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AN
ADDRESS,

DELIVERED BEFORE

AN ASSEMBLY OF CITIZENS

From all parts of the Commonwealth,

AT FANEUIL HALL....BOSTON,

JULY 4, 1836.

BY DAVID HENSHAW.

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A D D R E S S .

THE signers of the Declaration have all departed ! The generation of seventeen hundred and seventy-six, most of the actors in the thrilling scenes of the revolution, like the immortal signers, have submitted to the inevitable decrees of Providence, and sleep with their fathers. Their children and their children's children occupy their places, and follow their precepts. The principles of their sires still survive; the mighty work of their hands, a government founded upon the will of the whole people, still exists, flourishing with renewed vigor, a living, and I trust it will remain, a perpetual monument of their wisdom, their constancy, and their fortitude.

In reverting to the history of the revolution, brought to a decisive issue by the immortal Declaration of

Independence, drafted by the illustrious Jefferson, and adopted by the assembled representatives of the united colonies, we ought to remember, that that event was but an epoch in the history of free principles. I would detract nothing from the lofty merit of our revolutionary fathers, nor would I forget the frightful sufferings, the daring acts, the many noble principles of their pilgrim progenitors. The patriots of the revolution sustained, and more fully displayed those great political truths, sometimes obscurely seen, and the institutions but feebly established by the more early inhabitants of the country. It were wrong, however, to suppose that free principles were first announced as correct, were first incorporated into our institutions, or were even fully developed in theory by the men of the revolution. They fulfilled their destiny in breaking the British yoke, in sundering the political ties that held them to the mother country, as their fathers had fulfilled theirs in fleeing from the land of their birth, in expelling the savage and in subduing the forests; in this their land of promise; and we, fellow-citizens, are fulfilling our destiny in uprooting many political heresies, the lingering remains of systems long since dead, of

ages long past—by carrying more fully into practice the principles of the revolution—by infusing into our institutions those liberal precepts which were, for a long time, and some of them yet but dimly seen, and known to our fathers only in theory.

It is worthy the occasion to take a brief review of the early announcement and steady progress of those principles, which now form the basis of our social and political institutions—principles destined still to spread—to go on conquering and to conquer, until despotic governments are overturned and broken into fragments, and the improvement of the human race shall have reached its utmost bounds.

While other Europeans colonized for conquest and for plunder, bringing with them, and planting in their new soil the tyranny and bigotry of their generation and of their country, the Anglo-Saxon race, and particularly that portion of them who became New England pilgrims, sought the New World, to enjoy the liberty of conscience and the freedom of self-government. The mighty consequences resulting from these different springs of action, these varied principles of human policy, after a lapse of more than two centuries, are prominently displayed in the dif-

ferent conditions of those portions of the human family who inhabit the northern and southern divisions of our hemisphere. Generations must pass away—existing institutions must crumble into dust beneath the hand of time, ere the Portuguese and Spanish American races can approach the enjoyment of those vast political blessings which are our pride, our boast, and our heritage.

The progress of free principles is slow—tardy is their growth, even in our own genial soil. Religious intolerance and political tyranny first drove the pilgrims from their native land, and led them to seek an asylum for themselves, and a field for freer systems of government, in the then wilds of the New World. But here they presented the anomalous spectacle of becoming persecutors, while themselves fleeing from persecution. But, fortunately, their liberal principles survived their ephemeral acts of intolerance, and in our day have received, and are destined still to acquire, new force and vigor in their application to the social compact.

Roger Williams, that truly great and good man, that first great Christian apostle of religious liberty, two hundred years ago, proclaimed before our public

tribunals, “that to punish a man for any matter of his conscience is persecution”—“that no one should be bound to worship, or maintain a worship, against his own consent.” When the men in high places, in astonishment at these heretical doctrines, as they thought them, asked him, “Is not the laborer worthy of his hire?” he replied, “Yes, from those who hire him.” These simple positions, so distinctly assumed by Roger Williams two centuries ago, embrace the whole code of religious liberty; and they entirely sever the odious union of church and state, which, from the time of Moses and the Israelites, has held the human mind in bondage. Yet, just and clear and simple and comprehensive, as all will admit them to be, the revolution which freed us from the galling yoke of British tyranny did not relieve us from the tribute of sacerdotal servitude. It is but a few years since, that we have been able to throw off the compulsory support of church establishments. We have not yet reached, in practice, the other plain and tolerant proposition of Roger Williams, that “to punish a man for any matter of his belief is persecution.” The courts of this state, at this very time, are degrading themselves and disgracing the

age in sustaining, and in sustaining, too, in violation of explicit constitutional guarantees, a criminal prosecution for a matter of mere speculative theology.

