asia, where these metals have been accumulating from time immemorial, and whither all the gold and silver of Europe and America—except what is caught up, and converted into plate, jewelry, &c.—is now going, and has been going for the last two thousand years, very little is in circulation as money. For the common traffic of the people, coins made of coarser metals, shells, and other things of little value, are the only currency. It is only for the larger commercial transactions, that gold and silver are used at all as a currency. The great bulk of these metals are used for plate, jewelry, for embellishing temples and palaces. Large amounts are also hoarded.

But that gold and silver coins now stand, and that they can be made to stand, as currency, only at their true and natural values as metals, for uses in the arts; and that neither the use, nor disuse, of any possible amount of paper currency, in any one country—the United States, for example—can sensibly affect their values in that country, or raise them above, or reduce them below, their values in the markets of the world, the author hopes to demonstrate more fully at a future time, if it should be necessary to do so.

Section 3.

Another argument—or rather assertion—of those who say that any increase of the currency, by means of paper—though the paper be equal in value to gold—depreciates the value of the gold, or inflates prices relatively to gold, is this: They assert that, where no other circumstances intervene to affect the prices of particular commodities, such increase of the currency raises the prices of *all* kinds of property—relatively to gold—in a degree precisely corresponding with the increase of the currency.

This is the universal assertion of those who oppose a *solvent* paper currency; or a paper currency that is equal in value to gold.

But the assertion itself is wholly untrue. It is wholly untrue that an abundant paper currency—that is equal in value to gold—raises the prices of all commodities—relatively to gold—in a proportion corresponding to the increase of the currency. Instead of doing so, it causes a rise only in agricultural commodities, and real estate; while it causes a great fall in the prices of manufactures generally.

Thus the increased currency produces *a directly opposite effect* upon the prices of agricultural commodities and real estate, on the one hand, and upon manufactures, on the other.

The reasons are these:

Agriculture requires but very few exchanges, and can, therefore, be carried on with very little money. Manufactures, on the other hand, require a great many exchanges, and can, therefore, be carried on (except in a very feeble way), only by the aid of a great deal of money.

The consequence is, that the people of all those nations, that have but little money, are engaged mostly in agriculture. Very few of them are manufacturers. Being mostly engaged in agriculture, each one producing the same commodities with nearly all the others; and each one producing all he wants for his own consumption, there is no market, or very little market, for agricultural commodities; and such commodities, consequently, bear only a very small price.

Manufactured commodities, on the other hand, are very scarce and dear, for the sole reason that so few persons are engaged in producing them.

But let there be an increase of currency, and laborers at once leave agriculture, and become manufacturers.

As manufactured commodities usually bring much higher prices than agricultural, in proportion to the labor it costs to produce them, men usually leave agriculture, and go into manufacturing, to the full extent the increased currency will allow.

The consequence is that, under an abundant currency, manufactures become various, abundant, and cheap; where before they were scarce and dear.

But while, on the one hand, manufactures are thus becoming various, abundant, and cheap, agricultural commodities, on the other hand, are rising: and why? Not because the currency is depreciated, but simply because so many persons, who before—under a scanty currency—were engaged in agriculture, and produced all the agricultural commodities they needed, and perhaps more than they needed, for their own consumption, having now left agriculture, and become manufacturers, have become purchasers and consumers, instead of producers, of agricultural commodities.

Here the same cause—abundant currency—that has occasioned a *rise* in the prices of agricultural commodities, has produced a *directly opposite effect* upon manufactures. It has made the latter various, abundant, and cheap; where before they were scarce and dear.

On the other hand, when the currency contracts, manufacturing industry is in a great degree stopped; and the persons engaged in it are driven to agriculture as their only means of sustaining life. The consequence is, that manufactured commodities become scarce and dear, from non-production. At the same time, agricultural commodities become superabundant and cheap, from over-production and want of a market.

Thus an abundant currency, and a scanty currency, produce directly opposite effects upon the prices of agricultural commodities, on the one hand, and manufactures, on the other.

The *abundant* currency makes manufactures various, abundant, and cheap, from increased production; while it raises the prices of agricultural commodities, by withdrawing laborers from the production of them, and also by creating a body of purchasers and consumers, to wit, the manufacturers.

On the other hand, a *scanty* currency drives men from manufactures into agriculture, and thus causes manufactures to become scarce and dear, from non-production; and, at the same time, causes agricultural commodities to fall in price, from over-production, and want of a market.

But whether, on the one hand, agricultural commodities are rising, and manufactured commodities are falling, under an abundant currency; or whether, on the other hand, manufactured commodities are rising, and agricultural commodities are falling, under a scanty currency, the value of the currency itself, dollar for dollar, remains the same in both cases.

The value of the currency, in either of these cases, is fixed, not at all by the amount in circulation, but by its value relatively to gold. And the value of gold, in any particular country, is fixed by its value as a metal, and its value in the markets of the world; and not at all by any greater or less quantity of paper that may be in circulation in that country.

Section 4.

But it is not alone agricultural *products* that rise in price under an abundant currency. Real estate also, of all kinds—agricultural, manufacturing, and commercial—rises under an abundant currency, and falls under a scanty currency. The reasons are these:

Agricultural real estate rises under an abundant currency, because agricultural products rise under such a currency, as already explained. *Manufacturing* real estate rises under an abundant currency, simply because—money being the great instrumentality of manufacturing industry—that industry is active and profitable under an abundant currency. *Commercial* real estate rises under an abundant currency, because, under such a currency, commerce, the exchange and distribution of agricultural and manufactured commodities, is active and profitable. *Railroads,* also, rise under an abundant currency, because, under such a currency, the transportation of freight and passengers is increased.

On the other hand, all kinds of real estate fall in price under a scanty currency, for these reasons, to wit: Agricultural real estate falls, because, manufactures having been in a great measure stopped, and the manufacturers driven into agriculture, there is little market for agricultural products, and those products bring only a small price. Manufacturing real estate falls, because, manufacturing industry having become impossible for lack of money, manufacturing real estate is lying dead, or unproductive. Commercial real estate falls, because commerce, the exchange and distribution of agricultural and manufactured commodities, has ceased. Railroads fall in price, because, owing to the suspension of manufactures and commerce, there is little transportation of either freight or passengers.

Thus it will be seen that an abundant currency creates a great rise in agricultural products, and in all kinds of real estate—agricultural, manufacturing, and commercial, (including railroads); and, at the same time, causes manufactured commodities to become various, abundant, and cheap. While, on the other hand, a scanty currency causes agricultural commodities, and all kinds of real estate, to fall in price; and, at the same time, makes manufactured commodities scarce and dear.

