

1842

Documents relating to the Ursuline Convent in Charlestown

George T. Curtis

Theodore Lyman

Charles G. Loring

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DOCUMENTS

Geo T. Curtis

(*See last page*)
RELATING TO THE

URSULINE CONVENT

IN

CHARLESTOWN.

BOSTON:

REPRINTED BY SAMUEL N. DICKINSON.

1842.

Charlotte Callahan

DOCUMENTS

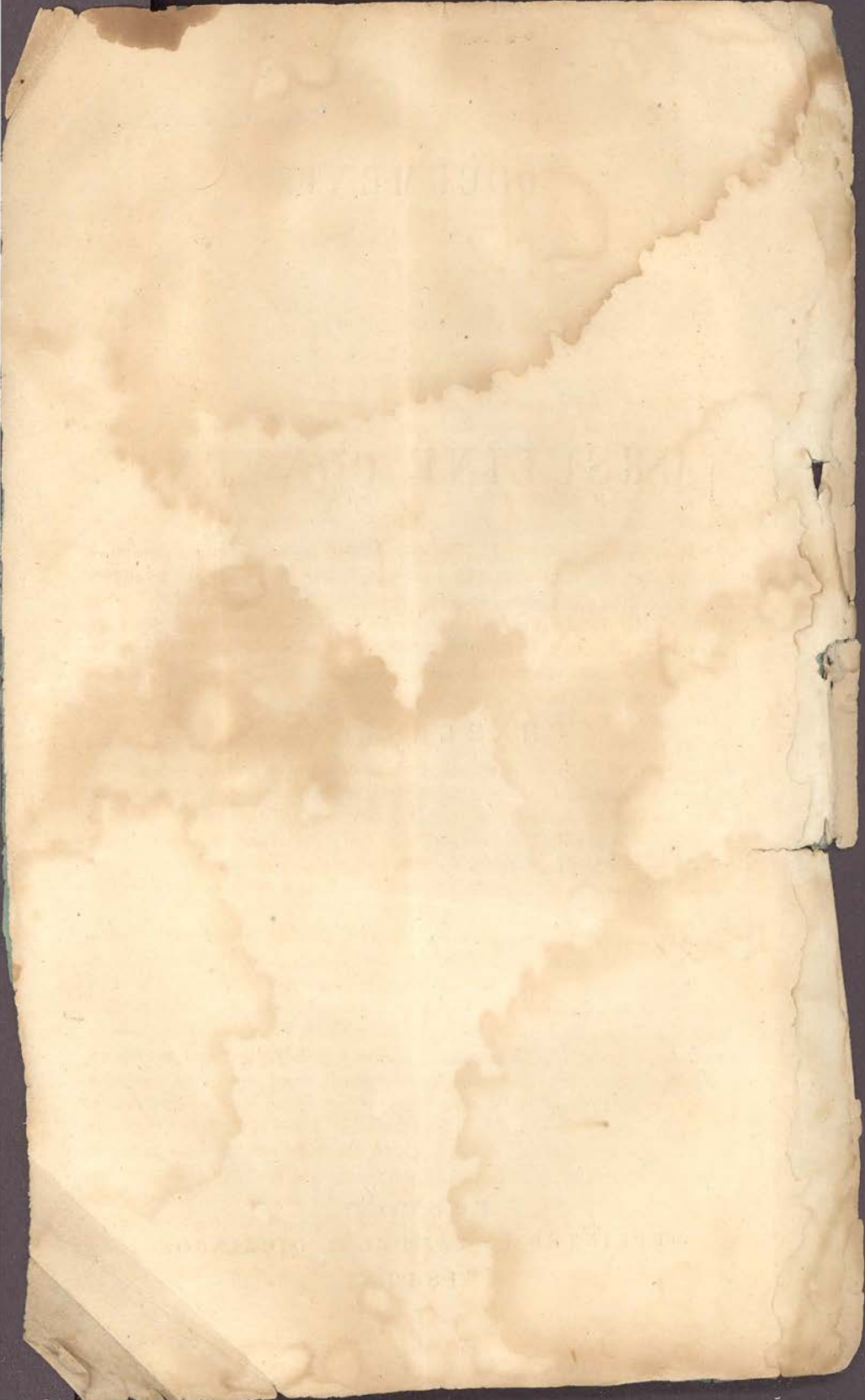
RELATING TO THE

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PREFACE.

THE relation of the owners of the Ursuline Convent to the commonwealth of Massachusetts is a subject which may well occupy the public attention. It involves a great principle of public justice, and the facts of the case present one of the gravest questions that can engage the attention of a free people, or awaken the inquiries and stimulate the exertions of individuals. If, in the pauses of political agitation, leisure and attention can be found for the calm, dispassionate consideration of what concerns our highest honor, our good name, our abiding interests as a people whose government is founded and should be administered in justice, this, among other objects, may claim our care. Fortunately, it is the sole blemish on the honor of the country, for which we of Massachusetts are in any wise peculiarly responsible, or over which we have exclusive jurisdiction; and it is consolatory to reflect, that, when this question shall have been met upon its merits, and disposed of according to its merits, if no untoward accident shall befall our public affairs, Massachusetts will stand before the world not merely as a model republic, but as a state, in which individual rights rest on the imperishable foundations of both the power and the disposition to be just.

It is not proposed here to argue the merits of the question between the owners of the convent and the commonwealth of Massachusetts, but merely to state it. It will be convenient, however, to state first what the question is not. It is not a question in the smallest degree analogous to the application of a college or other literary institution for aid from the state; and therefore it is not to be answered by those arguments which are commonly deemed a sufficient response to such applications. These owners ask for no encouragement, or aid, and no one asks aid or encouragement for them. They, being citizens of the commonwealth, were possessed of certain property; they paid upon it all the taxes assessed by the laws; their right to its possession, enjoyment, use and absolute dominion, was the same as that of every other citizen to his property, a right without which civil society does not and cannot exist. This property was torn from them and struck out of existence. In any question, therefore, as to whether this property ought to be replaced by the state, a question grounded on an alleged omission of public duty, there is not the most remote analogy to the case of an institution or individual asking a gift of pro-

perty entirely anew, or to replace what has been destroyed by accident. To liken the two cases would be as correct as it would be to find a resemblance between a claim for damages and an asking for alms.

What then is the question? It is: whether, by force of the social compact, there exists a duty on the part of the body politic to protect the property of its citizens; and, if that duty exists, whether it does not—in a case where protection has failed in the manner and degree and under the circumstances peculiar to this case—draw after it a solemn public duty to make reparation of what has been destroyed? In other words, the question is, granting the duty of protection, whether that duty does not involve the duty of indemnification, in a case of public violence, breaking forth in unrestrained fury upon the citizen, sweeping his property out of existence, and leaving him without a shadow of redress, either against the local community where the outrage occurs, or against those who permitted it to be done.

In order rightly to consider this question, the people of the commonwealth ought to be possessed of the facts of the case. In order to consider it fairly and without prejudice, and to feel kindly and impartially towards those immediately interested, the people should know that impressions once industriously spread abroad, affecting the purity of the institution, are wholly false; and that a great, undeserved and cruel wrong—far exceeding the work of the mob itself—has been done to the good name of individuals and the honor of a sect, by such impressions. In order to consider the question intelligently and in its true legal and moral bearings, the people should have before them the existing state of their own laws at the time of this outrage, the state of the laws at the present day, and some discussion of the legal doctrine applicable to the subject. For the purpose of meeting these wants, the following documents are now re-published.

This republication is not made at the instance or by the funds of Roman Catholics. Up to the time when this pamphlet will issue from the press, there is not a single Roman Catholic, in this city or elsewhere, who is aware that it is about to be published. Indeed, that sect of our fellow citizens, for eight years, have maintained a dignified, but sorrowful reserve, upon this subject. They are not connected with, or responsible for any present movement. The wound inflicted on them is too deep, and their self respect is too great, for them to be active promoters of any measure of justice. They may and do grieve that the commonwealth should be so tardy in its action in this behalf, or that those who guide its councils should bestow no thought upon their wrongs; but they are as silent as they are grieved, pondering many things in their hearts.

This is as it should be. If ever this act of mingled grace and justice, of sound policy and clear duty is to be performed; if ever the chaplet, to be won from the admission of a principle by a lofty public virtue, is to be wreathed round the pillars that uphold the state; it is to be done by the spontaneous movement of the Protestant people of this commonwealth, in kind, large and elevated feeling towards their Catholic brethren.

It is proper also to say, that no political party is connected with or responsible for this republication. This too is right and fortunate. The means of republishing these documents have been furnished by benevolent and public spirited

Protestant citizens of all parties, who have no object to gain thereby, other than the interests of truth, justice, mercy and the public honor.

