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THE  
FEDERAL JUDICIARY

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# THE FEDERAL JUDICIARY.

A THANKSGIVING DISCOURSE,

BY

HENRY A. BOARDMAN, D. D.  
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PHILADELPHIA:

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*Law*

PHILADELPHIA, December 8, 1862.

To the REV. HENRY A. BOARDMAN, D. D.

*Dear Sir*—We think that the publication of your Thanksgiving Discourse, on the *Federal Judiciary*, would be acceptable to the members of the Legal Profession, as well as to many others unconnected with that Profession.

You are aware that on one or two of the questions embraced in the discussion, there has been a diversity of sentiment in the Profession; and some of the undersigned might not be ready to adopt every expression you have used on those topics. We are, nevertheless, desirous of seeing the Discourse in print, and trust that you will favour us with the manuscript for publication.

Very truly and respectfully yours,

HENRY C. CAREY,  
WILLIAM B. HIESKELL,  
HENRY S. HAGERT,  
CHARLES E. LEX,  
JOSEPH ABRAMS,  
F. CARROLL BREWSTER,  
SAMUEL HOOD,  
ARTHUR M. BURTON,  
WILLIAM F. JUDSON,  
JOHN B. GEST,  
THOMAS GREENBANK,  
CLEMENT B. PENROSE,  
JAMES OTTERSON, Jr.  
SAMUEL DICKSON,  
HENRY P. KING,  
CHARLES GIBBONS,  
W. H. DRAYTON,  
HENRY A. CONVERSE,  
VICTOR GUILLOU,  
MORTON P. HENRY,  
FREDERICK HEYER,  
P. B. CARTER,  
E. K. NICHOLS,  
JAMES W. PAUL,  
WILLIAM H. ARMSTRONG,  
(Williamsport, Pa.)

R. C. GRIER,  
W. STRONG,  
JAMES THOMPSON,  
J. I. CLARK HARE,  
A. V. PARSONS,  
WILLIAM A. PORTER,  
JOHN C. KNOX,  
J. HILL MARTIN,  
W. J. McELROY,  
JOHN C. BULLITT,  
GEORGE W. THORN,  
A. S. LETCHWORTH,  
AMOS BRIGGS,  
B. GERHARD,  
CHARLES SERGEANT,  
CHARLES GILPIN.  
GEORGE JUNKIN, Jr.  
ROBERT H. McGRATH,  
J. F. JOHNSTON,  
MORTON McMICHAEL,  
E. SPENCER MILLER,  
THEODORE CUYLER,  
STEPHEN COLWELL,  
GEORGE M. BOKER,  
R. C. McMURTRIE,  
JAMES MILLIKEN.

PHILADELPHIA, December 11th, 1862.

GENTLEMEN—I need not say to you that the article of our Constitution which provides for the erection of a tribunal for the peaceful arbitration of differences among the various governments embraced in the Federal Union, is justly regarded as one of the highest achievements of political wisdom the world has ever seen. It was this conviction which led me, on the late Thanksgiving Day, to call attention to the Judiciary as a great national blessing, too little remembered by us. My discourse has been received, especially by the Bench and Bar, with a kindness I could not have anticipated. I feel myself honoured by your note, and cheerfully place the manuscript at your disposal.

I am, Gentlemen,

Very respectfully and truly yours,

HENRY A. BOARDMAN.

To the Hon. ROBERT C. GRIER,  
Hon. W. STRONG,  
HENRY C. CAREY, Esq., and others.

## THE JUDICIARY.

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2 Chronicles xix. 5—7.

AND HE SET JUDGES IN THE LAND THROUGHOUT ALL THE FENCED CITIES OF JUDAH, CITY BY CITY, AND SAID TO THE JUDGES, TAKE HEED WHAT YE DO, FOR YE JUDGE NOT FOR MAN, BUT FOR THE LORD, WHO IS WITH YOU IN THE JUDGMENT. WHEREFORE NOW LET THE FEAR OF THE LORD BE UPON YOU; TAKE HEED AND DO IT: FOR THERE IS NO INIQUITY WITH THE LORD OUR GOD, NOR RESPECT OF PERSONS, NOR TAKING OF GIFTS.

It has fallen to my lot, on the annual recurrence of this festival, to address you on a variety of topics connected with our public affairs. This has become so much the established and approved custom of the pulpit, that you would be disappointed, should I depart from it to-day. I am not unwilling to respond to this feeling. But instead of dwelling upon the present state of the country, I propose to offer you some observations on a subject of national importance, as new to this pulpit as it must be to most of the pulpits of the land. Among the very numerous discourses that have been preached and published concerning our history and institutions, one of the three fundamental departments of the Government appears to have been overlooked. The inquiry

seems never to have been raised, whether amidst the affluence of blessings bound up in our political charters, there was any thing to call for special *thanksgiving* in the JUDICIAL SYSTEM of the United States, and the characters and services of the leading men by whom it has been administered. It is not difficult to account for this oversight.

The Executive and Legislative departments of the State are kept constantly before the public eye. Subjected to the ever-recurring test of the ballot-box, they supply the staple of those political contests which are waged with such vehemence in every country blessed with constitutional liberty. Not only are the offices accessible to all, but they appeal with power to the ambition, and, it must be added, the cupidity of the masses. The acts of these functionaries, too, invite praise or censure, because, as they are without concealment, so they bear directly upon the personal interests of all who compose the body politic. The Judiciary, on the other hand, has no prizes to offer to the multitude. It is confined to the ranks of a single Profession which, in our country, embraces only about a thousandth part of the population. It moves in a secluded sphere. While we can not say of it, "There is no speech nor language; their voice is not heard;"\* we may say,

\* The literal rendering of Psalm xix. 3.



that its voices do not attract the popular ear. Except on rare occasions, people do not affect the court-rooms. And where they do, the cases which allure them are oftener those that appeal to their curiosity or their passions, than those which involve principles that concern our dearest personal rights or our public liberties.

Owing to these and other causes, the Judiciary is rarely thought of, even when we are reverently meditating upon the signal advantages which are bound up in our form of Government. It is another illustration of the familiar adage, "out of sight, out of mind." We are drinking every day of the crystal streams which flow from this hidden fountain, without one thought of the fountain itself; and even without caring to know whether it is really hidden, or hidden only to our indolence. It may not be what you would prefer to listen to to-day; but if there is one of our chief temporal mercies unacknowledged, you will not chide me for venturing to remind you of it.

I use the word "remind" in this last sentence advisedly. It would be great presumption in me to attempt, under any circumstances, an elaborate dissertation on the Jurisprudence of the United States. The present occasion calls for no such performance. All I propose is, to throw out a few suggestions, for-

tified by proper biographical references, which may lead to a juster appreciation of the Divine goodness to us in this department of our affairs.

