

differ a particle in Constitutional principle from the District of Columbia indictment (pp. 205, 253). In the latter case the proceeding rests upon the theory that a libel published in any State, is indictable in the District of Columbia if copies come into that District; in the former, the theory is that a libel published anywhere in a State, is indictable in the Federal court of that State, if copies come into a place in the State to which the State has ceded Federal sovereignty. The former holds good if the latter does. If a New York City newspaper can be criminally prosecuted for libel in the Federal court at New York, because copies of the paper have found their way into a nearby Federal fort or navy yard, then newspapers published in any State in the Union can be indicted and forced to trial in the Federal courts in any part of the United States into which copies come and over which the Federal government has exclusive jurisdiction. Establish this doctrine, and we shall have made another stride along the pathway that Rome trod in her pilgrimage from republicanism to imperialism. The only safe doctrine is that the Federal courts shall have no general jurisdiction—that is, jurisdiction over all kinds of offenses—unless the alleged offense is actually, not constructively, committed by the offender upon soil where the Federal government's sovereignty is exclusive.

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Is Opera Singing Unfeminine ?

"No singer can be a prima donna and be a wife at the same time," proclaims Mary Garden as an explanation of her decision not to marry. Is that so? Then what becomes of one of the most industrious arguments against woman suffrage? Either the argument fails or prima donnas must go.

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THOMAS JEFFERSON.

I.

It is the regret of history that Thomas Jefferson was sent on a mission to France in 1787, bountiful as were the fruits of it to posterity.

The subsequent peaceful acquisition of an empire vastly richer and more extensive than the original Colonies, was a master stroke for which that mission only could have prepared him; and it is as though Providence was determined partly to recompense posterity through him for the grievous blunder his generation made in assigning him to Europe, when the great labors for which his 44 years had equipped him above all men, lay before

him at home while he awaited the word from his people to take them up.

For in that year there was called to meet in Philadelphia the "Grand" Convention which was to build the first government of all time upon the mighty truths that "all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness;" and in this recognition to construct the only government on the globe not the result of fraud or force, since all its just powers were to be derived from the consent of the governed.

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Of the foundation upon which the structure of government was to rise, Jefferson, at 33, had been the master-mason. It was the Declaration of Independence and the might of its truths, by the grace of God, that inspired the Colonists and made them invincible while humbling the pride of the most powerful government then on earth.

The hour was now at hand when it was to be demonstrated whether a polity builded upon that foundation could stand and win as well the enduring victories of peace.

Jefferson, the anxious champion of the rights of man, was necessarily the one character pre-eminently equipped to take the leadership in that Convention.

II.

Eleven years had elapsed since he wrote the Declaration of Independence, years that had further enriched his powers in the practical experience of government-building upon principles of liberty and equality. They had been years of warfare against deep-rooted inequalities which had flourished in his own State under monarchical patronage, and the products of those labors in the revision of the Virginia Code are today the most priceless gems in the crowns of the States of the Union.

This work of Jefferson's in the Virginia legislature alone was sufficient to fill the measure of fame of an ambitious man, but he had "no passion that would lead him to delight to ride in a storm." Born April 2, 1743, into the landed aristocracy of Virginia, and uniting by marriage with the powerful Randolph clan, he might have outshone Solomon in the trappings of aggrandizement if his mind had been bent upon it. It was at least incumbent upon him, one would suppose, from ties of family and interest, that he uphold the institution of feudal privileges and slavery perpetuated by law.

But this was no common man, and the measure-stick of mediocrity is too short. A liar could not have written the Declaration of Independence, and true to that document he renounced the advantages of the feudal system and resolved openly to overthrow it.

"The masses of mankind," he declared, "were not born with saddles on their backs, nor a favored few booted and spurred ready to ride them legitimately, by the grace of God." He did not ask to oppress a people he had labored so largely to redeem from oppression.

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And so he conceived in the revision of the Virginia Code four measures particularly "as forming a system by which every fibre would be eradicated of ancient or future aristocracy; and a foundation laid for a government truly republican; and all this would be effected without the violation of a single natural right to any one individual citizen."

The first of these measures destroyed the law of entail, under which the vast estates had been handed down from father to son, proof against even the just claims of creditors. Our present laws of distribution took its place.

The second measure crushed the crown of the system by abolishing the law of primogeniture, by virtue of which the eldest son became the sole heir, establishing that domestic autocracy necessary to the suppression of any internal or external invasion of the supposed inviolability of property. In desperation the landed lords pleaded for the adoption of the old Hebrew principle of a double portion for the eldest son. "If the eldest son can do double the work and eat double the food, it might be evidence of his right to a double portion," Jefferson replied.