The first of the documents contained in this pamphlet, consists of a report made by a committee of the citizens of Boston, after an investigation of three weeks, commencing on the day after the riot. It contains all the facts attending the outrage, and all the facts necessary to place in the clearest light the moral character of the institution. It is quite improbable that such a committee, embracing eminent lawyers accustomed to the scrutiny of evidence, and men of other pursuits of the highest intelligence, accustomed to the weighing of testimony, after examining more than a hundred and forty witnesses, should have been deceived in any essential fact. It is equally impossible that such men should have placed their signatures to a publication intended to mislead the public. That it has not at this day been found to have done all its work of vindication, is owing to the fact of its limited circulation. The report was never successfully contradicted, in any material point. Other publications have indeed left their natural effect of prejudices in the public mind. But the day has come when these prejudices ought to be dispelled. It concerns the honor and the intelligence of the people of Massachusetts, that they do not suffer a continued injustice to be visited upon persons as innocent of wrong and as worthy of the blessings of free institutions as themselves.

The other document contained in this pamphlet, is a report made to the House of Representatives, at the winter session of 1842. It was never acted upon, having been purposely allowed by the chairman who made it, to remain upon the table for future consideration.

Boston, November 1st, 1842.

BURNING OF THE URSULINE CONVENT.

At a public meeting of the citizens of Boston, held at Faneuil Hall, on the 12th day of August, 1834, the following Resolutions were unanimously adopted.

Resolved, That in the opinion of the citizens of Boston, the late attack on the Ursuline Convent in Charlestown, occupied only by defenceless females, was a base and cowardly act, for which the perpetrators deserve the contempt and detestation of the community.

Resolved, That the destruction of property and danger of life caused thereby, calls loudly on all good citizens to express individually and collectively, the abhorrence they feel of this high-handed violation of the laws.

Resolved, That we, the Protestant citizens of Boston, do pledge ourselves, collectively and individually, to unite with our Catholic brethren in protecting their persons, their property, and their civil and religious rights.

Resolved, That the Mayor and Aldermen be requested to take all measures, consistent with law, to carry the foregoing resolution into effect, and as citizens, we tender our personal services to support the laws under the direction of the city authorities.

Resolved, That the Mayor be requested to nominate a committee from the citizens at large, to investigate the proceedings of the last night, and to adopt every suitable mode of bringing the authors and abettors of this outrage to justice.

The following committee was nominated by the Mayor:

H. G. Otis, John D. Williams, James T. Austin, Henry Lee, James Clark, Cyrus Alger, John Henshaw, Francis J. Oliver, Mark Healy, Charles G. Loring, C. G. Greene, Isaac Harris, Thomas H. Perkins, John Rayner, Henry Gassett, Daniel D. Brodhead, Noah Brooks, H. F. Baker, Z. Cook, Jr., George Darracott, Samuel Hubbard, Henry Farnam, Benjamin F. Hallett, John K. Simpson, John Cotton, Benjamin Rich, William Sturgis, Charles P. Curtis.

On motion of Mr. George Bond, the committee of twenty-eight were requested to consider the expediency of providing funds to repair the damage done to the Convent, &c.

On motion of John C. Park, Esq., it was

Resolved, That the Mayor be authorized and requested to offer a very liberal reward to any individual who, in case of further excesses, will arrest and bring to punishment a leader in such outrages.

THEODORE LYMAN, Jr., *Chairman.*

ZEBEDEE COOK, Jr., *Secretary.*

REPORT

OF THE COMMITTEE, RELATING TO THE DESTRUCTION OF THE
URSULINE CONVENT, AUGUST 11, 1834.

THE Committee appointed at Faneuil Hall, at the meeting on the 12th ult., to investigate the recent outrages in Charlestown, and take measures for bringing the perpetrators to justice, and also to consider the expediency of providing funds to repair the damage done to the Convent, believing that an account of their proceedings and of the results of their inquiries may be acceptable, respectfully

REPORT:

That, upon the second day succeeding that of their appointment, they entered upon the discharge of their duties; and continued in session every day from 9 A. M. to sunset, with the intermission of Sundays and the usual time for dining, until the 27th ult., when the afternoon sittings were dispensed with.

The most active and vigorous measures within the scope of their authority, were adopted to obtain intelligence, and have been persevered in till the present time — sub-committees being frequently despatched to various parts of the city and to the neighboring towns, and messengers constantly employed to obtain the attendance of such persons as were supposed capable of giving useful information.

The number of which the committee was originally composed being insufficient for the discharge of its various and arduous duties, and some of the gentlemen appointed having declined the service, the aid of several others was requested, who have been among the most efficient of its members.

The committee being invested with no power to compel appearance, or take examinations under oath, were careful to notify those who came before them, that their attendance and statements were entirely voluntary; and that no use would be made of the information they might give, unless it should be thought necessary to summon them as witnesses before a magistrate or judicial tribunal.*

* This latter assurance was given to most of the persons who appeared in the committee room, in order to remove the apprehensions entertained by them or some of them, for their personal safety, if it should become known to the rioters or their friends, that they had given information to the committee, inculpatory persons concerned in the riot.—SUB-COMMITTEE.

In this manner more than one hundred and forty persons, and some of them repeatedly, have been examined, and much important information has been procured, which has led to the arrest of several individuals, and constituted important additions to the evidence upon which other arrests have been made; and, it is hoped, will lead to further disclosures. But it is obvious that any statement of the testimony would, at this time, be improper.

The whole number of arrests and commitments made by the efforts of the Charlestown committee and magistrates, and of this committee, is thirteen; of which, eight are upon charges of a capital nature.

It appeared immediately upon commencing the investigation, that the destruction of the convent might be attributed primarily to a widely extended popular aversion, founded in the belief, that the establishment was obnoxious to those imputations of cruelty, vice, and corruption, so generally credited of similar establishments in other countries, and was inconsistent with the principles of our national institutions, and in violation of the laws of the commonwealth; and which aversion in the minds of many, had been fomented to hatred, by representations injurious to the moral reputation of the members of that community, attributing to them impurity of conduct, and excessive cruelties in their treatment of each other, and of the pupils; and denunciatory of the institution, as hostile, in its character and influences, alike to the laws of God and man: and also by reports that one of the sisterhood, Mrs. Mary John, formerly Miss Elizabeth Harrison, after having fled from the convent to escape its persecutions, and then been induced by the influence or threats of Bishop Fenwick to return, had been put to death, or secretly imprisoned, or removed; so that her friends could neither see nor obtain information concerning her. These assertions and reports were not only prevalent in this city and its vicinity, but, the committee have reason to believe, pervaded many distant parts of the commonwealth, and have extended into other states; affording a monitory lesson of the extent and excitability of public credulity, when in accordance with popular prejudice.

It was doubtless under the influence of these feelings and impressions, that some of the conspirators were led to design the destruction of the convent, and to avail themselves of the aid of those miscreants, who, actuated by the love of violence, or the hope of plunder, were the foremost in the perpetration of the outrage.

The committee, therefore, considered it an important part of their duty, to make faithful inquiry into the character of the institution, and into the truth of the assertions and reports of such fatal influence: believing that authentic information upon these subjects was demanded in justice to the sufferers and the public; and might be instrumental in leading to the detection of those who had instigated or aided in the commission of the crime; and who, it is feared, are still, in great measure, sheltered by the prevalence of the impressions above referred to.

The committee are not influenced in communicating the result of this inquiry, by any impression that the truth of the imputations, if

established, would have constituted any *justification of the wrong*; being entirely of opinion, that whatever might have been the character of the institution, or the deportment of its members, they could give no sanction to this *high-handed violation of the law*. Still less can it be supposed that they have any disposition to aid in the dissemination of the Catholic faith, being *unanimously* opposed to its characteristic tenets.

But having discovered the existence of the prepossessions so generally prevalent, and perceiving how much they affected the disposition of those called to give testimony, and how often they were referred to as a palliation of the offence, they have felt imperatively bound by a regard for truth, by a just appreciation as they hope of the candor of their fellow citizens, and also by a sense of justice to the injured, to make known the conclusions, to which the evidence before them has irresistibly led. And in doing this, they are careful to make no statements but those of which they consider themselves to have evidence amply sufficient to sustain them, were they in question before a judicial tribunal.

The institution at Charlestown was of the Ursuline Order, which was first established in the year 1536, for the purposes of administering relief to the sick and the afflicted, and of superintending the education of female youth; and so exemplary had been the character and deportment of this order of nuns, and so extensively beneficial were their services in the cause of education and Christian charity, that, when other convents were abolished by many governments in Europe, these alone were not only permitted, but encouraged to remain.

Unlike the other order of convents, into which the members repaired for the avowed purposes of religious seclusion from the pleasures and duties of the world, and in which corruptions and abuses might be supposed to exist beyond the reach of human detection, the members of this religious community, by the necessity of their order and by their vows, devote themselves to those services in the cause of humanity, which render them at all times subjects of public observation; and expose their personal deportment, as well as the character of their institution, to the strictest scrutiny.