If I confine myself mainly in these remarks to the Federal Judiciary, it will be partly from its paramount importance, and partly from the necessary brevity of a discourse like the present.

Among the problems submitted to that assembly of great men, the Convention which framed the Constitution of the United States, the question of the Judiciary was found peculiarly embarrassing. As there was no precedent for such a Union as they proposed, a confederation of States on principles which consolidated the people into a single compact nation, without sacrificing the independence of the several constituent sovereignties, so history failed to supply them with any model in framing a Judicial system suited to the exigencies of so unique a political structure. It was indispensable that the Judicial should be made co-extensive with the Legislative power. Its jurisdiction must comprehend the entire country, yet without interfering with the supremacy of the State courts in their respective spheres. More than this, it was necessary to provide an umpire to whose authority the States themselves should do homage. Collisions had occurred among them, and might occur again—as on questions

of boundary, of jurisdiction, or of personal rights. They might enact laws in contravention of the federal compact. In the absence of a competent tribunal to adjudicate these controversies, both parties would fly to arms, and the Union would soon perish. The embarrassment lay in the fact, that the Judicial power must be so organized as to reach and control, not individuals and corporations merely, but large and flourishing States, proud of their traditions, jealous of their rights, and restive under restraint. It must go still further. The Government might be subverted as well by its own legitimate authorities as by the action of the States. It was as needful to protect the Constitution from domestic as from foreign invasion—from the usurpations of the legislative and executive departments at the centre, as from the encroachments of the provincial governments. There must be a tribunal clothed with power to annul the formal statutes of the States and of Congress, and, in certain cases, to pass upon the constitutional validity of the acts of the Chief Magistrate.

To say that other nations supplied no example of such a Judiciary, is to state but a part of the truth. No such tribunal was ever heard of. Every civilized country has its high Courts of Judicature. But however ample their powers, they have no mission to sit in judgment upon the acts of the Crown and the

Legislature. Each is supreme in its own department. Grave questions may arise as to the assumed prerogative of the throne; or as to powers assumed by the Legislature. But it is not for the Judges to say, this is constitutional, and that is not; here the subject must obey, and there he is absolved from obedience. Our Constitution herein is as much a novelty in the science of government, as is the court which expounds it. It is literally our fundamental law; as binding upon the President, upon Congress, and upon the States, as it is upon the youngest midshipman of the Navy. Its essential characteristics are these two. It is the formal expression of the will of the *whole people*. As such, the States, severally and jointly, accepted and ratified it; and so, from being distinct societies, they became a single consolidated nation, indivisible and inseparable, except at the bidding of the authority which created it, the voice of the entire population of the Union. These attributes make it our law of laws. They enthrone it within its sphere, which its own terms define, over all other powers and over all persons. To explain and apply the principles of this (shall I style it) sublime instrument, is the province of our Supreme Court of Judicature; and no functions so august were ever before confided to a human tribunal.

How much we are all indebted to this arrangement, can be estimated only by one who is able to sum up the benefits which the Constitution of the United States has in the course of seventy years conferred upon our country and the world. For it admits of easy demonstration, that the preservation of the Constitution, and, by consequence, of the Union and all that the Union comprehends, is due, under God, to the Judiciary. The Constitution is the depository and charter of those rights and privileges which, prior to this rebellion, had conducted our country to an unexampled pitch of prosperity and happiness; and of the Constitution, the Judiciary has been the faithful guardian. Numerous are the instances in which its provisions have been violated, sometimes by acts of Congress, more frequently by the State Legislatures or the State courts. And if there had been no court of eminent jurisdiction to annul these acts and decrees, the Constitution must long ago have been scattered to the winds. It was with a deep significance that Washington, in enclosing to John Jay his commission as the first Chief Justice of the Supreme Court, addressed him as "the head of the department which must be considered as the keystone of our political fabric." Subsequent events have vindicated this comparison. That the arch did not sooner give way, was, under Providence,

because the keystone proved immovable. That the keystone should still preserve its poise, notwithstanding the frightful ruins strewn around its base, forbids us to despair of yet seeing the crumbling arch restored.

Some general idea may be formed from these observations, of the lofty position which the Judiciary holds in our political system. It will readily be seen that the duties devolving upon the magistrates who preside in this court, are no less delicate than momentous. Besides the difficulties and responsibilities inherent in the Judicial office under ordinary circumstances, they are exposed to others of no trivial character. They are set to expound the Constitution. Representing, in this capacity, the federal authority, they stand in a sort of antagonism to the State functionaries, and to all upon whose pride, or ambition, or supposed interest, the yoke of the Constitution may press with any degree of rigour. The allegiance of the citizen to his own State being immediate and direct, and that to the general government remote, a tribunal created to uphold the supremacy of the national authority wherever the States may presume to impugn it, must expect to be viewed with a jealous eye. The popular sympathy which so often cheers other jurists, rarely makes its way into the presence-chamber of our national Court. It is

their ungracious office to decide causes where the parties-litigant are, perhaps, sovereign States; and the mandate they issue, instead of affecting a solitary individual or corporation, disappoints and vexes a million of people. To this great community they are, as it were, a foreign tribunal: and so much room do their relations to the defeated party leave, in cases of this sort, for the workings of wounded state-pride, partisan feeling, and all uncharitableness, that the general acquiescence of the nation in the decisions of the Supreme Court, deserves to be regarded as a signal token of God's providential care over our country.

This, however, is but one class of the cases which illustrate the point before us. It devolves upon this Court, as already intimated, to sit in judgment upon the acts of the co-ordinate branches of the Government, and to interpose itself, as occasion serves, between either or both and an excited people. It must defend the Legislature against the threatening designs of the Executive. It must protect the just prerogative of the Executive against the unconstitutional demands of the Legislature. It must guard the right of the States from federal aggression, and the authority of the federal government from the aggressions of the States. It must, if needful, invoke the whole power of the Union to enforce its

decrees in the face of an inflamed populace who are disappointed of a coveted victim. And it must invoke that same power to shield even an unworthy citizen from an attempted outrage, whether on the part of a vindictive Legislature or a despotic Executive.

Functions like these could be entrusted only to a Judiciary established upon the firmest possible foundation. The provision of the Constitution relating to this point, is in the following words:—"The Judges both of the Supreme and inferior Courts, shall hold their offices during good behaviour; and shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office." It is well known that the wisdom of these last days claims to have devised a better principle for the regulation of the Judiciary than the good behaviour tenure; I refer to the plan of an elective Judiciary for short terms. The great importance of this question must be my apology for offering a few observations on the general subject.