Then came the bitterest of struggles in the destruction of that other agency for keeping the masses in humble submission—the state church, as the third measure in the program. The Colonial pulpits thundered against his "blasphemy" and called down curses upon the "infidel." He replied calmly: "The people have not given the magistrate the care of their souls, because they could not. They could not because no man has the right to abandon the care of his salvation to another. If the magistracy had vouchsafed to interpose in other sciences, we should have as bad logic, mathematics and philosophy, as we have divinity in countries where the law settles orthodoxy." The statute for religious liberty in Virginia, afterwards copied as an amendment to the Constitution of the United States, was the law extinguishing the state church.

The final measure of this series looked to the

general establishment of public schools, Jefferson affirming public education to be the surest and necessary bulwark of liberty. It succeeded in his day indifferently, with the exception of the central university of Virginia to which he gave the last years of his life.

He had hoped to include in the Code a law abolishing slavery after a certain date, but it was overwhelmingly opposed. Subsequent efforts were also defeated.

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Of the levelling of the feudal lords under the equal laws of the State, the biographer Parton says: "It was the earliest and quickest of Jefferson's triumphs, though he did not live long enough to outlast the enmity his victory engendered. Some of the old Tories found it in their hearts to exult that he, who had disappointed so many fathers, lost his only son before it was a month old."

The key to the marvelous vision of the man, who even today is written of as "coward" and "atheist"—so deep is the bitterness of great works—is to be found in the utterance: "I never submitted the whole system of my opinions to the creed of any party of men whatever, whether in religion, in philosophy, in politics, or in anything else, where I was capable of thinking for myself. Such an addiction is the last degradation of a free and moral agent. If I could not go to heaven but with a party, I would not go at all."

III.

Such was the brilliantly democratic figure of Thomas Jefferson in 1787, the Virginia Code finished, standing like light incarnate, awaiting the call to the supreme test of his powers in the Convention that was "to insure the blessings of Liberty to ourselves and our posterity," when—the most far-reaching blunder in our history was committed. The call to France came, and he responded.

He deserves no censure for his obedience; he was distinctively a public servant, not a time-server.

Contemplating the Revolution without the genius of Washington to direct it, or the chaotic conditions of '61 without the firm wisdom of Lincoln to disentangle them, fills us with awe; but the event was no less big with fate which gave us a Constitutional Convention with the fundamental democracy of Jefferson not only omitted, but he sent 6,000 miles away to remain while the work was done. For the hand that wrote the Declaration of Independence was the hand created to draft its declarations of fundamental rights into the provisions of the Constitution of the United States.

The puissant spirit of his democracy had not destroyed the superstition of the divine right of kings in order to create another, equally indefensible, of the divine right of aristocracy. And yet the Convention no sooner met than it listened to earnest denunciations of the "excess of democracy" then being enjoyed. Hamilton, the guiding spirit, urged solemnly the institution of an aristocratical government by an hereditary Executive and Senate modeled upon the English monarchical system, as "the best government on earth," which was rejected in that blunt form because it was well known the jealous States would never acquiesce.

Still the Convention sugar-coated the proposition of Hamilton in the final product, by giving us life judges (who are now practically irremovable) and a President who may be elected for life.

The rights of man, God-given, inherent, inalienable, almost disappeared before the deep anxiety displayed in the Convention touching the rights of property.

And the document ultimately submitted would have made of our government the most absolute despotism on earth, but for the never-resting hand of Jefferson, which, though in Europe, wrote, wrote, wrote, as if to triumph over Fate. To these voluminous letters largely is due the adoption of the Bill of Rights, comprehended in the first Ten Amendments.

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Think of a Constitution whose foundation logically was the Declaration of Independence, omitting the guarantees of trial by jury, and for felony only upon indictment or presentment; denying freedom of religion, speech and press, and the right to assemble; denying freedom from search and seizure; denying compulsory process for obtaining witnesses; denying freedom from quartering soldiers!

The superstructure couldn't fit. The foundation was a perfect square, whose rule was equality; the structure was a circle—"an endless circle of oppression, rebellion, reformation, and so on forever."

Finally, when a number of the States refused to accede to the Constitution in the absence of a Bill of Rights, the Ten Amendments were tacked on as a tail to be wagged at pleasure.

With Jefferson in the Convention the substance of the amendments would have been the body of the instrument, breathing its very essence.