It is a particularly noticeable fact, that those who claim that an abundant paper currency inflates the prices of *all* commodities, relatively to gold, never find it convenient to speak of the va-

riety, abundance, and cheapness of manufactures, that exist under an abundant currency; but only of the high prices of agricultural commodities, and real estate.

The whole subject of prices—a subject that is very little understood, and that has been forever misrepresented, in order to justify restraints upon the currency, and keep it in a few hands—deserves a more extensive discussion; but the special purposes of this pamphlet do not admit of it here. But enough has probably now been said, to show that the great changes that take place in prices, under an abundant currency, on the one hand, and a scanty currency, on the other, are not occasioned at all by any change in the value of the currency itself—dollar for dollar—provided the currency be equal in value to coin.

Enough, also, it is hoped, has been said, to show to all holders of either agricultural, manufacturing, or commercial real estate (including railroads), that the greater or less value of their property depends almost wholly upon the abundance or scarcity of currency; and that, inasmuch as, under the system proposed, they have the power, in their own hands, of creating probably all the currency that can possibly be used in manufactures and commerce, they have no one but themselves to blame, if they suffer the value of their property to be destroyed by any such narrow and tyrannical systems of currency and credit as those that now prevail, or those that have always heretofore prevailed.

By using their real estate as banking capital, they can not only get an income from it, in the shape of interest on money, but by supplying capital to mechanics and merchants, they create a large class who will pay high prices for agricultural products, and high prices and rents for manufacturing and commercial real estate; and who will also supply them, in return, with manufactured commodities of the greatest variety, abundance, and cheapness.

It is, therefore, mere suicide for the holders of real estate, who have the power of supplying an indefinite amount of capital for mechanics and merchants—and who can make themselves and everybody else rich by supplying it—to suffer that power to be usurped by any such small body of men as those who now monopolize it, through mere favoritism, corruption, and tyranny, on the part of the government, and not because they have any claim to it.

CHAPTER IV. SECURITY OF THE SYSTEM.

Supposing the property mortgaged to be ample, the system, as a system, is absolutely secure. The currency would be absolutely incapable of insolvency; for there could never be a dollar of the currency in circulation, without a dollar of capital (Productive Stock) in bank, which *must* be transferred in redemption of it, unless redemption be made in specie.

The capital *alone*, be it observed—independently of the notes discounted—must always be sufficient to redeem the entire circulation; for the circulation can never exceed the capital (Productive Stock). But the notes discounted are also holden by the trustees, and the proceeds of them must be applied to the redemption of the circulation. Supposing, therefore, the capital to be

sufficient, and the notes discounted to be solvent, the redemption of the circulation is doubly secured.

What guarantee, then, have the public, for the sufficiency of the mortgages? They have these, viz.:

1. The mortgages, composing the capital of a bank, will be matters of public record, and everybody, *in the neighborhood,* will have the means of judging for himself of the sufficiency of the property holden. If the property should be insufficient, the bank would be discredited at once; for the abundance of solvent currency would be so great, that no one would have any inducement to take that which was insolvent or doubtful.

2. By the Articles of Association, all the mortgages that make up the capital of a bank, are made mutually responsible for each other; because, if any one mortgage proves insufficient, no dividend can afterwards be paid to any of the bankers (mortgagors), until that deficiency shall have been made good by the company. The effect of this provision will be, to make all the founders of a bank look carefully to the sufficiency of each other's mortgages; because no man will be willing to put in a good mortgage of his own, on equal terms with a bad mortgage of another man's, when he knows that his own mortgage will have to contribute to making good any deficiency of the other. The result will be, that the mortgages, that go to make up the capital of any one bank, *will be either all good, or all bad.* If they are *all good,* the solvency of the bank will be apparent to all *in the vicinity;* and the credit of the bank will at once be established *at home.* If the mortgages are *all bad,* that fact, also, will be apparent to everybody *in the vicinity,* and the bank is at once discredited *at home.*

From the foregoing considerations, it is evident that nothing is easier than for a *good* bank to establish its credit, *at home;* and that nothing is more certain than that a *bad* bank would be discredited, *at home,* from the outset, and could get no circulation at all.

It is also evident that a bank, that has no credit at home, could get none abroad. There is, therefore, no danger of the public being swindled by bad banks.

A bank that is well founded, and that has established its credit at home, has so many ways of establishing its credit abroad, that there is no need that they be all specified here. The mode that seems most likely to be adopted, is the following, viz.:

When the capital shall consist of mortgages, it will be very easy for all the banks, in any one State, to make their solvency known *to each other.* There would be so many banks, that some *system* would naturally be adopted for this purpose.

Perhaps this system would be, that a standing committee, appointed by the banks, would be established in each State, to whom each bank in the State would be required to produce satisfactory evidence of its solvency, before its bills should be received by the other banks of the State.

When the banks, or any considerable number of the banks, of any particular State—Massachusetts, for instance,—shall have made themselves so far acquainted with each other's solvency, as to be ready to receive each other's bills, they will be ready to make a still further arrangement

for their mutual benefit, viz: To unite in establishing one general agency in Boston, another in New York, and others in Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans, San Francisco, &c., &c., where the bills of all these Massachusetts banks would be redeemed, either from a common fund contributed for the purpose, or in such other way as might be found best. And thus the bills of all the Massachusetts banks would be placed at par at all the great commercial points.

Each bank, belonging to the association, might print on the back of its bills, "*Redeemable at the Massachusetts Agencies in Boston, New York, Philadelphia, &c.*"

In this way, all the banks of each State might unite to establish a joint agency in every large city, throughout the country, for the redemption of all their bills. In doing so, they would not only certify, but make themselves responsible for, the solvency of each other's bills.

The banks might safely make *permanent* arrangements of this kind with each other; because the *permanent* solvency of all the banks might be relied on.

The permanent solvency of all the banks might be relied on, because, under this system, a bank (whose capital consists of mortgages), once solvent, is necessarily forever solvent, unless in contingencies so utterly improbable as not to need to be taken into account. In fact, in the ordinary course of things, every bank would be growing more and more solvent; because, in the ordinary course of things, the mortgaged property would be constantly rising in value, as the wealth and population of the country should increase. The exceptions to this rule would be so rare as to be unworthy of notice.

There is, therefore, no difficulty in putting the currency, furnished by each State, at par throughout the United States.

At the general agencies, in the great cities, the redemption would, doubtless, *so far as necessary,* be made in specie, *on demand;* because, at such points, especially in cities on the sea-board, there would always be an abundance of specie in the market as merchandise; and it would, therefore, be both for the convenience and interest of the banks to redeem in specie, on demand, rather than transfer a portion of their capital, and then pay interest on that capital until it should be redeemed, or bought back, with specie.

