

THE RIGHTS
OF
CONSCIENCE AND OF PROPERTY;
OR THE TRUE ISSUE OF
THE CONVENT QUESTION.

BY
GEORGE TICKNOR CURTIS.

B O S T O N :
CHARLES C. LITTLE AND JAMES BROWN.
M DCCC XLII.

B O S T O N :
PRINTED BY THURSTON AND TORRY,
DEVONSHIRE STREET.

THE

URSULINE CONVENT QUESTION.

THIS pamphlet is published under the author's name, because, while he has no desire to parade his opinions, he also knows of no reason why he should avoid the slightest responsibility attaching to their expression. The reason for its publication is the wish to say some things which could not be said in a legislative report, formerly made upon this question.

Boston, Nov. 15, 1842.

THE CONVENT QUESTION.

It has long been to me matter of great wonder, that the people of Massachusetts should, for eight years, have virtually slumbered over one of the greatest wrongs ever perpetrated in a civilized country, the disgraceful evidence of which stands conspicuously prominent, in sight of their cultivated metropolis. To what this apathy is to be attributed, one may well pause amid conflicting doubts. Is it to be attributed to any want of courage on the part of those who can look through events to principles, and who are bound, by their allegiance to the public weal, to hold up the real meaning of events and the real issue of questions to the public apprehension? Or can it be attributed to any deficiency of the sense of justice? Is it to be laid to the account of indifference to private wrongs, or to the want of a true perception of the great rights violated in this strange occurrence? What can be assigned, in the way of reason, to the intelligent foreigner, on our soil or in his own land — who may inquire in real kindness towards our public honor, and so

may expect a rational reply — when he asks how it is that a free, a cultivated, and a just people, who respect the rights of conscience and of property, who live under a government of laws, who are renowned for their general liberality and philanthropy and for their cultivation of the science of human laws, have never searched into the merits of a question involving their immediate reputation for all that is thus said to characterize their state? The objector, who — armed in the panoply of that prejudice which is so nearly insuperable — shall perhaps answer this inquiry, will reply that there need be no difficulty about the answer, because the simple truth is, that there are no merits in the matter to make it a question of public concern. To exhibit the affirmative of this negative will be one of my efforts.

Before, however, the main subject is approached, I must recur to the causes of the singular indifference which seems to be manifested by the public to this subject. It is true that the demand for public reparation is only a private claim, and that the wrong was only a private wrong, done in a somewhat public and open manner. But beneath that private wrong there lie violated, trampled, and destroyed, some of the first rights of man as a member of the state, and the very right of rights of the human mind. The victims of this atrocious wrong are merely a handful of individuals — some of them no longer living — all of them of no moment to the mass of the public. But

their wrongs are unrepaid ; and even if we are insensible to them as claims for particular justice, so long as we are insensible to the principles involved in their case, we can never say with the slightest confidence whose turn it shall next be, when public odium has fastened upon his creed, his politics, or his manners, to be made the object of a similar outrage. This apparent indifference to the destruction of the Convent is a public misfortune ; and it can be attributed, as it seems to me, to but one cause. We have carried our opposition to the religious views of the Roman Catholics to the extent of such an inveterate prejudice, that we can hardly hear with impartiality any cause or claim in which they are interested. Besides the religious prejudice, there exists also a vague, but very jealous fear of the increase of Catholicism, a result to be deplored politically, as many people think, on account of its supposed hostility to our republican institutions, and the susceptibility of its professors to the control of its clergy in secular as well as religious affairs. A few words may be devoted here to one aspect of this prejudice.

With Catholicism, theologically, I have nothing to do. As a system of faith and discipline, as the true church or the false church, I do not propose to discuss its merits. It is sufficient to say that I have not the smallest sympathy with its characteristic tenets, and that if there is any sect of Protestants, whose doctrines are wider than all others

from those of the Church of Rome, it would seem to be that denomination with which all my associations and sympathies are connected. I cannot therefore, as an individual, be drawn to take any different view of Catholicism from that of many others, out of any sympathy with its tenets or forms. Moreover, as one member of society, I am perfectly willing that they, whose vocation it is to carry on religious controversies, should do whatever battle they please upon that ancient church, provided that, in a social crusade, they do not drive its members beyond the pale of such civil rights, privileges, and equalities as belong to us all. When this is likely to occur, I wish to see other members of society come to their defence, and to rally among that host myself. And, therefore, though opposed to both form and tenet of the Church of Rome, I venture to say, as an American citizen, that politically, the probable growth or decline of Catholicism, in this country, is not worthy of the passing anxiety of a moment to any patriotic and reflecting man. Its growth or its decline, within any probable limits, will exercise upon the destinies of this country not the weight of a rush.