However just, therefore, might be the popular odium against an institution which secluded its members from the occupations and enjoyments of life, cutting them off from the sympathies of society, and dooming them to an irrevocable concealment, into which the eye of friendship and affection could never penetrate, and where suffering might be without remedy, and crime without punishment, there can be no rational pretence for similar feelings towards an institution, whose members were openly engaged in the most useful and elevated offices of humanity in the presence of the world; who had it in their power to leave the institution at their pleasure; and whose dwelling was filled with those who were not members of their community, and accessible at proper times to the parents and friends of its numerous inmates.

The institution in question was founded in the year 1820, by Doctors Maignon and Cheverus, whose names will be, in this com-

munity, a sufficient guarantee of its purity and Christian character, with funds, given by a native citizen of Boston. By their invitation, four ladies of the Ursuline Order, emigrated to this country in the year 1820, and established themselves at first in this city. They afterwards, in the year 1826, removed to Charlestown, and occupied the farm house at the foot of Mount Benedict until the main building on its summit was finished in the year 1827. In the meantime the reputation of their seminary was widely extended, and the number of pupils from all the New England, and from many of the southern states, and the British provinces, rapidly increased; so that in the year 1829, it was found necessary to add two large wings to the building for their accommodation.

The number of nuns has varied at different times from four to ten, each of whom performed a distinct part in the care of the establishment, or the education of the children. For admission as a member of this community, the candidate, after a preliminary period of probation, enters upon a noviciate for two years by taking the white veil, in order to give her ample time, after full experience of the discipline, duties and principles of the institution, to determine whether they are such as she shall be solicitous to enter upon for life. During this period no restraints by religious vows or otherwise are imposed to prevent her secession from the establishment, and the committee have plenary evidence from those who have thus seceded, of their freedom in this respect.

Upon receiving the black veil, the religious vow is taken of devotion to the institution for life; but even then no forcible means could be exercised to detain any one, who might choose to return to the world; and their legal right to do so, is perfectly well understood by every member of that community.

No penances or punishments are ever forcibly enforced or inflicted; they are not only always voluntary, but can never even thus take place, but by permission of the head of the order, which is not granted unless the applicant be in good health.

The committee do not mean to be understood, as believing, that there may not be a mental subjection, not less effectual upon the individuals concerned than one created by external force; but they consider this a matter of religious faith, resting entirely between themselves and the only Being to whom they are accountable; and one which neither renders them amenable to public law, nor in any degree justly obnoxious to popular odium.

Some of those, who after entering upon their noviciate seceded from the convent, still retain the warmest affection for its members, and bear willing testimony to their unvaried kindness and the purity and excellence of their deportment.

The number of pupils has varied from forty to sixty, during each of the past five years, being for the most part children of those among the most reputable families in the country of various religious denominations, (the number of *Catholics* never exceeding ten at any one time,) and wholly unrestrained in their communications with their friends concerning all that transpired in the seminary.

No means were taken to influence or affect their religious opinions; their attendance upon the services in the chapel was voluntary, never exacted. The only religious services forming a part of the system, were morning and evening prayers, common to all christians, and discourses by the Bishop, on Sundays, upon the practical truths and religious duties which are peculiar to no sect. *Nor can it be ascertained that any pupil placed under their charge for the purposes of education, has been converted from any other to the Catholic faith, or induced to become a member of the community.**

Of these facts, and of the truly maternal kindness with which the children were uniformly treated, and of their filial affection to the ladies of the establishment, and of the entire confidence and respect to which they are entitled, the committee have the fullest assurances both from children and parents. Nor can it be believed that, if undue severity had been exercised upon the pupils; or harshness, or cruelty had been inflicted upon any member of the community; or if any thing inconsistent with purity of deportment had existed, it could have escaped the scrutinizing observation of so many inquisitive and active minds; or could fail to be communicated to their friends; and still less can it be believed, that upon a disclosure of this sort, a father or mother could be found who would suffer a daughter to remain under their roof.

In pursuing their inquiries into the truth of the injurious representations and reports above referred to, members of the committee have had an interview with the young lady upon whose authority they were generally supposed to rest. She entirely disclaimed most of those passing under the sanction of her name, *and particularly all affecting the moral purity of the members of the institution, or the ill treatment of the pupils under their care.*

As to the reports in relation to the supposed murder or secretion of Miss Harrison, it is only necessary for the committee to recapitulate the facts already before the public, with the further assurance that the relation *has been personally confirmed by her to some of them, who were well acquainted with her before the destruction of the convent, and have repeatedly seen and conversed with her since.*

This female, a native of Philadelphia, entered upon her noviciate in the institution in the year 1822, and became a member, in full communion, in the year 1824, after knowledge and experience of the principles and rules of it, and of the manners and dispositions of its members. She has one brother and a brother-in-law living in this city, with whom she has constant intercourse, and who have been accustomed to visit her at the convent at pleasure.

* It is some proof of the estimation in which this School was held by the Protestant community, that of forty-five pupils only four were Roman Catholics. The pupils resident at the Institution at the time it was destroyed were from Boston, Cambridge, Charlestown, Watertown, Gloucester, Brighton, Milton, and Brookline, in this State; from Bath, Maine; Quebec, Canada; Savannah, Ga.; New Orleans, La.; and Porto Rico, South America. Among them were daughters of Samuel K. Williams, and Hall J. How, Esquires, of Boston; of the Hon. S. P. P. Fay, of Cambridge, Judge of Probate of the County of Middlesex; of the Hon. Levi Thaxter, of Watertown; of the late John Parkman, Esq., of Brighton; of the late Alphonso Mason, and grand daughters of John Mason, Esq., of Gloucester; and of the Lamar family, of Georgia: and of many other families of the highest respectability, whose religious opinions are as firmly opposed to the tenets of Catholicism as those of any person in the community. The testimony of the Committee shows conclusively that their confidence in the conductors of the School was fully justified.

She is the teacher of music in the seminary, and for some time before the 28th day of July, had been engaged in giving fourteen lessons per day, of at least forty-five minutes each, and by the confinement and exertion of these arduous efforts, had impaired her health, and was suffering under a nervous excitement or fever, which, on that day, increased to a delirium; under the influence of which, unconsciously to herself, she left the house and proceeded to that of Mr. Edward Cutter, in the immediate neighborhood, whence, at her request, she was carried to the residence of Mr. Cotting, in West Cambridge.

On the morning after her departure, her brother, Mr. Thomas Harrison of this city, went to her, and found her surprised at the step she had taken. At her request he accompanied Bishop Fenwick there in the afternoon, and she gladly returned with them to the convent; where she was welcomed by her anxious friends, and remained until the night of the outrage, receiving from them every kindness and attention which her situation required.

The story of her flight and of her alleged forcible return, and subsequent death or removal, had, however, obtained such currency and was so generally believed in Charlestown and the neighboring towns, that the selectmen of that place considered it their duty to investigate the affair; and upon application to the Superior, a time of their own appointment was fixed by the Board to visit the convent. Accordingly on the 11th August, at 3 P. M., they repaired there in a body, and were received by Miss Harrison, the nun who was supposed to be murdered or secreted, and were, by her alone, conducted throughout the establishment, into every room and closet, from the cellar to the cupola, inclusive, and were answered every inquiry which they saw fit to make.

The result of this examination was their entire satisfaction "that every thing was right," and they proceeded from the building to the house of one of their number in the neighborhood, to prepare a certificate to that effect, to be published in the papers of the following day.

The committee have been unable to find any report in circulation injurious to the reputation of the members of the community, which may not be traced to one of the above sources, or which has any other apparent foundation.

And having thus given to the public an authentic statement of all the facts affecting the character and reputation of the institution and its members, so far as they have come to their knowledge, and of which they have abundant proof, the committee have acquitted themselves of this part of their duty and leave to their fellow citizens the question, whether this institution was in any degree obnoxious to the fatal imputations so generally circulated and believed, or to the public odium so unfortunately prevalent.

For some time previous to the 11th day of August, the excitement of the public mind had become so great in Charlestown, that the destruction of the convent was the subject of frequent threats and conversation, and on the preceding day inflammatory hand-bills had been posted.

There can be no doubt that a conspiracy had been formed, extending into many of the neighboring towns; but the committee are of opinion that it embraced very few of respectable character in society; though some such may perhaps be accounted guilty of an offence, no less heinous, *morally considered*, in having excited the feelings which led to the design, or countenanced and instigated those engaged in its execution. And there is reason to believe, that those who had determined on the destruction of the building, were induced to an earlier accomplishment of their purpose than was originally intended, by a publication in the Mercantile Journal headed "Mysterious;" (afterwards copied into other papers,) which, it appears, was inserted by the news-gatherer of that journal, without other authority than the idle gossip then prevalent in Charlestown, (the falsehood of which might have been ascertained at any time by a walk of a few minutes from the office to the proper place of inquiry :) and also by a knowledge that the selectmen had made their investigation, and the apprehension that a publication of its result might, by allaying the principal cause of the excitement, prevent its execution.

