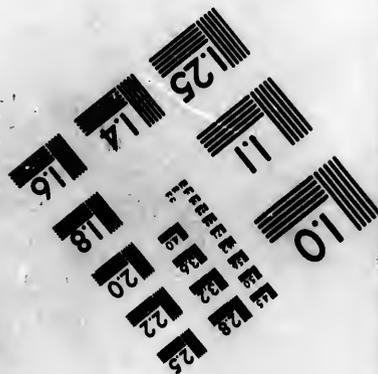
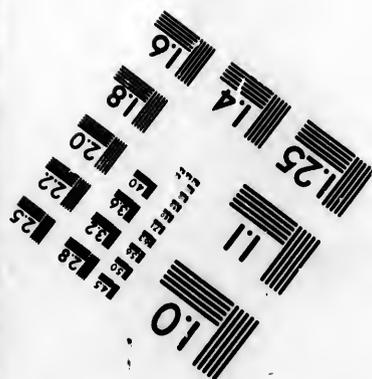
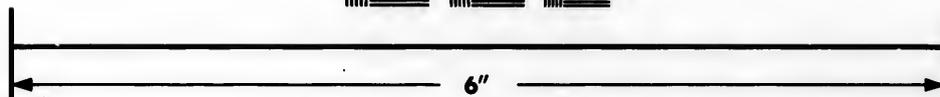
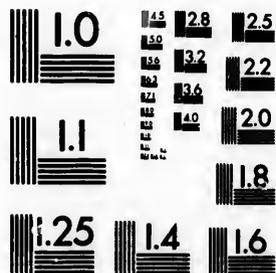


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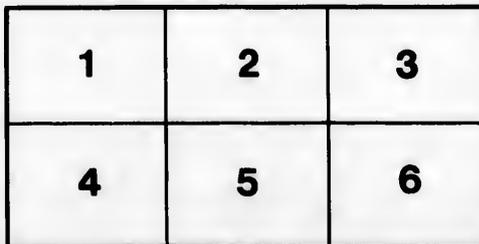
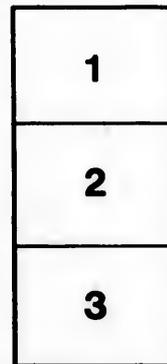
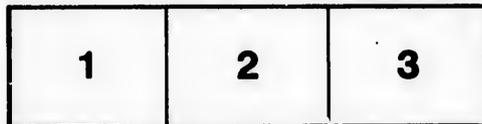
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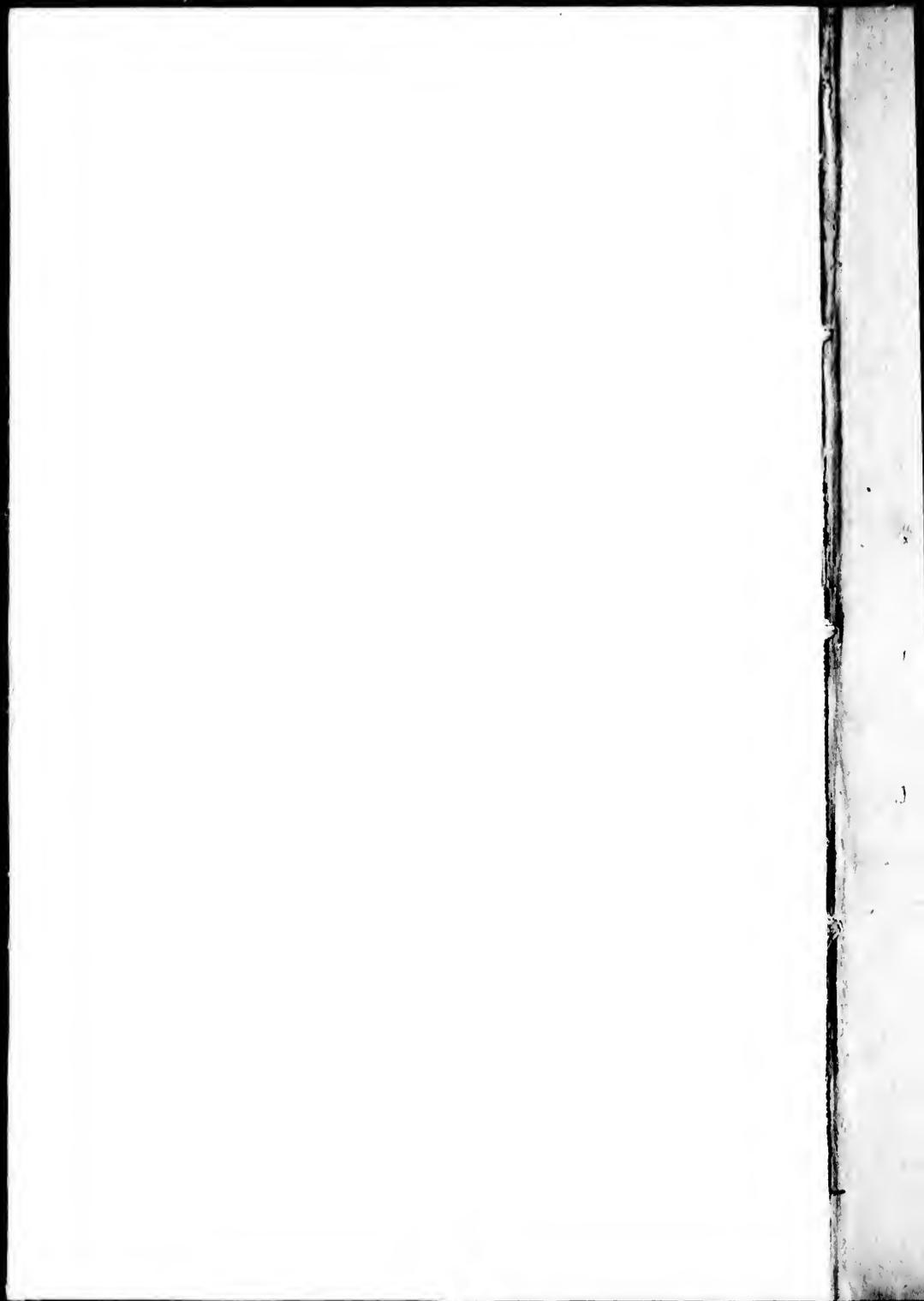
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1801
To G. B. Viger Esq
From His Excellency J. J.

DISSERTATION

UPON THE

CONSTITUTIONAL FREEDOM

OF THE

P R E S S

IN THE

UNITED STATES OF AMERICA.

BY AN IMPARTIAL CITIZEN.

* Hujus studii due sunt positiones publicum et privatum. Publicum jus est, quod ad statum rei Romane spectat. Privatum est quod ad singulorum utilitatem pertinet.

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ADVERTISEMENT BY THE AUTHOR.

THE freedom of the press is of vast importance to the United States ; it depends, for its constitutional definition, upon natural, simple principles ; there is no abstruse learning on the subject. It ought to be settled, and understood by the body of freemen, whose votes in elections, and whose verdicts as jurymen, are to maintain it, according to its constitutional principles.

This essay is the first attempt of the kind in America. Whoever reads the production, will find, that it is not written under the influence of any party. Some of each party will be displeas'd with it. But as it is compos'd with a sincere desire to enlighten, and inform the whole body of the people, in a matter of great consequence to their liberty and safety, the author is by no means anxious in regard to the opinions of men, who have forsaken principle, and devoted themselves to party. He will, indeed, consider himself as unfortunate in this production, unless it shall be abus'd, mutilated, misunderstood, and misapplied, as is usual in such cases. Should he be charged with being ambitious to be President, Governor, Judge, Senator, or any thing else, he allows the charge ; — only read the book, and attend to the truths it contains, and his wishes are accomplished.

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A PREFACE BY THE AUTHOR.

WHERE shall the true art of exercising power without tyranny, or authority without puffianimity be found? The idea of power is noble, and sublime; we tremble at it, when we conceive it to be uncontrollable and irresistible. We stand in awful diffidence before it; because our first conceptions of its form admit of no modifications or restraint. But the moment it has become familiar to our senses, and we have conceived the idea of rendering it subservient to our will, the apprehension of terror vanishes, and we soon treat it with indifference and contempt. Strength is the first indication of power, but when the horse is broken to the bit, or the ox subdued to the yoke, the sublime and terrible, which had before associated themselves with the dread of strength, are done away. The tyger and the wolf excite emotions of terror, but the mastiff and the spaniel recline on our bosoms.

The ancient nations were well acquainted with all the feelings of the human heart. Homer carried his hero, under the contested protection of a multitude of gods, through dangers and distresses, through voyages and shipwrecks, through victories and defeats, to lay the foundation of the Grecian empire. The Greeks brought their civil institutions from Egypt, where, as it was then believed, the gods had promulgated laws for mankind. This was done, that the laws

should be respected by the people. The Romans founded an empire, by the man who had been nursed by a wolf; and their poet, in imitation of Homer, to render their origin respectable, and their religious and civil institutions sacred, detailed the perils, the wars, and the interposition of the gods, which carried the first of their race to the spot, which was admired by earth, and protected by heaven.

Before the christian religion was respected in Europe, fabulous deities were called in, to take a part in the inauguration of kings; and the laws were framed by the Druids, who lived sequestered from the world, and were considered as having an intercourse with heaven. As soon as christianity was established, the divine right of kings was proclaimed, as from heaven; and miraculous signs, and terrible wonders, were observed at the birth of princes, and the coronation of monarchs.

The English nation have had so many changes in the dynasty of their throne, that they are compelled, by a sense of decency, to abandon the divine right of earthly sovereigns, and the peculiar efficacy of the royal blood. A sacred regard to a constitution, much talked of, no where on paper, and highly respected, because it has never been seen, forms the main bond of that vigorous and efficient government.

But where shall we, placed in the going down of the sun; we, who have been familiar with our own origin, and have created ourselves; we, who are but of yesterday, find a substitute equal to the exigency of our situation? Composed of millions, who widely differ in their educations, habits, manners, pursuits and

designs, what shall hold us together as a nation? Our constitution of national government is in our own hands, like the school books; we know the men who formed it. They have not, like Solon, banished themselves from the country, nor like the Druids, sequestered themselves from the world. They remain among us, as men of like passions, subjected to the same errors, follies and weakness, as other men. So far are they from boasting of an inspiration in this work, that neither two of them can agree to understand the instrument in the same sense.