Often, however, and very likely even in the great majority of cases, a man from one State—as California, for example,—presenting Massachusetts bills for redemption at a Massachusetts agency—either in Boston, New York, or elsewhere—would prefer to have them redeemed with bills from his own State, California, rather than with specie.

If the system were adopted throughout the United States, the banks of each State would be likely to have agencies of this kind in all the great cities. Each of these agencies would exchange the bills of every other State for the bills of its own State; and thus the bills of each State would find their way home, without any demand for their redemption in specie having ever been made.

Where railroads were used as capital, all the banks in the United States could form one association, of the kind just mentioned, to establish agencies at all the great commercial points, for the redemption of their bills.

Of course each railroad would receive the bills of all other roads, for fare and freight.

Thus all railroad currency, under this system, would be put at par throughout the United States.

CHAPTER V. THE SYSTEM AS A CREDIT SYSTEM.

Section 1.

Perhaps the merits of the system, as a credit system, cannot be better illustrated than by comparing the amount of loanable capital it is capable of supplying, with the amount which the present "National" banks (so called) are capable of supplying.

If we thus compare the two systems, we shall find that the former is capable of supplying more than fifty times as much credit as the latter.

Thus the entire circulation authorized by all the "National" banks,* is but three hundred and fifty-four millions of dollars ($354,000,000).

But the real estate and railroads of the country are probably worth twenty thousand millions of dollars ($20,000,000,000). This latter sum is fifty-six times greater than the former; and is all capable of being loaned in the form of currency.

Calling the population of the country forty millions (40,000,000), the "National" system is capable of supplying not quite *nine* dollars ($9) of loanable capital to each individual of the whole population. The system proposed is capable of supplying five hundred dollars ($500) of loanable capital to each individual of the whole population.

Supposing one half the population (male and female) to be sixteen years of age and upwards, and to be capable of producing wealth, and to need capital for their industry, the "National" system would furnish not quite eighteen dollars ($18) for each one of them, on an average. The other system is capable of furnishing one thousand dollars $1,000) for each one of them, on an average.

Supposing the adults (both male and female) of the country to be sixteen millions (16,000,000), the "National" system is capable of furnishing only twenty-two dollars and twelve and a half cents ($22.12½) to each one of these persons, on an average. The system proposed is capable of furnishing twelve hundred and fifty dollars ($1,250) to each one, on an average.

Supposing the number of *male* adults in the whole country to be eight millions (8,000,000), the "National" system is capable of furnishing only forty-four dollars and twenty-five cents

($44.25) to each one. The other system is capable of furnishing twenty-five hundred dollars ($2,500) to each one.

The present number of "National" banks is little less than two thousand (2,000). Calling the number two thousand (2,000), and supposing the $354,000,000 of circulation to be equally divided between them, each bank would be authorized to issue $177,000.

Under the proposed system, the real estate and railroads of the country are capable of furnishing one hundred thousand (100,000) banks, having each a capital of two hundred thousand dollars ($200,000); or it is capable of furnishing one hundred and twelve thousand nine hundred and ninety-four (112,994) banks, having each a capital ($177,000), equal, on an average, to the capital of the present "National" banks. That is, this system is capable of furnishing fifty-six times as many banks as the "National" system, having each the same capital, on an average, as the "National" banks.

Calling the number of the present "National" banks two thousand (2,000), and the population of the country forty millions (40,000,000), there is only one bank to 20,000 people, on an average; each bank being authorized to issue, on an average, a circulation of $177,000.

Under the proposed system, we could have one bank for every five hundred (500) persons; each bank being authorized to issue $200,000; or $23,000 each more than the "National" banks.

These figures give some idea of the comparative capacity of the two systems to furnish credit.

Under which of these two systems, now, would everybody, who needs credit, and deserves it, be most likely to get it? And to get all he needs to make his industry most productive? And to get it at the lowest rates of interest?

The proposed system is as much superior to the old specie paying system (so called)—in respect to the amount of loanable capital it is capable of supplying—as it is to the present "National" system.

Section 2.

But the proposed system has one other feature, which is likely to be of great practical importance, and which gives it a still further superiority—as a credit system—over the so-called specie paying system. It is this:

The old specie paying system (so called) could add to the loanable capital of the country, *only by so much currency as it could keep in circulation, over and above the amount of specie that it was necessary to keep on hand for its redemption.* But the amount of loanable capital which the proposed system can supply, hardly depends at all upon the amount of its currency that can be kept in circulation. It can supply about the same amount of loanable capital, even though its currency should be returned for redemption immediately after it is issued. It can do this, because the banks, *by paying interest on the currency returned for redemption*—or, what is the same thing, by paying dividends on the Productive Stock transferred in redemption of the currency—can postpone the payment of specie to such time as it shall be convenient for them to pay it.

All that would be necessary to make loans practicable on this basis, would be, that the banks should receive a higher rate of interest on their loans than they would have to pay on the currency returned for redemption; that is, on the Productive Stock transferred in redemption of the currency.

The rate of interest *received* by the banks, on the loans made by them, would need to be so much higher than that *paid* by them, on currency returned for redemption, as to make it an object for them to loan more of their currency than could be kept in circulation. Subject to this condition, the banks could loan their entire capitals, whether much or little of it could be kept in circulation.

For example, suppose the banks should pay *six* per cent. interest on currency returned for redemption—(or as dividends on the Productive Stock transferred in redemption of such currency)—they could then loan their currency at *nine* per cent. and still make *three* per cent. profits, even though the currency loaned should come back for redemption immediately after it was issued.

But this is not all. Even though the banks should *pay,* on currency returned for redemption, precisely the same rate of interest they *received* on loans—say *six* per cent.—they could still do business, if their currency should, on an average, continue in circulation *one half the time for which it was loaned;* for then the banks would get three per cent. net on their loans, and this would make their business a paying one.

But the banks would probably do much better than this; for bank credits would supersede all private credits; and the diversity and amount of production would be so great that an immense amount of currency would be constantly required to make the necessary exchanges. And whatever amount should be necessary for making these exchanges, would, of course, remain in circulation. However much currency, therefore, should be issued, it is probable that, on an average, it would remain in circulation more than half the time for which it was loaned.