Nor is this the only or the most important instance where our theory and our practice are at war with each other, where it remains for us to carry out and enforce the principles of the Revolution.

The object of our ancestors in settling the new world, was to establish a system of self-government, where the powers and duties of rulers, where the rights and obligations of the governed should be accurately defined. They fled from the tyranny of the ecclesiastical law and of the common law, which were the mere dicta of priests and judges. The design of basing the government upon the will of the people, and of strictly defining the powers of the rulers, is discovered in the first acts of the Colonists, and runs through the whole history of the State down to our own day. The passengers in the May Flower while off the north fluke of Cape Cod, November 11, 1620, entered into the following agreement:—

“In the name of God, Amen. We, whose names are underwritten, the loyal subjects of our dread sovereign lord, King James, by the grace of God, of Great Britain, France and Ire-

land, King, Defender of the Faith, &c., having undertaken for the glory of God and the advancement of the Christian faith and honor of our king and country, a voyage to plant a colony in the northern parts of Virginia, do, by these presents, solemnly and mutually, in the presence of God and of one another, covenant and combine ourselves together into A CIVIL BODY POLITIC, for our better ordering and preservation, and furtherance of the end aforesaid ; AND BY VIRTUE HEREOF, DO ENACT, CONSTITUTE AND FRAME SUCH JUST AND EQUAL LAWS AND ORDINANCES, ACTS, CONSTITUTIONS AND OFFICES, FROM TIME TO TIME, AS SHALL BE THOUGHT MOST MEET AND CONVENIENT, FOR THE GOOD OF THE COLONY, UNTO WHICH WE PROMISE ALL DUE SUBJECTION AND OBEDIENCE.”

The charter of King Charles the First to the Colony of Massachusetts Bay, granted March, 1628, vests the government of the Colony in the Governor, Deputy Governor, Council of Assistants and Freemen, WHO HAD AUTHORITY TO MAKE AND EXECUTE THE LAWS. In 1634, this Colony adopted the representative system, and their first General Court, consisting of twenty-four representatives, resolved, “THAT NONE BUT THE GENERAL COURT HATH POWER TO MAKE AND ESTABLISH LAWS”—“THAT NONE BUT THE GENERAL COURT HATH POWER TO RAISE MONEY

AND TAXES, AND TO DISPOSE OF LAND, VIZ : TO GIVE AND CONFIRM PROPRIETIES.”

In 1641. It is ordered by the General Court “AND THE AUTHORITY THEREOF, THAT NO MAN’S LIFE SHALL BE TAKEN AWAY, NO MAN’S HONOR OR GOOD NAME SHALL BE STAINED, NO MAN’S PERSON SHALL BE ARRESTED, RESTRAINED, BANISHED, DISMEMBERED, NOR ANY WAY PUNISHED ; NO MAN SHALL BE DEPRIVED OF HIS WIFE OR CHILDREN, NO MAN’S GOODS OR ESTATE SHALL BE TAKEN AWAY FROM HIM, NOR IN ANY WAY UNDEMANAGED, UNDER COLOR OF LAW, OR COUNTENANCE OF AUTHORITY, UNLESS IT BE BY VIRTUE OR EQUITY OF SOME EXPRESS LAW OF THE COUNTRY WARRANTING THE SAME, ESTABLISHED BY A GENERAL COURT AND SUFFICIENTLY PUBLISHED ; OR, IN CASE OF THE DEFECT OF A LAW IN ANY PARTICULAR CASE, BY THE WORD OF GOD. AND IN CAPITAL CASES, OR IN CASES CONCERNING DISMEMBERMENT OR BANISHMENT ACCORDING TO THAT WORD, TO BE JUDGED BY THE GENERAL COURT.”

In 1692, a new charter was granted by King William and Queen Mary to the Province of Massachusetts Bay, uniting that and the Plymouth Colony under one government, making several changes in the powers of the provincial government, but still LEAVING THEM THE LIBERTY OF MAKING THEIR OWN LAWS, if they did not contravene the laws of Great Britain applicable to the Colony, but subject under

certain limitation to the royal approval, giving them in fact more power than our territories possess under the government of the United States.