No man can predict or show reasonable grounds to apprehend, that it ever will or can become either a predominating or a very numerous denomination in this country. In the first place, as to its growth from immigration, we hold it, as to all political dangers, entirely in our own hands. It

may be too late to say, that we might go back to a purely native system of suffrage, and deny to the emigrant altogether all participation of political power. It might be also impolitic, and unjust, and against the spirit of our institutions, to do so. But we can always regulate the period of admission to the full rights of citizenship. We can say what length of time the foreigner shall have dwelt among us, and what evidence he shall have given of attachment to our institutions, and of ability to comprehend them, before we admit him to vote. If we hit the right period, there is no more to be apprehended from the Catholic Church, than there is from the Church of England, or the Church of Scotland. If we do not hit the right period, it will be from our own fault, or folly, from some temporary need of voters to sustain or overthrow a party, or from a want of courage to apply the proper correctives.

In the second place, the idea of any serious growth of Catholicism, by conversion of our native population, seems to be quite preposterous. Such a result is wholly incompatible with the genius of our people. We are essentially and emphatically a *protesting* people. Our boldness, our vigor, our capability of new ideas and new forms, our craving for change, our restlessness under restraint, our inquisitive spirit, are all very great. Even if the present were a fit age of the world, Catholicism could not *begin* to attack the general mind of such a nation as ours. If it should for a moment seem

in some localities to have grasped the popular mind, its hold would in the next moment be shaken off by some new form of doctrine, faith, or worship, springing up in a day, and running through society like the strata of a geological formation, but without settling into fixed and permanent forms. The spirit of our American age is a spirit of change, dissent, and progress. If Protestantism had never protested in the heart of Europe, it would have uttered itself in America. If we can conceive of this country settled by Englishmen before the Reformation, bringing with them cross and crosier, and a Latin ritual, and no vernacular Bible, and can then imagine that in the progress of time it had not happened that Wicliff, and Luther, and Calvin had ever lived, we may still suppose, or rather we *know*, that the Anglo-Saxon mind, in this new country, with its independent and questioning spirit, with the development and the progress belonging to a new country, would have burst the shackles of Rome, though all Europe had continued to wear them. As it is, the actual course of history exhibits an independent English Reformation, in progress, before the time of Luther. Could the Englishman — who, if he had remained at home under the Catholic Tudors, spite of the quiet monotony with which rural life, even in those days, often glided away, would have found himself drawn from the bosom of the Church, by some bold dissent of Wicliff's — could he have penetrated into this great land, as the pio-

neer of a new empire, and beneath the temple of our overarching forests have felt that God could be worshipped only, or best, in the Cathedral? Could he have stood in the presence of our mighty cata-racts, or have seen the infinite spread out in our vast prairies, piled in our majestic mountains, or stretched away into the illimitable skies, bringing him into a visible presence of his Maker, and have asked for the intercession of the saints? Could he have met the necessity of a social polity, framed for the exigencies of his life among near savage tribes, and adapted to his task of rearing a new fabric of society, and still have endured the restraints of old forms, and the burthens of a tribute to the Vatican? Could he have lived, and endured, and survived his mighty task, and transmitted it to his children, in peril and tribulation, in joy and gladness, without wresting the Scriptures out of the dead tongues in which they might have been given to him from Europe, and unlocking them for himself and them, and for the new American age which was forming as an era of the world? No — if the Reformation had never been born in Europe, it would have sprung, Titan-like, from our new American earth.

It is not only true, that our national genius, temper, and character are wholly beyond any exposure to Catholicism, but we are — or ought to be — intelligent enough to know, that the Church of Rome has long been powerless to do political mischief in any of the great Protestant countries, and

that it no longer aims to do so. The keys of St. Peter no longer bind and unloose, as was their ancient wont. The shadow of a former greatness, which overtopped the proudest monarchies of the world, the head of the Church is a Bishop, with territorial sovereignty over a small state in Italy. Even if it were true — as the modern stage exhibitors of the old bugbear would have us believe — that the discipline of the Catholic Church is such as to enable its head to control its political conduct, we ought to know that the day has forever gone, when, as a sovereign, the head of that church has much to do with the politics of the world. Practically, too, we know, or ought to know, that the Catholic subjects of Protestant countries have long ceased to exhibit any proof of political control by their clergy, in action against the institutions or policy of their country. The day of plots and cabals in England, among the Catholics, against their own government, is over — as is also the possibility of their being tampered with from Rome. So entirely is this understood and felt by the nation, that the disabling statutes against Catholics are repealed, and what is called Catholic Emancipation, has added a new jewel to the crown. The Catholic Englishman is the same subject of Queen Victoria as his Protestant neighbor. Should any menace approach her throne — come from what quarter it might — the Catholic, who has derived his faith with his blood from those who met at Runnemedede, would rally to its defence

as quickly as the staunchest Protestant of the realm.