The plan of an elective Judiciary for short terms, has been advocated chiefly upon two grounds. First, as affording the only adequate means of getting rid of incompetent or corrupt Judges. The answer to this is, that a Judge of this sort may be removed by impeachment. In some of the States the same end



may be reached by the less formal process of an address to the Governor by the Legislature. The other and main argument is, that it is anti-republican to confer an "office for life;" and that to insure the faithful administration of justice, the Judges must be made, like Legislative and Executive officers, directly responsible to the people. But the system here impugned does not create a "life-office." The tenure is, "during good behaviour." If a Judge does well, he keeps his place: if otherwise, he may be deposed. Nor is the analogy drawn from the other departments of any validity. The difference has been often pointed out. The whole power of the State is vested in the Legislative and Executive branches of the government. They make the laws. They create offices. They appoint all the officers. They dispense all the patronage. They declare war and make peace. They may embark in schemes which involve the outlay of millions of money, and the employment of whole armies of contractors, agents, and their subordinates; for all which the country must be taxed. In wielding these vast powers, they have a large discretion. They may do or not do, as they see fit. They may choose out of a variety of projects for accomplishing a certain end; or they may reject them all, and abandon the object itself. Whatever they do or leave undone, the

people reap the consequences. It is on every ground proper, then, that the people should exercise a strict *surveillance* over these functionaries; that they should hold them to a rigid accountability, by requiring them to return their commissions to their hands at stated and brief intervals.

Now what semblance of identity is there between this case and that of the Judiciary? The Judges have no political power. They can create no corporations. They can make no contracts. They can lay no taxes. They can appoint no officers. They are simply the oracle of the law. The laws, which, it is important to note, they have no agency in making, (and none in repealing except as they may pronounce them unconstitutional,) speak through them to the people and to their rulers. The Judges are shut up to this service. They are without discretion.\* There is not a vagrant on the street who may not go into court and compel them to speak. A Legislature may shirk an unwelcome duty. They may decline or postpone action, where action would embroil them with their constituents. But a Judge has no such latitude. It matters not who may invoke his interposition, nor whom he may disquiet; when the cause comes before him, his oath requires

\* See Mr. Sergeant's very able speech in the Pennsylvania Convention.

him to decide it. That these decisions should frequently give offence, is unavoidable. All the more reason is there for making the Judges independent. It is for the interest of the *people* that the magistrate who expounds the laws, should be in a position to fear neither their displeasure nor that of their political rulers. It is no disparagement to them to say, that they are not competent to review the proceedings of the courts; if they are, why not abolish the courts altogether? Experience has shown that opinions from the Bench which at first excited popular odium, are frequently accepted after a little season as just and wise. This shows the importance of a permanent Judiciary.

To say that "the offices of the Judges belong, not to the incumbents, but to the people," and to urge this as a reason why the people should have a frequent opportunity of appropriating them, is to trifle with a very grave subject. The offices do belong to the people. And it also belongs to the people to have them filled with wise and faithful men—not for the sake of these men, but for the public good. Of what moment is it to you or to me, who the individual may be that sits in the seat of judgment? But it is of the greatest moment to us all, that we should guard the independence of the jurist who sits there, by assuring him that so long as he does well, he shall

not be molested. It is for our good, not his own, that we would have him feel that he shall not be deprived of his bread and turned adrift upon the world, for doing his duty. In taking this ground, we are pleading the cause of the government against faction; the cause of minorities against majorities; the cause of the helpless against the strong; the cause of the loyal and exemplary citizen against the violence of party; the cause of popular liberty against the usurpations of arbitrary power. The whole framework of society is suspended upon the independence of the Judiciary. "I have always thought," says Chief Justice Marshall, "from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a *dependent* Judiciary." These solemn words occur in a speech he delivered in 1829, (he was then in his 75th year,) to the Virginia Convention, his main object being to show that Judicial independence could be secured only by the good-behaviour tenure.

To maintain that an upright judge has nothing to fear from a periodical reference of his commission to the contingencies of a popular vote, may be a very amiable sentiment, but it does not quite suit the sphere we happen to dwell in. This is no Arcadia, but a very matter-of-fact sort of world, with large

room for the play of envy, ambition, resentment, avarice, and their kindred passions; and with sad memorials, filling many thousands of volumes, of faithful public servants who have suffered injustice at the hands of their fellows. We cannot trust our Judges to this sort of guardianship. We do not care to expose them to such temptations. We fear the flatteries and the enmities of popular leaders. We distrust the arts of emulous rivals, and the candour of a partisan press. There is no country in the world where personal character is so mercilessly traduced at the polls, as here. No citizen who becomes a candidate for office is too good to be gibbeted as a felon in disguise. The most venerable of our living statesmen, now four-score years of age, as remarkable for the purity of his life as for his eminent abilities, observed in a speech before the United States Senate some years ago, that when his name was before the country in connection with the Presidency, he was accused by the newspapers of every crime in the decalogue except one. I suppose the excepted sin was idolatry. Why his detractors should scruple about this charge is quite intelligible. Even party credulity was not ready to have it said, that Mr. Cass was a worshipper of Jupiter or Juggernaut. Had there been an audience to entertain it, the libel should not have failed for lack of some one to father it.

It is the tax we pay for our liberties—this licentiousness of the tongue and the press. For this reason and no other, we tolerate it. But who wishes to see Judicial integrity cast into this seething cauldron? Can the Judges bear it? Do they require it? If it be needful to subject them to the ordeal by fire, why not go back to the approved system of the fathers, and compel them every few years to walk barefoot over nine red hot plough-shares? That had a certain dignity about it. It was genuine sorcery. The other is a poor imitation. It lacks the solemnity of the primitive institute,—unhappily it retains the fire. But the personal relation of the Judges to this question, is of secondary importance. Let it fare with them as it may, can the *people* bear it? Can they afford to live under a system the essential tendency of which is to make justice the sport of human passions and the foot-ball of parties? Is it for their security and happiness that the courts should be exposed to every gust that disturbs the political atmosphere; and that the Judges should be placed in a position where the thought of bread for themselves and their families, may tempt them to keep one eye on the code and the other on the ballot-box? Will it aid in conserving their franchises to have learned and upright Judges driven from the Bench—perhaps to go to the almshouse, or to the grave—at the very

time when age and experience combine to make their services more valuable than ever?

It is no reply to these views to urge that many of the States, our own among them, have adopted the plan of an elective Judiciary for short terms: and that thus far it has proved satisfactory. For the time has not come to gather the fruit of this tree. The system is yet to be tested. We may concede that in our own State it has thus far wrought no irreparable mischief. We may go further: it has given us some Judges of very high character, who deservedly enjoy the confidence of the Bar and of the public. This is cause for thankfulness. But neither our experience nor that of other commonwealths, will aid the sponsors of this new doctrine.