This state of things continued until the revolutionary troubles and the adoption of our State Constitution in 1780. That Constitution, which was re-enacted and confirmed in 1820, is still in force, and guards our rights in theory in the most ample manner. It says, that no man shall be hurt for his religious sentiments or professions—that the liberty of the press ought not to be restrained—that the judicial department shall never exercise executive or legislative powers—that “THE PEOPLE OF THIS COMMONWEALTH ARE NOT CONTROLLABLE BY ANY OTHER LAWS THAN THOSE TO WHICH THEIR CONSTITUTIONAL REPRESENTATIVE BODY HAS GIVEN THEIR ASSENT.”

We thus see, fellow-citizens, how early, steadily and uniformly, this people have asserted, and maintained in their laws, as well as by the force of arms, the right of self-government under standing laws, and the necessity of confining the magistracy within well defined limits.

How does the practice of some of our tribunals, even at this day, correspond with this long-established, uniform principle of our institutions? We have been taught from earliest childhood to reverence the judges and the judicial system of this Commonwealth. Is that system entitled to confidence or respect? Do not mistake me. I speak of the judicial system, not of the persons who occupy the Bench. Many of the judges I know—all of them I respect—some of them are my personal friends. In condemning the judicial system, and in censuring some of the acts of some of the judges, I shall not impugn their motives. I believe their inattentions to the requirements of the law, and their frequent violations of law, to arise from a diseased system, and not from moral obliquity on the part of the judges.

The Constitution, in guaranteeing the unrestrained liberty of the press, has deprived all branches of the government, the Legislative, the Executive, and the Judicial, of the power of making the exercise of that liberty a public crime. There is no statute law since the adoption of our Constitution, making any publication against any individual

a crime. A libel by our laws is only a civil injury at most. I HAVE SHOWN, BY REFERENCES TO OUR EARLIEST COMPACTS, CHARTERS AND DECLARATIONS OF RIGHTS, THAT THE COMMON LAW NEVER OBTAINED A FOOTING IN THIS COLONY, PROVINCE OR STATE; yet we have seen within a few months a respectable clergyman, belonging to a pious, numerous, powerful and wealthy sect, doomed to a dungeon by a court of this Commonwealth, for an alleged crime of libel, ostensibly under the sanction of the common law, but really without any warrant of law or color of legal authority, except Judge law. I challenge the Bench and the Bar to produce a particle of authority under any law of this State to sanction this act. I assert that there is no statute under which the courts sustain indictments for libels, and punish men for this act as if it were a crime. I aver that the criminal common law never was in force in this State. I assert that the libel law which our present courts enforce, is not English common law libel law, and that they have no warrant for sustaining a prosecution of this nature, except the decision of former judges as guilty as themselves in violating the constitutional rights of the press and

the citizens. The Northern and Middle States have been convulsed, for the last ten years, in consequence of the kidnapping a citizen in a neighboring State. Is the offence less a crime when perpetrated under the forms of judicial proceedings, than when done by men not in their official robes? We are shocked—all good men are alarmed—at the lawless tyranny of a mob; but is Lynch law any more hideous off than on the Bench? Is it not, indeed, worse when perpetrated under the judicial garb? for in assuming the forms of law in the robes of official dignity, it loads its victim with disgrace as well as injury.

Palpable and reprehensible as are the usurpations of the Bench in the case of libels, they are by no means the only or the most extraordinary acts which contravene the principles of the revolution, and the provisions of the Constitution. The law regulating the manner of drawing jurors, prescribes that the Mayor and Aldermen in this city shall perform that service, and it also ordains that the names of persons convicted of an infamous offence, or guilty of gross immorality, shall not be put into the jury box. The Mayor and Aldermen, under the law, are the judges

of the fact, whether or not a person come within these inhibitions of the law. A few years since, a person was regularly drawn, by the Mayor and Aldermen, to serve on the Grand Jury, who had been convicted in the Municipal Court of the crime of a libel—a crime unknown on the pages of the statute book—a crime that only exists by judicial legislation; he was elected by his fellows foreman of the Grand Jury, an office of great importance and of a year's tenure. It became the duty of the clerk of the court to record the fact of his election. The Judge had no business with the case, but he nevertheless assumed the authority to displace the foreman from his office, and by an exercise of arbitrary power set aside the provisions of the law, deprived the officer of his place, and, as far as such a judicial act could affect that object, disgraced him. Both the law and the individual are yet unredressed of these wrongs.