In truth, the power of the Church of Rome is among the great powers that *have been*. We ought to have intelligence enough to know this, and the magnanimity to treat its members accordingly. We ought to remember, on the one hand, that the world has now something else to do than to subject itself to any hierarchy under the sun. It has to feed and clothe its millions; to maintain its several institutions for public and private happiness and security; to strengthen the bonds of order; to liberate the oppressed; to enlighten the ignorant; and to carry on the great development of human society towards the perfection designed for it on earth, under the guidance of the *spirit* of Christianity. This, it is beginning to learn, it can best do, by leaving the *form* of Christianity to rest between the individual soul and its Maker. We ought, therefore, on the other hand, to feel that one of the chief things which the world has before it in its task, and which it is learning by degrees to do, is to maintain the inviolability of the rights of conscience, as well against the power and oppression of the masses, as against the tyranny and craft of priesthoods and kings.

As to the political conduct of the Catholics actually among us, there is no proof whatever of their being subject to central influence or control, or that they do not exercise their elective franchise with as much freedom, intelligence, and independ-

ence, as any other portion of the people of the same respective conditions in life. There may be, at times, local or particular questions, the bearing of which upon their interests may cause them to cast the great body of their votes in one direction ; but this proves nothing of the Catholics which may not just as often be proved of every other denomination. There are very few sects which do not sometimes take sectarian views of men and measures, and cast their votes more or less according to those views. This is so well understood among political managers, that the sect of a candidate is often made a very material consideration when he is about to be set up ; and it is often found that the exact lines of the two main political parties are not the only lines, upon which the people choose to divide. Sects, sections, and portions of the people are governed in their political conduct by the bearing of questions upon their interests, when those questions particularly affect them. Their unanimity, upon a particular occasion, would be no better evidence of central influence or control in one sect, than in another. No proof of such influence has ever been given by the Roman Catholics in this city. Their votes are generally distributed between the two political parties in the proportion of about three to one, as the best informed persons have estimated.

I have touched upon these points not because it can be of the smallest real consequence to the merits of the Convent question, whether Catho-

licism is a good or a bad form of Christianity; whether it is increasing or diminishing; whether its professors are, or are not subject, in their political conduct, to the control of its clergy; but because there is a vast deal of prejudice afloat in the community upon these subjects, which prevents the merits of this question from receiving a fair discussion, and from being separated from the extraneous considerations which do not belong to it. We shall the more easily see what the real question is, and how entirely it concerns the rights of all, by first satisfying ourselves that anxieties and disquietudes, which have distorted our vision, have no real cause of existence. Then, and only then, we shall be in a state of mind to apprehend that, when men ask the government, in pure justice, to indemnify them for a loss of property, which has been torn from them through public neglect of its defence, there cannot, with any degree of justice, enter into the question the inquiry, What was, or is, or is like to be, the religious faith of its owners? Then, also, and not till then, we shall fully apprehend, that when individuals, on account of their faith, suffer an outrage grounded in deep religious hatred, it is time for a government that writes in its charters a guaranty of universal toleration, to protect the rights of all other sects, by signalizing the occasion with an indemnification out of the public purse. Then, too, we shall perceive the impolicy, the absurdity, and the danger of denying such protection and

reparation, because the particular form of religion, that has exposed its professors to the outrage, is one which the majority of the people do not desire to have propagated.

We must meet this question and dispose of it as becomes us. It is as certain to be disposed of by a public act of indemnification, as that the great principles of public justice and equity shall continue to govern our conduct, and to be more and more developed in the progress of our civilization. If there are any who doubt or disbelieve this, they do not know what truth can accomplish. There may be periods when the matter will not be agitated ; there may be times when no effort will be made to accomplish the work of justice and reparation. But it might as well be expected that the original fountains of justice, in the hearts and understandings of men, should be buried beyond discovery in the rubbish of prejudice and neglect, as that this matter should not be urged. There are principles involved in it ; there is a stain on our good name in consequence of it ; which, if warmth of language would aid a cause, would justify any strength of language or warmth of feeling. Where stand those ruins of a burnt and pillaged house of education, which a mob destroyed in a passion of religious hatred, unchecked by any power whatsoever ? As one comes towards this metropolis of New England, from the east, on the bosom of our beautiful sea, from the west, the north, or the south, — on what does the eye first

rest, kindling, as it rests, with the thronging recollections of our glory and pride? The great obelisk, reared over the deeds of a heroic age, marks the spot where our fathers asserted, in blood, the principles of that freedom in which were alike comprehended, for them and for us, religious and civil liberty. Within the morning's shadow of that seat of liberty and glory, and along the very stretch of ground where the heroes of that day dragged their bleeding and exhausted limbs out of the raking fires that swept the shore, stands the only monument of our disgrace existing on the soil of Massachusetts. Who can endure this contrast? Who can look upon these two monuments, without tasking whatever faculty he may have, to discover if, in the principles and duties of public justice, there be not some remedy, that will remove the one, in its shame, and leave the other, in its serene and noble simplicity, to tell unrebuked, in all after ages, of the glory of Massachusetts?