Soon after sunset several persons were seen at the gate of the avenue leading from the road to the convent, and on being inquired of concerning the reason of being there, gave evasive and impertinent answers; but there was nothing in their language or numbers which led to the belief that a serious riot was to be apprehended. Immediate information, however, was given of the fact to one or more of the selectmen, and assurances were made in reply that no danger could possibly be anticipated.

Soon after 9 o'clock, the rioters began to assemble in considerable numbers, arriving on foot and in wagons from different quarters; and a party of about forty or fifty proceeded to the front of the building, using violent and threatening language. They were addressed by the lady at the head of the establishment, who, desiring to know their wishes, was replied to that they wanted to enter and see the person alleged to be secreted. She answered, that their selectmen had that day visited the house, and could give them satisfactory information, and that any of them on calling the next day at a suitable hour, might see for themselves; at the same time remonstrating against such violation of the peace and of the repose of so many children of their most reputable citizens.

Shortly afterwards, the same, or another party, with increased numbers, approached the convent, using still more threatening and much gross and indecent language. The lady above referred to again addressed them in terms of remonstrance and reproach, and desired to know whether none of their selectmen were present. Some of them replied that one was there, mentioning his name. He then came forward and announced his presence, stating that he was there for the purpose of defending her. She inquired whether he had procured the attendance of any others of the Board; and upon being answered in the negative, replied that she would not trust the establishment to his protection, and that if he came there to protect them, he should show it by taking measures to disperse the mob.

It appears from various testimony that he did attempt to dissuade the rioters from their design, by assurances that the selectmen had seen the nun who was supposed to have been secreted, and that the stories reported concerning her were untrue. But his assertions drew forth only expressions of distrust and insult. The mob continued upon the ground with much noise and tumult, and were in that state left by this magistrate, who returned home and retired to bed.

At about eleven o'clock, a bonfire was kindled on the land of Alvah Kelly, adjoining that of the eastern boundary of the convent, and distant about two hundred and seventy yards from the building, the fences of which were taken for the purpose. This is believed to have been a concerted signal for the assembling of all concerned in the plot.

The bells were then rung as for an alarm of fire, in Charlestown and in this city, and great multitudes arrived from all quarters. Upon this alarm, the magistrate above mentioned arose and proceeded to procure the attendance of others of the selectmen. In the mean time the Charlestown engines and some from Boston had arrived, one of the latter of which, passing those of Charlestown, which had halted opposite the bonfire, immediately proceeded into the avenue leading to the convent, where her arrival was greeted with a shout from some of the rioters upon the hill and among the shrubbery, many of whom seizing hold of the rope, proceeded with her up the avenue, around the circular walk to the front of the building, when the attack was instantly commenced by the breaking of fences, and the hurling of stones and clubs against the windows and doors. Upon this, the engine, by the order of its commander, was immediately carried down into the road and stationed opposite the gate, where it remained during the night.*

At the time of this attack upon the convent, there were within its walls, about sixty female children and ten adults; one of whom was in the last stages of pulmonary consumption, another suffering under convulsion fits, and the unhappy female, who had been the immediate cause of the excitement, was by the agitations of the night in raving delirium.

No warning was given of the intended assault, nor could the miscreants, by whom it was made, have known whether their missiles might not kill or wound the helpless inmates of this devoted dwelling. Fortunately for them, cowardice prompted what mercy and manhood denied: after the first attack, the assailants paused awhile from the fear that some secret force was concealed in the convent or in ambush to surprise them; and in this interval the governess was enabled to secure the retreat of her little flock and terrified sisters into the garden. But before this was fully effected, the rioters, finding they had nothing but women and children to contend against, regained their courage, and ere all the inmates could escape, entered the building.

It appears that during these proceedings, the magistrate above

* Most of the members of this company have been before the committee, and deny any previous knowledge of a design to destroy the convent, or any participation in the riot; and it has been stated in the public prints, that the examining magistrates of Charlestown expressed their opinion that this company stood fully acquitted of all concern in it.

referred to, with another of the selectmen, had arrived and entered the convent with the rioters, for the purpose, as they state, of assisting its inmates. The mob had now full possession of the house, and loud cries were heard for torches or lights. One of the magistrates in question availed himself of this cry to deter the rioters from firing the building, by stating, that if lights were brought they might be detected.

Three or four torches which were, or precisely resembled engine torches, were then brought up from the road; and immediately upon their arrival, the rioters proceeded into every room in the building, rifling every drawer, desk and trunk which they found, and breaking up and destroying all the furniture, and casting much of it from the windows; sacrificing in their brutal fury, costly piano fortes and harps, and other valuable instruments; the little treasures of the children, abandoned in their hasty flight; and even the vessels and symbols of christian worship.

After having thus ransacked every room in the building, they proceeded with great deliberation, about one o'clock, to make preparation for setting fire to it. For this purpose, broken furniture, books, curtains and other combustible materials, were placed in the centre of several of the rooms; and, as if in mockery of God as well as of man, the Bible was cast, with shouts of exultation, upon the pile first kindled; and as upon this were subsequently thrown the vestments used in religious service, and the ornaments of the altar, these shouts and yells were repeated. Nor did they cease until the Cross was wrenched from its place, and cast into the flames, as the final triumph of this fiend-like enterprise.

But the work of destruction did not end here. Soon after the convent was in flames, the rioters passed to the library, or bishop's lodge, which stood near, and after throwing the books and pictures from the windows, a prey to those without, fired that also.

Some time afterwards they proceeded to the farm-house, formerly occupied as the convent, and first making a similar assault with stones and clubs upon the doors and windows, in order to ascertain whether they had any thing to fear from persons within, the torches were deliberately applied to that building; and, unwilling to leave one object connected with the establishment to escape their fury, although the day had broken, and three buildings were then in flames or reduced to ashes, the extensive barn, with its contents, was in like manner devoted to destruction. And not content with all this, they burst open the tomb of the establishment, rifled it of the sacred vessels there deposited, wrested the plates from the coffins, and exposed to view the mouldering remains of their tenants.

Nor is it the least humiliating feature in this scene of cowardly and audacious violation of all that man ought to hold sacred and dear, that it was perpetrated in the presence of men vested with authority, and of multitudes of our fellow citizens, while not one arm was lifted in the defence of helpless women and children, or in vindication of the violated laws of God and man. The spirit of violence, sacrilege, and plunder, reigned triumphant. Crime alone seemed to confer

courage; while humanity, manhood, and patriotism, quailed, or stood irresolute and confounded in its presence.

The committee are satisfied upon evidence before them, of what it would indeed be injustice to many of their fellow citizens to doubt, that great numbers of those present were indignant spectators of these scenes, and would gladly have aided in the defence of the convent and arrest of the rioters, had any attempt been made by either of the magistrates or engineers of the fire department of Charlestown, who were present, or by an engine company, or any person having, or assuming to have, authority to rally them for that purpose. But no voice of authority was heard, and no remonstrance, but that of timidity, in effect giving courage to the assailants.

Nor has any other satisfactory account been suggested, why the mob was not arrested in its career, by the great multitudes by which it was surrounded, than the supposition that, from the omission of magisterial interference, doubt and mistrust existed, whether the work were not so sanctioned by popular opinion, or the connivance of those in authority, that resistance would be hopeless.

The fact that the dwelling of inoffensive females and children, guiltless of wrong to the persons, property, or reputation of others, and reposing in fancied security under the protection of the law, has been thus assaulted by a riotous mob, and ransacked, plundered, and burnt to the ground, and its terrified inmates, in the dead hour of night, driven from their beds into the fields; and that this should be done within the limits of one of the most populous towns of the commonwealth, and in the midst of an assembled multitude of spectators; that the perpetrators should have been engaged for *seven* hours or more in the work of destruction, with hardly an effort to prevent or arrest them; that many of them should afterwards be so far sheltered or protected by public sympathy or opinion, as to render the ordinary means of detection ineffectual; and that the sufferers are entitled to no legal redress from the public, for this outrage against their persons and destruction of their property, is an event of fearful import as well as of the profoundest shame and humiliation.

It has come upon us like the shock of the earthquake, and has disclosed a state of society and public sentiment of which we believe no man was before aware.

If for the purpose of destroying a person, or family, or institution, it be only necessary to excite a public prejudice, by the dissemination of falsehoods and criminal accusations, and under its sanction to array a mob; and there be neither an efficient magistracy nor a sense of public duty or justice sufficient for its prevention, and if property may be thus sacrificed without the possibility of redress, who among us is safe?