Judicial presumption is visible also in a very prominent form, in the arbitrary rejection of witnesses on account of their religious creed. The Constitution says, that no man shall be hurt for his religious sentiments or professions; but if the judges do not like the creed of the witness they reject him, alike

in violation of the provisions of the Constitution and the dictates of plain common sense. The courts receive the testimony of the pardoned felon, and reject that of the honest Pantheist. They take him as competent, who believes that a wrathful God punishes the soul of man through eternity, and reject the philanthropic Universalist, who thinks that a beneficent Deity redeems all mankind from the punishment of sin. The rule under which the Court act is English Judge law—not English Common law, for English Common law, to be good, must run back, in uninterrupted practice, for centuries. Lord Coke, high authority with lawyers, will inform our Judges that their rule for deciding on the competency of witnesses is as variant from the English Common law, as I aver to be at war with the plain provisions of our Constitution. They disregard our fundamental law on this point, and follow the dictum of an English Judge, delivered nearly a century since, who overturned the Common law.

They not only violate the Constitution, but run counter to the plain principles of common sense.—We all know that belief is not a matter of the will, but is an involuntary sensation, the necessary and

inevitable result of conviction. It cannot affect a man's veracity, nor is there either law or reason why it should affect his legal competency. The principle has no application to our system of government. It only applies where there is a privileged or state religion. It is a civil disability, resulting from the ecclesiastical act of excommunication, and has reference not to a man's veracity, but is simply a means of protecting the rights and preserving the power of a privileged sect—a dominant church. As we have no dominant church, no state religion, there is no occasion to enforce the odious principle ; but were there ever so much necessity for it, the people have prohibited all branches of the government, and especially the Judiciary, from making such a law.

The great error of the Bench, however, is in punishing for offences at Common law, a practice long pursued by our Judges. Every trial of this kind is illegal. We have no Common law crimes.—Our Courts are established by written law, and they cannot legally extend their jurisdiction beyond what the statutes give them. **NO ACT CAN BECOME A CRIME BY JUDICIAL DECISION.** The statute law must first make an act a crime, designate the court that shall

have jurisdiction of the offence, and prescribe the penalty for the violation of the law, before that court can legally take cognizance of the case, and inflict any punishment. I have before shown that the English Common law, as it respects crimes, never existed here ; and if it had existed, prior to the adoption of the Constitution, the provision of the tenth of the Bill of Rights, which declares that “ the people of this Commonwealth are controllable by no other laws than those to which their constitutional representative body has given their assent,” would have cut it off.

Leaving, for the present, the subject of judicial encroachments, permit me to call your attention to another branch of the law—to the equity, or rather we should say, the inequity, powers with which the Legislature has clothed the Judiciary.

The Constitution, in the tenth article of the Bill of Rights, declares, that each individual of the Society has a right to be protected by it, in the enjoyment of his life, liberty and property, according to *standing laws*. In the twelfth and fifteenth articles, the right of trial by Jury is secured both in civil and criminal cases. In the eleventh article it is declared, that every subject ought to obtain right and justice freely, and without

being obliged to purchase it ; completely and without denial ; promptly and without delay, *conformably to the laws*.

Our courts, in the exercise of their equity powers, depart from and disregard all these salutary constitutional provisions. There are no "standing laws" to guide the actions of the people, or to control the decisions of the Judge in equity cases. Every decision must of necessity apply to a pre-existing case, and is, in its very nature, *expost facto* in its operation. These equity powers abolish the trial by Jury, that great constitutional right of our citizens. They impede the administration of justice, and compel men, after the most expensive and vexatious delays, to accept justice of a doubtful quality and at heavy costs. There are, doubtless, cases where wrongs are redressed in this way, that would not be remedied by a course of law ; but for one wrong thus righted, ten are probably perpetrated. The whole system has been patched up, little by little, and surreptitiously ingrafted upon our code, in direct violation of our Constitution. The legislative body has no right to delegate its legislative powers to the Judiciary ; and every equity decision is in fact a new law made by

the Bench, especially to apply to a pre-existing case. The Judges, in reality, are thus constituted a tribunal of dictators, holding their offices for life, disposing of men's property, not under the guide of existing laws, but at their own good will and pleasure ; and under their usurped Common law jurisdiction they punish for acts not known as offences by any law of the land. Our lives, our personal liberty, and our rights to property, existing at the will of this frail tribunal.