The motives to this exertion are very great, — motives drawn from the character and history of the Commonwealth. Casting the eye back over the long and not inglorious line of its history, to the days of its early foundation, we behold our fathers planting a colony, destined to become a model republic, in the full recognition and upon the express assertion of religious liberty. Once or twice, indeed, they lost sight of its universal truths; but at length the principle works itself free from the restricting influences of a bigoted age,

and comes to assume the authority and force of law, in the fundamental polity of the State. Then, that problem, which for seventeen hundred years had been denied a solution through all Christendom, comes to a demonstration apparently successful. Government is found no longer to require a union with any particular form of Christianity. Founded on the idea of God alone, the State coerces none to creed or dogma, but declares an absolute freedom of conscience and proclaims its sacred rights. And now, in this day of its ripening maturity, blessed with every form of institution that can give security and stability to a Commonwealth ; blessed with a people whose condition blends the largest personal freedom with a general reverence for the laws ; prosperous, contented, appreciating the great ends of public and private existence, and obliged to forego none of its means, we present a rare advance towards the perfection of the social state, and for that advance we are renowned among the nations. Our good name for a perfect liberty has gone throughout all the world. The down-trodden and disfranchised, but gallant Pole hears it lauded among the friends of freedom, and comes to seek its sympathy. The learned and enthusiastic German comes from his study to realize here the dreams of his speculative philosophy. The cultivated and ardent Italian, having been buried for the best period of a noble life in an Austrian dungeon, but at length released from his chains, bends hither-

ward his expatriated steps, as towards a shrine of social and public safety, to contemplate institutions of which he has only read. Here, if anywhere, men should say, are all personal rights beyond exposure, safe under the protecting arm of public justice. Yet here, in the midst of all this social perfection, a deed was done, which puts to shame all our theories, and all our boast ; and the fame of that deed has likewise gone, where there is any speech or language of civilized men.

In that deed was perpetrated the violation of the rights of conscience, and of the rights of property, in an open, public manner, and no reparation has ever followed it.

The rights of conscience were there violated. It is true that the ostensible provocation, that incited the mob, was an unfounded rumor about the supposed murder, abduction, or secretion of a nun. But the passion that animated the mob was religious hatred. It is matter of history, that public prejudice against the Roman Catholics had risen to an extravagant point ; and it is beyond all question, that this peaceful and useful school owed its destruction to the fact, that it was conducted by a number of Roman Catholic Nuns. If it had been a Protestant institution, no amount of false rumors would have excited a mob to destroy it. In proof of this, I refer to the well ascertained and authenticated facts of the wide spread prejudices cultivated into excess ; that the actual rioters not only destroyed, but offered every imaginable in-

dignity to the peculiar insignia of the Catholic religion ; that thousands of spectators looked on, in a state of non-interference, which can possibly be accounted for, only from the existence of a feeling, that the outrage was winked at by the authorities ; that those authorities did absolutely nothing in the way of a defence ; and finally, that to this hour, it has been impossible to obtain for these injured parties, upon the question of indemnification, a respectable hearing, without encountering a charge — *thought to be a sufficient answer* — that it is encouraging the Catholic faith.*

Is any further evidence needed ? Look, then, at the fact, that not a word or a whisper upon the subject has ever escaped from the Executive of the Commonwealth, save a feeble and ineffectual proclamation, which offered a totally inadequate reward for the conviction of the rioters. Eight times has the gubernatorial chair been successively filled by elections and reëlections, since this most strange occurrence, so intensely interesting to the feelings of a portion of the people, so important to all, took up a disgraceful prominence in our history. Eight times has the high function of the Constitution been exercised, which law and custom have made to embrace the suggestion and discussion of all topics of pub-

* This has been said over and over again in the public newspapers, in private conversation on the floor of the Legislature, and in its public debates.

lic concern. On no one of these occasions, has the violent destruction of a house of female education, and much valuable property, in the night, by a mob, been made the subject of Executive attention, to teach the legislative or the popular mind, that wrongs had been there done, that rights had been there violated, which the sovereign power of a just people alone, under God, could, and ought to repair and vindicate. There is but one mode of accounting for this — the belief that the suggestion would not penetrate through the prejudices of the time.

The rights of conscience were there violated. But what can be done to repair *this* wrong? No human power can do it. No law, no sovereignty, no grants or gifts can reach it. The burning sense of injustice that dries up the heart, when its inner sanctuary is violated; the feeling of shame and humiliation, when the faith of the soul is hated by the world; the shudder of despair with which God is looked to, when man refuses succor; these we can never reach, with any compensations, though our revenues exceeded “the wealth of Ormus or of Ind.” Property, the civil rights of the citizen, can alone be repaired, among all the incidents of this sad event.