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In the numberless letters exhorting Madison and others to press certain provisions we get but a

glimpse of what the Constitution might have been. And in these instances, in most of which Jefferson's advice was neglected, we find a century has vindicated his wisdom.

He repeatedly urged a clause for the freedom of commerce from monopolies. All that came of it was a vote of 8 to 3 in the Convention against giving the Federal government the power of granting charters of incorporation (Madison's Journal, p. 726).

Later he pointed out and condemned the usurpation of this very power by the Federal government in incorporating banks.

And even in his day the abuse of the corporation became so flagrant that he wrote: "I hope we shall crush at its birth the aristocracy of our monied corporations, which dare already to challenge our government to a trial of strength and bid defiance to our laws."

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Another measure which he urged earnestly upon Madison to assist in having included was a provision against a standing army in time of peace. "There are instruments so dangerous to the rights of the nation," he wrote, "and which place them so totally at the mercy of their governors, whether legislative or executive, that those governors should be restrained from keeping such instruments on foot, but in well-defined cases. Such an instrument is a standing army."

And again he wrote to Samuel Adams: "Bonaparte has transferred the destinies of the (French) Republic from the civil to the military arm. Some will use this as a lesson against the practicability of republican government. I read it as a lesson against the danger of standing armies."

It was the opinion of Madison, Gerry and Mason in the convention that the Constitution should provide for the limiting of the standing army to 2,000 or 3,000 in time of peace; but the majority voted finally to place no definite limit, feeling that so long as the power of raising armies was left exclusively with Congress, the power would not be abused. It was the concensus of opinion, however, that the Executive should not have the power.

The recently enacted law granting to the President the power in his discretion alone to increase the standing army to 100,000 men, or to reduce it at pleasure, is a deep wound upon early Constitutional sentiment; and if the spirit of the Constitution counts for anything, this law is of doubtful validity. Still, in an era of conquest—which to Jefferson was unthinkable—a large standing army is a necessity, constitution or no constitution.

We pass on to another wise doctrine the Virginian urged. It was a clause making the President forever ineligible for re-election after two terms of service. He did not press this at the outset, because he considered Washington, the man to whom all looked, as peculiarly fitted to get the new government under way; and he wished Washington might remain as long as that might require. However, he himself declined third-term offers coming from many States, saying: "If some period be not fixed, either by the Constitution or by practice, to the services of the First Magistrate, his office, though nominally elective, will in fact be for life; and that will soon degenerate into an inheritance."

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One of the most novel propositions he pressed Madison and others to endeavor to incorporate in the Constitution, was a recognition of the absolute freedom of each generation from the acts of all that had preceded it. "Let us provide in our Constitution for its revision at stated periods," he wrote. "What these periods should be, nature herself indicates. By the European tables of mortality of the adults living at any one moment of time a majority will be dead in about nineteen years. At the end of that time, then, a new majority has come into place; or, in other words, a new generation. Each generation is as independent of the one preceding as that was of all which had gone before. It has like them the right to choose for itself the form of government it believes most promotive of its own happiness; consequently, to accommodate to the circumstances in which it finds itself, that received from its predecessors; and it is for the peace and good of mankind that a solemn opportunity of doing this every nineteen or twenty years be provided by our Constitution, so that it may be handed on, with periodical repairs, from generation to generation, to the end of time, if anything human can so long endure." And again: "If this avenue be shut to the call of sufferance, it will make itself heard through that of force, and we shall go on as other nations are doing, in the endless circle of oppression, rebellion, reformation; oppression, rebellion, reformation, again; and so on forever."

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This principle has been recently recognized by some of the States, among them New York, which has incorporated a provision in its Constitution for a revision every 19 years.

Extending the application of the same doctrine, Jefferson urged Madison to propose a clause which would deny the Federal and State governments the

power to load posterity with debt, by limiting all public loans to the life of the borrowing generation. "Ought not every generation," he asked, "be guaranteed against the corruptions and dissipations of the generation preceding it? I suppose it to be self-evident that the earth belongs in usufruct to the living; that the dead have neither powers nor rights over it. That portion occupied by any individual ceases to be his when himself ceases to be, and reverts to society. I suppose that the received opinion, that the public debts of one generation devolve upon the next, has been suggested by our seeing habitually in private life that he who succeeds to the lands is required to pay the debts of his ancestor or testator, without considering that this requisition is municipal only, not moral, flowing from the will of society, which has found it convenient to appropriate the lands become vacant by the death of their occupant on the condition of the payment of his debts, but that between society and society, or generation and generation, there can be no municipal obligation, no umpire but the law of nature. We seem not to have perceived that one generation is to another as one independent nation to another. At first blush this may be rallied as a theoretical speculation, but examination will prove it to be solid and salutary. It would furnish matter for a fine preamble to our first law for appropriating the public revenue; as it will exclude at the threshold of our new government the contagious and ruinous errors of this quarter of the globe, which have armed despots with means not sanctioned by nature for binding in chains their fellow men."