It would seem that these powers ought to satisfy all ordinary cravings, but they do not satisfy our Judiciary. The trial by Jury, that great palladium of our rights, is a stumbling-block to the Bench. The Judges often seize occasions to degrade this institution, to insult the jury, and to invade their legal rights. In all criminal cases it is admitted, even by the Bench, that the jurors are the judges of the law and the fact ; but the Judges always assume the right to charge the jury, the sole object of which is to bias their minds for or against the accused, and to induce them to render a verdict in conformity with the opinion of the Bench ; thus, in effect, assuming the performance of duties which the law confides to the jury.

Much of this evil, so far as it relates to the interpolation of Common law crime upon our code, may be remedied if jurors will learn their rights, and will perform their duties in as firm and fearless a manner as my worthy friend, (C. G. Greene, Esq.) the able editor of the Boston Morning Post, performed his, when on the jury a few years ago. They can lay the axe to the root of all this Common law crime with a very little effort—a fact that I hope each of you now present will bear in mind, if you are ever upon a jury, and that you will then make the effort. It should be remembered, that we have no crimes but statutory crimes ; common law crimes exist only by judicial usurpation. Jurors should require, whenever any one is on trial before them for any offence, the reading of the statute by which the alleged offence is made punishable. If this be not produced, or do not meet the case, no grand juror can, without perjury, find a bill ; no petit juror can, without perjury, consent to a verdict of guilty ; and each individual juryman is bound, by his oath to his God and to his conscience, to decide for himself—to decide whether or not there be a statute law, whether or not it embrace the case, whether or not the law is within the

constitutional bounds. The Judges have no legal right, unasked, to express an opinion to the jury on these points. These simple rules, rigidly followed, will lop off that whole mass of judicial wrong and oppression now existing under the name of Common law crimes. It will not, however, reach those fields of error which lay beyond it. Our present judicial system is based on wrong principles. It is a deformity upon our political institutions—an anomaly in our jurisprudence. That system, together with its handmaids, the law monopoly and the bar rules, ought to yield, and it must before long yield, to the enlightened spirit, the prevailing intelligence of the age. There is no good reason why Judges, more than other officers, should be placed beyond the reach of the popular will. In the adjoining States of Rhode Island and Vermont, and in some other States, Judges hold their offices for limited terms, and are elected to their places by the representatives of the people. There is no good and sufficient reasons why this entire branch of the government, the branch which controls our property, and holds in its hands our personal rights, in the application of the law to them, should be monopolized by a single profession,

by the trades' union of the Bar. In New Hampshire, in Vermont, in New York, a portion of the Judges are taken from the intelligent farmers and tradesmen ; and in the highest Court in the State of New York, the court for revising the doings, and correcting the errors of her legal tribunals, consisting mainly of the Senators, those members are chosen by the popular vote, bienially, from among the mass of the citizens. No man of intelligence, I presume, will hazard the assertion, that justice is not as promptly and as impartially dispensed in those States as in ours, and at much less cost.

The profession of the law, here, is a monopoly of the most odious kind, injurious to the public and to most of the members of the profession themselves, particularly to the younger portion of the lawyers. Competition, free and unrestrained competition—free as the bird who wafts itself upon the breeze—in the law, as in all other callings—is the life-blood of improvement. Close as is the monopoly, yet, from the blandishments thrown around the profession, it is filled to overflowing, mostly with the sons of those who are wealthy, who alone can incur the expense necessary to enter this tabooed, this consecrated

ground. Extreme poverty among the mass of the lawyers, who are allured into the calling, in many instances, devoid of the natural qualities adapted to and necessary in that profession, is the inevitable consequence. Stimulated by pride and driven by want, many of them are obliged to seek their living from public stations. They have claimed in this State, and long enjoyed the entire monopoly of all judicial offices, even down to the Clerks of your courts; and the Legislature has clothed the Judiciary, in violation of the Constitution, with the executive power of appointing these clerks. There is no office of emolument in the whole land, from a Clerkship of a petty corporation to the Presidency of Harvard College, from a Deputy Sheriff or village Postmaster to a Senator's seat in Congress, but you will see some of these greedy men in hot pursuit of it, and, from their clannish spirit, recommending one another for the places. In these remarks I am portraying the natural consequences of a vicious system. I blame not the members of the profession: other men, under like circumstances, would present us with like results. As individuals, I respect the members of the legal profession as I do other good citizens; and I

am proud to rank among its numbers many, very many, of my warmest and most cherished friends. But most surely the system of law monopoly must be radically wrong, when it yields the results we see. The practice of the law, like all other callings, should be thrown open to free competition. The lawyer can at any time he chooses enter into trade, and become a merchant, or pursue any other calling ; and why not reverse the rule ? But if the profession need regulation, let the Law, and not the Bench, as at present, regulate it.