We not only have this thing in our own hands, familiar to our senses, but it informs us, that it is in our own power, subject to any alterations we may choose to make in it. How then shall we dress it in the sublime and noble? How shall we decorate it in the venerable habiliments of a mysterious and supernatural origin? How shall we raise and maintain a permanent awe and reverence for it? Shall we change it for a more incontestible power, by adopting an hereditary executive, in the room of an elective chief magistrate? Behold the divine right of kings is done away! their persons are no longer sacred! but the throne is the rallying point of faction, and the supporter of the standard of civil war. Round this the partizans collect their forces, under various pretexts, but to gain the same object, the prostration of power, and the plunder of the people.

Shall we restore the days of ignorance, and fanaticism, and return to the dark ages, when rulers shall be considered as gods, though we see them die as men? Alas! the days of religious enthusiasm, found-

ed in the ignorance of mankind, are the days of tyranny and calamity.

Shall we rely on our boasted diffemination of knowledge and learning, and fly to our churches, colleges, academies and schools, as the ancients did, in their distress, to the temples of their gods ? Here we find that learning is but the spy of sorrow, and that a great part of it is expended in describing troubles which can never happen, or in attempts to overturn the civil state, that contending parties may gain a lucrative and powerful standing.

Since then the real happiness of our country has no kind of connexion with those boisterous struggles ; since every violent contention serves to distract the people, and weaken the social compact, since the destruction of our constitution will annihilate our existence as a nation, and render us wretched as citizens, and miserable as men, we will attach ourselves to that glorious system ; we will hold in contempt the few, who fill the atmosphere with seditious libels, base calumnies, and false reasonings, and, rallying round the constitution, we will, in the character of brethren, live and die like freemen, honorably associated for civil happiness, and the promotion of our country's honour and interest.

DISSERTATION.

WHEN the constitution of the United States was formed, there was no provision in regard to the freedom of the press; the general convention left it to the common understanding, and established opinion of the people. But the conventions, which were called in the several states, to ratify the instrument, exhibited proposals for an explicit recognition of the privilege, as it had been used and approved in the country. Upon this, the first Congress, by way of amendment to the Constitution, resolved, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or of the right of the people, peaceably to assemble, and to petition the government for a redress of grievances."

Previously to this, there had been express provision made, in several of the states, to prevent an abridgment of the liberty of the press. In New Hampshire, it was declared, that "the liberty of the press is essential to the security of the freedom of a state: it ought therefore to be inviolably preserved."

In Massachusetts it is thus expressed in the declaration of rights prefixed to the constitution; "The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth."

As new constitutions were not formed in the states of Rhode Island, and Connecticut, there was not, in either of those states, any declaration upon the subject. The freedom of the press was well understood in those states;

and the common, public opinion of the citizens in them, was established in unison with the declarations made by the others.

The convention which formed the constitution of the state of New York, and the people whose authority ratified it, contented themselves with declaring, ordaining, and determining, "that such parts of the common law of England, with the statutes adopted, and the acts of their own legislature, as together did form the law of the colony in the year 1775 shall continue, subject to the alterations of the legislature." They then considered the freedom of the press as established by the common law; and were under no apprehensions, that a legislature, frequently elected by the people, would ever be induced to lay an undue restraint upon a privilege so important, as that of a free communication of sentiment on public measures.

The state of Pennsylvania, is more explicit in its constitution on this subject. The provision there is, "that the printing presses shall be free to every one who undertakes to examine the proceedings of the legislature, or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man; and every citizen may freely write and print, on any subject, being responsible for the abuse of that liberty. In the prosecutions for publications of papers, investigating the official conduct of officers, or men of public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And, in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases."

The state of Maryland said no more than "that the liberty of the press ought to be inviolably preserved."

The state of Virginia seems to rest the guardianship of this important privilege on the common understanding, and the enlightened prudence of the people.

In North Carolina it was declared, "that the free-

“dom of the press, is one of the great bulwarks of liberty, and therefore ought never to be restrained.”

South Carolina committed the privilege to the keeping of the common law, as understood by the people.

In Georgia it was declared, that “freedom of the press, and trial by jury, should remain inviolate.”

In Vermont it was declared, “that the people have a right of freedom of speech, and of writing and publishing their sentiments, concerning the transactions of government; and therefore the freedom of the press ought not to be restrained.”

In the States of Tennessee and Kentucky, the declarations on the freedom of the press are the same. “That the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch or officer of government: and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man; and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. But in prosecutions for the publication of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law, and the facts, under the direction of the court, as in other cases.”

This subject is treated as a matter of great importance by the Congress of the general government, as well as by the conventions of the greater part, and by all the people of the United States. Their wishes seem to be concentrated in a principle, which they conceive to be highly interesting to the whole nation, and of great account in the establishment, and preservation of free governments. The systems they were forming, were to be rested, for support, on the opinions of the people at large; and it would therefore have been a great degree of remissness in their procedure, to have left any thing in the

way of a free, open, and universal communication of sentiments upon public men, and public measures, where the same should be necessary to maintain the principles of the constitutions they were forming.

The conventions of the states, and the Congress of the United States, use the word *press* as descriptive of the free communication of ideas and sentiments, by the art of printing. This kind of figure, in speech, where the continent is used for the contents; the appellation of the cause as a description of the effect; or the power which produces, for the product obtained, is very common in all languages. By the freedom of the press they undoubtedly intended *an unrestrained use, and free improvement of the privilege of writing, and printing, in the communication of sentiments and opinions, on matters of public concernment, governmental measures, and political procedures*. Not a licentious and destructive abuse of the privilege, in such a manner; as that wicked and malicious men should gratify their resentment, malevolence, and revenge, to the overthrow of family reputation, and the ruin of their neighbor's character.

In order to define the meaning of the liberty of the press, as established in the country, I shall,

First, Endeavor to shew how far it may be considered as free, in regard to the rights of individual members of the community, in their private capacities.

Secondly, How far it may be restrained, consistently with the principles of the constitutions of our governments, in regard to men, in their public official character and conduct.

Thirdly, How far it may be restrained in regard to the measures of government, and in questions of elections.

Fourthly, Shall make some observations, on a late act of Congress, which has furnished so much fuel for the fire of party zeal.

It seems to be an agreed principle, that government is instituted for the public good; and to preserve, in safety, the lives, the happiness, the interests, the characters, and the estates of all those, who are combined to

maintain it; and who have consented to become the subjects of it. In the social compacts, which we denominate constitutions, no more is surrendered or given up, than what is supposed to be necessary to the safety, and well being of the whole. So much is consequently retained, as cannot, in the nature of the government, be defended and protected by the powers of the association. The right of conscience, as to the forms and principles of devotion, cannot be ceded, and given up, because this is a matter between a man and God, the high and holy creator and preserver of all things, and man can have no control over it. Reputation, and character, are of great consequence to the happiness and enjoyment of human life, and therefore, these are never sacrificed to government, but are jewels of inestimable value, deposited carefully, to the safe keeping of the constitution, and the protection of the laws. The whole society has an interest in the reputation of each individual member, as in a part of the wealth and happiness of the community,

There is an invaluable right, which the society has in the good character of each individual of which it is composed. In order to demonstrate this, nothing more is necessary, than to conceive of the distress and misery of a community, composed of men, who have no moral principle, and who are totally regardless of character, integrity, and truth. It has been said, and perhaps was never disputed, that the founders of Rome were a banditti, a collection of robbers; but this cannot be understood, as meaning any thing more, than that they were regardless of the natural rights of other tribes, and did not attend to the law of nations, which in later times has governed, in some measure, the conduct of independent nations towards each other. The hordes, clans, or tribes of all that part of the world were then hostile to each other; and the Romans, no doubt, made an accession of strength by receiving fugitives from justice into their society; there must have been, nevertheless, a great degree of public and private virtue, to lay the foundation, and to raise so powerful an association, as that of the Roman empire. The Romans not only began

very early, to inculcate the principles of morality and virtue, but they made a good character the qualification to office, and the preliminary condition of public confidence.

The laws of all civilized nations provide for the protection of character, by the punishment of slander, as a crime against the public, and by giving a remedy in damages at the suit of the party injured. In our laws, the words which are considered as slander, are very well defined, and are classed, as those which have a tendency to expose the person of whom they are uttered to a prosecution for an offence against the public, and those which injure him, or have a tendency to injure him in his prospects, business, or profession. A distinction is also made between those words above described, and words which proceed from sudden heat and passion; such as calling one a rascal, liar, villain, &c. These are highly provoking, and frequently produce very fatal consequences between the parties, and which might, perhaps, be avoided by the provision of a legal remedy.

The distinction between words proceeding from malice, and those which are only from sudden heat and passion, is lost, when they are committed to paper; because that every act of writing is deliberate, and the party has time to reflect, and is therefore deprived of the excuse of a sudden gust of passion or resentment. This distinction is founded in the nature of man, and is therefore a constituent part of the laws of every society.

But there is yet something more in the nature of this distinction. Words vanish in air, unless the injury really done by speaking them has, from peculiar circumstances, an abiding effect on the character against whom they are spoken; but words written, or signs made to impress the senses, may do a lasting injury. Hence it has been always holden, that erecting a gallows at a man's door, is punishable, and so is the making of any other sign, or picture, as expressive of his deserving an infamous punishment, or the drawing signs, or pictures, expressive of his having committed crimes, or of his being a scandalous, abandoned, or wicked man. These have not

only a tendency to injure him personally, but they have also a strong tendency to injure his family, and connexions, who may have good characters, even if his is not good.