The indications are (so it is credibly stated) that the election of Judges in the States which have repudiated the time-honoured custom of the older nations, will at no distant day sink to the level of those partisan contests, in which all concern for the fitness of candidates is merged in the one paltry idea of their "availableness." And when that day comes, Justice will fly from her desecrated temples, and Liberty will not be long in following her to some happier shore.\*

\*I have heard a very distinguished citizen of this State express his deep regret for the vote he gave in the Convention of 1837,

I may be allowed to confirm these views by an authority which both the Bar and the Bench are accustomed to respect.

“What guarantee is there for the Constitution itself, if you emasculate the judicial department, the only one that is a smooth, practical, wakeful, and efficient defence against invasions of the Constitution by the Legislature—the only one that can be efficient in a republican representative government, whose people will not bear a blow, and therefore require a guarantee whose blow is a word? A leasehold elective tenure by the Judiciary is a frightful solecism in such a government. It enfeebles the guarantee of other guarantees—the trial by jury—the writ of habeas corpus—the freedom and purity of elections by the people—and the true liberty and responsibility of the press. It takes strength from the only arm that can do no mischief by its strength, and gives it to those who have no general intelligence to this end, in the use of it, and therefore no ability to use it for their own protection. The certainty

in favour of altering the Judicial tenure. He added, with emotion, “It is my conviction that this change has put Pennsylvania back one hundred years; and so thorough is the revolution of opinion on this subject, that if the question could now be submitted to a popular vote, our State would go back to the old tenure by an overwhelming majority.” I am further assured, by leading members of the Profession, that “the Pennsylvania Bar is a unit on this question.”



and permanence of the law depend in great degree upon the Judges; and all experience misleads us, and the very demonstrations of reason are fallacies, if the certainty and permanence of the judicial office by the tenure of good behaviour, are not inseparately connected with a righteous, as well as with a scientific, administration of the law. What can experience or foresight predict for the result of a system, by which a body of men, set apart to enforce the whole law at all times, whatever may be the opposition to it, and whose duty is never so important and essential as when it does so against the passions of a present majority of the polls, is made to depend for office upon the fluctuating temper of a majority, and not upon the virtue of their own conduct?""\*

Thus much on the general question of the Judicial tenure. The argument grows cumulative when applied to the Federal Judiciary. It were quite pertinent to refer, on this point, to the stores of learning, professional and general, which are demanded by the exigencies of that Bench. A Court which, to say nothing of Admiralty cases, Treaties, and the Law of Nations, rises to the dignity of a great "international arbiter," by comprehending within its jurisdiction the acts of Congress and the Legislation and

\*The Leaders of the Old Bar of Philadelphia. By Horace Binney. 1859.

Jurisprudence of thirty-four sovereign States and an indefinite number of Territories, must require for the wise administration of its powers, an extent and variety of intellectual resources far beyond any Judicial office known to the most polished nations of Europe. How are men to be fitted for such an office without a life of study? And what motive were there to engage in this herculean work of preparation, if they were liable to be removed at the end of a few years?

But let me simply recall the views already presented. Consider the vast responsibilities accumulated upon this Bench, the extreme delicacy of their relations to the General and State Governments and to all the inferior Courts, the powerful clients that appear at their Bar, the wide sweep of their jurisdiction, the momentous consequences which their decisions frequently draw after them in respect to our own commonwealths and our transactions with foreign Cabinets, and their peculiar liability to provoke the displeasure of suitors of all sorts, individuals, corporations, and whole communities,—consider these things, and say whether it can be wise or just to place men in this position without making their privileges indefeasible, except on due conviction of imbecility or crime. This Court has more than once given umbrage to the Federal Legislature and the

Executive. It has wounded the sensibility of States. It has affronted great political parties; and drawn upon itself the anathemas of popular orators and the denunciations of the press. We violate no charity in assuming that on some of these occasions it may have deserved censure: for what tribunal is infallible? What one has always and entirely escaped the taint of unworthy motives? But what then? We are to estimate its working on the whole. And after making all due allowance for the infirmities and errors incident to such a tribunal, no candid mind will deny that it has been one of the main buttresses of the Republic, one of the chief supports of the public safety and the public virtue. Yet it is morally certain, that if the Judges had been removable at the discretion of the President or of Congress, or had been obliged to encounter at prescribed intervals the hazards of a heated political campaign, the *personnel* of the Court would have undergone frequent changes. In particular instances this might have been advantageous. But the general result must have been pernicious in a high degree. The differences which arise between the Judiciary and the other branches of the Government, are now evanescent. Under the other system, they would ripen into settled contests; and we should present to the world the unseemly spectacle of a frequent, perhaps,

a perpetual wrangling among the principal departments of the Government. Again, the perturbation which occasionally follows an obnoxious decision of the Supreme Court, now passes off in an effervescence of popular feeling. Under the adverse plan, every such event would be seized as an element of political agitation, and made to bear with mischievous effect upon the next Judicial election. In this way, that high Court would be brought down from the serene atmosphere where it now dwells, into the turbulent region of party politics. Frequent changes would destroy its identity. That sense of responsibility and harmony of action which are the natural characteristics of an upright and permanent Judiciary, would give place to the mutual jealousies which may be expected to mark a Bench composed of politicians as distinguished from a Bench composed of Jurists. And the potent influence of this great Institution, which has done so much to save and bless the country, would combine with the numerous agencies already at work to poison the springs of our national life, and hasten the final catastrophe of the Government.

Not to pursue this topic further, the wisdom of the plan upon which the federal courts were organized, has been amply vindicated by the results. It may be asserted, without the least fear of contradic-

tion, that the Judiciary has continued to this day the purest branch of our government. Its integrity must often have been thrust into the crucible. The Tempter, from whose assaults neither private worth nor official station insures any immunity, would not fail to spread his toils around its council-chamber. Specious arts would be employed to subsidize it, now in the interest of some unscrupulous corporation, now in the interest of arbitrary power, and anon on behalf of some popular resentment. We have all seen the fatal effects of these insidious agencies, in the admitted moral deterioration which has, for many years, been going on in other departments of the public service, both State and National. But thus far, (let us thank God for it,) the Judiciary has not been drawn into this vortex. However its decisions may sometimes have occasioned a wide murmur of discontent, and even provoked the formal censure of assembled Senates, it is beyond controversy, that the people, as a body, have more confidence in this Court, than in any other branch of the Government.

Let justice be done, however. This result is not to be wholly ascribed to the plan upon which the Judiciary is organized, nor to the tenure by which the judges hold their office. It is due, in an eminent degree, to the characters, personal and profes-

sional, of the men who have occupied the Bench of the Supreme Court. In the list of names which grace the records of this tribunal, there are not a few which have reflected honour even upon that august station. But the hand of a beneficent Providence is especially to be recognised in the history of the Chief Justiceship. .