Our present judicial system, too, needs a change ; it is too defective for repair or amendment—it should be demolished, and a new one reared upon its ruins. Judges should hold their offices for limited and short periods, and a majority of them should be taken from among the community at large. Do not your farmers, your tradesmen, your manufacturers, your merchants make the laws ? Do not these laws operate upon them, and are they not required to obey them ? and do not these facts pre-suppose that the mass of your citizens understand them, and are capable of applying them to others ? Nay, more, in giving to jurors, as the law does in all criminal cases, the right

to judge of the law and the fact, the very power here claimed is confided to persons, not of the profession of the law, taken from the mass of your citizens; you give to them, and will not place in the hands of the Bench the power of deciding all cases implicating the personal liberty, the character and even the lives of your people; and yet it is gravely contended by many, that, in matters of mere property, you need more talented, more gifted men, men learned in the mysteries of the law. This is indeed valuing the dross of the world, your dollars and cents, more highly than you prize your own lives. It is even worse than the idolatrous Israelites, whom Moses denounced, and God commanded to be slain, for worshipping the golden calf.

If you will give to practical men their share in the judicial offices of the state, the tricks of law trade, the mystery, the jargon and the chicane of the craft will vanish. We shall fall back for our protection upon our code of Statute Laws, the only laws recognized by our Constitution, for our guide and government. That musty and barbarous code, the English Common law—that horrible system, the child of fraud, of substituting the opinions of English

Judges, and French Judges, and American Judges for law, will disappear from our land, and we shall finally reach that goal for which our pilgrim fathers started, for which our revolutionary patriots fought, a government of written laws, made by the Representatives of the people, and administered by men taken from among the body of the people themselves.

In carrying out fully the principles of the revolution, and engrafting them practically upon all our institutions, other errors than those pervading the judicial branch remain to be corrected. We must guard against monopolies of all kinds, whether of power, of wealth, or of privilege. The trades' union of operatives, which, by a combination of power, a monopoly placed in a few hands, would compel a workman against his own will to adopt their prices and hours for labor, is as reprehensible as the trades' union of the Bar, or of the Physicians, who establish the fees or rates of work for their own craftsmen, and punish members who violate, not the laws of the land, but the arbitrary rules of these trades' unions.

As friends to free principles, as disciples of the

revolutionary patriots, we should discourage all these and every other species of monopolies. It is a wrong notion, warmly maintained by some, however, that all corporations are monopolies, and that all accumulations of wealth are dangerous. But we should scout the idea which I have seen recently deliberately advanced by some ultra anti-monopolists, that the possession of wealth is presumptive evidence of dishonesty. The possession of wealth is, on the contrary, presumptive proof of industry and frugality and honesty; for rogues are more generally poor than honest men.

I am against^d monopolies, I am friendly to all honest men of industrious habits, but I do not belong to, nor hold fellowship with, that class of ultras who would herd only with paupers, incendiaries and pickpockets—who consider poverty and crime and indolence as the only legitimate passports to their ranks. I would discourage corporate monopolies as well as others. I would discountenance the accumulation of wealth in mortmain estates, or to be tied up for generations in trust companies and in life insurance offices; for these sap the foundations of

our institutions, which rest for security on the general distribution of wealth, and the general intelligence of the people.

Property, tied up in these forms, tends to defeat the laws of distribution, and is fastening upon us entails, more objectionable than private entails, which the laws wisely prohibit. The income from property tied up in mortmain, is as much a drain from the earnings of labor, as it would be if the same were levied by direct taxation; and the great evil is, that the people, who ultimately pay this tax, have no voice in directing its expenditure. It would be far better to support your colleges and your charities by a direct tax, as your common schools, your almshouses, and your State Lunatic Hospitals are now supported, than by an income from mortmain funds.

Harvard College is a striking example of the inutility of supporting such institutions in such a form. It is a seminary rich in mortmain funds, rich from the income thus wrung from the hand of labor, but musty from age and indolence, and loitering half a century behind the progress of the age. We can say of it, as they say of Oxford University in England,

that it serves as a land-mark from which to note the progress of surrounding institutions.