This kind of abuse has no tendency to correct the morals of the man against whom it is uttered, but may stimulate him to revenge; and thereby endanger the peace of the society. If the man is proveably guilty of crimes, let him be exposed to punishment, according to the laws; if there is no proof, he ought not to have a slanderous accusation exhibited without proof, in a manner which will not admit of a defence; and which might, by creating a prejudice against him, deprive him of a defence on a future trial. If the charge by way of libel is only for foibles, or weakness of character, it is a crime against the community to publish it; because no one is without his failings, and if you have a right to expose those of one man, you have a right to expose those of all, and that respect yielded from one member of the community to the character of another, and which forms a strong band in social life, would be subverted; the bands of society essentially weakened, examples to virtue and goodness, would appear to be generally beclouded by the infirmities naturally incident to human kind, so as to form excuses for licentiousness, and apologies for voluntary errors. It is therefore prudent, on principles of social economy, to let those instances, which mark the imperfection of human nature, remain without comment, or public exposure. This is not a new idea, either in theory or practice. We all know the force of example, and the overbearing power of fashion. We all know the restraint resulting from the disapprobation of men whom we consider, as having attained to a high degree of perfection in morals and propriety of conduct. We all venerate the eye of prudence, and stand reprov'd by the countenance of matured discretion. Why then should an unprofitable and malignant licentiousness be allowed to subvert a most urgent stimulus to virtue, and to weaken, or destroy, one of the most powerful restraints upon vice?

All men will say, that this ought not to be, in a free and equal government ; and that every government will, for its own sake, and for the sake of justice, defend the characters of all its members and subjects, from that kind of slander, which, from mere circumstances of human weakness, will expose a man, and his posterity, to contempt and ridicule ; and much more, from that slander, which, when rendered permanent by ink and paper, or by signs and pictures, will wrap a character in infamy, spread it abroad in disgrace, and hand it down to posterity in the habiliments of guilt. Yet it may be, that some honest advocate for the freedom of the press will say, that though slander committed to paper with the pen, ought to be punished, yet there is a sacred respect due to the press, and that the slander which issues from the type is a different thing.

If that slander, which comes from the press, is less injurious than that which comes immediately from the quill, it must be, because that which is printed is not so worthy of credit, as that is, which is seen in manuscript only. This idea is not only opposed to the freedom, but to the usefulness of the press ; for if it is agreed, that what issues from the press does not deserve credit, merely because it is produced under that form, then there is a want of confidence in this manner of communication, and consequently the press has lost all its valuable usefulness. But a production from the type, if the press has equal credit with a manuscript communication, as the circle of communication is, in that way, increased in its diameter, so the injury is increased in its magnitude ; and therefore the slander from the press is the most injurious, and most to be dreaded.

But still there may be a question, whether a restraint can be laid on the press, so as to protect the individuals of society, in their private capacity, from libels and slander, and yet preserve the freedom of printing, so as fully to answer the intentions of the people, in their attempts to preserve the freedom of the press, as essential to the support of a free government.

The affirmative of this argument would rest on the

advocate for an unrestrained liberty of the press. He would have to prove, that such a restraint, as would protect individual characters from printed slanders, is incompatible with that freedom of printing, which is necessary to the maintenance of a free form of government. All I can say, is, that I do not discover the least degree of incompatibility in the question. How can the privilege of slandering our neighbours with impunity, be of necessity to the maintenance of a free government? To the support of a tyranny, it may be necessary, because, that every thing which derogates from the respectability of the people, increases the power of the despot, and serves to evince the necessity of a despotism.

Even though the libel is true, yet being unjustifiably published, because it is not done in support of a claim of right, or in a legal prosecution, the truth of it cannot be given in evidence, as a justification; because there is no necessity for the publication of it. This has always been the principle in the European governments, from the time of the Romans* to the present day. In England we find the principle sacredly maintained, from the earliest times. In the 5th of Coke's Reports it was decided, that a libel is a malicious defamation, expressed either in printing or writing, page 121; the same Report also determines that to be a libel, which is in signs, or pictures, if it is defamatory. Skinner's Reports, 123, maintain the same principle. Hobart, 253, has the same doctrine; and Hawkins, 93, and all the later writers and decisions, give us the same as law.

The first settlers in this country, considered themselves as subjects of the English government, and declared, "that they came here as free born subjects of the kingdom of Great Britain; endowed with all the privileges belonging to such."† And further declared, "that no person should suffer in his life, limb, or liber-

* "Vel si quis ad infamiam alicujus libellum aut carmen, aut historiam scripserit, composuerit," &c.

† By the Roman law, the author or publisher of an infamous libel might be punished with death if it brought another man's life into danger; but if it did not he was deprived of capacity of giving testimony.

† Old Colony Laws.

“ ty, good, name or estate, under color of law, but by
 “ some express law of the general court of this colony,
 “ or the good and equitable laws of our nation, suitable for
 “ us, in matters which are of a civil nature, as by the
 “ court here hath been accustomed, wherein we have
 “ had no particular law of our own.”

This declaration proves, that the first settlers of the country, claimed the principles of the English common law, so far as these were suitable to the situation of the country, as their privilege ; and they trusted in the wisdom and prudence of their courts of justice, to determine what part of those principles was suited to their circumstances. No law was ever made before the revolution, to give an action for slander, whether the same was uttered in words, in writing, in print, or otherwise ; yet such actions have been maintained on the principles of common law, ever since the first settlement of the country. This must have been done on the idea of the efficiency of the common law, which had been adopted and practised upon here. The common law, is a system of commonly received opinions, established by the common consent of the people, without acts of the legislature, and defined by practice in the courts of law. The idea of having a government, which does not give a remedy in such cases, must be the result of an opinion, either, that character is of no value, or that each subject is left as in a state of nature, by the force of his own arm, to protect that which is most dear to him, to his family, and to his posterity. Where this is the state of society, there ought to be no law against *duels*, or *assassinations* ; for those who have strength and skill to do it, ought to be allowed to defend their reputation by open combat ; while those of less courage, or weaker bodies, ought to be indulged in private assassinations, by way of revenge, on the principle of the *lex talionis*.

It is a fact, that among the advocates for an unrestrained license of the press, we find some of the most resentful persons, when they are themselves, attacked in that mode of slander. It would, indeed, be a strange, unreasonable conclusion, that though a man was to have a

remedy, in all cases, against *written* slander, yet that the *type* should render the evil so sacred, that when the same libel shall be issued from the press, the virtue of that form shall render the publication of it a justifiable act.

It may be well to examine, whether any of the declarations, made by the people on this subject, can have a construction tending to maintain so unreasonably and dangerous a hypothesis.

The constitution of the United States provides, that Congress shall "make no law abridging the freedom of speech or of the press." It would be as reasonable to conclude, that, as Congress can make no law to abridge the freedom of speech, every one is at liberty to utter, in words spoken, what slander he pleases, with impunity, as to conclude, that because Congress can make no law to abridge the freedom of the press; every one may be allowed to print and publish, of his neighbor, what slanders he pleases to publish. But take this declaration upon the same principles of construction, as other declarations, acts and productions are taken; that is according to the subject matter of it, and it can have no other meaning than this, that the measures of the government of the United States shall, at all times, and on all occasions, be open to a public examination in the press. How such an examination is to be conducted, according to the provisions of the constitution, is to be the subject of another section.

The constitution of Massachusetts, declares, that "the liberty of the press is essential to the security of freedom in a state." But this can never have a construction, to render printed slander against those whom the constitution has agreed to defend, as justifiable; when the same constitution declares, "that the end of government is to furnish the individuals who compose it, with the power of enjoying, in safety, and tranquillity their natural rights, and the blessings of life." To believe, that men, under the pressure of calumny, and overborne with slander, can enjoy the blessings of life in tranquillity, is to suppose, that they have lost all sense of

honor and reputation, and are no more than savage barbarians.

The same declaration in New Hampshire, will have the same construction. The state of Pennsylvania, provides for the freedom of writing and printing, but, also provides, that he who prints, or writes, shall be responsible for the abuse of the liberty he has exercised.

The other states make the same declaration, that the liberty of the press is essential to a free government, and that it ought therefore to be inviolably preserved. But none of them intimate an idea, that such a due, and proper restraint, as shall be adequate to the preservation of the characters of individuals from slander, would be an undue restraint, or by any means amount to such a restraint, as would endanger the freedom of the government, or be subversive of the principles of civil liberty.

Since the history of the human race exhibits full evidence, that in every age of the world, a good name has been esteemed as precious ointment, and as of the highest value, it would be a very strange, and unfortunate circumstance, if in this enlightened day, and in this free and highly civilized country, we could not maintain our governments, without a constitutional license to calumny and detraction.

The freedom of the press, in regard to men in public stations, is of, at least, as much consequence, as it is in regard to private individuals. The idea, that a man's being in office, renders him a fit mark for the malignant arrows of slander, is no less injurious to the rights of individual citizens, than it is to the government at large. It cannot be considered as of no importance to a man, whether he shall have an opportunity to improve his talents in his country's service; whether he shall share in the honors of his government, or enjoy the confidence of his nation. Every one has a right, by fair and honest means, to possess himself of a place in the administration of government, and to obtain an office, which, while it renders him useful to the public, will promote the honor and happiness of his family. But if, as soon as he is in office his enemies, and others, have a right

to defame his character, and to charge him with corruption and wickedness in his public conduct, or even to represent him, through the press, as a weak, unsuitable person for the office, the best part of the community, the men, who hold a good character, as of high value, will not run the hazard of holding an office or place; and of course, the worst and most unsuitable men will be called forward to take the care of the government: and thus by the power of their own slanders, gain an opportunity to plunder the people.

There can be no man of any consideration, who will sacrifice his own reputation, by advancing it as a principle, that the press shall be free to abuse and slander a man, merely because he holds a public office; but there are some who believe, that a libel against a magistrate, or public officer, may be justified, by proving the charge in the libel to be true. There are declarations in the constitutions of Pennsylvania, and the Tennessee states, which maintain the idea, that, "in prosecutions for publications of papers, investigating the official conduct of officers, and men of public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence."

These states having made this provision, there can be no doubt but that men may publish what they shall please within them, on the official conduct of men in office, provided they have their proof ready at hand to maintain the charge. But even this is a restraint upon the press; for if any thing is published which cannot be proved, the author and publisher, are liable to prosecutions and severe punishment. I do not know what the law, in this respect, had before been in Pennsylvania; the other state did not exist previously to its present constitution which formed it; but in the other states, such a provision if taken in a literal sense, unconnected with the subject matter, would have been an express alteration of the common law, as before used and practised in them.

In the other states, there may be question, whether the liberty of the press; guarded in their constitutions,

as an important privilege, has or has not the same meaning as is expressed in the constitution of Pennsylvania. New Hampshire says the liberty of the press ought to be inviolably *preserved*. Massachusetts says it ought not to be *restrained*. Maryland says the liberty of the press ought to be inviolably *preserved*. North Carolina and Georgia say the press ought not to be *restrained*. The states not mentioned, leave it to the public opinion, according to the principles of the common law, as used and practised upon in them.