What the rights of conscience are to man as a religious being, the rights of property are to him as a member of the State. Property, in which term is to be included labor and all its attendant opportunities and results, is one of the very objects,

politically speaking, for which society is instituted. The laws of property are among the foundations on which political society rests. They are the most obvious links that bind it together, and prevent it from falling into the confusion, the uncertainty, and the aimless poverty of the liberty of nature. Property itself is among the grand instruments by which the world is enabled to emerge out of Barbarism, by which Christianity is sustained and propagated. He that has none is benefited and blessed by its institution and preservation. Were he in a state of nature, he would be poor, as he is now ; but were all like him in his poverty, there could be neither incentive nor opportunity for labor, nor for the improvement of his condition, as there could be no benevolence to help him when his efforts had failed. The state that does not protect the rights of property, to the full extent of earthly power, especially against open and public violation, loses sight of its own highest policy, and breaks its contract with the individual, and weakens that of all its members.

There is a growing persuasion in this community, that the owners of the Convent should and must receive from the State an indemnification for their loss of property, torn from them in open and cruel violation of the plain principles of the social compact. Of course, the great question here is, whether the Commonwealth, as a government, so far failed in any of its implied duties, upon the occasion, that it can be said with

propriety to owe this reparation. It must be remembered, in considering this question, that a very different spirit of justice, in one respect, should obtain between the State and its citizen, from the justice which the State enforces between man and man. In the first place, the State cannot be sued, or required to answer, before any legal tribunal, by an individual. Its attitude is perfectly sovereign, and as a sovereign it should blend with its conduct that mercy which "seasons justice." In the next place, it cannot, and ought not to measure a claim like this by such rules of technical law, as would defeat the claim, if the State were capable of being sued, or impleaded in a court of law. If we apply these rules to the present case, we come far short of the exigencies of the great relation between the body politic and its members. Our ideas of contracts, if drawn from the rules of technical law alone, often exclude the equities of implied obligations. We must keep these implied obligations in view, when we search for the law that is to govern the fundamental relations of society and its members — a law founded in natural equity and a just expediency, as well as in the express contract for protection, involved in the payment of taxes and public imposts. Searching for this law, and guided by these monitory considerations, we shall find that the owners of this property had a legal right to expect something of the Commonwealth, which it did not perform.

What they had a right to expect was *protection*.

This must be conceded — for, if we give up or deny the duty of protection, the first mob that arises in the streets is a power above and beyond the power of government, and society is at an end. The duty is conceded ; none question it. But many question its extent, or application. It has been gravely argued, that it is the duty of the Commonwealth to protect the property of its citizens, as far as it can consistently with its existing laws. The position is positively absurd. It is merely saying that it is the duty of the Government to protect, as far as it does protect, at any particular time ; a measure of duty that would perform no very useful office in any system of law or ethics, public or private. The truth is, the duty of protection is paramount, pre-eminent, and independent of all laws and particular institutions. The degree of protection which the citizen has a right to expect, which in fact he stipulates and pays for, in some kind of consideration, is a protection as full and perfect as human power and wisdom can reach. The man, who owns property, stipulates for this protection of his property and his life. The man, who owns nothing but his life, stipulates for the same protection of his life, and of his right to labor and acquire property. They must both have it. The nature and character of the government, and of its institutions, may lead to a choice of the means and instruments of protection. In one country, it may be a standing army ; in another, a militia ; in

a third, a police ; in a fourth, it may be all these combined. But whatever the means made use of, according to the character and habits of the people, if those means are not so used as to afford protection against obvious and open dangers, the duty of the Government is not discharged.

What are the means peculiarly adapted to our character and habits, by which the citizen is to be protected in the enjoyment of all his rights? Chiefly two. Wise and salutary laws, to prevent or to repair the effects of popular violence ; and the active interference of a militia, under the direction of the civil magistrate, to restrain such violence when actually breaking forth. This is the state of the public security under which we now live, and have lived since the sixteenth day of March, 1839.* On the eleventh day of August, 1834, in the case of the proprietors of the Convent, there was a failure of protection in all these respects. The law punishing magistrates who should neglect their duty on such occasions, and

* *Extract from "An Act concerning Riots," passed March 16, 1839.*

SECT. 2. Whenever any property, of the value of fifty dollars or more, shall be destroyed or injured to that amount, by any persons to the number of twelve or more, riotously, routously, or tumultuously assembled, the city or town within which said property was situated, shall be liable to indemnify the owner thereof, to the amount of three-fourths of the value of the property so destroyed, or the amount of such injury thereto ; to be recovered in an action of the case in any court proper to try the same: *Provided*, the owner of such property shall use all reasonable diligence to prevent its destruction, or injury, by such unlawful assembly, and to procure the conviction of the offenders.