We must not, however, confound corporations and trust companies of these kinds with the various corporations of individuals and the associations of wealth, for the active business purposes of life. These are the parents of industry, the patrons of labor. They are the means by which this whole country, from its earliest history, has advanced in her unparalleled career of improvement. The first vessel of size ever built in the old colony, in 1641, a barque of fifty tons, costing £200, was put into sixteen shares, and was owned by thirteen individuals.

This principle of associating wealth to accomplish particular works, either by a voluntary copartnership or a legal corporation, was early adopted; and it is obviously beneficial to persons of small means, who, by thus uniting their little sums, are enabled to accomplish magnificent and useful works, otherwise unattainable, or beyond the reach of all except the most wealthy. The system thus early begun, has been steadily pursued through all our history down to our own days. It has given to the country your

wharves—your docks—your bridges—your turn-pikes—your canals—your steam-boats—your rail-roads—many of your most splendid edifices—your flourishing manufactories—your wide-spread commerce. To abandon the system, as some ultra theorists demand, would be to stop short in the march of improvement. If there be abuses in it—and all systems are liable to abuses—correct them; but to prohibit all corporate associations of wealth, which are always controllable by the legislative will, would be but yielding to the demands of folly, ignorance, or knavery.

You thus see, fellow-citizens, that though much has been done, much yet remains for us to do, before our institutions shall be fully imbued with free principles, and all the errors of the past and present rooted out.

We are wont to look back and compare our Republic with the ancient Republics of Greece and Rome. The institutions of those renowned nations, in turn the mistresses of the world, were raised upon foundations so radically different from our own, surrounded by circumstances and influences so foreign from those of the present age, that they can no more

be compared with us, than we with the Chinese. Our government is, *sui generis*, the first of its race. It sprung into life from the voice of the people, as Minerva sprang from the head of Jupiter. We can only measure our progress by comparing the different epochs of our own history. By this measure we shall find that we have made great advances. We shall perceive that, as Democratic doctrines have prevailed, as the Democratic party has held the reigns of power, so has our progress in free principles been accelerated. The pomp and stateliness of aristocratic forms, under their rule, have yielded to a simpler garb and a more civil deportment in your public functionaries. The monied aristocracy was curbed during the Republican administration of Mr. Jefferson; and the shackles upon the press, which the preceding administration, regardless of the constitutional restrictions, had imposed, as the most important step in their march to arbitrary power, were taken off in Mr. Jefferson's time. The human mind was emancipated—mental slavery, so far as the laws of the United States could apply to it, was abolished. The freedom of action, as well as the field of thought; was enlarged—new force was given to the

will of the majority, exercised within constitutional limits—the whole course of the National Government, which was previously fast verging towards monarchical principles, was changed, and the Ship of State put upon “the Republican tack.” Time brought with it new abuses—the rigid democracy of Jefferson had given place, in the government, to looser political principles. A monied aristocracy had planted itself in a fortress, which it had occupied and strengthened for half a generation, which it thought impregnable, and by means of which it fondly hoped to rule the country. The whole system of our National Government was rapidly tending to a complete change. The government was levying taxes to be spent for internal improvements—it was draining the people of the old States, who had made their own roads and bridges and canals, to pay for like improvements in the newer sections of the Union. It was taxing the whole community under a ruinous tariff, for the purpose of fostering or regulating the labor of a class. It was rapidly absorbing the power of the States, and suffocating the liberties of the people. While retrograding from just principles at home, the government was fast losing its

character abroad. Our despoiled citizens called in vain for redress from the spoiler, for protection from their country. General Jackson took the helm. He was called into power by the spontaneous votes, the unbought suffrages of the people. On him the hopes of the nation reposed. He has not disappointed them. He has redeemed his pledges. He has far surpassed the most sanguine anticipation of the people. The veto upon the Maysville Road Bill closed the wasteful drain from the public treasury for internal improvements. The principle of reducing the taxes to the wants of the government, has been fully recognized. The national debt has been extinguished; the spoiler has been called to his reckoning, and compelled to pay for his robberies. The character of the country has been elevated in the eyes of the whole civilized world; and every American abroad moves in more safety, and is treated with more respect. The monied monster, with its hydra heads, which designed to crush and strangle our liberties in its venomous folds, has been prostrated by the blows of this modern Hercules. *But its heads are not yet seared.* The attention of the people has been aroused to the enormities of the paper system—

to the evils of an excess of credit currency ; and under the auspices of this administration, they are enlarging the specie basis, and resuming the use of hard money. Gold, which for a generation had disappeared from view—which had never met the eye of the younger portion of the community, is now getting into circulation.