Or if the banks should pay *six* per cent. interest on currency returned for redemption; and should then loan money, for *six* months, at *eight* per cent. interest; and this currency should remain in circulation but one month; the banks would then get eight per cent. for the one month, and two per cent. net for the other five months; which would be equal to three per cent. for the whole six months. Or if the currency should remain in circulation two months, the banks would then get eight per cent. for the two months, and two per cent. net for the other four months; which would be equal to four per cent. for the whole six months. Or if the currency should remain in circulation three months, the banks would then get eight per cent. for three months, and two per cent. net for the other three months; which would be equal to five per cent. for the whole six months. Or if the currency should remain in circulation four months, the banks would then get eight per cent. for the four months, and two per cent. net for the other two months; which would be equal to six per cent. for the whole six months. Or if the currency should remain in circulation five months, the banks would then get eight per cent. for the five months, and two per cent. net for the other month; which would be equal to seven per cent. for the whole six months.

The banks would soon ascertain, by experiment, how long their currency was likely to remain in circulation; and what rate of interest it was therefore necessary for them to charge to make their business a paying one. And that rate, whatever it might be, the borrowers would have to pay. Subject to this condition, the banks could always loan their entire capitals.

CHAPTER VI. AMOUNT OF CURRENCY NEEDED.

It is of no use to say that we do not need so much currency as the proposed system would supply; because, first, if we should not need it, we shall not use it. Every dollar of paper will represent specific property that can be delivered on demand in redemption of it, and that will have the same market value as gold. The paper dollar, therefore, will have the same market value as the gold dollar, or as a dollar's worth of any other property; and no one will part with it, unless he gets in exchange for it something that will serve his particular wants better; and no one will accept it, unless it will serve his particular wants better than the thing he parts with. No more paper, therefore, can circulate, than is wanted for the purchase and sale of commodities at their true and natural values, as measured by gold.

Secondly, we do not know at all how much currency we do need. That is something that can be determined only by experiment. We know that, heretofore, whenever currency has been increased, industry and traffic have increased to a corresponding extent. And they would unquestionably increase to an extent far beyond any thing the world has ever seen, if only they were aided and permitted by an adequate currency.

We, as yet, know very little what wealth mankind are capable of creating. It is only within a hundred years, or a little more, that any considerable portion of them have really begun to invent machinery, and learned that it is only by machinery that they can create any considerable wealth. But they have not yet learned—at least, they profess not to have learned—that money is indispensable to the practical employment of machinery; that it is as impossible to operate machinery without money, as it is to operate it without wind, water, or steam. When they shall have learned, and practically accepted, this great fact, and shall have provided themselves with money, wealth will speedily become universal. And it is only those who would deplore such a result, or those who are too stupid to see the palpable and necessary connection between money and manufacturing industry, who resist the indefinite increase of money.

It is scarcely a more patent fact that land is the indispensable capital for agricultural industry, than it is that money is the indispensable capital for manufacturing industry. Practically, everybody recognizes this fact, and virtually acknowledges it; although, in words, so many deny it. Men as deliberately and accurately calculate the amount of machinery that a hundred dollars in money will operate, as they do the amount of machinery that a ton of coal, or a given amount of water, will operate. They calculate much more accurately the amount of manufactured goods a hundred dollars will produce, than they do the amount of grain, grass, or vegetables an acre of land will produce. They no more expect to see mechanics carrying on business for themselves

without money, than they do to see agricultural laborers carrying on farming without land, or than they do to see sailors going to sea without ships. They know that all mechanical, as well as agricultural, laborers, who have not the appropriate capital for their special business, must necessarily stand idle, or become mere wage-laborers for others, at such particular employments as the latter may dictate, and at such prices as the latter may see fit to pay.

All these things attest the perfect knowledge that men have, that a money capital is indispensable to manufacturing industry; whatever assertions they may make to the contrary.

They know, therefore, that prohibitions upon money are prohibitions upon industry itself; that there can be no such thing as freedom of industry, where there is not freedom to lend and hire capital for such industry.

Every one knows, too—who knows any thing at all on such a subject—that it is, intrinsically, as flagrant a tyranny, as flagrant a violation of men's natural rights, for a government to forbid the lending and hiring of money for manufacturing industry, as it is to forbid the lending and hiring of land, or agricultural implements, for agricultural industry, or the lending and hiring of ships for maritime industry. They know that it is as flagrant a tyranny, as flagrant a violation of men's natural rights, to forbid one man to lend another money for mechanical industry, as it would be to forbid the former to lend the latter a house to live in, a shop to work in, or tools to work with.

It is, therefore, a flagrant, manifest tyranny, a flagrant, manifest violation of men's natural rights, to lay any conditions or restrictions whatever upon the business of banking—that is, upon the lending and hiring of money—except such as are laid upon all other transactions between man and man, viz.: the fulfilment of contracts, and restraints upon force and fraud.

A man who is without capital, and who, by prohibitions upon banking, is practically forbidden to hire any, is in a condition elevated but one degree above that of a chattel slave. He may live; but he can live only as the servant of others; compelled to perform such labor, and to perform it at such prices, as they may see fit to dictate. And a government, which, at this day, subjects the great body of the people—or even any portion of them—to this condition, is as fit an object of popular retribution as any tyranny that ever existed.

To deprive mankind of their natural right and power of creating wealth for themselves, is as great a tyranny as it is to rob them of it after they have created it. And this is done by all laws against honest banking.

All these things are so self-evident, so universally known, that no man, of ordinary mental capacity, can claim to be ignorant of them. And any legislator, who disregards them, should be taught, by a discipline short, sharp, and decisive, that his power is wholly subordinate to the natural rights of mankind.

It is, then, one of man's indisputable, natural rights to lend and hire capital in any and every form and manner that is intrinsically honest. And as money, or currency, is the great, the indispensable instrumentality in the production and distribution of wealth; as it is the capital, the motive power, that sets all other instrumentalities in motion; as it is the one thing, without which all

the other great agencies of production—such as science, skill, and machinery—are practically paralyzed; to say that we need no more of it, and shall have no more of it, than we now have, is to say that we need no more wealth, and shall have no more wealth, and no more equal or equitable distribution of wealth, than we now have. It is to say that the mass of mankind—the laborers, the producers of wealth—need not to produce, and shall not be permitted to produce, wealth for themselves, but only for others.

For a government to limit the currency of a people, and to designate the individuals (or corporations) who shall have the control of that currency, is, manifestly, equivalent to saying there shall be but so much industry and wealth in the nation, and that these shall be under the special control, and for the special enjoyment, of the individuals designated; and, of course, that all other persons shall be simply their dependants and servants; receiving only such prices for their property, and such compensation for their labor, as these few holders of the currency shall see fit to give for them.

The effect of these prohibitions upon money, and consequently upon industry, are everywhere apparent in the poverty of the great body of the people.