the law requiring towns to pay three-fourths of the damages sustained, did not then exist. Can it be pretended that the government extended all the protection it was bound to afford, before it passed those laws? Let it be remembered that the danger, against which the citizen needed protection, was not that of a foreign invasion, which can hardly ever come without especial warning of its particular approach, but the danger of a mob, the exposure to which is constant, which is likely to spring up at any time, and which becomes boundless, when we consider that the unpopularity of the citizen may be shared, by a weak magistrate, with the mob. This last source of danger is the most fearful of all. The worst wounds which the rights of free discussion have ever received, in this country, have been owing to the concurrence of sentiment between the magistrates and the mob, in some of the riots occasioned by the proceedings of the "Abolitionists." The unpopularity of their proceedings—often really objectionable—by being shared in by the authorities, has in some places withdrawn from them a decent protection of the great rights of free discussion. Against such dangers as these, notwithstanding repeated warnings, the Commonwealth had provided no system of indemnification, and no system of accountability, on the part of the local population or magistracy, when the Convent was destroyed. But the great fundamental duty of protection existed then, as it exists now, and as we

have recognised it. The failure on the part of the State consists in not having provided the means to discharge it. The duty itself it can neither create nor destroy.

Notwithstanding all this, it has been frequently asserted that the owners of the Convent are bound by the laws as they existed at the time, and that a legislative grant, in the way of indemnification, would be objectionable, upon principle, as *ex post facto* legislation. This notion proceeds wholly upon the assumption, that the existing laws, for the time being, constitute the contract — and the whole contract — between the citizen and the State. I will not repeat the argument by which this fallacy is to be met. It lies simply in the incontrovertible position, that the great paramount duties of protection and defence can never be any greater, or any less, because one or another kind or degree of means is made use of to discharge them. Such a standard would erect public negligence as the measure of public duty. But without pursuing the argument further upon this point, we may resort to a class of illustrations, familiar in our legislation, to show that there are public duties not defined, or yet recognised, in existing laws, but not therefore deemed the less imperative, which come afterwards to be acknowledged by laws passed specially to meet the case and discharge the duty. Take the whole system of pension laws, which are full of proof that former laws do not measure the whole contract. A man

enlists in the service of his country, upon a rate of wages fixed by law, and fights through a war of several years, in which his time, his health, his limbs, and his pecuniary prospects, have all been sacrificed. His wages as a soldier are no compensation for his losses and sufferings, but they are all that the government, in terms, contracted to give him, at the time. When he or his heirs ask for farther compensation — for full indemnification — does any decent government say, “There is the statute fixing your wages, by that you must abide?” On the contrary, twenty, fifty, or seventy years after the fact — when he has long found rest in a hero’s grave, and his claim, with his glory, has descended to his representatives — it is recognised, and a law is passed specially reverting to it, to give them something in the nature of a full indemnification for his losses. Upon what principles do legislators thus vote away the public money? Do they do it to make a wretched “political capital” out of the blood and suffering of their sires? No. They do it upon the ground, that what is written in the bond, or enacted in the existing law, does not embrace the whole contract or define the whole duty; but that the great principles of justice and equity are binding upon States and governments, though the *laws* have thus far been silent to the claims which rest upon them.

This illustration shows that cases are familiar where legislation after the fact, and specially reverting to the fact, proceeds upon the admitted

and perfectly safe doctrine, that the party is not concluded by the existing laws, but that the sovereign power will grant him the relief which in justice he is entitled to expect from it. So it should be in this case. If the existing laws were not a sufficient protection; if the government of the Commonwealth — whose duty and prerogative (not the duty and prerogative of the town or county) it was, to give the owners of the Convent the same protection which we all now enjoy — failed in a remarkable and palpable degree in that duty; and if those owners paid, as they did, their full taxes upon the property, the case of justice is fully made out.

It is strange that they, who object to this measure as being *ex post facto* legislation, do not perceive where the true line of distinction rests, separating the cases in which such legislation may, from those in which it may not, be allowed. Wherever any particular relief is asked, inconsistent with the ascertained and settled public policy, such relief should seldom, perhaps never, be granted. But where the relief sought goes entirely along with the public policy, and depends upon the same principles, requiring merely that those principles should be carried back to a case that can be reached by the sovereign power alone, there can be no valid objection to such legislation. Thus, the statute of limitations is a great law of public policy, forbidding simple contract claims from being enforced after six years, which policy

has never been reversed. To except, by particular legislation, any case, of whatever hardship, out of this law, is to run counter to the settled public policy on the subject. So, also, a very ancient law requires conveyances of lands to be made by deed, for reasons of public policy. To except a case out of it would be wrong, as being against the reasons for the law itself. But when the legislature are asked to indemnify the owners of the Convent, there is not a principle or reason urged, that is not in direct accordance with the declared and settled policy of the State. They are asked to apply, not to reverse the public policy ; not to except a case out of it, but to legislate in pursuance of it.