It must be regarded as a remarkable circumstance, that, during the seventy-three years which have elapsed since the organization of the Court, there have been, with an unimportant qualification, but four Chief Justices. The qualification this statement requires, has respect to the appointment of John Rutledge of South Carolina, to this post, in 1795, whose nomination, however, was rejected by the Senate, after he had presided for a single term; and the appointment of William Cushing, of Massachusetts, who, on the retirement of Rutledge, accepted the office, but resigned it at the end of a week, without presiding at all. On the adoption of the Constitution in 1789, Washington manifested his appreciation of the character and abilities of JOHN JAY, by offering him a choice of the offices at his disposal. Mr. Jay preferred the Chief Justiceship, and it was conferred upon him. Four years after, when another war with Great Britain appeared imminent, the President selected him as the most

suitable person to be sent as special envoy to that country. The mission was distasteful to Mr. Jay, but he sacrificed his private predilections to his patriotism, and accepted the trust. One of our late historians refers to this event in language which I quote, as supplying (so far as it goes) a faithful portraiture of the man. "In point of Revolutionary services, only the President himself stood upon higher ground. Nor could any person, except the Vice-President, (Adams,) pretend to a place upon the same level. In lofty disinterestedness, in unyielding integrity, in superiority to the illusions of passion, no one of the great men of the Revolution approached so near to Washington. Profound knowledge of the law, inflexible sense of justice, and solidity of judgment, had especially marked him out for the office which he held. . . . The only serious objection to his appointment, (as Ambassador Extraordinary,) was his judicial station. But even that gave an additional dignity to the mission; and in a crisis so important, the objection lost much of its weight."\*

Of the convulsions which were occasioned by the Treaty he negotiated; how bitterly he was denounced as the betrayer of his country's independence; how copies of the Treaty were publicly burned in Boston,

\* Hildreth.

New York, Philadelphia, and Charleston; and how the two great parties marshalled their forces throughout the Union on this question, as one of honour or shame, of even life or death, to the Republic, it is not for me to speak. All that concerns the present discussion is, that neither at this crisis, nor at any other juncture of our affairs, was any assault made upon Mr. Jay's personal integrity. Even the malevolence of party feeling, never more virulent than then, dared not point a single shaft at his character. That he should feel keenly the injustice with which his services were requited, was unavoidable. But he bore the trial with the perfect peace promised to him whose "mind is stayed on God." Any other foundation must have given way. For "the rain descended, and the floods came, and the winds blew," with a fury to which the history of parties in our country supplies few, if any, parallels. But he was unmoved: his feet were planted on a Rock—on that Rock which sustains the pillars of the firmament. The serenity of spirit he displayed amidst this storm, found apt expression on a kindred occasion, when, having been defrauded, by the canvassers, of the vote which had made him Governor of New York, he wrote thus to his wife: "Having nothing to reproach myself with in relation to this event, it shall neither discompose my



temper, nor postpone my sleep. A few years will put us all in the dust; and it will then be of more importance to me to have governed myself than to have governed the State."

This incident reveals both his moral greatness and the source from which it was derived. There is no purer name known to the annals of our country than that of John Jay. A man of vigorous intellect, with ample and various culture, equal to any position in the government, and actually filling several of its most elevated and responsible offices, the bosom friend of Washington, and one of the idols of that great party of which it is praise enough to say that it had Washington for its head, his whole character and life were transfused with the spirit of true religion. He was proof alike against calumny and against flattery. A prominent actor in most turbulent scenes, he daily "walked with God." And while nothing could be further removed from a sanctimonious carriage, he seemed ever to carry along with him an atmosphere that savoured of the "better country."

Of Mr. Jay's judicial career I shall not pause to speak. But we may well record it as one of the tokens of the Divine goodness to our country, that such a man was called to preside over the Supreme Court for the first six years of its existence.

He was succeeded, after the brief interval already alluded to, by OLIVER ELLSWORTH, of Connecticut. (March 4, 1796.) It is not from choice that I make merely a passing allusion to the labours of this distinguished man. The limits prescribed by approved custom to a service like the present, only permit me to say, that the mantle of Jay contracted no stain when it fell upon his successor. A sound and able jurist, he administered his high trust in a manner satisfactory to the country, while he carried into every sphere of life the spirit of an unaffected and earnest piety.

Ellsworth resigned the Chief Justiceship in 1800, and was succeeded by JOHN MARSHALL, (January, 1801.) There is but one name in our history which deserves to be pronounced with greater reverence than this. It is the name we instinctively associate with the Supreme Court of the nation; the name through which, more than any other, that Court has established itself in the grateful affections of the American people, and secured for our Jurisprudence the respect of the Profession abroad. If the entire testimony of the Bench and Bar of the country may be relied upon as a safe guide, the munificent Providence which raised up a Washington to conduct us through the Revolution, and take the lead in organizing the government, bestowed

upon us a gift of scarcely less value in sending us a Marshall. For without his agency, or that of some one endowed with similar qualifications, the work achieved by Washington and his compeers must soon have come to nought. No one can believe that it would have survived the fierce political conflicts which marked the administrations of the second, third, and fourth Presidents. The machinery of the government was all new. It had gone into operation against the energetic remonstrances of large bodies of the people, including not a few of the most influential advocates and statesmen of the country. Patrick Henry was gone; but at the period of Marshall's accession to the Bench, the echoes of his prophetic warnings were still heard in the land. It happened, singularly enough, that only a very few cases had come before Jay and Ellsworth which involved important questions of constitutional law. The Constitution was yet to be expounded. Its slumbering powers were to be evoked, and its principles applied, as well to the delicate network which bound the thirteen commonwealths together in a compact Union, as to questions of personal right and liberty. These proud commonwealths were waiting to hear whether, in escaping from the thralldom of one master, the Revolution had given them another. They were waiting to be told what

rights they had relinquished for the common good; and how far they had curtailed their own sovereignty for the promised but, as yet, uncertain advantages of a consolidated government. The lesson was not an inviting one, and there was but one school in which it could be learned. For however ample the discussions which had been elicited by the Federal Constitution; with whatever ability it had been canvassed in the Convention which formed it, in the Conventions which adopted it, by the press, and by the people at large, the country did not and could not know *what the Constitution really was*, until it had been subjected to the keen scrutiny of the Judiciary. Its own terms vested this high prerogative in the Supreme Court; and the country was now to hear the first utterances of that oracle whose voice it had bound itself to reverence as paramount to every other except the voice of God. The formal adoption of the Constitution had been carried in some of the States by a bare majority; and in nearly all it encountered serious opposition. In one of the numerous eloquent speeches with which Henry had opposed it in the Virginia Convention, he went so far as to say, "I would rather infinitely—and I am sure most of this Convention are of the same opinion—have a King, Lords, and Commons, than a government so

replete with such insupportable evils.”\* The Convention of North Carolina had been told that “instead of securing the rights of the States, the Constitution would melt them down into one solid empire.”† New York had been told that, if not amended, “not even the shadow of liberty would be left to the States, as States.”‡ Pennsylvania had been told that in adopting this government “they were laying a foundation on which might be erected as complete a tyranny as could be found in the Eastern world.”§ The lapse of twelve years had not obliterated these auguries from the public mind. The States were well aware that many of the powers of the Constitution were as yet latent; and they waited with deep solicitude to see the seals loosed, and the book opened which was to decide their future destiny.

