

WORK FOR A CONSTITUTIONAL CONVENTION.

I.

REASONS WHY A WEAK GOVERNMENT MUST BECOME OPPRESSIVE.

THE proper function of a government is to protect the liberty of the people against aggression from within as well as without. In order that it may properly perform its function, it must be endowed with strength, and held accountable for its acts; for if it is weak, it cannot protect; if it is irresponsible, it will not. The government of our own country is unfortunately both weak and irresponsible.

That it is weak is evident without an argument; our constitutions show on their face that their very aim is to insure its weakness.

The sovereign powers are divided among three departments, one making, another enforcing, the third interpreting the laws. These departments are coördinated, in order that they may check and balance, hinder and clog each other; and the first is subdivided into two branches, so as to have more hemming in and clogging, while the second is able to arrest all action, and the third to destroy it.

That such a government is also irresponsible becomes apparent on a moment's reflection. Responsibility depending upon duty, and duty upon power, it follows that when the power is unfixed the responsibility is necessarily unfixed; and unfixed responsibility is absence of responsibility.

Where the power of administering the laws is separated from those who make them, upon whom can the duty be fixed of proposing the laws needed for the due administration of public affairs? Each congressional or legislative district may, indeed, hold its representatives to look to its own interests, but who is there that represents the country and is obliged to care for the interests of the whole people? If we consider the responsibility of the judiciary to the law-makers, we can find no answer to the question. Upon whom of the latter, in especial, does the duty of enforcing this responsibility devolve, and who in particular can be held accountable if it be not enforced? Or, if the legislature pass improper laws,—that is to say, laws contrary to the will of the people,—how can the executive be held accountable if it execute them?

And no lengthy disquisition is required to show that a government which is both weak and irresponsible necessarily loses sight of the

fact that it is the agent of the popular will, betrays its trust, and becomes the servant of the people's enemies, an instrument for its oppression. The members of the legislature are not long in finding out that the checks and balances which are to hem in and clog their public acts make all attempts to serve the public, all attempts to carry out the objects for which they were deputed, a difficult, ungrateful, and discouraging task. At the same time each becomes conscious of the fact that no special duty concerning the care for the public welfare is imposed upon him in particular, and that therefore no special responsibility for this care devolves upon him. And the recognition of their weakness and irresponsibility lowers the moral tone of the body and destroys the public spirit which ought to animate it. But after the destruction of this spirit, there is nothing which admonishes them that they are public agents, and as such trustees and guardians of the interests of the people; and they learn to consider their office as private property, to be used for their private benefit. When this state of political decadence is reached, they are henceforth impelled only by two motives. The first is to keep their positions or change them for better ones; the second, to make them pecuniarily profitable. The first necessarily brings in its train the establishment of personal and party machinery, the conversion of public offices into spoils and booty, the system of maintenance and patronage, the demoralization of the administrative organs, of the civil service and the judiciary. The second converts all public powers into the merchandise of the office-holders, for sale to any one willing and able to buy.

As soon as the governmental powers have become a marketable commodity, governmental officers become the servants of private individuals,—enemies of the people; and government in consequence becomes converted from its proper function of protecting the people into an instrument for its oppression. For who will buy the governmental powers? Surely not the public-spirited, the friends of the people, but those who seek their private advancement at public expense, those who seek to oppress the people and put it under tribute to themselves.

It must be remarked that this conversion of the governmental organization into a machine in the service of private interests,

changes at the same time a weak instrument into a strong one. The government is weak, not because it lacks sufficient powers, since, no matter what the form of government may be, all sovereign powers are of necessity confided to it, but because these powers are divided among many individuals; and these, as public interests are generally matters debatable, will naturally differ among themselves in regard to the proper use of their powers, and by their dissensions hem in and clog governmental action.

But when these individuals have become the slaves of some single will, by whom they have been purchased in order that some single purpose may be accomplished, all debates, all dissensions, all checks and balances disappear. The divided powers become united, and the machine, no longer hemmed in and clogged in its action, is transformed from a condition of weakness into one of strength. Thus the government weak for protection becomes strong for oppression. Together with this transformation another one takes place. The system of irresponsibility is changed into that of responsibility, not, indeed, to the people, but to the masters who hold the rod over those whom they have purchased.