I wish now to present a view of the relation between the owners of the Convent property and the State, which perhaps will not occur to every one. Let it be supposed that, instead of the property of citizens, taxed as such in its full proportion, and instead of property connected in part with real estate, it had been movable property of an alien, he being within or without the State, in time of peace. Let it be farther supposed, that property of an alien had been destroyed, of so large value as to render it an object for him to complain, and for his government to receive complaint, of the fact ; and that it had been done by popular violence, incited by rumor, or suspicion, or dislike, or love of plunder, without any defence whatever by the local government, or any provision for subsequent remuneration. This, of course, is

a much less strong case, than the sacking and burning of buildings owned by citizens and inhabited by women.

Probably few readers need to be informed, that the public law requires every government to protect the person and the property of the foreigner, tacitly permitted to enter its dominions. No plea, that its institutions are too democratic, or aristocratic, too peculiar, or exclusive, to admit this principle, will avail as a defence to the demand of a foreign nation, requiring indemnity for the violation of those rights which the law of nations protects. As soon as a government admits the person or the property of a foreigner within its territory, it engages to protect him and it, and to afford to both perfect security, as long as its own laws are not violated by either. This obligation is founded in part upon the moral duties of hospitality, which render a wanton injury to him, who has been tacitly permitted to enter our territories, the most barbarous treachery, intolerable to the moral sense of mankind.* In part, also, it is

* Grotius mentions a Scythian tribe, the Taurians, who sacrificed strangers to Diana. He maintains that all other nations had a right to unite together to chastise them. General Jackson, when President, sent a naval force, which summarily demolished a whole town of similar barbarians, who had treated some of our countrymen in the same manner. These barbarians had a regular government; but I believe it was never ascertained that the murder of the Friendship's crew was an act of that government; it was done by a handful of irresponsible savages — what, in a civilized country, is called a mob. But the walls of Quallah Battoo had to fall for it, notwithstanding.

founded in the public policy of the world, whose best interests require freedom and security of intercourse and of commerce. It is still farther founded, in part, upon the duties and obligations, which may be and are exacted of aliens and their property, when in a foreign State. The right to insist on this duty of protection, is founded in the fact, that the alien continues to be a member of his own nation, and his property continues to be a part of its aggregate wealth, even while both or either are in the foreign country.

Now in the case above supposed, let us imagine that we had answered the demand of a foreign government, by saying that we had protected the person or the property of its subject, as far as we had engaged to by our existing internal laws of protection. The reply would inevitably be — “ we know nothing of your laws of protection or your internal policy, except that they were insufficient for the occasion. You are a government amenable to the public law ; there existed a paramount duty to protect our subject, founded on the relation between him and you, which attached as soon as he or his property, by permission, entered your territory, and which is never diminished or enlarged, by your laws, so long as he or his property do not offend against them. That duty we require you to discharge, or to maintain your position by the last argument to which nations resort.” Thus, the very answer, which we make to our own citizen, would, in the case of a foreigner, under the like

circumstances, plunge us into the evils and crimes of a war without justice on our side. Can there be any difference between the cases, save that the claim of our own citizen is not presented at the cannon's mouth, backed by the whole power of a foreign government, but is proffered by a weak and humble suppliant for a magnanimous justice which he cannot compel? and save also, that it has all the farther legal and moral strength, derived to it from the fact, that he and his plundered property constituted part of the aggregate force and wealth of the body politic, and as such discharged all duties imposed for public purposes?

Having said, here and elsewhere, all that I wished — perhaps more than will be read — upon the legal argument, I wish now to point to some considerations which would make the action of the Commonwealth upon this subject an act of policy. But I would guard against misapprehension, by the plainest declaration, that the policy referred to is not limited to the scope of parties. There is a policy by which votes are canvassed from the honest hands that hold them, into whose calculations I would not obtrude this question. But, if the wish to conciliate to the Commonwealth the love of its citizens; if the intent to gather around our republican institutions the affection and confidence of our own people and the respect of the world; if the desire to have every citizen of this noble State feel that it is noble for its justice, its magnanimity, its elevation above the meaner motives and

degrading prejudices, that corrupt the action of too many other of our governments ; if humble efforts, aiming at the full result of that grand problem in human affairs — of which these institutions are so capable — the harmonious union of liberty and law ; if these things rightly constitute a true policy, then may the word be used without abusing it.

In that high sense of the policy of a State, could there be an act that would more truly add a crowning glory and security to our institutions, than the performance of this long-deferred act of justice ? Could there be a measure that would more deeply impress upon society the lesson of that true and only equality, which makes all men equal in their civil and religious rights ? Could any statesman, if he had the ordering of events, shape or fashion an occasion for strengthening the rights of conscience and of property, by a striking public act, more admirably suited to that end, than is here exhibited ? The acquired virtue of an individual sometimes receives its greatest strength from having overcome great vices. Public misfortune may in like manner lead to a higher degree of public security and peace, and to a farther advance towards social perfection.