Jefferson contended, and wisely, that the universal adoption of this principle would save one-half the wars of the world.

To the argument that a large part of our public debt is going into productive enterprises the benefits of which will be enjoyed by future generations, it might be stated that history affords few examples where the productive part of a public debt has ever been sufficient to discharge the unproductive which has always accompanied it.

IV.

Nothing is more certain than that the decision which took Jefferson from the Convention sealed the fate of the million who died in the Civil War and all the horror of it. He had an abiding conviction that the wrath of God must be visited upon the continuance of slavery, and at no time was the problem easier of solution than in 1787.

As chairman of a committee of the old Congress to devise a form of government for the west-

ern country above the parallel of 31 degrees north latitude, he brought in a report recommending that "after the year 1800 of the Christian era there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty."

But the report was lost by a single vote.

Had this clause stood out majestically with the great fundamental principles of democracy in a truly Jeffersonian constitution, it is more than reasonable to suppose the people would have ratified it, seeing such preponderating advantages in the whole.

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In his retirement at Monticello some years later, Jefferson jotted this down in his notes under the inspiration of prophecy:

"Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that His justice cannot sleep forever."

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It is a fact worthy of noting in passing that the powerful party calling themselves Jeffersonian, did not adhere to the principles affirmed by their leader on this great question; on the contrary, they defended the institution of slavery. It fell to the lot of a new party, led by an isolated, thinking man, whom the Republicans called "a huckster in politics," to carry forward the repudiated principle. And the very language of Jefferson was adopted in the Thirteenth Amendment abolishing slavery, by the opponents of the party to whom Jefferson had bequeathed it.

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In the same category Jefferson propounded a doctrine which eminent thinkers since his time have closely correlated to condemnation of slavery. "The earth," he wrote, "is given as the common stock for man to labor and live on. If for the encouragement of industry we allow the earth to be appropriated, we must take care that other employment be provided to those excluded from the appropriation. If we do not, the fundamental right to labor the earth returns to the unemployed."

With only three or four million people enjoying almost free access to nearly all of the soil now

occupied by our ninety millions, it is certain that the land problem pressed but lightly, if at all, in his time, yet he foresaw that a day might come when the entire soil would be appropriated.

Who can say that he might not also have put forward some fundamental provision touching the great question of land in the then far-off future when all should have been appropriated, in an extension, for instance, of the power of eminent domain?

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Most men are shocked by change. The conditions in which they are born are to them a part of the established laws of nature. They look back to the systems established for them in the past as expressions of the ultimate wisdom of man. It is difficult in the extreme for them to conceive that under other systems and principles to which adjustment had been made they might be happier, more prosperous, more comfortable. And so it will probably not be generally accepted that a Constitution molded by Jefferson more closely upon the Declaration of Independence would have found us happier and less perplexed; but if the sentiments of the Declaration are true, then the statement is true.

V.

Next to the failure to secure a more democratic document, nothing afflicted the great soul of this prophet more deeply than the logical evolution of it. I say evolution because, though written, it became, like its model—the unwritten British Constitution—plastic in the hands of an irremovable judiciary which soon usurped the power finally to decide its meanings, and formulating their decisions not upon the intent expressed in the Convention, but upon expediency, have made it over for the people who live under it.

The Constitution today is truly as Bryce says, "the work of judges, and most of all of one man, the great Chief Justice Marshall." A few years and it will be something else, adapted to the supposed wants of the people in the measure to which the Supreme Court shall think meet to construe it. As Jefferson prophesied, it has become "a blank paper by construction" in which metaphysical subtleties have made its provisions "mean anything or nothing at pleasure."

And it is a lamentable fact that in the confirmed refusal of the long dominant Republican party to add to or take away powers by the Constitutional method of amendment which Jefferson so earnestly urged, powers necessary or supposed to be necessary have been read into it until time has all but

confirmed the process and discarded the Constitutional or popular method of amendment.

VI.