The cry may be of bigotry to-day, and heresy to-morrow; of public usurpation at one time, and private oppression at another; or any other of those methods by which the ignorant, the factious, and the desperate, may be excited; and the victim may be sacrificed without protection or relief.

It is hoped that the fearful warning thus suddenly given, enforced as

it is by similar occurrences in other states, will arrest the public attention; check the prevailing disposition to give credence to injurious and calumnious reports; will produce throughout the country a higher sense of the qualifications requisite for magisterial office; and lead to amendments and improvements of our laws, which are thus found so sadly defective.

And above all, may it rebuke the spirit of intolerance thus unexpectedly developed, so fatal to the genius of our institutions, and unrestrained, so fatal to their continuance. If there be one feeling which more than any other should pervade this country, composing, as it were, the atmosphere of social life, it is that of enlightened toleration, comprehending all within the sphere of its benevolence, and extending over all the shield of mutual protection.

The committee trust that they shall not be thought to exceed the bounds of propriety, by adopting this as a fitting occasion for the suggestion of those amendments of the law, the necessity of which is made particularly obvious by this unhappy event.

The first which they submit, is forced upon their consideration by the difficulties they have encountered in their efforts to accomplish the purposes of their appointment; having no official power to compel the attendance of witnesses, or examination under oath, or take any other requisite measures for the satisfactory investigation of the guilt of persons supposed to be implicated; but against whom sufficient evidence, without these means, cannot be procured.

The only cases, excepting when the grand jury is actually in session, in which, under the existing laws, these measures can be resorted to, is where a complaint and arrest have been made; and, as this complaint must be the unofficial act of an individual, and being necessarily public, often exposes him to great odium, and, in many cases, to personal danger, it is rarely ventured upon in opposition to public opinion or prejudice; and seldom in any case, excepting where the evidence is in the first instance conclusive, or the party implicated is too humble to be accounted a dangerous enemy.

If, on the other hand, a bench of magistrates were empowered in similar cases, to compel the appearance of witnesses, and conduct their examinations under the authority of law, it is obvious that the means of detecting those concerned in the commission of crime, would be far more certain and efficacious; and those guilty of its inception and instigation, would often be brought to that punishment, which now generally falls upon the humbler instruments of their villany.

This power might be vested in the judges of the court of common pleas, and such of the justices of the peace in each county as might be selected for that purpose, and thus be deposited in hands free from danger and abuse. A similar one exists in England, vested in magistrates designated for that purpose; and it is not known that it has ever been perverted to the purposes of oppression, though often instrumental in detecting criminals, who might otherwise have escaped with impunity.

The second improvement which the committee venture to suggest is the enactment of a law, rendering magistrates indictable, when-

ever guilty of an omission to discharge their duty, in the prevention of outrage or crime.

If rulers are the servants of the people, it ought to be understood that as such they are accountable for the *neglect* as well as the *abuse* of their powers; that the authority with which they are vested must be exercised and shall be obeyed. And if men with no higher sense of duty than accountability to the party by whom they may have been elected, and no more honorable fear than that of the loss of office, shall be placed in authority over us, they, the security of whose persons and property may depend upon their fidelity, should at least have the power of holding them to legal responsibility.

A further, and perhaps still more salutary addition to our subsisting laws, would be a provision that in cases of destruction of life or property occasioned by riot or tumult, the public shall be responsible to indemnify the sufferers to the whole extent of their pecuniary loss; restoring the value of the property destroyed, and making suitable provision for all, whose means of support shall be lost or impaired by the personal injury of themselves, or of those upon whom they may be dependant.

A provision of this sort seems called for by the first principles of justice and civil government.

The basis of every political community is the surrender of the right of personal defence, and the contribution of individual property, that each may enjoy the mutual protection of all.

It is a direct contract between each individual and society at large, in which the latter receives a full equivalent for the guarantee to the former of security of life, liberty and property. It is therefore the duty of the community to provide and exercise the means necessary for affording such protection; and whenever such means do not exist, or the servants intrusted with them are faithless to their duty, the contract is broken, and the sufferers are entitled to redress,

Nor would the expediency of such provision be less obvious than its justice, as the personal interest which every one would feel in this responsibility, would render him vigilant and active in preventing a tumult, the consequences of which might be visited upon himself. At the same time it would influence the people in the election of magistrates, who might be relied on in the hour of difficulty and danger, as competent and fearless in the discharge of their duty.

The opinion so generally prevalent that the sufferers in this instance were legally entitled to such redress against the town of Charlestown, or the county of Middlesex, is a striking proof how well such a provision would accord with that sense of justice, which we hope will ever distinguish this community.

But the provision above suggested would, it is feared, be insufficient for the purpose, without the organization of a more efficient and ready force than can now be called into action; and the committee would suggest the expediency of legal provision therefor.

It is probable indeed that the mere knowledge of the existence of such organization would often of itself suffice to prevent riot and tumult.

Legislative enactments, however, can avail but little, unless a check be given to the tendency now pervading all parts of the country to refer every question to *popular will*, instead of *public law*.

In Europe, the staff of the police officer is backed by the sabre of the dragoon or the musket of the gens d'arme; but in our favored land, there is no *immediate* force but the posse comitatus, nor *ultimate* authority but the judicial tribunal: the one wholly, the other essentially, an appeal to the people.

If it be true of other countries that all power rests in public opinion, it is in ours alone that this principle is fully understood and acted upon. *Our only security, therefore, is an enlightened obedience to law; to be enforced by all in conversation and example, as the highest duty of patriotism; for upon this, and this alone, depends the safety of our political freedom.*

If the time shall arrive when popular will shall take place of law, whether this be by riots and tumults, or under the form of judicial proceedings, the grave of our nation's happiness and glory will have been prepared. Life, liberty, and property, will be held at the will of malignity, prejudice, and passion; violence will become the common means of self defence; and our only refuge from the horrors of anarchy, will be under the comparatively peaceable shelter of military despotism.

The remaining subject submitted to the consideration of the committee was the expediency of raising funds for the purpose of indemnifying the sufferers.

They are of opinion that the plainest principles of equity require remuneration to be made; but are at the same time impressed with the conviction, that a donation, derived from private contribution, does not so well comport with public justice, and would not constitute so entire and expressive a vindication of the majesty of the law, as would a compensation proceeding from the government.

By the *theory* of our institutions, the magistrates of Charlestown or of the county of Middlesex are vested with authority, and have under their control a force sufficient for the prevention or suppression of popular riots and tumults. And if the fact corresponded with the theory, that town or county would be justly responsible to make good the pecuniary loss occasioned by this outrage.

But if that authority is insufficient for such emergencies, and that force is defective in strength or organization, so that it cannot be brought to act with promptness and energy, then the fault rests with the whole community, and upon them should fall the burden of indemnity.

The committee cannot forbear expressing the hope that a public outrage committed in such open and audacious defiance of the law, inflicting so deep a wound upon the reputation of the commonwealth and through her upon the hitherto fair fame of New England, will receive the early attention of the legislature; and that a committee will be appointed with full power to investigate the character of this institution and the conduct of its members, and to take measures for the further detection of those implicated in its destruction; and that

a suitable compensation will be provided for the sufferers, so that the same page on which the history of our disgrace shall be recorded, may bear testimony to the promptitude of our justice to the injured.

They lay aside all questions of the expediency of indemnifying the sufferers, *as means of aiding in the support of the Catholic faith.* Of their individual feelings and opinions upon that subject, their fellow citizens can have no doubt; but they look upon the obligations of justice as of higher import and more deeply affecting our welfare as a political community.

It is enough that the property of a portion of our fellow citizens, erected under the sanction of the laws, paying its full proportion of the expenses of government, and admitted on all hands to be entitled to its protection, has been openly and wantonly destroyed through the insufficiency of those laws, or the supineness or timidity of those intrusted with their execution.

If regard is to be had to the religious or political tendency of an institution, in determining whether it be entitled to protection or redress, it might be hard to find one against which the popular cry of superstition or heresy or corruption might not be raised. To resort to such considerations, is the direct substitution of popular will or passion in place of public law and justice. And if this cruel and unprovoked injury, perpetrated in the heart of the commonwealth, be permitted to pass unrepaid, our boasted toleration and love of order, our vaunted obedience to law, and our ostentatious proffers of an asylum to the persecuted of all sects and nations, may well be accounted vain-glorious pretensions, or yet more wretched hypocrisy.