And the influences which have changed the governmental agency into a class set over against and above the people—a class no longer carrying out the will of those whose mandataries they are, but of those into whose service they have sold themselves—do not cease after this transformation has been accomplished. Indeed, they continue to operate with ever-increasing force. The personal and party machinery, with its army of henchmen and retainers, secures a firmer and firmer grip upon the people in the measure that this army becomes better disciplined and experienced, and the public, in the face of it, proportionately disorganized and reduced into a mob. Moreover, the difficulties of a reorganization become intensified by means of the very causes which produce the disorganization. For the people, seeing a weak government so oppressive, and not perceiving that its weakness is the very cause of the oppression, refuse to strengthen it, and reject the only means which might eradicate the evils, and might enable them to regain their lost liberty. And thus of their own accord they forward the cause of their enemies. This vicious circle of governmental weakness and irresponsibility, producing corruption and oppression, and again oppression perpetuating governmental weakness, irresponsibility, and corruption, is the chain forged by the nation for itself, which binds it hand and foot while the vultures eat out its vitals.

II.

HISTORICAL CORROBORATION.

NOR need I confine myself to deductive reasoning in order to show that the principle of the division of powers leads to the conversion of the public governmental agents into servants of private individuals—that it reduces these agents to impotence for good, but makes them strong for evil; historically the course of events has corresponded throughout with the logical development I have traced.

The distrust of the people in their agents, manifested by the invention of checks and balances, by the clogging and hemming in of their action, by the unfixing of governmental powers and the annulling of responsibility, lowered the moral tone of our legislative bodies, and invited the members to substitute their private interests for their public duties. Then, patronage-mongering became the occupation of our legislators in place of public affairs; and by the practice of the former and want of regard for the latter, the politicians' tricks have become an art, while statesmanship is dying out. The anxiety to serve only their private ends, to secure the greatest amount of profit from offices obtained and retained at so much expense and trouble, has moreover excited so active a competition among those desiring to sell themselves, such a fear in the mind of each that no one may desire to buy him, that they have made themselves vile and cheap enough to tempt the least unprincipled. The task, then, of capturing the governmental machinery, turning it to the profit of private masters, making it a most efficient and easily managed instrument for the oppression of the people, and rendering them tributary to these masters, was a comparatively easy one; nor did the division of powers, the checks and balances, succeed in clogging or hemming in this machinery when turned against the people, when those among whom these powers are divided had been purchased and lashed into obedience. It was easy for certain manufacturing interests to obtain control over our Congress for their purposes, and thus make the people labor for the benefit of those whose chief labor consists in gathering corruption funds and sending them to the lobbies of the Capitol. It was easy for certain other interests to reduce the vast and complicated machinery of the State legislatures into their service; to have the highways of the nation handed over to them to be dealt with according to their pleasure; to secure a hold on the very throat of commerce, and put every individual of the community under tribute.

And so despised and despicable, through

this corruption of the governmental agent, has become the principal—the people which a hundred years ago rose and faced death rather than submit to taxation without representation—that now a handful of private individuals come together, deliberate behind closed doors, and tax it to their hearts' content at the rate which promises most profit to themselves; and it submits to it as tamely as an African tribe submits to the edict of its despot. Nor has any attempt on its part to raise itself from its degradation been attended by any other result than that of more securely keeping it down. For, chained by the vicious circle of distrust engendering corruption, and corruption in turn engendering distrust, the only change it could accomplish was to substitute for one set of men another set, subject to exactly the same system, and necessarily brought to act as their predecessors had acted. Indeed, the more frequent the changes the greater the temptation of the incumbents to sell themselves as rapidly as possible, and to reject no offer, however low, for fear that they might be turned out of office before a better one were made. And so the very name reform has become a by-word of contempt; all efforts to permanently secure it seem forever barred out, and events drift hopelessly in the current running headlong into despotism, dynamite, and nihilism.

III.

THE NEEDED REFORM.

WHAT, then, is the imperative need of the hour? It is to break the circle which is chaining us, to substitute for the weakness and irresponsibility appertaining to our governmental system strength and responsibility, so that the government may be able and obliged to protect our liberty against the aggression of irresponsible private individuals who are rapidly destroying it.

But, under all conditions, in all ages and all climes, necessary changes are always opposed by two so-called conservative arguments. The first is summed up in the maxim that it is better to keep the ills we have than to fly to those we know not of; the second is an appeal to reverence the establishments of our ancestors. So it will be incumbent upon us to examine critically these arguments when applied to the condition of our own affairs.

The first is soon disposed of. If we remember that a weak government always ends in despotism, being logically and historically inconsistent with the preservation of liberty, while a strong government does not always end in despotism, and is neither logically nor

historically inconsistent with liberty, it follows that in any event the change from a weak government to a strong one is a diminution of ills, since it transforms an absolute evil into a merely contingent one. Indeed, the argument can actually be turned against those who use it for the purpose of continuing in the present current, since this current is rapidly carrying us into ills we know not of; and consequently a change is the only true conservative course, the only one which can conserve and preserve our liberty beset by enemies on all sides and about being overwhelmed and destroyed.