At the present time, the people of this country certainly do not produce one third, very likely not one fifth, of the wealth they might produce. And the little they do produce is all in the hands of a few. All this is attributable to the want of currency and credit, and to the consequent want of science, skill, machinery, and working capital.

Of the twenty million persons, male and female, of sixteen years of age and upwards—capable of producing wealth—certainly not one in five has the science, skill, implements, machinery, and capital necessary to make his or her industry most effective; or to secure to himself or herself the greatest share in the products of his or her own industry. A very large proportion of these persons—nearly all the females, and a great majority of the males—persons capable of running machinery, and of producing each three, five, or ten dollars of wealth per day, are now without science, skill, machinery, or capital, and are either producing nothing, or working only with such inferior means, and at such inferior employments, as to make their industry of scarcely any value at all, either to themselves or others, beyond the provision of the coarsest necessaries of a hard and coarse existence. And this is all owing to the lack of money; or rather to the lack of money and credit.

There are, doubtless, in the country, ten million (10,000,000) persons, male and female—sixteen years of age and upwards—who are naturally capable of creating from three to five dollars of wealth per day, if they had the science, skill, machinery, and capital which they ought to have, and might have; but who, from the want of these, are now creating not more than one dollar each per day, on an average; thus occasioning a loss to themselves and the country of from twenty to forty millions of dollars per day, for three hundred days in a year; a sum equal to from six to twelve thousand millions per annum; or three to six times the amount of our entire national debt.

And there are another ten million of persons—better supplied, indeed, with capital, machinery, &c., than the ten million before mentioned—but who, nevertheless, from the same causes, are producing far less than they might.

The aggregate loss to the country, from these causes, is, doubtless, equal to from ten to fifteen thousand millions per year; or five, six, or seven times the amount of the entire national debt.

In this estimate no account is taken of the loss suffered from our inability—owing simply to a want of money—to bring to this country, and give employment to, the millions of laborers, in Europe and Asia, who desire to come here, and add the products of their labor to our national wealth.

It is, probably, no more than a reasonable estimate to suppose that the nation, as a nation, is losing twenty thousand millions of dollars ($20,000,000,000) per annum—about ten times the amount of our national debt—solely for the want of money to give such employment as they need, to the population we now have, and to those who desire to come here from other countries.

Among the losses we suffer, from the causes mentioned, the non-production of new inventions is by no means the least. As a general rule, new inventions are made only where money and machinery prevail. And they are generally produced in a ratio corresponding with the amount of money and machinery. In no part of the country are the new inventions equal in number to what they ought to be, and might be. In three fourths of the country very few are produced. In some, almost none at all. The losses from this cause cannot be estimated in money.

The government, in its ignorance, arrogance, and tyranny, either does not see all this, or, seeing it, does not regard it. While these thousands of millions are being lost annually, from the suppression of money, and consequently of industry, and while three fourths of the laborers of the country are either standing idle, or, for the want of capital, are producing only a mere fraction of what they might produce, a two-pence-ha'-penny Secretary of the Treasury can find no better employment for his faculties, than in trying, first, to reduce the rate of interest on the public debt one per cent.—thereby saving twenty millions a year, *or fifty cents for each person, on an average!* And, secondly, in paying one hundred millions per annum of the principal; that is, *two and a half dollars for each person, on an average!* And he insists that the only way to achieve these astounding results, is to deprive the people at large of money! To destroy, as far as possible, their industry! To deprive them, as far as possible, of all power to manufacture for themselves! And to compel them to pay, to the few manufacturers it has under its protection, fifty or one hundred per cent. more for their manufactures than they are worth!

He has been tugging at this tremendous task four years, or thereabouts. And he confidently believes that if he can be permitted to enforce this plan for a sufficient period of years, in the future, he will ultimately be able to save the people, annually, *fifty cents each, on an average, in interest!* and also continue to pay, annually, *two dollars and a half for each person, on an average,* of the principal, of the national debt!

He apparently does not know, or, if he knows, it is, in his eyes, a matter of comparatively small moment, that this saving of $20,000,000 per annum in interest, and this payment of

$100,000,000 per annum of principal, which he proposes to make on behalf of the people, are not equal to what *two days*—or perhaps even *one day*—of their industry would amount to, if they were permitted to enjoy their natural rights of lending and hiring capital, and producing such wealth as they please for themselves.

He apparently does not know, or, if he knows, it is with him a small matter, that if the people were permitted to enjoy their natural freedom in currency and credit, and consequently their natural freedom in industry, they could pay the entire national debt three, four, or a half dozen times over *every year,* more easily than they can save the $20,000,000, and pay the $100,000,000, annually, by the process that he adopts for saving and paying them.

And yet this man, and his policy, represent the government and its policy. The president keeps him in office, and Congress sustain him in his measures.

In short, the government not only does not offer, but is apparently determined not to suffer, any such thing as freedom in currency and credit, or, consequently, in industry. It is, apparently, so bent upon compelling the people to give more for its few irredeemable notes than they are worth; and so bent upon keeping all wealth, and all means of wealth, in the hands of the few—upon whose money and frauds it relies for support—that it is determined, if possible, to perpetuate this state of things indefinitely. And it will probably succeed in perpetuating it indefinitely—under cover of such false pretences as those of specie payments, inflation of prices, reducing the interest, and paying the principal, of the national debt, &c.—unless the people at large shall open their eyes to the deceit and robbery that are practised upon them; and, by establishing freedom in currency and credit—and thereby freedom in industry and commerce—end at once and forever the tyranny that impoverishes and enslaves them.

CHAPTER VII. IMPORTANCE OF THE SYSTEM TO MASSACHUSETTS.

Section 1.

The tariffs, by means of which a few monied men of Massachusetts have so long plundered the rest of the country, and on which they have so largely relied for their prosperity, will not much longer be endured. The nation at large has no need of tariffs. Money is the great instrumentality for manufacturing. And the nation needs nothing but an ample supply of money—in addition to its natural advantages—to enable our people to manufacture for themselves much more cheaply than any other people can manufacture for us.

To say nothing of the many millions who, if we had the money necessary to give them employment, might be brought here from Europe and Asia, and employed in manufactures, more than half the productive power of our present population—in the South and West much more than half—is utterly lost for the want of money, and the consequent want of science, skill, and machinery. And yet those few, who monopolize the present stock of money, insist that they must

have tariffs to enable them to manufacture at all. And the nation is duped by these false pretences.