CHARLES G. LORING, *Chairman.*

CHARLES P. CURTIS,
HENRY LEE,
JOHN COTTON,
HORACE MANN,
RICHARD S. FAY,
JOHN D. WILLIAMS,
CYRUS ALGER,
JOHN HENSHAW,
FRANCIS J. OLIVER,
MARK HEALY,
CHARLES G. GREENE,
ISAAC HARRIS,
DANIEL D. BRODHEAD,
HENRY F. BAKER,
Z. COOK, JR.,
HENRY FARNAM,
WILLIAM STURGIS,
BENJAMIN RICH,
WILLIAM HALES,

JOSEPH EVELETH,
CHARLES H. PARKER,
R. C. WINTHROP,
JOHN L. DIMMOCK,
J. L. ENGLISH,
NATHAN APPLETON,
WILLIAM APPLETON,
DAVID CHILD,
SAMUEL K. WILLIAMS,
THEOPHILUS PARSONS,
EDWARD BLAKE,
L. STANWOOD,
THOMAS MOTLEY,
HENRY GASSETT,
JAMES CLARK,
GEORGE DARRACOTT,
JOHN KETTEL,
EDWARD D. SOHIER.

REPORT

MADE TO THE HOUSE OF REPRESENTATIVES, AT THE WINTER
SESSION OF 1842.

COMMONWEALTH OF MASSACHUSETTS.

THE select committee of this House, to whom was referred the petition of George Bradburn, praying the legislature to indemnify the proprietors of the Ursuline Convent in Charlestown, have had the subject under consideration, and

REPORT:

Nearly eight years have now elapsed, since the Ursuline Convent in Charlestown, a seminary devoted to purposes of education, resorted to by the daughters both of our Protestant and Catholic citizens, and inhabited at the time by about fifty children and ten adults, all of them females, was destroyed by a mob in the night, without defence, upon one of the most conspicuous spots on the map of Massachusetts. Deal with this event, and with the claims arising out of it, as we or any future legislators may see fit to do, it is forever engraved upon the history of the commonwealth, as an act of atrocity and barbarity unparalleled in the history of the civilized world. Such it is felt to be in foreign countries—as such it is regarded by our own people; and though the slumbering conscience of that people has not yet been awakened to the act of justice which can alone wipe out the disgrace, no man can assume that the question of that justice is settled. The petition before us is but an illustration of what future years will bring forth. It is the petition of a single individual—speaking from the retirement of a far-off privacy—and praying us to dispose of the great question of public duty involved in this subject. So it will be, hereafter. We may neglect or postpone this topic, as we please; we may turn from its investigation as unpleasant, or inexpedient: we may take the scales from the hands of Justice, and tear off the bandage from her eyes, and permit her to be engrossed with partial views of her great employment: still there will be minds who will not be silenced by neglect or expediency, and who will, from time to time, and from age to age, demand that their high sense of duty and their keen perception of the true honor of the state, shall be felt in the public councils.

In order to state clearly the relations of the commonwealth to this subject, it will be necessary to premise a brief statement of the facts, which we draw from a report made to the House of Representatives in February, 1835, (documents of 1835, No. 37,) and from a report made by a committee of citizens, in August, 1834, to the inhabitants of Boston, after the most thorough investigation ever had upon the subject.

The substance of what took place on the night of the 11th of August, 1834, may for the purposes of the present discussion, be stated to be:—That the building and its contents of furniture, clothes, books, musical instruments and other apparatus of instruction, together with much other valuable property, partly belonging to the proprietors of the establishment, and partly to the children resident there, were destroyed, burnt and pillaged by a mob, in the night, the immediate incitement of whose lawless conduct was an unfounded rumor against the purity of the institution, coupled with religious hatred. That no defence of their property or persons was afforded by this government, or any other power, to these defenceless women and children, and to the proprietors of the estate. That those proprietors were citizens of the commonwealth, their property paying its full proportion of taxes. That no law of the commonwealth then existed, to make the town or particular neighborhood responsible for such injuries, when the local authorities should have failed to prevent them, or to punish magistrates who should grossly neglect their duty in such cases.

We now propose to assert and maintain the following proposition: *That there existed, at the time of the destruction of the Ursuline Convent and of the movable property contained in it, an implied contract between the state and each of the owners thereof, by which the state was bound to insure to such owner the preservation and dominion of his property against such a destruction; and that the failure to do this, creates a claim upon the state, in justice and equity, of the highest nature.*

In any discussion by which this proposition is to be maintained, it will need to be borne in mind, that not only must the sources from which obligations are to be deduced lie far deeper than any written or technical law, but that terms expressing the ideas of contract and obligation must be used in a higher sense than the popular or technical meaning of express stipulation. The sources from which the duties and obligations and implied contracts of a nation, or sovereign community, are to be drawn, are not its statutory, or even its organic laws. These merely declare the means and modes in which the political society from time to time undertakes to discharge its duties and fulfil its obligations. In the written or positive law of what state, for instance, is the duty of preserving and defending itself and its members enacted, or declared, so that it may be said to spring from such enactment or declaration? A state declares by law how it will discharge this duty; it provides by law the means and the mode; but the duty is anterior to all declaration and all provision for its discharge. If the duty is in terms recognized, or declared in the fundamental law by which the form of government is defined, or

in any statutory law, it may be well; but it is no less a duty, if it be not so declared; for it exists and is created by the original compact of civil society, independent of all forms of government, or modes of exercising it. So also the great duty of administering justice, which is only a mode of protecting the members of society against the rapine and injustice of each other, is a duty wholly independent of the forms or means in and by which it is discharged. This duty springs not from the institution of courts, or the adjustment of rights, or titles; it is not created by the science of law. It is anterior to all these things, which are merely machinery and instruments. It is found in the organization of society; by which men have engaged to furnish to each other a mutual defence against violence and the peaceful possession of property.

We may see then, that to ascertain the duties of a state, resulting from its implied contracts, we must not look to its laws, whether written or traditionary. We must look beyond its institutions and its form of government. These, of themselves, in no way determine the obligations and duties of the society, which cannot be changed or diminished, until the end and object of society is found to be, not protection and preservation, but exposure and destruction. Whether I dwell in society under a sovereign prince, or a sovereign people, it is equally the duty of that prince and of that people to protect my body from violence and my property from rapine. This is the very object, politically speaking, for which I am in society at all, and it is what I stipulate to do with and for every other man, who is in society with me.

From these illustrations, it will be obvious that there is a sense in which the terms contract and obligation may and must be used, wholly beyond the meaning of express covenant, or positive agreement or stipulation. But this higher sense of the terms is not only precise and accurate — it is also familiar and frequent. The technical law of the land, which defines and regulates the duties of individuals to each other, is full of instances of contract, wherein the obligation is strictly implied, springing from no express promise or undertaking. The obligation is deduced from natural equity, from the fact that a consideration moves from one party to the other, and from the necessity of presuming a promise without which justice would fail to be done. Upon this basis, the law raises an implied contract, wherever it can take cognizance of the duty incumbent upon the party. It presumes, in all cases where it finds a duty which human laws can enforce, that what a man ought to do he has already promised and undertaken to do. Contracts thus implied are familiar in the daily business of life; and if the principles on which they rest are sound, and if the use of the terms by which they are described is correct, in such cases, they can be no less so in the great mutual relations of society and the individual. Reason, justice, natural equity and the obligations deducible from them, were ordained for the great fundamental relations of man, as well as for his minor affairs.

Having said thus much of the sources from which our reasoning is to be drawn, we proceed to consider the proposition above laid down.

The first branch of that proposition is, in substance, that there existed an implied contract on the part of the state, to protect the owners of this property in its peaceful possession and enjoyment, against such a destruction as that by which it was torn from them.

It is obvious, from what has been already said, that it is from the political capacity of the people of the commonwealth, as a civil society, and from the position of the individual member of that society, that we are to deduce this contract; which, if it exist at all, in any society, exists equally under any and all forms of government, and is independent of all such forms.

It is generally admitted and presumed by all men, that, among the ends or objects of human society, are the peaceful possession of property and a mutual defence against all external violence. Now the very act of association for these ends, necessarily supposes an agreement of the whole of the members with each member, to aid him in the accomplishment of them. Government is the intelligent agent through whom the whole of the members are to perform this agreement with each other. As these ends of civil society are of the utmost consequence, and as merely partial attainment of them is not to be presumed to be the object of the individual in entering into society, but rather the full and perfect attainment of them is to be presumed to be his object, the agreement by which society is formed must be presumed to embrace a stipulation that the protection furnished shall be as complete, full and perfect as it can possibly be made. This is not merely the presumption of theory. It is a presumption found in the practical recognized duties of states and nations. The individual stipulates for full protection of his life; and no state can take from a member his life, or abandon it to be taken by others, unless compelled to do so by necessity, or indispensably obliged to it by the strongest reasons of the public safety. The individual engages for full protection of his property: and no civilized state takes from him that property, even for the purposes of the general welfare and safety, without rendering to him a full equivalent. These illustrations are sufficient to show that it is not a partial, or imperfect, or feeble protection, for which the individual stipulates when he enters into, or is found in society. Partial protection, feeble and imperfect defence, he can make for himself, in what the publicists call "the liberty of nature." He enters into society for as full and perfect protection as a mortal condition can have.