As by the common law of England, adopted and practised upon in the several states before the revolution, the truth of a libel, or written or printed slander, could not be given in evidence to justify the publication, the question is, whether such an alteration is made, by the declarations recited, or by the nature of the governments in the nation, and in the several states, as shall place this principle on a footing similar to what it is, in the states of Pennsylvania, Kentucky and Tennessee. The restraint guarded against, is not defined in any of those states, and it is said, that the liberty of the press shall be inviolably preserved, there is no definition of what that liberty of the press is. But the main object is apparent; that there shall be no such restraint upon the printing, and publishing sentiments, and opinions upon public men and measures, as shall prevent a free and necessary communication of ideas, for the preservation of liberty and the support of the principles of the constitution. I therefore conclude, that these constitutions have not changed the common law principle adopted and uniformly acknowledged in the country; nor do they differ essentially from those of the other states.

When we come to consider the evils, and injuries, which would result from a justification of a written or printed libel, or defamation against a public officer, and see that no public advantage can possibly arise from it, every reasonable man will be contented with the old settled form of principle.

I here mean to make a distinction between a charge made in a publication against an officer, for his having

corruptly taken bribes, or having acted wrong and unjustly from corrupt motives, and the act which may have proceeded either from such motives or from others indiscriminately. In the next section, under the liberty of the press, in regard to the measures of government, I mean to maintain, that it cannot be criminal to publish what the government in fact does, and that therefore the truth of the publication may be given in evidence; as a justification under the prosecution. But I am now speaking of a charge of corruption, for which a magistrate, or public officer, may be removed from his office, or punished *criminaliter*, for the fraud or corruption; or be displaced for weakness, incapacity, or impropriety of conduct in his official capacity.

There may be a question, what good a publication, charging a public officer with corruption, can do? If he feels himself guilty, he will never procure a prosecution for the libel. If the publisher of the charge, has the evidence to maintain it, he may lay it before a legal and proper tribunal, with much less trouble than he can go to the press. Unless the charge is altogether groundless, and he knows it to be so, he runs no hazard by a prosecution before a grand jury and a competent court. Even though he shall fail, unless his attempt is groundless and malicious, he is not liable to damages. What advantage, can then result from printing a charge, which, if true, can be inquired into by a court of justice, where the man charged will have a fair chance to defend himself, if he is innocent, and the public the advantage of punishing him, if he is guilty?

If a citizen has a privilege of consequence enough to contend for, it is that of a fair, impartial, and candid trial when he becomes the subject of a criminal prosecution. But if he can be, before, charged in a gazette, with the same crime, the public opinion will be forestalled, and there can be no certainty of obtaining a fair trial by a jury. The *publication* of the corruption, or weakness of an officer's conduct, can be no foundation for his removal; for the gazette is no evidence in itself, nor can any court take cognizance of a charge made in that manner. It

may be said, that an unrestrained license to publish on the conduct of public men, would operate as a restraint upon them, and thus promote the public good ; but this is not true ; an unrestrained license to publish slander against public officers, would very soon be improved, by men who wish their removal, and by others who resent the uprightnes of their conduct, or who have private quarrels with them on other occasions, in such a manner that the slanders uttered from the press, though rendered of less consequence, and received as matters of course, would, while they wound the feelings of him to whom they shall be pointed, pass unnoticed as to public prosecutions, and answer no possible valuable purpose to the community.

If the officers of government are guilty of corruption or fraud, there are tribunals to punish them ; the grand jury may indict, and the house of representatives, on the supported complaint of an individual, may impeach before the senate ; and, in nearly all the states, there may be a removal from office for weakness and incapacity ; but, where there is no power of removal, the publication of the officer's incapacity can do no good ; and, where there is such power, the publication can furnish no grounds for a removal.

Yet it may be asked, why the truth, in regard to the officer's corruption and fraud, shall not be published ? The answer is, that if it could be rendered certain, that nothing but the truth would, under such license, be published, there might be less objection to it. For then the mere publication would amount to proof of his guilt, and he might be removed, or otherwise punished without a trial. But this idea is against the tenor of all our constitutions. No man is to be condemned until his crime has been fully and plainly described to him, nor until he has had an opportunity to be heard in his own defence. Should a charge be made in the gazette against a public officer, he would be, if he was innocent, under some necessity to commence, or to procure to be commenced, a prosecution against the printer or author, or against both, more especially if they could give the

truth of the charge in evidence to defend themselves; otherwise he might be supposed to be afraid to bring his conduct into legal disquisition. This would give a first, or principal, magistrate business enough to do, without attending to matters of state. Every transaction must be opened and explained before a jury, and the secrets of the state, in many instances at least, be exposed, in order to maintain prosecutions against men of no consequence, but who would hope to rise, even from a conviction and punishment.

There is therefore, no doubt, but that the declaration, on this subject, in Pennsylvania, has a restrained meaning, and is not intended to be taken altogether in its literal sense. Whatever a government, or officer of state does in his civil capacity, must be open, and public acts. The president's appointments, his embassies and treaties, the laws, resolves, and orders of the legislature, the judgments and decisions of the judges and magistrates, are all public acts; they not only may be, but they ought to be made public through the press. If they are wrong, the people ought to know it, if they are right, they ought to be given to the public. But these ought to be accurately and truly published; and there ought not to be a publication, or assertion of public acts or proceedings, which had never been made or done. When a publication of this kind is made, it is fit and reasonable that the truth should be a justification. If the acts done or passed are wrong, yet as errors may happen without corruption, the existence of the act can be no justification of a charge of bribery or corruption, or of an intent, or combination to overthrow the government, or to subvert the liberties of the people; and therefore the proof of the act can be no justification of a charge of treason or corruption in them, or him who effected it. There can therefore be no reason to believe that Pennsylvania ever intended any thing more, than a mere license to publish what had been in fact done by the government, or by its officers, in an official capacity, independent of any charge for gross immoralities, corruptions or frauds, by them personally committed.

To explain this idea more fully, it may be observed, that a league or combination in a president, governor, or other magistrate; to subvert or change the form or nature of the government by force, and without the consent of the people, given in the form which is provided by the constitution; is treason of itself, treason, even though there should never, in fact, be an open attempt, or an overt act in pursuance of it. There could be no necessity for gazette publications on this point, because a public prosecution for a crime of the first magnitude ought to be immediately commenced. But should there be such publication made, on full proof, the nature of the case, and public jeopardy, would justify it. The league, or combination being fairly stated, the public would be left to determine, how far the danger had been extended, and the tribunals of justice, how far it amounted to treason, and whether the nature of the combination *truly given* through the press is not a justifiable act:

When a judge, magistrate, or any officer, civil or executive, shall take a bribe in his office, to induce him to do wrong, or shall, by extortion, take that, which he has no right to take, in order to induce him to do that, which it was his duty to do without, whether any thing is done in consequence of it, or not, it is a crime in itself, and is not the subject of a gazette essay, but a matter for an indictment, or impeachment, and ought to be taken up in that way. The act done in consequence of such bribe, or the corrupt refusal, when it is the officer's duty to act, are distinct facts from the crimes of bribery or extortion. They may be criminal, or they may be only an error of judgment; and as they may, or may not proceed from corruption, so they are, or are not punishable as crimes, as they are, or are not connected with corrupt motives. But bribery and extortion, are crimes in themselves, simply considered, without a connexion with any consequent act or denial. Whatever an officer, therefore, does, or whatever he denies to do, may be published, without the danger of being charged with a libel, unless the fact published is false. But publishing, that he had received a bribe, is charg-

ing him with a crime in an open and public manner; where no proof can be offered against him, where he can by no means make a defence, and where there is no existing tribunal to render judgment.

Should it be said, that the person who is made the subject of the libel, may have his action, or prosecution against the printer, and that the truth of the libel may, on that to be investigated, the answer is, that this would be unreasonable and unjust, because it would involve all public servants of the people in litigious suits to discharge themselves from accusations, which would never be produced against them by a grand jury, or by a judicial inquest. Besides this, if there could be one libel, there could be a hundred for the same thing; and if these publications, had any weight in the public opinion, they would create a prejudice, which would deprive the party injured of a fair and impartial trial. This is in its nature, an opposition to the principle expressed in the constitution of Massachusetts, and maintained by the tenor of all the others, that no man shall be held to answer to a charge for a crime, until the same shall be fairly and fully described to him.

The simple fact of an officer's having done, or refused to have done, any thing in his office, is not a charge of criminality against him, yet if it is false and malicious, and he shall be injured, or receive any special damage by such publication, he may have his remedy by an action for the libel, and be recompensed in such sum of money as a jury shall adjudge to be adequate.

The transactions of government, may, in some instances be wrong, and even unconstitutional, and yet the authors, and agents have no corrupt intentions. These may all be published, and their consequences be detailed, and dilated upon, without charging the men who effect the measure with crimes. When the earl of Chatham in his nervous language said, that the earl of Bute had brought the king and kingdom of Great Britain to the brink of ruin, he did not charge him with a crime, because, as the earl of Bute had been prime minister, this might all have been done by him, from error and weak-

ness; and without any corrupt intention. But had Chatham charged Bute with having done this, *with a traitorous intention* to overthrow the government, or dethrone the king, he would have charged him with a crime: or had he charged him with a *conspiracy* against his sovereign, or of having *corruptly received a stipend from another sovereign*, there must have been an inquiry into the fact. Should it so happen, that when the measures of any department of the government, shall be published, the people shall be alarmed, and dark jealousies shall arise; should there be false consequences drawn, and erroneous reasonings be exhibited on the tendency and consequences of those measures, there can be no possible way to cure such an evil, but by giving to patience, and experience their perfect work.