To give bounties to encourage manufactures, and at the same time forbid all but a favored few to have money to manufacture with, is just as absurd as it would be to give bounties to encourage manufactures, and at the same time forbid all but a favored few to have machinery of any kind to manufacture with. It is just as absurd as it would be to give bounties to encourage agriculture, and at the same time forbid all but a favored few to own land, or have cattle, horses, seed corn, seed wheat, or agricultural implements. It is just as absurd as it would be to give bounties to encourage navigation, and at the same time forbid all but a favored few to have ships.

The whole object of such absurdities and tyrannies is to commit the double wrong of depriving the mass of the people of all power to manufacture for themselves, and at the same time compel them to pay extortionate prices to the favored few who are permitted to manufacture.

When tariffs shall be abolished, Massachusetts will have no means of increasing her prosperity, nor even of perpetuating such poor prosperity as she now has,* except by a great increase of money; such an increase of money as will enable her skilled laborers and enterprising young men to get capital for such industries and enterprises as they may prefer to engage in here, rather than go elsewhere.

Even if Massachusetts were willing to manufacture for the South and West, *without a tariff,* she could hope to do so only until the South and West should supply themselves with money. So soon as they shall supply themselves with money, they will be able to manufacture for themselves more cheaply than Massachusetts can manufacture for them. Their natural advantages for manufacturing are greatly superior to those of Massachusetts. They have the cheap food, coal, iron, lead, copper, wool, cotton, hides, &c., &c. They lack only money to avail themselves of these advantages. And, under the system proposed, their lands and railroads are capable of supplying all the money they need. And they will soon adopt that, or some other system. And they will then not only be independent of Massachusetts, but will be able to draw away from her her skilled laborers, and enterprising young men, unless she shall first supply them with the money capital necessary for such industries and enterprises as may induce them to remain. They will, of course, go where they can get capital, instead of staying where they can get none.

So great are the natural advantages of the South and West over those of Massachusetts, that it is doubtful how many of these men can be persuaded to remain, by all the inducements that capital can offer. But without such inducements it is certain they will all go.

And Massachusetts has no means of supplying this needed money, except by using her real estate as banking capital.

It is, therefore, plainly a matter of life or death to the holders of real estate in Massachusetts to use it for that purpose; for their real estate will be worth nothing when the skilled labor and the enterprising young men of Massachusetts shall have deserted her.

All this is so manifest as to need no further demonstration. And Massachusetts will do well to look the facts in the face before it is too late.

Section 2.

What prospect has Massachusetts under the present "National" system?

The Comptroller of the Currency, in his last annual report, says, that of the $354,000,000 of circulation authorized by law, Massachusetts has now $58,506,686. He says, further, that this is more than four times as much as she would be entitled to, if the currency were apportioned equally among the States, according to population; more than twice as much as she would be entitled to, if the circulation were apportioned among the States, according to their wealth; and three times as much as she is entitled to upon an apportionment made—as apportionments are now professedly made—half upon population, and half upon wealth.

The Comptroller further says, that a law of Congress, passed July 12, 1870, requiring him to withdraw circulation from those States having more than their just proportion, and to distribute it among those now having less than their just proportion, will require him to withdraw "from thirty-six banks in the City of Boston, $11,403,000; [and] from fifty-three country banks of Massachusetts, $2,997,000."

Thus the law requires $14,400,000 to be withdrawn from the present banks of Massachusetts.

When this shall have been done, she will have but $44,106,686 left. And as this will be more than three times her just proportion on a basis of population, and nearly twice her just share on a basis of wealth, there is no knowing how soon the remaining excess over her just share may be withdrawn.*

By the census of 1870, Massachusetts had a population of 1,457,351. She has now, doubtless, a population of 1,500,000. Calling her population 1,500,000, the $58,506,686 of circulation which she now has, is equal to $39 for each person, on an average. When $14,400,000 of this amount shall have been withdrawn, as the law now requires it to be, the circulation will be reduced to less than $30 for each person, on an average. If the circulation should be reduced to the proportion to which Massachusetts is entitled, on the basis of wealth—that is, to $25,098,600—she will then have less than $17 for each person, on an average. If the circulation should be reduced to the proportion to which Massachusetts is entitled on a basis of population—that is to $13,879,778—she will then have a trifle less than $9 for each person, on an average.

For years the industry of Massachusetts has been greatly crippled for the want of bank credits, although her banks have been authorized to issue their notes to the amount of $58,506,686; or $39 to each person, on an average. What will her industry be when her banks shall be authorized to issue only $44,106,686, or $30 for each person, on an average? What will it be, if her bank issues shall be reduced to her proportion on a basis of wealth, to wit, $25,098,600; or less than $17 for each person, on an average? Or what will it be, if her bank circulation shall be reduced to her proportion on a basis of population, to wit, to $13,379,778; or less than $9 for each person, on an average?

In contrast with such contemptible sums as these, Massachusetts, under the system proposed, could have nine hundred millions ($900,000,000) of bank loans;* that is, $600 for every man, woman, and child, on an average; or $1,500 to each adult, male and female, on an average; or $3,000 to each *male* adult, on an average.

Which, now, of these two systems is most likely to secure and increase the prosperity of Massachusetts? Which is most likely to give to every deserving man and woman in the State, the capital necessary to make their industry most productive to themselves individually, and to the State? Which system is most likely to induce the skilled laborers and enterprising young men of Massachusetts to remain here? And which is most likely to drive them away?

Section 3.

But the whole is not yet told. The present "National" system is so burdened with taxes and other onerous conditions, that no banking at all can be done under it, except at rates of interest that are two or three times as high as they ought to be; or as they would be under the system proposed.

The burdens imposed on the present banks are probably equal to from six to eight per cent. *upon the amount of their own notes that they are permitted to issue.*

In the first place, they are required, for every $90 of circulation, to invest $100 in five or six per cent. government bonds.* This alone is a great burden to all that class of persons who want their capital for active business. It amounts to actual prohibition upon all whose property is in real estate, and therefore not convertible into bonds. And this is a purely tyrannical provision, inasmuch as real estate is a much safer and better capital than the bonds. Let us call this a burden of *two per cent. on their circulation.*

Next, is the risk as to the permanent value of the bonds. Any war, civil or foreign, would cause them to drop in value, as the frost causes the mercury to drop in the thermometer. Even any danger of war would at once reduce them in value. Let us call this risk another burden of *one per cent. on the circulation.*

Next, every bank in seventeen or eighteen of the largest cities—Boston among the number—are required to keep on hand, at all times, a reserve—*in dead capital* (legal tenders)—"equal to at least twenty-five per centum," and all other banks a similar reserve "equal to at least fifteen per centum," "of the aggregate amount of their *notes in circulation, and of their deposits.*"

Doubtless, two thirds—very likely three fourths—of all the bank circulation and deposits are in the seventeen cities named. And as these city banks are required to keep a reserve of dead capital equal to twenty-five per cent., and all others a similar reserve equal to fifteen per cent., *both on their circulation and deposits,* this average burden on all the banks is, doubtless, equal to *two per cent. on their circulation.*

Next, the banks are required to pay to the United States an annual tax of one per cent. on their average circulation, and half of one per cent. on the amount of their deposits.