If we look about us, within our own Massachusetts — without any thought of comparison — we behold a regulated liberty, civil and religious, the certain and priceless inheritance of every child. No dreadful social evils afflict us with present annoyance, and a dark night-mare of apprehension

for the future. Justice, pure and unbought, is administered, between man and man, with sleepless vigilance and rare intelligence. Education is ripening towards a noble autumn of the richest fruits. Between the body politic and the citizen, farther wise and salutary laws have at length defined some of the great duties, on which rests the security of property and person in a republican government. Amid this bright and noble scene, one spot, one dark repulsive spot, stains the history of the past, through the defective administration of that public justice which we have so much amended. One monument of cruelty, violence, prejudice and licentiousness, trampling on the rights of innocence and weakness, remains. We approach that spot, to wipe away forever the whole sad and disgraceful story. We do it upon a principle drawn from no visionary theory, but which lies deep in the immutable foundations of society. We do it under no arm of compulsion, but with a magnanimity that shall forever silence all insinuations against our power or disposition to be just. This done, could there be a community, where individual rights, of every name and nature, would be more securely entrenched in the citadel of the law, than in this old Commonwealth? *She* deals — it would then be our boast — *she* deals with the individual, not with the defiance which the strong shows to the weak, who cannot compel justice; not with the cold neglect which marks a public insensibility to private wrongs; but with the

same living and energetic justice which she enforces between man and man. This were a consummation of the highest hopes of her sons for her true renown. This were a compensation for all exertion, for hope deferred, for that long canker of despair, that has almost eaten out the public courage, and made the mention of this subject a thing to be feared. This were a consolation for every fear of patriotic hearts, lest that despair might settle into a stern and reckless refusal ever to look upon the past again.

I repeat it, it will be an act of policy — of a great, wise and noble policy. I cannot understand, if we have men among us aiming at the reputation of statesmen, who would deepen the foundations of public and private security, who would enlarge and liberalize the sentiments of the people, and make our boasted toleration a practical truth, why they do not seize this occasion to impress upon our domestic legislation the great lesson that might thus be taught. Least of all can I understand, why there should be lost upon such men the public virtue displayed by that sect, whose feelings were so much interested in this occurrence, when it broke like a thunderbolt upon them. Their conduct exhibited what it is of infinite public importance should meet its due acknowledgment. They saw an institution — in which, as a body, they had no very lively interest, until the moment when it fell beneath public violence on account of their faith, and which thus

became instantly an object of their most intense sympathies — destroyed in one short night, without any defence. The morning dawned to disclose to them the truth, that it had also no defence under the laws. They saw the outrage committed in the presence of magistrates, and of thousands of spectators, with every indignity to their religion; and they had too much reason to believe, that it was only a new outbreak of the long war, that for ages had rent the world between Protestant and Catholic, forgetful that there is but one Saviour for them both. Turning from this spectacle, they saw that every other institution, and every other house in the land, were at that moment, *for the owners*, just as defenceless under the laws, as had been the halls of Mt. Benedict. They did not raise a finger in the violence of civil commotion. They saved themselves from the guilt of retaliation, and waited, in good faith, for justice.

This conduct certainly forms no express reason, why a grant of money should be made to the owners of the Convent by the Legislature. But no reflecting man will omit to see what is its real value. It exhibits a section of the people, preserving the public peace, under the strongest provocations with which human nature can be inflicted. When I see how constantly men are disposed to appeal to passionate and hasty action, rather than to wait the sure justice and certain success of great principles of right; when I see men foiled in their objects, or imagining themselves, or the

“cause” they may have espoused, dealt with unjustly, stirring up a popular whirlwind to break down all opposition, and sweep them on towards their object ; when I remember how infinitely important is the public peace, and how vast the public injury which every infraction of it creates ; I cannot withhold my humble praise from men, who have borne such provocations as the Catholics did so well, so truly like men and Christians.

Let it not be answered that I am debasing the dignity of the Law, by urging it to recognise the meritorious forbearance of men who thought they had grievous cause for retaliation. True enough it is, that, if any outrage had been committed after the destruction of the Convent, it might have been restrained and punished. True enough also it is, that the Law has always its constable’s staff, and its musket of the citizen soldier, if magistrates will but use them. The Law should never yield to any violence, whatever those who offer it consider to be their provocation. But the intelligent magistrate, who, as in a city like this, or elsewhere, devotes his days and nights to the not easy administration of your public peace, will tell you, reader, that every measure of legislation, which conciliates the people towards each other ; that every public act, which recognises and builds upon the good faith of any sect or section ; that every public acknowledgment of forbearance, and public spirit, and Christian principle, which may be exhibited by any portion of society — that each and all of these

things are greater auxiliaries to his responsible and important task, than all the staves or muskets you could place in his hands. The public peace, defended by a good citizen soldiery, I believe to be safe ; for a militia is capable of admirable adaptation to the purpose. But it is far better that it should be defended by public magnanimity, justice, mutual forbearance, and mutual recognition of what is virtuous and elevated in the conduct of individuals.