There are other cases, where the exercise of the liberty of the press may injure individual citizens, and yet the truth of what is published, or the causes and circumstances of the publication, must excuse the author and printer from punishment. A man allows his friends to propose him to an office under the suffrages of the people; and others undertake to examine his character, and to shew that he is unfit for the office. In this case, there are no decisions, or legally established opinions, to guide our inquiries, and we can therefore only reason on the question, according to what is conceived to be the principles of reason and justice; and we may gain understanding from the practice of nations on the subject. On the one hand, it will not do to say, that when a man is proposed as a suitable character to fill an office to be given by the suffrages of the people, that his incapacity, incompetency, or inability to sustain it, shall not be asserted with as much publicity as the proposal of his election is. This would be, to allow any one, however unsuitable he may be, to palm himself upon the people, to the great injury of the nation. We therefore, have a right, through the medium of the press, to communicate our opinions, in regard to the character of every candidate, and to assign our reasons for those opinions. The press is as free for him and his friends, to combat our

opinions, and to shew that our reasons are not supported on good foundations, or to vindicate his character from false aspersions, tending to shew him to be no proper candidate, as it is for us to call his eligibility or competency into question. On the other hand, it will not do, to allow men, merely because one is nominated to office, to charge him falsely, and maliciously, with crimes, and scandalous conduct, for which he ought by law to be punished, or which would, if he is guilty, amount to a disqualification to office. Yet if he is thus guilty, he who proclaims this to the public, and thus prevents a villain from obtaining the public confidence, to which he has no just pretensions, does his country an essential service.

In this case the party who may be charged with a libel against another, is taken out of the reach of the principle, that he who publishes a libel against another, cannot be allowed to justify the publication by the truth of the facts. This question would be decided on the same principles, as that where a suit or prosecution is brought before a proper tribunal authorised to discuss, and decide on the question. The candidate opens his claim to the public, every member of the community has an interest in the event, the whole people are to decide on the question, he constitutes them his judges, and there is no other way to bring the question before the public, than by the press; and therefore every one in the community, has a right, in the same way, to lay his objections before the people, in order to prevent the election.

In all cases of criminal prosecutions, each citizen has a right to exhibit his complaint against another, and no action or prosecution lies against him for it, unless it is done maliciously, and groundlessly. Whether it was done maliciously, or not, will appear, generally, from those circumstances which shew, whether it were groundless or not. So in the case of an election, the publisher of any thing against the candidate, which in itself, is defamatory and scandalous, ought to be responsible; and heavy and aggravated damages ought to be given, unless

he can justify himself on the truth of the publication. But if he publishes the truth only, he ought to be allowed to justify his conduct upon the proof of the facts; and in such case the plaintiff by his action, will only expose his own folly and weakness, in attempting to gain an office, to which his misconduct and vices have rendered him incompetent.

In these observations, two lessons are contained. One is, that he, who allows himself to be proposed as a candidate on an election, ought to consider whether his character can bear the test of public scrutiny. The other is, that when an election is in question, every one who writes, or publishes, against the candidate, ought to have his proof ready at hand to meet him before a tribunal of civil justice, if he charges him with a crime, or with scandalous, or infamous conduct; or even, if he charges him with weakness, incapacity, or a want of integrity, and thereby defeats his election, it would be reasonable to suppose, if this was proved to have been done maliciously, falsely, without any foundation, that an action would be maintained, and proper damages be given by a jury.

The liberty of the press, as it respects the government and measures of administration in a state, is not so easy to be adjusted; yet, perhaps, a little careful attention will place it on reasonable grounds, and exhibit it on constitutional principles.

The United States in all their constitutions clearly intended to preserve a free communication of sentiments, and opinions, in every state, as to matters of governmental concernment. The public opinion, in the most arbitrary government, has its irresistible influence and acknowledged effect. The great art of government, in a despotism, is to gain the public opinion in favour of tyranny. This is done by promotions, by bribery, by corruption, and by terror. We have many examples in ancient, and modern history, where the change of public opinion has effected a revolution, has totally altered the dynasty of nations, dethroned one family and set up another; taken away the father and enthroned the son,

and even changed and rechanged the form of the government. The princes and despots of the world are afraid to acknowledge the force of public opinion, and yet all their movements are predicated upon a conviction of its force. In America, we have made the public opinion the guide and safety of our systems of civil government; but to avoid the errors, and wildness, with which the public opinion has been generally conducted in other countries, we have marked the place of its current in our civil constitutions; that so it may move on, in the form of frequent elections, curing, by silent votes, the mischiefs, which in Europe demand the remedy of a civil commotion. There can be, then, no danger in appealing to the public, on the transactions of a government, where the manner and measure of the public will are thus regulated. The idea that the body of the people are incapable of judging in the public concerns of state, is in itself an opposition to the principles of the governments in America; because they are all founded in the sentiment, that the people at large, will maintain them on the considerations of interest. It cannot therefore be wrong to spread the concerns of the state before the people, that their opinions may be formed on the measures of the administration. And I should conceive it to be very clear, and a well established truth, that this was all that was intended by the state of Pennsylvania, when that state provided for a justification, in prosecutions for libels, from the truth of the fact, as to public men, and public measures. It is hard to be believed, that it is intended there, that a tale of bribery and corruption of a public officer, may be made the subject of a gazette publication, and then be justified, upon proof of the facts charged, when there should be a prosecution. This would be, to compel every man in public office, to engage in a lawsuit with every evil minded printer, or malicious writer, on the peril of losing his reputation, and compel him to try those facts, on an action for slander, which ought to be tried only on impeachment.

The press ought, by the tenor of all the constitutions, to be free in the publication of all the measures of the

government. The restraints laid upon the press in all the governments on the continent of Europe, was the stimulus which produced an express declaration in so many of the governments in North America. If the measures exhibited are right, the people will ultimately support them, if the measures are wrong, they will have their influence in the then next election.

To explain this principle more fully, we begin with the lowest magistrate. Whatever, he in fact does, or whatever decision he may make, he does it as a servant of the public, and the people at large ought to be possessed of it. To publish what he has officially done, is one thing, and to charge him with having received a bribe to do either right or wrong, is another. The former may be from error or mistake, but the latter is in itself a crime in him, in his private capacity, because it is received by him as a man, to corrupt him as an officer, and thereby to contaminate the stream of public jurisprudence. If the opinion of a judge is published, and a prosecution commenced for the publication as a libel, the truth may be given in evidence, because we are all interested in the opinion and judgment of the judges, and though the opinion or judgment may be wrong and erroneous, yet it is an opinion in which the public have a concern, and therefore there is no impropriety in the publication of it.

Whatever shall be done by the legislature, is a proper subject for public communication through the medium of the press. The legislature ought to pass no act, which will not bear the public scrutiny. If their acts are wrong, they ought to be repealed; if they are unconstitutional, the judges ought to declare them to be so, and refuse to carry them into execution. Therefore, as the measures of government are proper for communications through the medium of the press, and the publication of them, if truly and impartially made, is for the use, advantage, and safety of the state, the truth of them ought to be a justification to the author and printer.

The publication of what is done by the judiciary, or legislative power, must in itself be a justifiable and prop-

er thing. But should the printer, at the same time suggest or publish, that what was done, was done from corrupt motives, or from a traitorous design to overthrow the constitution, he ought to be punished, unless he can prove the fact of corruption, or the conspiracy or combination to destroy the government. If the writer or printer asserts, that the measure is unconstitutional and wrong, even though he is mistaken, or wilfully errs, he cannot be punished; because he has a right to have and give an opinion, and he submits it to the public, who are a proper tribunal to decide upon it; and the act done may be wrong and unconstitutional, and yet not be the effect of corruption or treason.

It does not follow that all publications on the measures of government, which are not true, are liable to prosecution and punishment. The indictment must set forth that the publication was *false*, and that it was *falsely and maliciously made* by the party charged. The malice or evil intention of him, who made the publication is a material part of the charge; for if it was done by involuntary error or mistake, there is no criminality in it; and of this the jury are to judge, as they do of the charge of fraud in other cases, or the charge of malice on a suit for defamation, or a malicious prosecution, or the charge of malice aforethought, as a constituent part of the crime of murder. But if the false publication proceed from *malice* to the government, or its officers, or from a seditious temper against the powers of the state, and the fact published be in itself false, there can be no reason why the author and publisher should not receive adequate and condign punishment.

The late act of Congress was intended to have been passed on proper principles, and the Congress had an undoubted right to pass an act against seditious libels; but it will not follow from thence, that the act was drawn on the rules of prudence, or executed with that discretion which might procure the confidence, and merit the support of the people.

Some of the men who contended against it, rested their opposition too much on principles quite incompati-

ible with every species of a free government; and though the act was finally suffered to expire, yet this circumstance can furnish no argument against a constitutional restraint on the press.

The act of Congress was made in June 1798. It was to continue in force until the third of March, 1801. The second section enacted, "That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of Congress of the United States, or the president of the United States, with intent to defame the said government, or either house of the said Congress, or the said president, or to bring either of them into contempt or disrepute; or to excite against them or either or any of them, the hatred of the good people of the United States; &c. such person being thereof convicted, shall be punished by fine, not exceeding two thousand dollars, or by imprisonment, not exceeding two years."

There is a section providing that it shall be lawful for a defendant, when under prosecution for writing or publishing any libel, to give in evidence in his defence the truth of the matter contained in the publication charged as a libel.

By this act, the crime is publishing any *false, scandalous and malicious writing*. This clause, taken in its literal sense, excludes the necessity of a provision for giving the truth in evidence in the defence, because the writing must be in itself *false*, in order to make the publication a crime; and therefore it would be natural to justify the fact by the truth. But though the facts asserted might be true, yet the conclusions drawn from them might not be so, of this the jury were made the judges, under the direction of the court. The crime did not seem to be completed, unless the publication was made to defame the Congress, or one branch of it, or to defame the president, or to bring him or the senate or house into con-

tempt or disrepute, or to excite against him, or them, the hatred of the people. Thus the act provided for the president and Congress, leaving all the other officers, and departments of government, without protection from slanders and libels, unless they could have found protection in the common law. The common law would have afforded equal protection to the president and Congress, as it did to the others.

This act seemed to have its origin in an apprehension, that the president and Congress, or a majority of the latter, were in danger from their fellow-citizens, or some of them, and was received, however it might have been intended, as a measure adopted to maintain a party influence long enough to gain some point, contemplated as of great political importance.