Such being the nature and degree of the protection for which society is instituted, in what way does the contract for it between the individual and society arise?

A contract, in all legal and moral reasoning, imports a consideration of some kind, passing from the party who asserts the existence and benefit of the contract, to the party of whom he claims the performance of its obligations. A consideration may be of money or other material thing. But it may also be of value that is not appreciable in money. It may consist of various kinds of benefit or advantage, passing from one party, or derived from one party to the other. It may be a moral or political benefit or advantage, as distinguished from pecuniary or material gain. Of considerations of these various kinds, as the basis of contracts, the common affairs of life furnish numerous instances.

To apply these principles to the relation of the body-politic and its members, what can be said to be the consideration, or considerations, passing from the latter to the former, in the social compact? They are of all kinds.

First. The individual, by his presence and residence in society, by virtue of his membership, adds to the numbers, the force, the power, and resources of the nation. He is an integral part of the whole body of the state; and as the perfection of a nation, which is its grand duty, can be advanced only by the preservation and is retarded by the destruction of its members, each of whom *can* contribute to that perfection, it follows that every accession of an individual to the body of a nation must be treated as a new benefit or advantage. Upon this ground, the murder of infants, just born or unborn, of whom no character can be predicated, becomes a crime against the state: and upon this ground the reformation of criminals becomes a duty of the state.

Secondly. The state derives a benefit or advantage from the individual, by whatever he does to carry on the machinery of society, in working out that perfection which is its end. Viewed in this light, before this high law of human destiny, it may truly be said that all men are equal. They are all equal, in this: that each, who does not absolutely war against society, fills some sphere, however humble, in its great taskwork, and for so doing, receives all its protection, all its defence, and is thus held of equal value to the state with every other.

In the third place. The state derives benefits from the individual, by the presence of his property, (in which term is to be included *labor*,) which he might remove into the liberty of nature, if he chose. The increase which his property adds to the aggregate wealth of the whole, is one of these benefits. The use, employment and consequent advantage derived therefrom to the community, are other benefits. The imposts and contributions which the nation may exact from that property, for the common purposes, form other benefits, directly appreciable as an actual pecuniary consideration.

Finally. The individual has engaged and contracted with every other member of the society to aid in the accomplishment of the great ends of protection and defence, for which the society is instituted.

All these considerations, in the case of an individual, have passed and are passing from him to the state, at every moment of his existence. Any one of them is sufficient to raise an implied promise on the part of the state, to confer that benefit upon him for which the state is avowedly instituted, and which he demands of it. Take, for instance, the lowest form in which these considerations may present themselves—the case of the most humble individual, performing the lowest offices of human labor. Is his life of no value to the state? Is he not one of its thousands, or millions, the vast aggregate of whom constitute its character, its force, its grand development of civilized man towards perfection? Must not the wood that he hews, and the water that he draws, be hewn and drawn? and is he not there, patient and faithful, to do it? Is not his labor at once his own little

capital and the state's integral wealth? Happily for mankind, wherever false institutions have not corrupted the general heart, these benefits, which move from the humblest individual to society, are admitted to constitute a full and perfect claim to all its protection, for the great purposes of life, liberty and the pursuit of happiness; and thus the peasant, on the original platform of the social compact, is equal with the prince.

We have been the more disposed to run these illustrations out to the extreme of society, because it seems to us that the denial, in any case, of the contract between society and the individual, as created by what moves from the one to the other, necessarily strikes at the doctrine of the importance of individual man: a doctrine, which is the great characteristic of this age, and which may be maintained by a legal, as well as a religious argument.

If, then, it be true that these considerations do move from the individual to the state, or body-politic, it must of necessity follow that they create corresponding duties on the part of the state towards him, unless we assume that he has no object in entering society, or in remaining in it, or that he requires and expects nothing of it. If he has any object in remaining a member of the state; if he and all other members unite together for any great common purpose; if he and they expect and require of each other some common good, about which they are all agreed; in short, if society is formed for any purpose, and upon any design, and for any object, the individual is entitled to the whole benefit of that design and object, by paying for it a full consideration. We have assumed, as an admitted fact, that the object of joining the social league and for which it is instituted, is mutual defence against violence and full protection of property. Whoever enters this league, for its avowed objects, and gives a consideration for what he demands, raises an implied contract on the part of the other members that he shall have what he demands of them and what they demand of him. If there were nothing in the case other than the simple promise of the individual to all the other members of society, that he will protect and defend them and their property, that promise is made by every member with every other, and thus the idea of a contract is as complete as law, reason and justice can make it. But we have seen that there is much more in the case.

There is another view of this great relation equally strong. The state cannot say to one of its members, already within the pale of membership, that it does not receive *his* consideration, and therefore is under no contract with *him*. It can make no distinctions, for it cannot afford to dispense with the individual. If it could do so, it could dispense with one equally as well as with another, and thus the state is dissolved, or rather it never was formed. The Roman law did not permit the life of a citizen to be valued in money; thereby declaring that its political value was beyond all price; and there is, in fact, no other bond or theory by which a nation can cohere together, than the recognition of the inestimable value of the individual to the state. This recognition is found in the theory of all civilized states; and they have, therefore, already received from each of their members his part of the com-

compact, already taken his consideration, already entered into the treaty with him, for their own advantage, and are, therefore, bound to his protection and preservation by a tie, which nothing but overwhelming reasons of the public safety can ever break.

We now proceed to show that the commonwealth of Massachusetts has recognized this whole doctrine, as applied to cases similar to that before us.

An act was passed on the 16th of March, 1839, providing that where property is destroyed by persons riotously assembled, the city or town in which such property is destroyed, shall pay to the owner three fourths of its value; one fourth of the loss being left to fall upon the individual owner, in order to stimulate him in the defence of his own property.

Several things are clear from the provisions of this statute.

First. That the placing the burden of indemnity upon the city or town where the injury is done, is merely a matter of policy, to awaken the vigilance of the local police. There is no reason in principle why the town where a violent destruction of property occurs, should bear the loss. There might well be great injustice in it, if the question were asked, who did the act? — because rioters might go from one town to another, and there destroy property which the innocent inhabitants would be taxed to pay for. But this law proceeds upon the principle that protection from such outrages is guaranteed by society, and upon the further principle that the local authorities can, and therefore it declares they shall, prevent such outrages.

Secondly. It is clear that the state admits, by this act, that indemnity is due to the individual, by virtue of the social compact. There is, otherwise, nothing but mere tyranny and injustice in the act itself. To say that even a man in the same town, who sits peaceably by his own fire-side, while a riotous assemblage is destroying a neighboring house, shall contribute to pay for the injury which he has not caused, is a palpable injustice, upon any other hypothesis than that of the contract on which society is based. Admit this contract, and there is no injustice or hardship in the case.

In the third place. It is clear that this statute did not create the original duty or obligation to indemnify the sufferer in such cases. That duty can neither be created nor destroyed by the municipal law. If it can be created by statute, it can be destroyed by statute, and then civil society is dissolved. The duty can be regulated — its burdens can be placed here or there, as matter of policy; but it exists a duty, in all cases where protection has failed, alike before such regulation as afterwards.

We now come to the inquiry, whether there was a failure of protection, in this case, for which the commonwealth is in justice and equity responsible?

That there was a failure of protection, in point of fact, is matter of notorious history. There was not only no defence made of these helpless women and children, but none was attempted to be made. There was not only no protection of the property actually extended, but none was attempted, by any one. The mob had free course

to glut themselves with the work of destruction. Now, we are aware that there are persons who are accustomed to reason upon this matter, from the fact that the local magistrates and the citizens of the immediate neighborhood might have interfered to repel the mob; that there was a period in the course of the attack, when any twenty resolute men would have quelled the whole riot; and that it is, therefore, not just to make the commonwealth pay for what the persons on the spot might have prevented.

This reasoning would be just, if it could first be ascertained that this government had no duties incumbent upon it, *prior to the commencement of the riot*, or that it had discharged all those duties. But when one looks beyond the duties of the local magistrate, or of the local population, to inquire whether the state had discharged all *its* duty in the premises, it is impossible not to see that there was a failure of duty on the part of the state, for the injuries occasioned by which, a just and generous people ought to be willing to make amends.