Here is another burden equal to at least one and a half per cent. on their circulation.

Then the capitals of the banks—the United States bonds—are made liable to State taxes to any extent, "not at a greater rate than is assessed upon the monied capital in the hands of individual citizens of such State." This tax is probably equal to *one per cent. on their circulation.*

Here, then, are taxes and burdens equal to seven and a half per cent. on their circulation.

Next, the banks are required to make at least *five* reports annually, to the Comptroller of the Currency, of their "resources and liabilities." Also reports of "the amount of each dividend declared by the association."

Then, too, the banks are restricted as to the rates of interest they are permitted to take.

Then "Congress may at any time alter, amend, or repeal this act;" and thus impose upon the banks still further taxes, conditions, restrictions, returns, and reports. Or it may at pleasure abolish the banks altogether.

All these taxes, burdens, and liabilities, cannot be reckoned at less than *eight or nine per cent. on the circulation of the banks;* a sum two or three times as great as the rate of interest ought to be; and two or three times as great as it would be under the system proposed.

And yet the banks must submit to all these burdens as a condition of being permitted to loan money at all. And they must make up—in their rates of interest—for all these burdens. Under this system, therefore, the rate of interest must always be two or three times as high as it ought to be.

The objections to the system, then, are, first, that it furnishes very little loanable capital; and, second, that it necessarily raises the interest on that little to two or three times what it ought to be.

Such a system, obviously, could not be endured at all, but for these reasons, viz.: first, that, being a monopoly, those holding it are enabled to make enormous extortions upon borrowers; and, secondly, that these borrowers—most of whom are the bankers themselves—employ the money in the manufacture and sale of goods that are protected, by tariffs, from foreign competition, and for which they are thus enabled to get, say, fifty per cent. more than they are worth.

In this way, these bank extortions and tariff extortions are thrown ultimately upon the people who consume the goods which the bank capital is employed in producing and selling.

Thus the joint effect of the bank system and the tariff is, first, to deprive the mass of the people of the money capital that would enable them to manufacture for themselves; and, secondly, to compel them to pay extortionate prices for the few manufactures that are produced.

Under the system proposed, all these things would be done away. The West and the South, that are now relied on to pay all these extortions, would manufacture for themselves. Their lands and railroads would enable them to supply all the manufacturing capital that could be used. And they could supply it at one half, or one third, the rates now required by the "National" banks. Of course, Massachusetts could not—under the "National" system—manufacture a dollar's worth for the South and West. She could not keep her manufacturing laborers. They would all go where

they could get cheap capital, cheap supplies, and good markets. And then the manufacturing industry of Massachusetts, and with it the value of her real estate, will have perished from the natural and legitimate effect of her meanness, extortion, and tyranny.

Looking to the future, then, there is no State in the Union—certainly none outside of New England—that has a greater interest in supplying her mechanics with the greatest possible amount of capital; or in supplying it at the lowest possible rates of interest. And this can be done only by using her real estate as banking capital.

CHAPTER VIII. THE TRUE CHARACTER OF THE "NATIONAL" SYSTEM.

Section 1.

Under the "National" system there are less than 2,000 banks. But let us call them 2,000.

Calling the population of the country forty millions, there is but one bank to 20,000 people.

And this one bank is, *in law,* a person; and only a single person. In lending money, it acts, and can act, only as a unit. Its several stockholders cannot act separately, as so many individuals, in lending money.

So far, therefore, as this system is concerned, there is but one money lender for twenty thousand people!

Of these 20,000 people, ten thousand (male and female) are sixteen years of age and upwards, capable of creating wealth, and requiring capital to make their labor most productive.

Yet, so far as this system is concerned, there is but one person authorized to lend money to, or for, these ten thousand, who wish to borrow.

And this one money lender is one who, proverbially "has no soul." It is not a natural human being. It is a legal, an artificial, and not a natural, person. It is neither masculine nor feminine. It has not the ordinary human sympathies, and is not influenced by the ordinary human motives of action. It is no father, who might wish to lend money to his children, to start them in life. It is no neighbor, who might wish to assist his neighbor. It is no citizen, who might wish to promote the public welfare. It is simply a nondescript, created by law, that wants money, and nothing else.

Moreover, it has only $177,000 to lend to these 10,000 borrowers; *that is, a fraction less than* $18, *on an average, for each one!*

What chance of borrowing capital have these ten thousand persons, who are forbidden to borrow, except from this one soulless person, who has so little to lend?

If money lenders must be soulless—as, perhaps, to some extent, they must be—it is certainly of the utmost importance that there be so many of them, and that they may have so much money to lend, as that they may be necessitated, by their own selfishness, to compete with each other, and thus save the borrowers from their extortions.

But the "National" system says, not only that the money lender shall be a soulless person, and one having only a little money to lend, but that he shall also have the whole field—a field of 10,000 borrowers—entirely to himself!

It says that this soulless person shall have this whole field to himself, notwithstanding he has so little money to lend, and notwithstanding there are many other persons standing by, having, in the aggregate, fifty times as much money to lend as he; and desiring to lend it at one half, or one third, the rates he is demanding, and extorting!

It says, too, that he shall have this whole field to himself, notwithstanding that ninety-nine one-hundredths of those who desire to borrow, are sent away empty! and are thereby condemned—so far as such a system can condemn them—to inevitable poverty!

Section 2.

But further. Each one of these 2,000 legal, or artificial, persons, who alone are permitted to *lend* money, is made up of, say, fifty actual, or natural, persons, to whom alone, it is well known, that this legal person will lend it!

These 2,000 legal persons, then, who alone are permitted to lend money, are made up of 100,000 actual persons, who alone are to borrow it.

These 100,000 actual persons, who compose the legal persons, do not, then, become bankers because they have money to lend to others, but only because they themselves want to borrow!

Thus when the system says that they alone shall lend, it virtually says that they alone shall borrow; because it is well known that, in practice, they *will* lend only to themselves.

In short, it says that only these 100,000 men—or one in four hundred of the population—shall have liberty either to lend, or borrow, capital! Such capital as is indispensable to every producer of wealth, if he would control his own industry, or make his labor most productive.