The writing and publishing falsely, and maliciously, against any one officer in the national government, a libel, with an intent to subvert the government of the United States, to bring it into hatred or contempt, or in that way, wilfully, and wickedly, uttering, and publishing any falsehood, in fact, with an intent to alarm the people, or to cause them to withdraw their love and support from the government, must in itself be a crime against the government, and ought to be punished. But the libel against a president or Congress, or officer of the government, must be in regard to something said to have been done by him, or them, officially, or otherwise, the government cannot be injured by it, and it remains as an offence against him, or them in their private capacities, and they are, as to a remedy, on the same foot of privilege, and point of protection, as other citizens. Where the private reputation of an officer of the general government is injured, or his property trespassed upon, he has his remedy as a private citizen. But where his official conduct is libelled, maliciously and falsely, *with a view to injure the general government*, or where he is opposed in the exercise of legal, official authority, derived from that government, there the injury is to the government itself, and it ought to be considered as possessing powers for its own defence and support.

Nothing could have been necessary, nor is there any thing more necessary at this time, than to pass an act, that if any person shall, by writing, printing, or in any other manner, utter and publish, any false, malicious, and scandalous libel of and concerning the legislature of the United States, or of and concerning the conduct of any member of the same in his legislative business, or of and concerning the president, vice president, or any officer or servant of the government, in regard to his official conduct, *with an intent to subvert, or weaken the government* he shall be punished by fine or imprisonment, not exceeding, &c.

There is yet one point attended with more difficulty. The truth may be published in regard to the measures of the administration of states, and yet such false constructions may be given to them in the publication, as will alarm the people, raise a jealousy against the state, breed sedition, and tend to bring on an insurrection. The question is, as this is an evil, how it can be prevented by the government.

Every man has a privilege to reason on the measures of government. Some reason in one way, and some in another; one party may be right and the other may be wrong; but if he who happened to be wrong in his reasoning, could be punished for his error, there would be an end of all free inquiry on the measures of administration. Some men may form wrong conclusions with very honest hearts, while others form the same from wrong heads and seditious minds; but there can be no way, in which a just, and exact scrutiny can be made, and therefore, there can be no punishment in such cases, without a dangerous infringement on the right of private judgment, in public concerns.

The evils attending these errors, whether involuntary or corrupt, are not so dangerous as they may be at first conceived to be. The writer, or the publisher lays the fact of the measure, fairly and fully before the public, and then offers his opinion, as to its effects and consequences. If he believes the act, decision or measure, to be unconstitutional, he says so, and exhibits his reasons:

the body of the people have the constitution in their hands, they hear the reasons of others on the subject ; and they can ultimately form an opinion for themselves, and they generally decide with ability and propriety ; because they have no corrupt motive, no sinister end in view, nor any wrong bias from interest on their minds. If he says that the measure, though constitutional, has a tendency to injure the public weal, yet if he assigns no reasons for his opinion, the public will not regard him ; and if he does, others will canvass his reasons, and the people will finally be able to form a correct and proper judgment on the case.

It will sometimes happen, that inflammatory pieces, with little or no foundation, will have a warm effect on the public mind. Elections are sometimes procured and sometimes prevented in this way ; and good men are frequently grieved at the effects of a misunderstanding in the public opinion ; but such is our state of imperfection here, that we can have no good, which is not tainted with evil. This is necessarily incidental to the freedom of the press, as established and contemplated by all the constitutions in our nation ; and being an evil in itself of less magnitude, than what would result from a restraint on the freedom of the press in such cases, it must be endured.

There can be no standard, besides that of the public opinion, established to decide on the reasonings and conclusions, which men and parties will draw, in adverse or diverging lines from the same premises. Therefore to punish a man for reasoning wrong, would be to deny him the privilege of reasoning at all : and to deprive him of this privilege, in a matter, wherein he has an interest in common with the rest of his fellow citizens, would be to deprive him of one of the most valuable rights secured by the form of all our governments. It would be like the claim of that authority which burned one philosopher for suggesting principles, the belief of which ultimately crowned another with laurels : or that which effected the execution of another philosopher, for suggesting, that the earth was not a *plane* but a *globe*.

Wherever one man, or one body of men can erect and maintain a coercive tribunal in favor of their own opinions, and in opposition to that of those who differ from them, there is an end of all free inquiry : and the right of private judgment no longer exists. The world has seen, does now see, and will forever see, melancholy instances of this truth. The wise man says, that which hath been will be again ; and there is nothing new under the sun. A survey of the whole Mussulman empire rises up in testimony of this fact. Wherever the Roman catholic religion, has had a full perception of its consequences, the effect has been the same as that of Mahomet in Turkey. Thus we see Italy, the garden of Europe, has become the imbecile sport of neighboring powers, from a want of mental energy ; and by reason of that torpid weakness of nerves, which never fails to be the consequence of indolence of mind. We behold in Spain, the ass crouching between two burdens ; the church and the throne. The former has a servile dependence upon the latter ; and in due form of law, lays the people, bound hand and foot, on the altar of superstition, that the sacrifice may be divided between the church and the state. This same kind of tyranny was maintained, in a great degree, under the late French monarchy ; but as it cultivated a superstitious regard to the monarch, as to the Lord's anointed, it was necessary to overthrow the church, in order to overturn the throne.

The holy religion, which was by these powers vilely corrupted, and profanely debased, contains no authority for such tyranny. The whole tenor and spirit, as well as all the precepts and examples of it, are in favor of the rights of conscience. We are there taught, to call no man master in matters of conscience, for one is our master even our Father who is in heaven. The whole host of martyrs, are now bearing testimony in favor of this right. The states of America have done themselves infinite honor in recognizing this sacred principle, given to the human race on their creation, and more fully explained in that divine system which hath brought life and immortality to light.

There never has been an instance, of the freedom of enquiry in matters of religion, being restrained, where the civil liberty of the people survived it. Nor has there ever been an instance, of the people being denied the right of enquiry on the principles, and administration, of civil government, where the rights of conscience have been preserved. Neither of these can subsist without the other. I do not mean, that, because a man has a right to think for himself, he has a right to vex and disturb others in the exercise of the same privilege. The whole of my argument tends to prove the reverse. The idea of each man's having a right to think for himself, suggests in the strongest manner, that in this respect, all are equal, and that it will be unjust in one, to subvert the right of another.

The laws made against blasphemy, and profanity, when fully understood, and properly, and cautiously executed, are quite compatible with these ideas. The laws against blasphemy, at least any one which I have seen, allow every one to have his own opinion in regard to the incomprehensible author and creator of the universe. If any one has a belief that there is a Being, who has created all things, and on whom he himself is dependant for his existence, he cannot think of him but with awe and reverence. If all the community are in this belief, they can have no right to grieve and vex each other, by contumelious reproaches of him. If the greater part of the community have this belief, and the reproach and ridicule of it, are not essential to the happiness and comfort of the minority, they ought to be restrained from the exercise of such contumely and reproach, as will afflict, or disturb the majority. This can be no injury to them, because they are left to have, and enjoy their own opinions in peace and in quietness; they are left to the exercise of the right of defending them in argument, by necessary means, only avoiding that mode of conversation, which is unnecessary to them, injurious to others, and vexatious to men of decency and good manners, who are not careful about any religion.

The laws which are made to prevent blasphemy, against

what christians denominate revealed religion, are on the same principles. The *contumeliously* reproaching of God, Jesus Christ, or the Trinity, or the books of the old or new testament, is a crime. But the opinion which any one may have, on these subjects, or any arguments he may offer in support of his opinion can be no crime against the laws. Yet there can be no reason, why one man shall be allowed to treat the opinion of a majority of a community, on those original ideas of religion, with contempt and ridicule. It can by no means be proof of the truth of his own opinion, of the gravity of his own mind, or the seriousness of his own inquiries to treat the religious opinions of his neighbors with contumely and reproach.

A society of men may believe with well grounded reason, that the apprehension of punishment in another state of existence after this is terminated, will lay a powerful restraint upon the actions of men here, that it will have a tendency to prevent secret crimes, or the crimes openly done, under the hope of protection from secrecy, and that it may have a tendency to establish truth, by the prevention of falsehood and perjury. This idea is as old as the world itself, and all nations have adopted it. The United States have universally adopted the same opinion, and it has been by the people here, counted upon as a main pillar of their several governments. There may be philosophers in the present day, who ridicule the idea, and assert that death is an eternal sleep. It is well for the world, in my opinion, that there are such men; for when the levity of their characters, and the atrocity of their actions are seen, we are convinced that the world would be a most miserable place of existence, if all men were to adopt their sentiments. Though these men, like other evils, may be useful in attaching mankind more sacredly to what is right and good in itself, yet like other evils their opinion may, and ought to be restrained within such bounds as may not injure, or overthrow the social compact. If they please themselves with the idea of a termination of their existence in the article of death, yet if they commit no crime against the laws of civil so-

ciety, no body can punish them. If their mode of belief takes off their restraint on their actions, so far as to involve them in guilt, they must suffer like other men. The promulgation of their opinion can be of no consequence to them, because if the end of this life is the end of our existence, there can be no necessity for our urging each other to receive opinions in which we can have no possible concern, and consequently, in which, as men, on their own hypothesis we, or they, can have no interest. The conclusion is therefore reasonable, that when the majority shall conceive a restraint upon contumelious treatment of a generally received religion to be necessary, which restraint can do no injury to one individual, but may advance the interest and security, and promote the happiness of the whole, his own included, they have a right to lay it.

The conclusion by me made from these arguments, is simply this, that in all matters of religion, and civil authority we have the freedom of the press sacredly assured to us by the constitutions of governments which we have formed; or, in other words, that while we have yielded to the community, the power of restraining us, so far, as is for the promotion of our own security and happiness, with that of all enrolled in the same social compact, we have reserved the privilege of exercising such rights, as will have a tendency to preserve from corruption, that system, by which that power is ceded, and by which these rights are secured.

Productions addressed to the understanding of mankind, on the subject of civil government have never been deemed to be seditious; but essays made on false facts to influence the minds of the people, to create unnecessary jealousies, and to disaffect the people to the government; always have been, and no doubt always will be, held as highly criminal.

Reasoning with decency on the being and attributes of God, on the divinity of Jesus Christ, or the efficacy of the Holy Ghost, or the evidence of the bible, have never been considered as criminal, but contumeliously reproaching the Deity, reviling the scriptures, &c. have

been, and no doubt will always be considered as criminal in these governments ; because such conduct tends to dissolve the bands of civil society, and of course, to convert that security to the people, which their governments were formed to establish.