The old age of Jefferson was full of the cup of bitterness in personal discomforts which the neglect of his own affairs for those of mankind had brought him; and in the University of Virginia, to which he was a father in every sense, he drank deep of solace and encouragement.

In the latter part of June, 1826, he became too feeble to leave his bed. He was calm, almost cheerful, at the realization that he was to be released from his suffering. But he expressed the wish to live to see the dawn of the fiftieth anniversary of Independence. When he awoke that morning, he said, his face lighting up: "It's the Fourth of July!"

His last wish had been granted and he murmured as he died: "Nunc dimittis, Domine." (Lord, now lettest thou thy servant depart in peace.) The birthday of the nation he labored so mightily to cement in liberty, the day consecrated to his deeds, was by a kind Providence solemnized with his death.

STERLING E. EDMUNDS.

EDITORIAL CORRESPONDENCE

AN ACTUAL CONVERSATION.

New York, April 3, 1909.

"How does the proposed tariff measure strike you?" I asked an importer of foreign wall papers the other day.

"Fine," he replied. "It will raise the duty on our goods five cents on the dollar over what it is at present."

"Where do you come in on that?" I inquired. "I thought you were howling for a reduction of the duty."

"So we were," was the answer; "but this is better. We will now have a good argument for raising the price fifteen cents on the dollar to the dealers. Foreign wall paper would cost more than the domestic product anyway. It is a comparatively high class article and the demand for it in this country is chiefly the result of the special styles which are produced in England and Germany. These exceptional patterns are but poorly imitated in this country and therefore in our special field we have little real competition. On the present basis we are doing a gross business of \$300,000 a year and making a gross profit of about \$135,000 a year. This is good enough for us. If the duty were taken off we would have to cut prices to the dealers from thirty to fifty per cent. We might do more business, but in the aggregate we would probably make little more money, and life would be far less serene than it now is.

"We have thought all these things out, and realize that after all a stiff tariff is the best asset of a business like ours. We would not have complained

if the duty had been left on the old basis, but the scheme in the Payne bill for raising it five cents on the dollar on the theory that foreign wall paper is a 'luxury' will mean big new money in our pockets. We have been converted to a profound belief in the blessings of protection, old man, and don't you forget it."

"But," I exclaimed, "where does the consumer come in?"

"Where does he come in? Why, he comes in with the 'dough,' of course. Every roll of paper that goes up on a wall will cost him from thirty to fifty per cent more than it does today. And if the paper hangers do not add a few cents for labor when handling imported goods they are bigger 'chumps' than I ever dreamed them to be."

"Which means," said I, "that you will pay \$1.05 for goods where you formerly paid a dollar; the dealer, who formerly paid you \$1.45 for goods which formerly cost you a dollar, will now pay you about \$1.60 to \$1.65 for the same goods; while the consumer, who formerly paid the dealer from \$2.00 to \$2.25 will now pay for the same goods from \$2.60 to \$3.25; and the paper hanger, if he is not a 'chump,' will add for his labor from three to five cents on every roll he hangs, on the plea that expensive paper is more difficult to hang. Is that the idea?"

"Exactly," replied the importer. "Free trade is an exploded theory. Come and let me buy you a good fifty cent cigar."

JOHN MOODY.

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THE END OF THE GREAT STRIKE.

Etaples sur Mer, France, March 26, 1909.

For eight days Paris had been practically cut off from communication with the rest of France, or with outside Powers, because of its lack of postal, telegraphic and telephone service.* For eight days there had been what all Parisians love an abundance of—"manifestations." At the beginning of the great movement when outsiders began to say "C'est la grève" (It is the strike), the functionaries concerned stood with their calmly folded arms and gravely remarked, "No, it is only that in manifest." And so they continued to "manifest" all through the eight days of the strike. They "manifested" first and all the time their intense dislike of the person and autocratic rule of Mr. Simyan, the under secretary of posts and telegraphs. They manifested it by their words and actions when he was present, and by their total disregard of him and his office when they carried their grievances past him to Mr. Barthou, the minister of public works, and to Mr. Clemenceau, the premier. Finally after numerous interviews with these great ones, and innumerable meetings of the employees' unions and their accredited delegates and representatives, everything is amicably settled and the great strike of government employees is brought to a successful issue.

Behold, then, Paris once more placarded with posters. At the head of each one in the largest possible letters is the word "Merci." Then follows the following temperate and modest declaration:

"Driven to extremes by the ill will, coarseness and extreme autocracy of Mr. Simyan, we were compelled

*Public of March 19, page 277, and Public of March 26, page. 301.