In the wise and gracious ordering of our Heavenly Father, this high duty devolved, not exclusively—for he had able and excellent associates—but mainly, upon Chief Justice Marshall. That all-wise Providence which ever prepares fit instruments for its chosen ends, had been silently training him for his great work. Gifted with extraordinary natural

\* Elliot's Debates, iii. 59.

† Id. p. 202.

‡ Id. ii. 386.

§ Id. p. 402.

abilities, he had been conducted through a variety of changes adapted to unfold and mature his powers, to familiarize him with our history, and to give him that personal knowledge of the wants and weaknesses, the dangers and capacities, of the Union, which experience alone could supply. From 1776 to 1781, he was in active service with the army of the Revolution. He was repeatedly a member of the Virginia Legislature. He sat in the Convention of that State which met to consider the Federal Constitution. At a later period he was sent as Envoy Extraordinary to France, and in 1799 was a member of Congress. The period here defined was one in which the public mind was stirred to its lowest depths with the earnest discussion, all over the land, of great questions of policy and jurisprudence.

It will be deemed no disparagement to the other States to say, that in these discussions, Virginia took the lead. It was her Augustan age. She could have spared orators and statesmen enough to endow two or three commonwealths, without impoverishing herself. As no other State could have supplied Washington with the military experience so indispensable to the post for which Providence designed him, so it was the only State in which Marshall could have been thoroughly trained for his mission. Not simply an observer, but a resolute and

prominent actor in the controversies of the day, he had mastered the true theory of our Government, and explored it from foundation to turret, before he was summoned to administer one of its three great departments. He must be a perverse unbeliever who is not ready to say, "The finger of God is here!"

Of the manner in which he acquitted himself in this elevated and most difficult office, there can be no occasion for me to speak. Others have spoken who are entitled to be heard. In the discourses occasioned by his lamented death in this city, (July 6, 1835,) eulogy fairly exhausted itself. And what is more remarkable, no one, it is believed, was ever heard to complain that his panegyrists had transcended the limits of sober truth. With such wisdom, such profound knowledge of the law in every branch of Jurisprudence, such unswerving devotion to the Constitution and to the rights as well of the States as of the general Government, such spotless integrity, such courtesy and candour, such benevolence and gentleness, had he borne the weighty and perilous honours of his position, that the feeling of the people, even of those who had never seen him, was, that nothing which the foremost men of the nation could say, was too good to be said of the departed Chief Justice. By the

graces of his personal character, he had endeared himself to all who came within the charmed sphere of his social life. His unaffected piety lent new beauty to the mellowing influence of age. A single stroke will do more to show what he was, than pages of description. His daughter relates\* that she had it from his own lips, that he never went to bed without concluding his prayers with those which his mother taught him when a child, viz., The Lord's Prayer, and Watts's cradle stanza,

"Now I lay me down to sleep."

Here, surely, is a spectacle to move any heart not bereft of sensibility. This man of lofty stature and of loftier station; "the Expounder of the Constitution of the United States," endowed with every quality of mind and heart which could shed lustre upon his high position, and when he opened his lips to deliver an opinion, listened to by the magnates of the land with a reverence they accorded to no other human being; this man, in his green old age, with all his honours thick upon him, bowing down at his bed-side night after night before the INFINITE ONE, and with clasped hands and gentle voice breathing into his FATHER'S ear the sweet prayer of his childhood:

\* Flanders' "Lives of the Chief Justices," ii. 548.



“Now I lay me down to sleep,  
 I pray the Lord my soul to keep;  
 If I should die before I wake,  
 I pray the Lord my soul to take.”

Dear old man, is it wonderful that he should have a place “in the hearts of his countrymen”?

As regards the Judicial services of this great man, I shall refer to them very briefly, and in the words of our own revered and honoured townsman, (*serus in cœlum redeat!*) of whom it must suffice to say, that if he had been called to sit in Marshall’s seat, the entire Profession would have said, “It is well.” I quote a paragraph bearing upon the topics chiefly dwelt upon in this discourse, and most vitally connected with our national welfare. The extract may serve to illustrate the estimate formed of him by William Pinkney, one of the most brilliant men that ever adorned the Federal Bar, who said of Marshall, the first time he heard him deliver an opinion, that, “he was born to be the Chief Justice of any country into which Providence should have cast him.”

“The day of Chief Justice Marshall’s appointment will ever be regarded as an epoch in the history of the Constitution. The rules of its interpretation were still to be settled, and the meaning of its doubtful clauses to be fixed by that authority which,

under the Constitution, is final, and some of them regarded nothing less than the action of States and the government of a nation. To have erred, would have been to throw into disorder and convulsion the movements of the entire system. To have been suspected of incompetency, would have been to strike out the department from the hearts of the people, and to have left the Union without a Judiciary. What greater responsibility ever rested upon the judgments of a court? What greater triumph to human intellect and virtue, than effectually to accomplish so great a work? What nobler destiny than to be appointed and qualified for the service? What eulogy is equal to so great a name, as that of a man, who gave the last sands of his life, to his eightieth year, in completing so much of it, and in tracing the plan of all that is to be done hereafter? Let it not be supposed that I claim for him the exclusive merit. His modesty would reject it. Justice withholds it. He has had by his side men now resting from their labours like himself, and men still living to continue them, who have contributed by their talents and learning to all that has been done, and will ever be honoured for it by their country. But it is both their praise and his, that they have improved their own powers by the inspiration of his wisdom, and have been raised to their eminence, in

part, by the attraction of his example. In him his country have seen that triple union of lawyer, statesman, and patriot, which completes the frame of a great constitutional Judge; and if we add to it "the heart of the wise man" inspired with the love of God, of country, and of mankind, and showing it in the walks of private life, as well as on the judgment-seat, while we have that which the course of the world very rarely exhibits, we have no more than, for the example of the world, has been bestowed upon our country."\*

Of the learned and upright jurist who succeeded Marshall, and the distinguished men associated with him, you will not expect me to speak.