It may, nevertheless happen, under the best form of government, that the means provided in the constitution for its own support, may be prostituted, either in acts of legislation, or in judicial procedures, to base and unworthy purposes. There can be no necessity for a civil government, when the imperfection of human nature is done away ; and while men govern men, there will of course, be imperfections and errors in the administration of government. When parties run high, the ruling majority, ever right in their own opinion, can never conceive that the rod in their hand is too heavy for the shoulders of those who oppose them. They will not reflect, that their severity has a direct tendency to change the public opinion, on which they stand ; and that those, whom they now scourge, may have an opportunity to lay the lash on their shoulders in turn.

The late act of Congress against sedition was the offspring of a warm party spirit. The execution of it seemed to be tinged with the same baneful drug. While some were punished for abusing the president, there was no provision against abusing the vice president ; but this was done in the most licentious manner. The way to make interest, and to gain an influence with some of the men who promoted the sedition law, was to violate its principles, by abusing some of the principal officers of the government. While some were punished for abusing the senate, as a body, others were attempting to make their way into office, by villifying, ridiculing, and libelling the members of that body, who were in the minority.

The act, was in itself, pointed, and particular, which no doubt produced those effects in its execution, that put an end to its existence. No act was necessary for any other purpose than that of providing the mode and

quantum of punishment. One of the judges observed, in one of the trials for a libel, that there was no criminal common law in the United States. He could not mean by this, that a nation had formed a government, without the powers of protecting itself. If he intended, that the government had powers to protect itself, but that these powers must be first defined by the legislature, before the judiciary authority could concern themselves with them, he involves himself in this difficulty, that there is no where, in the catalogue of powers given to Congress, any one in regard to sedition. If he says, that the restraint of sedition is necessary to the preservation of the government, and that therefore the power is given by implication; the answer is, that whatever has a tendency to overthrow the constitution and civil authority, is a crime against the government, and may be punished by a reasonable restraint; and that fines, imprisonment, and sureties for good behavior are reasonable restraints, and may be administered without any act of Congress for the purpose. If these are not adequate, the legislature of the nation may increase the punishment.

There never was a necessity for Congress to do any thing more than to provide for the punishment of sedition, without an attempt to define it by statute. This crime, in this respect, is like treason, murder and other offences, which are defined by precedents, and by the nature of things, and can never submit to a legislative description. Congress ought therefore to have simply provided a punishment for sedition, and seditious libels, without saying more on the subject. If they had thought it necessary to make provision, as was done in that act, that in all cases for a libel against the government, or any officer of it, for misconduct in his official capacity, with an intent to injure or to oppose the government, the party charged should be allowed to produce evidence of the facts contained in the libel, in his justification, they might have done it. But this ought to be restrained to such facts only, as the officers of government should commit in their public capacity, and not to such matters as would be disgraceful, and immoral in them, as private

men. To allow every one to produce evidence that a judge or magistrate had given a wrong judgment, and to use that, as proof that he had received a bribe, would be inadmissible. To prove that a president had made a wrong appointment, or that a member of the legislature had given a wrong vote, and to offer this as evidence of corruption, would be unreasonable and unjust.

The conduct and tenor of executive and judicial appointments, ought to be the subject of scrutiny. Where the appointments are bestowed upon persons of a particular way of thinking, or on the leaders of a party, we have a just right to discover from this, the drift of the administration, and as clear a privilege openly to promulge the truth, as to the facts of appointments, and to give out our opinion of the tendency of the measures. Where there is a division of federalists and democrats, as the parties are now called, and the president, or the governor will make an attachment to the one party or the other a qualification to office, and a condition for a place, we have a right to charge him with being of that party. Nay, further, we have a right to condemn the practice as being a species of corruption, destructive to the rights of private judgment on public concerns; and as a mode, which cannot fail to create factions, and to maintain dangerous and bitter parties, as long as the government shall exist.

The patronage of the president, as has been asserted by some politicians, must be maintained by some means or other, and there are no other than those of filling offices and places with men who are devoted to his opinions.

When this idea is properly examined, it will appear to be quite unnatural to our systems of civil government, and derogatory to all the principles, which have been advanced, in order to maintain our late glorious revolution. It will appear to be a legitimate offspring of that tyranny which has so often deluged the world in blood. It is introduced at no other door, than that, which opens to receive the dangerous charge against the people of America, that they are incapable of preserving and enjoying a free government.

The president can have no interest separate from that of the people. The idea of bribing, by appointments, a part of the people, to defend the interests of the whole, is absurd and unnatural. An honest man and a patriot, will promote and defend the interest of his country, whether he is in office or not; while a man of no principle, he who acts or engages for the sake of an office, will betray his country, and subvert the liberties of the people, where it shall be for his sinister emolument to do it. The constitution is to be maintained, not because it is the source of honor and emolument, but because it is established by the nation for the public happiness and security.

There can be no incompatibility in the interests of the state governments, and that of the United States. The latter, as now established, sinks of course when the state governments shall cease to exist. They will become the destroying angel of each other, for as soon as that is overturned, the preserving balance will be done away, and they must sink to ruin by their wars and depredations on each other.

How far the idea of creating an interest, and maintaining an influence by a presidential patronage, in the late administration, was adopted, I do not undertake to determine. There are charges openly made on this score by men in the interest of the present administration, and the same is as warmly reciprocated. How far either charge is true, the public must judge for themselves.

It has been said that the president cannot administer the government on his own principles and plans, unless his agents and servants shall coincide with him in opinions upon civil and political subjects. This assertion, in the latitude it is intended, cannot be true, or be consistent with political propriety. Could this assertion be maintained, every president ought to exhibit his political creed, not that the people might know his sentiments, and correct them, as by the standard of public opinion, but that they should implicitly conform themselves to it, as to the fixed, unerring and unalterable standard of po-

litical truth. We should all be released from the labor of forming opinions for ourselves, and have only to embrace the creed of the chief magistrate. Those who expect to live by the president's patronage, finding the offices all full, will begin to intrigue for a new president, whose political principles are in direct opposition to the one in office. The men who view themselves as candidates, will of course open a controversy with him, and either explicitly, or implicitly, form contracts to promote the leaders of their party. Thus the constitution will be forsaken, and the plans and machinations of parties form the plan of administration.

Mr. Adams in his book, intitled the Defence of the American constitutions, observes very truly, that a *majority may be a faction*. Whatever number of men shall associate together, for any other purpose than that of maintaining the government on the principles, and by the forms of the constitution, is a faction. What necessity can there be for associations, either by express compact, or by implicit intrigue? We are all united in a form of government, which interests all alike, and which must be supported by the will of the whole. Does any one say, that parties, intrigues, armies and a separate order of men, are necessary, because the people have not virtue enough to govern themselves, in an elective republic? *He who says this, is an antifederalist, and commits treason against the constitution.*

The agents and servants of the government, and the secretaries of the departments, foreign ministers and consuls; the executive and judicial officers, and the men employed in the business of legislation; the secretary of state, the secretaries of war and of the navy, are properly confidential friends of the president; and will of course, be men whose opinions are coincident with those of him who appoints them. The foreign ministers and consuls are men who are under the president's confidential orders, and ought to be with him in political sentiments. The legislators are so far from being in the rank of agents of the chief magistrate, that he is by the form of the constitution considered as their agent, to carry in,

to effect the acts they pass. The judges and judicial officers, the executive officers, including in this description the officers of the revenue, are not his agents and servants, but are the agents and servants of the nation according to the established form of the government and the laws of the land. This distinction is of great importance under the form of a free government; because the immediate, confidential friends of the president are to be guided by his pleasure, as dictated by him alone, while the judicial and executive officers are under the direction of the laws. These are personally amenable for their own conduct, and responsible for every deviation from the legal path of their duty: nay, further, the express orders of the president himself, is no justification for their neglect of duty, or error in proceeding.

Since the laws alone are to govern the conduct of those officers, of what moment can it be to the people, whether their opinions coincide with the president, either in religion or politics. To the president it may be of consequence in an ensuing election, because their being in office may give them an influence in his support. It is of consequence to the people that the officers of their government should be well informed, and upright men. If they are so, and the president is a good man, and a suitable person for his elevated station, they and he cannot differ in sentiment; but if he thinks, and reasons erroneously, it is of consequence that they should not unite with him. It is therefore, a salutary, and just conclusion, that no man ought to be denied an office in the judicial, or executive line, or be removed from such office, because his opinions and sentiments, are not assimilated to that of the chief magistrate.

Men who are opposed in opinion to the government, as it is established, cannot be safely trusted with its administration. Those who have no confidence in an elective republic, but believe an hereditary monarchy, and a line of descending nobility as necessary, can never administer an elective republic with firmness and patience. Those men who are opposed to all settled rules, and a

verse to all the maxims, which experience and wisdom have established, can never administer any government well. Yet this is a case very wide from those opinions, which divide the body of the people in our country: the extremes on each side ought to be rejected, but whether a man is in favor of Adams, Jefferson, Burr or Pinckney, ought by no means to be considered as a qualification, or as a disqualification to office.

Should the idea obtain, that men are to be appointed to, or secluded from office, on account of political opinions upon the administration of the government, there would be an eternal warfare between the *outs* and *ins*. Contentions would be sharpened, and the hopes and fears of men in office, or those who want offices, would have the full effect of bribery and corruption. The number who are in office, will always be a minority, and those who are out, and under disappointment, must ultimately prevail: these will have their day of triumph, and an opportunity to share in the coveted emoluments of the treasury.

It may be suggested here, that in a struggle of this kind, the respectable and honest part of the community, will take no part. The men who are partizans, have a claim to the offices, as they may have gained a victory, and the only men who could be safely trusted with the government, are placed at a distance, while these champions, for their own emolument, assume the gown of the patriot, and urge the people to civil discord; and perhaps to bloody dissensions: the men who dare to condemn, in a Washington, that which they would not justify in an Adams; who will condemn in a Jefferson's administration, the measures which they censured in that of his predecessor, and applaud in the one, what they approved in the other. These men are the true federalists; independent of all parties; and though neither are friendly to them, yet they will have a tribute of respect, from the community, of more value, than the eulogies of designing partizans; and will enjoy more substantial satisfaction, than can be derived from offices and stipends.

It is asserted with confidence, that there are men in the United States, who have no faith or confidence in the present federal constitution ; and from a variety of publications in several parts of the union, there is some reason to believe the fact. There seems in some productions to be a design to disaffect the southern with the northern states. Others seem to be endeavoring to divide the New England states from the others. Whatever pretensions such men may make, they are by no means *federalists*. The general constitution is a league, or covenant, between all the states, and he, whoever he is, that shall attempt in any manner to dissolve it, is an *antifederalist*.