Consequently, it says, practically—so far as it is in its power to say—that only one person in four hundred of the population shall be permitted to have capital; or, consequently, to labor directly for himself; and that all the rest of the four hundred shall be compelled to labor for this one, at such occupations, and for such wages, as he shall see fit to dictate.

In short, the system says—as far as it can say—that only 100,000 persons—only one person in four hundred of the population—*shall be suffered to have any money!* And, consequently, that all the property and labor of the thirty-nine million nine hundred thousand (39,900,000) persons shall be under the practical, and nearly absolute, control of these 100,000 persons! It says that thirty-nine million nine hundred thousand (39,900,000) persons shall be in a state of industrial and commercial servitude (to the 100,000), elevated but one degree above that of chattel slavery.

And this scheme is substantially carried out in practice. These 100,000 men call themselves "*the business men*" of the country. By this it is meant, not that they are the producers of wealth, but only that they alone handle the money! Other persons are permitted to sell only to them! to buy

only of them! to labor only for them! and to sell to, buy of, and labor for, them, only at such prices as these 100,000 shall dictate.

These 100,000 so called "*business men,*" not only own the government, but they *are* the government. Congress is made up of them, and their tools. And they hold all the other departments of the government in their hands. Their sole purpose is power and plunder; and they suffer no constitutional or natural law to stand in the way of their rapacity.

How many times, during the last presidential canvass, were we told that "*the business men*" of the country wished things to remain as they were? Having gathered all power into their own hands, having subjected all the property and all the labor of the country to their service and control, who can wonder that they were content with things as they were? That they did not desire any change? And their money and their frauds being omnipotent in carrying elections, there was no change.

These 100,000 "business men," having secured to themselves the control of all bank credits, and thereby the control of all business depending on bank loans; having also obtained control of the government, enact that foreigners shall not be permitted to compete with them, by selling goods in our markets, except under a disadvantage of fifty to one hundred per cent.

And this is the industrial and financial system which the "National" bank system establishes—so far as it can establish it. And this is the scheme by means of which these 100,000 men cripple, and more than half paralyze, the industry of forty millions of people, and secure to themselves so large a portion of the proceeds of such industry as they see fit to permit.

CHAPTER IX. AMASA WALKER'S OPINION OF THE AUTHOR'S SYSTEM

As Mr. Amasa Walker is considered the highest authority in the country, in opposition to all paper currency that does not represent gold or silver actually on hand, it will not be impertinent to give his opinion of the system now proposed.

He reviewed it in a somewhat elaborate article, entitled "*Modern Alchemy,*" published in the *Bankers Magazine* (*N. Y.*) for December, 1861.

That he had no disposition to do any thing but condemn the system to the best of his ability, may be inferred from the following facts.

After describing the efforts of the old alchemists to transmute the baser metals into gold, he represents all attempts to make a useful paper currency as attempts "*to transmute paper into gold.*" He says that the idea that paper can be made to serve the purposes of money is "*a perfectly cognate idea*" with that of the old alchemists, that the baser metals can be transmuted into gold. (p. 407.)

He also informs us that—

> "It is perfectly impracticable *to transmute paper into gold* to any extent or degree whatever, and that all attempts to do so (beneficially to the trade and commerce of

the world) are as absurd and futile as the efforts of the old alchemists to change the baser metals into the most precious." (p. 415).

These extracts are given to show the spirit and principle of his article, and the kind of arguments he employs against all paper that represents other property than coin; even though that property have equal value with coin in the market.

Yet he says:—

> "One thing we cheerfully accord to Mr. Spooner's system—*it is an honest one.* Here is no fraud, no deception. *It makes no promise that it cannot fulfil.* It does not profess to be convertible into specie [on demand]. It is the best transmutation project we have seen." (p. 413).

When he says that "it is the best *transmutation* project he has seen," the context shows that he means to say that it *comes nearer to transmuting paper into gold,* than any other system he has seen.

This admission, coming from so violent an opponent of paper currency, may reasonably be set down as the highest commendation that *he* could be expected to pay to any *paper* system.

He also says:—

> "Many schemes of the same kind have, at different times, been presented to the world; but none of them have been more complete in detail, or more systematically arranged, than that of Mr. Spooner. (p. 414).

But by way of condemning the system as far as possible, he says:—

> "Mr. Spooner, however, can, we think, make no claim to originality, so far as the general principle is concerned. The famous bank of John Law, in France, was essentially of the same character." (p. 413.)

No, it was *not* essentially of the same character. One difference—to say nothing of twenty others—between the two systems was this: that Law's bank issued notes that it had no means to redeem; whereas Mr. Walker himself admits that "Mr. Spooner's *system makes no promises that it cannot fulfil.*" That is to say, it purports to represent nothing except what it actually represents, viz.: property that is actually on hand, and can always be delivered, *on demand,* in redemption of the paper. Is not this difference an "essential" one? If Mr. Walker thinks it is not, he differs "essentially" from the rest of mankind. What fault was ever found with John Law's bank, except that it could not redeem its paper? Will Mr. Walker inform us?

Endnotes

[*] By the State valuation of May, 1871, the real estate of Boston is estimated at $395,214,950.

[†] By the State valuation of May, 1871, the real estate of the Commonwealth is estimated at $991,196,803.

[‡] The amount of circulation now authorized by the present "National" banks of Massachusetts, is $58,506,686, as appears by the recent report of the Comptroller of the Currency.

[*] There would always be a plenty of specie for sale, in the seaports, as merchandise.

[*] Exclusive of the so called "gold" banks, which are too few to be worthy of notice.

[*] I say "poor prosperity," because the present prosperity of Massachusetts is not only a dishonest prosperity, but is also only the prosperity of the few, and not of the many.

[*] If the excess mentioned in the text should not be withdrawn, it will be only because the system is so villainous in itself, that other parts of the country will not accept the shares to which they are entitled.

[*] Since the notes on page fifth were printed, the *Boston Journal*, of Jan. 11, 1873, says that, by the valuation of 1872, the real estate of Massachusetts is $1,131,306,347.

[*] At first they were required to invest only in *six* per cent. bonds. But more recently they have been coerced or "persuaded" to invest sixty-five millions ($65,000,000) in *five* per cent. bonds. And very lately it has been announced that "The Comptroller of the Currency will not hereafter change United States bonds, deposited as security for circulating notes of national banks, except upon condition of substituting the new five per cents. of the loan of July 14, 1870, and January 20, 1872."—*Boston Daily Advertiser of February* 5, 1873.

From this it is evident that all the banks are to be "persuaded" into investing their capitals in *five* per cent. bonds.