In selecting this unusual topic for a Thanksgiving Discourse, I have already intimated that its being "unusual" was one of the considerations which commended it to my choice. Not that any stress is to be laid, in a question of this sort, upon mere novelty. But here was a long-standing debt of gratitude to be paid. Here was one of our greatest national blessings unchronicled; a blessing not held in fee by a single profession, but co-eval with the Government, co-extensive with the country, shared by us all, essential to us all, without which there could be

\* Mr. Binney's Eulogy on Chief Justice Marshall, 1835.

neither personal security nor national progress. Even the cursory glance we have taken at our history, must suffice to show that without the mild, equable, and constant pressure of the Judiciary, the old Confederation could never have been moulded into that strong and symmetrical Union which, until assailed with parricidal hands, was our joy and pride. It was, in no small degree, the firm and discreet action of the Supreme Court which reconciled the discontented to the change; which convinced all classes that their rights would be better protected in the Union than out of it, and satisfied the States that the general Government, instead of despoiling them of their independence, had placed it, within its prescribed sphere, upon firmer ground, and made the interest of each to blend with the harmony and growth of all.

The Judicial power, which had loomed up before the disturbed imaginations of so many able men as the very symbol of tyranny, came to be regarded, and justly so, as the stronghold of liberty. Few, if any of the States have escaped its wholesome reprimands for their forays upon the Constitution; but this, like all domestic discipline wisely administered, has only cemented their attachment to the household. Secession itself has been mute in this presence. So far as I know, it has made no formal

attempt to extenuate its stupendous crime by appealing to the records of the Supreme Court. We may even, by a pardonable anachronism, quote its own authority as exonerating this Court from all responsibility in the premises. In a beautiful tribute to the character of Marshall at the time of his death, the Charleston Bar made use of this striking language: "Though his authority as Chief Justice of the United States was protracted far beyond the ordinary term of public life, no man dared to covet his place, or express a wish to see it filled by another. Even the spirit of party respected the unsullied purity of the Judge; and the fame of the Chief Justice has justified the wisdom of the Constitution, and reconciled the jealousy of freedom to the independence of the Judiciary."\* No testimony could go beyond this in establishing the value of the Federal Judiciary as a means of preserving our Government. If I may seem to you to have dwelt too exclusively upon this one aspect of its powers and results, let it be noted that our Government is, under God, everything to us. If that is gone, all is gone—all that pertains to our civil and social life, and very much that concerns our Christianity, with its infinitude of blessings. Whatever contributes essentially to conserve and perpetuate it, is, to that

\* Van Santvoord's "Lives of the Chief Justices."

extent, to be recognised as the shield and safeguard of our dearest rights and privileges. Let us, then, bring our thank-offerings to the altar to-day, for the Judicial system of our country, and for the great and good men who have been raised up to administer it.

This is one of our duties: to be *thankful to God* for our Courts of Justice. There is another duty no less obvious: *we must sustain and cherish the Judiciary.*

The reasons for this are interwoven with the discussion in which we have been engaged. The obligation rests alike upon the Government and the people—upon the Governments, State and National, in their spheres, and upon the people in theirs. We have dwelt upon the beneficent influence of the Judiciary in fostering the national life and preserving the Union. It was the feebleness of the Federal bond which gave the founders of the Republic more solicitude than any other subject. They would have made it stronger, but the temper of the States would not bear it. The quarter from which they apprehended danger, was that from which all our danger has come—the weakness of the central power, exposed, as it must necessarily be, to the aggressions of so many independent and aspiring States. Inheriting their principles and their fears, Marshall

did what he could to invigorate the general Government. To this point tended the whole current of his judicial opinions, during the thirty-four years he sat upon the Bench. Had he and his learned associates adopted what is styled the "States Rights" theory of the Constitution, as the basis of their decisions, the Union, it is probable, would long ago have fallen to pieces. Perhaps the latent tendencies in that direction, before this war broke out, were more decided, even in some of the free States, than was imagined. The war has repressed them for the time, and the Federal power now shines forth in its splendour. But this is the effect of a great crisis, and may or may not continue. Thirty years ago, a profound philosopher and statesman, who, though a foreigner, has written the ablest work on our institutions since the Federalist, penned these remarks on the topic before us:

"I am strangely mistaken if the Federal Government of the United States be not constantly losing strength, retiring gradually from public affairs, and narrowing its circle of action more and more. It is naturally feeble, but it now abandons even its pretensions to strength. On the other hand, I thought that I remarked a more lively sense of independence, and a more decided attachment to provincial government in the States. The Union is to subsist,

but to subsist as a shadow; it is to be strong in certain cases, and weak in all others; in time of warfare, it is to be able to concentrate all the forces of the nation, and all the resources of the country, in its hands; and in time of peace, its existence is to be scarcely perceptible: as if this alternate debility and vigour were natural or possible. . . . So far is the Federal Government from acquiring strength, and from threatening the sovereignty of the States, as it grows older, that I maintain it to be growing weaker and weaker, and that the sovereignty of the Union alone is in danger.”\*

These are the words of a far-seeing man, and a true friend to our country. It cannot impair the solemnity of the warning, that it should coalesce so entirely with the teachings of Washington and Hamilton, of Jay and Marshall. In our jealous concern for the rights of the States, we must see to it that the general Government be not shorn of its just prerogatives. And if the Government itself be alive to the danger in this direction, it will neglect no suitable means for increasing the stability of the Federal Judiciary. For, if this prop gives way, the whole structure becomes a heap of ruins. Two things, in this view, devolve upon the Executive and the Legislature.

\* De Tocqueville.



In the first place, they must exercise the utmost caution in the Judicial appointments. The Supreme Court cannot maintain its true place in our system, unless its high functions be confided to competent hands. It will not do to recruit this Bench from the second and third ranks of the Profession. Nor will it do to make it an asylum for unfortunate politicians. It must be expected that vacancies will be filled from the dominant party, whatever that may be. But every one understands the distinction between a lawyer who makes his profession a hewer of wood to his politics, and a lawyer who makes his politics wait on his profession. With the entire Bar of the Union before him, it were inexcusable in a President to propose any name for this high position, which would not command the general respect of the country. We may of right insist that the men who fill those seats, shall be men of undoubted capacity and inflexible integrity. No others could be safely entrusted with a power which gives law to thirty millions of people, and which has disposed of property worth an hundred millions of dollars in a single year.