General Jackson has done more than any other man living, to bring back the government to the Republican path—to protect our commerce and extend its bounds—to elevate the national character abroad—to restore to the people their rights at home—to confine the action of the National Government to its legitimate objects, and to keep it within the prescribed limits of the Constitution. His administration will occupy the brightest page of American history. He will illustrate the age in which he lives. His fame will commingle with the fame of Washington, and after times will rank them together as the fathers of their country—the benefactors of the human race.

To carry forward the reforms which I have pointed out as necessary to infuse the free principles of the Revolution into all our institutions, we must continue

to operate through public opinion upon the ballot box. In other countries, under other forms of government, political changes are the offspring of civil wars. There, reforms gush forth, commingled with the blood of the people—ours is a more peaceful, and a more efficient remedy.

Both our national and state elections take place the coming fall. The Democracy have before them, for the Presidency, a man who has uniformly supported republican principles—a man who, like our present illustrious chief, is the architect of his own fortune. Springing from the people, he has always been found advocating their rights. In a long life of public service he has always been found faithful to their interests. He has aided by his counsel, and assisted with his talents, in carrying forward the measures of Gen. Jackson's administration.

It is remarkable that none, not even the most violent of those who oppose Mr. Van Buren, has ever made a charge against him of any disreputable act, either in his public or private life. He must have led a life always guided by the cynosure of good principles, when, amidst the stormy strifes of politics, his bitterest enemies can find no act of his to which

they dare attempt to attach the imputation of disreputable. They oppose his politics—they call him an intriguer—a magician ;—but we sustain him for those very political principles for which they oppose him ; what they call intrigue and magic, we know to be the result of a sound, of an almost unerring judgment, and of a straight-forward, unyielding honesty. We believe him to be most eminently qualified to maintain and enforce the principles of Gen. Jackson's administration, and if he do that, the people will say of him, as they now say of Gen. Jackson, “well done, thou good and faithful servant !”

Col. Johnson, the conqueror of Tecumseh, the candidate for the Vice-Presidency, will unite the hearts and command the votes of those who love philanthropy—who prize bravery—who venerate patriotism—who would reward the man that has poured out his blood in the service of his country, who bears about his mangled frame the marks of the enemy's steel.

I speak of Mr. Van Buren's election as though it were certain ; I so consider it ; certain by an overwhelming majority, without a vote from this State. But I desire to see, and I hope to see Massachusetts,

that, for thirty years, with but few intermissions, has wasted her political influence and sacrificed her interests to the waywardness and ambition of a few selfish men, restored to the arms of her sisters—to the communion of the family board.

The interests of New York and the interests of this State are one and the same in the great features of national policy. I therefore consider it impossible that men of intelligence in our State can prefer Judge White or Gen. Harrison to Mr. Van Buren. Mr. Webster is out of the question ; this even his warmest friends will admit. He cannot get an electoral vote out of Massachusetts ; and hence any vote given for him in this State, is, in effect, either thrown away, or given for Judge White or Gen. Harrison. There are many in this State who prefer Mr. Webster to Mr. Van Buren, but who would prefer Mr. Van Buren to Judge White or Gen. Harrison. I have confidence enough in the good sense and intelligence of our citizens to believe that they will see the true state of the case, and vote for Mr. Van Buren—that they will place Massachusetts in a position where she may command the influence to which the talents and the numbers of her people entitle her.

We are equally fortunate in the choice of our candidate for the Governor of the State. The purity of Judge Morton's life and character defies the assaults of his bitterest foes. He, too, has made his own fame and fortune. He, too, has sprung from the people; and while others, his cotemporaries, have risen to high stations by the profession of Democratic principles and by the influence of the Democratic party, have subsequently abjured their early principles and betrayed their early friends, have become first the elevated and then the humbled instruments of their former enemies, he has never swerved from the straightforward path of Democracy—he has never abandoned the cause of his early friends.

The great prize, the Redemption of the State and the Reform of the Judiciary, is before us. It depends upon the Democracy to say if it shall be redeemed. Let us sacrifice all personal interests—let us bury and forget all personal differences—let us, like the Patriots of '76, whose mighty deeds we celebrate, unitedly go forward to the great work. Let VAN BUREN and MORTON be our watch-words—the complete triumph of Democratic principles our goal!