There was a failure, in the want of suitable legislation to compel magistrates to do their duty in such cases, and to punish them if they did not. It is not within the bounds of probability, if a law of the commonwealth had existed, severely punishing a magistrate who should grossly neglect to use the power with which other laws had armed him for the suppression of riots, or giving the party injured a claim for damages against such magistrate, that this property ever would have been destroyed — that this stain ever would have rested upon the fair fame of Massachusetts. Is it said that such legislation would then have been, or would now be unwise, because the magistrate may well be left to his general sense of duty and to the corrective power of public opinion, if he does not do his duty? This very event proves, with a melancholy distinctness, that such grounds of trust are no sufficient security for the citizen. The infection of popular prejudice that threatens the life or property of a citizen, may reach the magistrate; there may be no corrective in public opinion, for it may applaud, for the moment, the neglect of duty which gives way to its bad passions, and the magistrate is restored to his sense of duty only when it is too late for him to act. That the commonwealth entertains the same opinion, is manifest from a statute passed only a year after this riot, punishing magistrates for such neglect of duty, and incorporated in the 129th chapter of the Revised Statutes.

Another failure of protection on the part of the state, was in the want of such a provision as that contained in the act of 1839, by which the social compact with the individual is carried out, and he is made whole, as far as is consistent with the policy of enlisting his own exertions in the defence and preservation of his own property. It is difficult for any man to point out why it was the duty of the commonwealth to have made this provision in 1839, and yet why it was not also its duty to have made it in 1834. It is difficult for any man to show that the state did not stand then in the same position as it stands now, the particular provisions of the act of 1839 being merely matter of public policy, and not differing in principle from the

compact between the whole people and the individual. If it is right for the legislature to call upon the people of a town to pay for property destroyed in its limits by persons who may not dwell there, it is equally right for the state, in its sovereign capacity, to give the individual an indemnity who suffered at a time when no such provisions existed.

Is it said, that it had never occurred to the people of the commonwealth that such legislation was expedient, or that such necessity for it would ever arise? The answer to this suggestion is two-fold. *First*: it is as much the duty of the sovereign power to enact wise and salutary laws, as it is to execute those which it has already enacted. Laws are but the means and modes in which society proceeds to discharge its great, original, prior duties to the citizen and to itself. One of those duties is self-preservation, of itself and its members; equally imperative, equally transcendent as a duty before the nation has taken its measures for defence and after it is armed to the teeth. Can it be said that the nation is guiltless of the blood or the property of a citizen, whose life is taken or whose effects are pillaged, for want of suitable measures of protection, simply because those measures had not been taken?—or because it had not occurred to the nation that the measures were necessary? A sudden invasion might descend upon a town, from an unexpected quarter, in time of profound peace, and cut it off from the nation; but it would require circumstances of the clearest surprise, of the most entire absence of all suggestions or suspicions of danger, to absolve from blame, under the social compact, the nation that had thus left its member to destruction. It is the public duty to *foresee* public danger. There is no principle more clearly defined in the law of nations, or more uniformly asserted by the great publicists of Christendom, than this: that the sovereign power, “as a faithful administrator, is to watch for the nation, and take care to preserve it and render it more perfect—to better its state, and to secure it *as far as possible* against every thing that threatens its safety or its happiness.”*

It comes then, upon the question of prior legislation, or of the public duty as to such legislation, to this; that where sagacity and public prudence, and that wisdom which is ever vigilant, in theory, in the mind of the sovereign power, could not foresee danger, should not have borrowed suggestions from every quarter, could not see examples at home or abroad, the failure of provision to anticipate the particular evil or exposure must be excused. But where all reasons for suggesting preparation exist—where prior experience at home or abroad, the state of society, the obvious policy, the existing circumstances, the strong necessity, are all pointing to some provision to meet such a calamity as has now come for want of the provision,—it cannot be said that there is no public negligence.

This brings us to the second answer to the objection we are now considering—an answer upon the point of fact.

It is not true, that the commonwealth had no reason to suppose

* Vattel, Book i. chap. 4.

that such legislation would ever be necessary. Riots in her own borders had previously taken place, at different times, with circumstances of more or less atrocity, and attended with more or less destruction of property. In other states of this Union, riots of a more fearful character, in which lives as well as property had been destroyed, had led to legislative enactments adapted to the prevention of such outrages, or to the remuneration of the sufferers. In the country from which our earlier laws and institutions were derived, statutes had existed for centuries prior to the emigration of our ancestors, and still exist, by which the burden of indemnity, in similar cases of the destruction or pillage of property, is thrown upon the local community, which is thereby made to stand in the place and to discharge the duty of the whole public. These laws were not transferred here and adopted by our ancestors, so as now to be part of the common law of Massachusetts, because the theory of our common law is, that it consists only of such of the laws of England, prior to the revolution, as our ancestors found to be required by their peculiar situation in this country, prior to that time. But the example of such legislation, as adapted to and required by a state of society such as had already come to pass among us, prior to the year 1834, was before the people of this commonwealth, in the legislation of other states and countries. The very outrage of that year shows that such a state of society had come to pass; the commonwealth provided for it in part, in the year 1839; and the existence of these facts is sufficient to make up a case, in which it may properly be said to have been incumbent upon the sovereign power to have anticipated the probable occurrence of such evils, by provisions to prevent or repair the mischief, as well before the eleventh day of August, 1834, as afterwards.

It remains for us to anticipate an objection which may occasion difficulty to some minds. It will be urged, that the ground which we have taken covers equally a loss of property by other wrongs than riots, and that an inconvenient precedent would be established, by which persons who had suffered by robbery, or other trespass, would claim indemnity of the state. The answer to this suggestion is, not that a case of robbery (on the highway, for instance,) differs in strict principle from the case before us. It is equally the duty of society to protect the property of the citizen in all cases. But the distinction between a case of robbery on the highway, and the case of the Ursuline Convent, is, that in the former case there is more ground for holding that the commonwealth has done all its duty of protection, than there is in the latter. Robbery is severely punished, and, considering the degree of temptation held out at any particular time, and the small amount of property exposed, perhaps it may be said that the punishment is in general sufficient to prevent the offence, and thus full protection is at least approximated. But if it be not so, if the punishments provided for the particular crime are not a sufficient protection of the citizen against that crime, if indemnity is the only thing that will afford full protection, then it is the duty of society to give it. Especially is this true, where a great mischief has been done to the citizen, marked by circumstances of peculiar atrocity, and caused in

great part by public negligence. Without therefore seeking to distinguish this case from others, in regard to the strict principle of contract, we believe that it is so marked by great features of the principle, that there was so striking a failure of protection, both in law and in fact, and that the injury was so cruel an outrage upon those living innocently under what they believed to be our protecting arm, that reparation of their losses may well adorn our magnanimity, without compromising our future justice to others.

Let us not be misunderstood:—and that we may not be, we state again the distinction just taken. The crimes of robbery, theft, arson, and other offences against property, are severely punished. Thus far, the state discharges a part of its duty of protection. It goes further; the duty embraces the maintenance of police, strict and vigilant execution of the laws, and certain punishment of the offender. These duties are also discharged by the state. In the case of a simple larceny of property, therefore, the state may be said to approximate very nearly to the discharge of its whole duty of protection. The punishments provided and the police maintained, are, generally speaking, adequate to the prevention of the crime. There is no striking, manifest and important omission of duty on the part of the state, to which the injury may wholly or in part be traced. It is not so with the case of riots. Something more than punishment of the offender, or the maintenance of police, is needed to insure adequate protection to the citizen. It is so easy for a whole community, at a period of excitement, to arm itself with a color of right, and under it to bring ruin and desolation upon the objects of its passionate prejudices; it is so nearly certain that, at such a period, the magistrate who has no other fear before him than the fear of the people, will not expose himself to the wrath of the people; and it is so plain a process of arithmetic, that when property has been destroyed, if there is no quarter from which indemnity may be compelled, none will be obtained;—that without special and energetic measures to forestal these occurrences, the public duty cannot be said to have been discharged. The commonwealth of Massachusetts has found and declared this to be so.

The owners of the property destroyed on Mount Benedict are not now before us, seeking a liquidation of their claims. They came before the legislature of 1835, and after a report made in favor of granting to them a sum of money, they were repulsed. Since that time, they have wisely and properly abstained from preferring their petitions, waiting, as was due to their injured rights, for a change in the views of the state upon the question involved in their case. They have left the blackened ruins of their halls, where piety, and learning, and charity, and useful labor, dignified their peaceful lives, standing as they were left by the fires of the incendiary, when the torch could find no more to consume. They have taken down no stone from off another, and the only agent that has yet been busy to remove from before us the monument of our neglect, has been the slow, corroding tooth of Time, which will remove it only after the lapse of ages. They have thus kept a continual claim before the people of Massa-

chusetts, upon their generous justice. They have not spoken, they have not written; but the mournful dignity of their silence, made eloquent by this index of their wrongs, is more touching and more persuasive, than the most elaborate appeals.

For the committee,

GEORGE T. CURTIS,

Chairman.

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