The other duty which devolves upon the co-ordinate departments, is that of respecting the powers of the Judiciary, and enforcing its decrees. Not to do this, would be suicidal. For the Government is

one ; and a house divided against itself cannot stand. It matters not that the decisions of the Court may sometimes be distasteful to the Executive and the Legislature. The Constitution leaves them no alternative but to obey its mandates. Any other course on their part would be adapted to prostrate the authority of the Government. For so pernicious an example could not fail to spread a fatal infection through the body politic. There are not wanting instances in which States have taken it upon themselves to condemn the opinions of the Judiciary. Pennsylvania once called out troops to resist its authority. But it was only a paroxysm of offended dignity, and the State soon bowed to the Constitutional edict. In a much more memorable instance, Georgia set the Court at defiance, and kept the doors of her penitentiary locked upon two faithful ministers of the Gospel, for eighteen months after Judge Marshall had pronounced the law under which they were condemned, null and void. More recently, a decree of this Bench has occasioned an intense popular excitement, spreading through a dozen States, and venting itself in bitter invectives against the Court:—a decree, I may add, which was received with equal astonishment and regret by many who gave no countenance to these assaults upon the personal integrity of the Judges. Examples of this

kind are not incompatible with the statement that the Supreme Court, on the whole, retains and deserves, in a signal degree, the confidence of the country. But they are portents which a wise man will heed. They show that this Court requires all the moral support to be derived from the cordial sympathy of the Executive and the Legislature. If they would have the people sustain it, they must not discredit it themselves. When they begin to arrogate its powers, or to tread its opinions in the dust, they may bespeak some one to write its epitaph—and their own.

The obligation to cherish the Judiciary, I have said, rests no less upon the people, than upon the Government.

Common gratitude demands this. If we have received from the Judicial power a tithe of the benefits traced to its agency in this discourse, it has laid us under obligations we can never repay. Besides this, the solemnity and delicacy of their functions, (I am speaking of the Federal Judges,) entitle them to the generous sympathy of the public. As the arbitrators between our several systems of government, they are charged with the gravest responsibilities, and peculiarly exposed to the attacks of mortified pride and disappointed ambition. The people whom they shield from so many evils, are

bound in honour to protect them, as far as may be, against such assaults, and to sustain them in the fearless discharge of their high duties.

But they have a still stronger title to our support. We ought to cherish the Judicial power because it is *the citadel of our liberties*. The founders of our institutions were men deeply versed in the science of government. They had explored the hidden causes which have changed so many good governments into bad ones. Experience had taught them that unless the liberty of the citizen was guarded as by "munitions of rocks," it would sooner or later be extinguished. Impressed with this conviction, they deemed it unsafe to commit this sacred deposit to the custody of either the Executive or the Legislature. Commencing with a fundamental law, as already stated, they confided public and private liberty to the keeping of a Constitution, which neither the Executive nor the Legislature could disturb,—to which, indeed, they were themselves subordinate. The prerogative of deciding whether their acts were conformed to this primal law, was vested in the Courts. Had the Courts been made dependent upon the other departments, they might have been prostituted by their masters to the worst purposes of tyranny. Our sages had seen too much of this in the Old World, and they eluded it by

making the Judiciary independent. By this system, it will be seen, the Judiciary becomes the conservator of our liberties. It is the protecting power of all the branches of the Government, because it is the guardian of the Constitution. But for its intervention, the Constitution would have perished long ago, pierced with more wounds, from friends and foes alike, than Cæsar received in the Senate-house. It is no less the bulwark which protects the citizen against the Government. It is the inalienable right of every citizen to be governed according to the laws of the land, and to have those laws conformed to the fundamental pact.

There is always, and every where, an inherent tendency in executive and legislative power to enlarge itself. It cannot be trusted. Our country is yet young; but it is old enough to have illustrated the prescient wisdom of its founders in creating a sanctuary for those who might suffer at the hands of arbitrary power. That sanctuary is the temple of Justice. It may share the fate of the Jewish temple, the earthly tabernacle of the Most High, and be demolished by violence. If this parricidal war upon the Union, which we are contesting on a hundred battle fields, should succeed, it must of course go down into the gulf which swallows up our national being. But to every other form of assault it may

and should be made impregnable. We must encompass it with our love and gratitude. The sympathies, the prayers, if need be, the right arms, of all true-hearted Americans must be invoked to guard its awful shrine from desecration. No unhallowed foot must be permitted to cross that threshold. I do not say that there is any danger of this at present. Nor am I speaking of what may or may not be allowable in great crises of our affairs, when the nation's life may hang as by a single thread, and nothing but a prompt exertion of executive authority can save it from extinction. All I say is, that here is the sanctuary of our liberties; and that it must be held inviolate at whatever sacrifice. We must cherish the sentiment, and disseminate it among the people, and transmit it to our children, that so long as the Constitution remains what it is, there is no earthly power which may lawfully challenge the supremacy of the Judiciary within its proper sphere, or contest its will.

This is the doctrine of the Fathers. It is the principle which underlies the entire fabric of our Government. It pervades and illumines every page of our annals. And the day that sees the country, whether in a frenzy of passion, or in cringing servility to some popular leader, assail and overwhelm it, will see a government of law supplanted by a govern-

ment of force, and a great nation putting on the chains their own hands have forged.

GENTLEMEN OF THE BAR—It would ill comport with the proprieties of this occasion—with the place where we are assembled, with this day, of grateful praise, and with the sacred office I am permitted to bear—should I close this service without adverting to one other aspect of the subject which has engaged our attention. The bearing of this discussion upon your personal responsibilities, will not fail to have occurred to you. A stream cannot rise above its fountain. The Judiciary must take its character from the Bar; and the Bar can never fill the full measure of its exalted sphere, unless it is pervaded with a becoming reverence for HIM by whom “princes rule, and nobles, even all the Judges of the earth.” It was the crowning distinction of those great Jurists who have passed in review before us, that they laid their lofty attainments and their honours, a willing sacrifice upon the altar of God. With whatever majesty they were enrobed in that high Court where powerful States listened with awe to their mandates, when they went into HIS presence, it was to bow before Him as miserable sinners, confessing their ill-desert, and pleading for mercy only through “the blood of the Lamb.” The example will commend

itself to your reflections. The proceedings with which your lives are engrossed, are but a dim type of that august Jurisprudence of which Jehovah Himself is the Minister; which takes cognizance of every thought of every human heart, and will one day decide the eternal "fates of men." Before His dread tribunal we must all be gathered. The purest amongst us is not pure enough to bear its scrutiny. But even the vilest will have nothing to fear, if he have a Friend in that great ADVOCATE who mercifully offers to appear for us. Let us put our case in His hands. Let us invoke the aid of the Divine Spirit, that so, trusting in the blood of the Crucified One, and relying upon His ever-prevalent intercession, we may find pardon and peace with God. This is His own counsel; and in that day of days, no other can avail us.

"What shall I, frail man, be pleading?  
 Who for me be interceding  
 When the just are mercy needing?"

"King of majesty tremendous,  
 Who dost free salvation send us,  
 Fount of pity! then befriend us!"



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