The people of the United States are secure in their persons and property. And therefore these men who delight in theoretic, speculative politics, ought to have modesty enough to be quiet, until those, who have a confidence in our present government, shall have given it a fair trial.

By the constitution of the United States, Congress have a right to exercise, over a territory ten miles square, where the seat of government is, exclusive legislative jurisdiction. What may be done under this clause for the punishing of libels, made or published within that territory, cannot now be satisfactorily ascertained : but we must take up the subject as the law now is in the general government, and in the state governments.

The remedies for libels are on a civil process, or on indictment. The former is by an action upon the case for damages. In this action, the plaintiff sues in his private capacity, as a private citizen, and can make no use of any public official character he may sustain, excepting merely in aggravation of damages. The court, where such actions are to be litigated are the same as those where any action for breach of contract, or other civil injury may be maintained.

The remedy, or redress on an indictment is on a different footing. There, unless the national constitution has changed it, the prosecution is to be, not only in the state, but in the county where the offence is committed.

The indictment cannot be for a libel, simply, against a public officer. The description of the offence may be aggravated by a malicious intention in the party charged, to deprive the party libelled of offices, or honors : but still it is no more an offence against the government in kind, than it would be if the person libelled had never possessed an office; or if the indictment was for an assault and battery on the same person. These injuries can never be considered as offences against the general government, even though the libels are against the officers of the same ; but must remain within the jurisdiction of the state governments, because the party injured, although he is an officer of the federal government, yet remains a subject of, and under the protection of the state where he resides. This will appear to be conclusive, on a review of the powers given to the Congress of the United States.

1. " The Congress shall have power, 1st, to lay and collect taxes, duties, imposts and excises, to pay debts; and provide for the common defence and general welfare of the United States : but all duties, imposts and excises shall be uniform throughout the United States."

2. " To borrow money on the credit of the United States."

3. " To regulate commerce with foreign nations, and among the several states."

4. " To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States."

5. " To coin money : regulate the value thereof ; and of foreign coin ; and for the standards of weights and measures."

6. " To provide for the punishment of counterfeiting the securities, and current coin of the United States."

7. " To establish post offices, and post roads."

8. " To promote the progress of science and the useful arts, by securing, for a limited time, to authors and inventors, the exclusive right of their respective writings and discoveries."

9. "To constitute tribunals inferior to the supreme court."

10. "To define and punish piracies and felonies on the high seas, and offences against the law of nations."

11. "To declare war ; grant letters of marque and reprisal ; and make rules concerning captures on the land and water."

12. "To raise and support armies. But no appropriation of money for that use shall be for a longer term than two years."

13. "To provide and maintain a navy."

14. "To make rules for the government, and regulations for the land and naval forces."

15. "To provide for calling forth the militia, to execute the laws of the union, suppress insurrections, and repel invasions."

16. "To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States : reserving to the states respectively, the appointment of officers, and the authority of training the militia according to the discipline prescribed by Congress."

17. "To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States ; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings."

18. "To make laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or office thereof."

None of these powers seem to include the authority to punish libels ; and therefore, some very good men;

have their doubts whether the general government can make laws on this subject.

It is very clear, that considering a libel as a private injury, the congress can have no authority to enact a law for its definition, or punishment. But yet it does by no means follow, that a libel may not be so conceived, and published, as to be a crime against the government itself, independent of the personal injury done to the particular subject of it ; and when that is the case, the government ought to possess the powers of punishing it on principles of preserving the constitution.

Any laws which may be necessary to the carrying into effect the powers vested in the national government, may be made by the Congress ; but if there is no government, or no Congress, there can be no laws made. It is therefore necessarily implied, that all things which ought to be done to preserve, and maintain that government, which is vested with those authorities, and which may make laws for their execution, may make laws to preserve its own existence. Should it be said, that the state governments will preserve and defend the existence of the federal government, this would by no means be accepted as an answer ; because a government, depending on another government for its existence, is merely a corporation—it can have no sovereignty—and can be no band of union for a nation.

The late act of Congress was deficient in its principles on these essential points. It went beyond what the constitution would warrant. Some of the libels pointed out by the act, were such, as were written and published against the president, to bring him personally into disrepute, or contempt : or to excite against him personally, the hatred of the people.

The constitution of the United States has expressly provided, that crimes shall be tried in the state where they shall be committed. And that in civil actions for damages, where one of the parties is a citizen of a state, of which the other is not a citizen, the action may be commenced and prosecuted in a court of the United States at the election of the parties. There is,

in this provision, no distinction in persons or officers. When the general government was formed, the people might, if they had thought it proper, have made provision for a president, vice president, and all the officers of the general government, to bring their suits and prosecutions in the federal courts; but no such provision was made. Perhaps the reason was, that the general government is as much the government of the people, as the others; and must derive its support from the same source.

The character of the first magistrate of the nation is highly to be respected; and though it may not be safe in any keeping, but that of the federal government, yet as the constitution has not placed it there, a question, on a legal principle, does not arise on the subject. Those who are advocates for the late act of Congress against libels, may feel themselves hurt at these observations; and may endeavor to support their measure by arguments, supposed to result from powers, necessarily implied in the constitution. Their arguments will be before the public, and I am without anxiety at the event, be it what it may; for I am ready to receive and abide the public judgment. It has been said, that the power of self preservation is an incidental, constituent part of the government; because a national government must be a sovereign government of course, and a sovereignty, relying on another sovereignty, for civil support, is an inadmissible idea in politics; but it will by no means follow, that the right to vindicate the president's personal character against libels, is necessarily incident to the constitution. The want of personal character in a chief magistrate, would be an unfortunate circumstance; but governments have existed very frequently and very well, under this difficulty. Should the president bring a civil action for a libel; or other slander, he would stand on the same level with other actions, and have his trial by the same rules and in the same courts where they have their's. Should there be a criminal prosecution for a libel, published against him personally, it could not be prosecuted any where but in the state courts, and in the county where the offence happens. But if the libel is pointed at him personally, and yet writ-

ten, printed, or published, *with an intent to injure, oppose or subvert the government of the United States* it takes a new denomination of criminality, and becomes punishable of necessity in the judiciary of that government against which the crime is committed.

The argument, that the Congress have a right to protect the character of the president, would with the same propriety be extended to every officer and servant of the general government. There can be no government without officers, and there can be no government without subjects and property. The case with us is, whether right or wrong, must remain under the process of experiment; that we have, from a number of separate sovereign states, carved out a national general sovereignty, limited, as to its authority, over the same persons and the same property, as the state governments have in protection, and what power is not expressly, or by a necessary implication given to that, is retained to the several states. Had the Congress enacted, that if any person should print, write, or publish, any libel against the president, or either house of Congress, *with an intent to obstruct, injure, oppose, or subvert, the government of the United States, or to raise sedition against the same*, he should be punished, &c. it would have described a new offence, which ought to be punished by that government. But when they enact, that, when any person shall publish a libel, *with an intent to defame the said president, or to excite against him the hatred of the good people of these states*, without connecting it with an intent to injure the government, it will be very difficult to maintain the measure by the constitution.

It may be said, that the injury done to the president may be an injury done to the United States. That may or may not be true: and it may be said that libels against the judges and other servants of the public, are injuries to the government. Nay, every immoral and vicious thing is an injury to the nation: but the creators of the federal government, are the creators and the supporters of the others, and are equally interested in all, and did not choose to invest the general government with all the au-

authority claimed in the late sedition law, passed by the late Congress.

This observation will, no doubt, be made and be echoed and reechoed from one champion to another, *that if the federal government cannot protect their president from libels, but must send him to the state courts for defence, we had better give up the national system at once.* This observation, when made, will be the result of the want of consideration. A moment's reflection will evince, that the general government is supported by the same people, who support the others. That these will have their influence; and whenever the general government shall be guided by men, who shall attempt a separate interest, the public opinion will gradually remove them, until the connecting balance shall be restored to its constitutional perfection.

The sum of the argument, on the whole, is this, that the constitutional freedom of the press does not open the flood gates of slander on the members of the civil society, and allow each man to calumniate his neighbor with impunity.

That a man's reputation ought to be guarded, as of the next consequence to his life.

That whatever is in fact done by a government, or by any officer of it, in his official capacity, or under a pretence of official authority, may be published to the world, without the writer or printer's being chargeable for a libel.

That the reputation of men in office, is as dear to them, as that of other citizens are to them, and as much under the protection of the laws, as the reputation of men in private life is; and that, therefore, a charge against them of bribery or corruption, ought not to be published, otherwise than in a judicial prosecution against them, before a proper tribunal, where they may be removed from office, or otherwise punished according to the demerit of their crime.

That where a man appears as a candidate for an elective office, he exhibits his character for a public scrutiny, and every one has a right to publish any thing against his

election, which is not false in fact ; but must be answerable for all falsehoods and groundless slanders, as well in civil, as in a criminal prosecution.

That though every one has a right to publish the proceedings of the government, in all its departments, yet if the publications are made of measures, which have never happened, the writers and printers are amenable, provided that any injury is done, or may be done, to the government by it. The fact of writing or publishing being proved, the burden of proof rests on the defendant, to prove the truth of the facts published, which if he cannot do, he must submit to punishment ; unless he can shew, that it was innocently done from mere error and mistake.

That though no one can justify the false publication of facts, in regard to the measures of the government, yet if facts are truly published, no one can be punished for reasoning erroneously upon them, or for publishing his reasons, however wrong he may be in his conclusions.

That the general government's having the power of punishing libels against the government itself, by a necessary inference from the constitution, does by no means give it the power of punishing those which are published against its president or other officers, who are also the subjects of the state governments ; unless the libel is made and published, with an intent to injure the government itself. Which intent, must be averred in the indictment, and be found by the traverse jury, or jury of trials, otherwise he cannot be convicted. As this distinction most plainly results from the constitution, there can be no doubt but that every candid, sober man will be ready to give it a full force in his mind ; because, were whatever he may wish the constitution, he must be content to take it as it is.

And finally, that a reasonable, constitutional restraint, judiciously exercised, is the only way, in which the freedom of the press can be preserved, as an invaluable privilege to the nation.—FINIS.

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