The second argument, however, is of a graver nature and will require more extended consideration. I may begin by saying that it has peculiar force upon me personally, because no one holds in profounder reverence the men who framed our Constitution, a reverence alike for their public spirit, their genius, and their wisdom. In my opinion, all history furnishes no parallel to the body who changed the confederation of the United States into a nation. But they themselves did not pretend to set the form of government permanently for all times and for all conditions. They themselves knew that the test of time must be applied to their work, and that it must be transformed as occasion required to suit the necessities of future generations, just as they found themselves compelled to transform a previous form into the present one. The provision for amendments makes a part of the Constitution, and is as important as any of the others contained in it. Calling attention to necessary amendments in order to preserve the institutions of liberty which they had conquered for themselves and bequeathed to us as a heritage to be preserved, is therefore strictly in accord with the spirit of the Constitution and consistent with veneration for its framers. In the second place, it is now historically ascertained that in framing the Constitution according to the theory of the division of powers, they were themselves misguided by relying on the authority of the great propagator of that theory, who deduced it from what are now known to be erroneous data and a fallacious course of reasoning.

IV.

MONTESQUIEU'S ERRORS.

THOSE who contend that the ideas of great men have but little influence in shaping the course of human events, must find it a difficult task to account for the profound impress on thought and action produced by the "Spirit of the Laws," the master-work of

Montesquieu. And yet that portion of it which most nearly concerns us in this investigation, and which proclaims that liberty is dependent on the division of powers,—the portion which forms the basis on which our constitutions are founded,—is shown to be logically and historically false when examined by the light of the political science of to-day. It appears, indeed, plausible enough at the first blush, or else it could not have become the prevalent and popular theory of government in this country. A despotism certainly shows us a union of powers in one hand, not, of course, in the sense that the despot makes all the laws, executes them in person, and sits in judgment over all who transgress them,—for despots are not usually so busily engaged in affairs,—but in the sense of containing within himself all the sovereign powers, distributing them according to his arbitrament, and keeping the tenure of those whom he appoints to be his governmental agents subject to his will. But the mistake that Montesquieu made consisted in that he considered this union the characteristic mark of a despotism, which it certainly is not; for that which distinguishes a despotic from other forms of government is not the union of powers, but the fact that these powers united in a single person are exercised without any responsibility to the governed; that the despot, and not the people, is the principal of the governmental agents. Likewise the British Constitution, the instance which Montesquieu cites as proving that liberty depends on a division of the sovereign powers among co-ordinated departments, appears to furnish the required proof on a superficial view. And yet, after a more mature consideration, it not only shows itself not to be what Montesquieu claims that it is, but actually proves the contrary of his proposition.

There is, indeed, in Great Britain, a legislature composed of two chambers making the laws, an executive enforcing them, and a judiciary independent of the executive, though appointed by him, interpreting them. But the researches of historians have now settled the fact that these two houses never were intended to check each other; that, on the very contrary, the House of Commons had its origin in the necessity to which the Lords were put of obtaining the assistance of the people at large in their contests with the King; that aiding each other, and not checking each other, is the principle on which the two houses repose. We know, also, that in the whole course of history the two houses never were strictly co-ordinated—never, in fact, balanced each other; that one of them always obtained the supremacy and the ability

to compel the obedience of the other,—a supremacy which at one period of English history rested with the Lords, who carried the Commons in their pockets, as it were, and which to-day remains with the Commons, whom, if it be determined upon any action, the Lords cannot successfully resist. We know, likewise, that the executive, far from checking and balancing, or being checked and balanced by, the legislature, must, on the contrary, be in perfect harmony with it, and that the very existence of the government depends on that harmony. We know that the executive is at the same time the executive and legislative committee of the legislature,—in the one capacity subject to the orders of the latter, in the other responsible to the people at large for the passage of the laws necessary to carry on the administration and secure the rights of the people. As for the judiciary, it is so far from being co-ordinated, so little intended to check or balance the Parliament, that its highest Court of Appeals is that very Parliament. And so all legislative, executive, and judicial supremacy is centered in one body, containing within itself all the sovereign powers openly and in a most pronounced manner united, demonstrating that liberty is perfectly consistent with such a union, and refuting the theory which Montesquieu supposed it to prove.

v.

WHY THE FRAMERS COULD NOT DISCOVER MONTESQUIEU'S ERROR.

BUT is it a subject of reproach to the framers of our Constitution that they allowed themselves to be misguided by a popular theory? Certainly not. For many reasons it was impossible for them to discover the error.

Engaged as they had been for many years in a struggle against the King for the maintenance of their liberty, born and bred, moreover, amid the traditions of a similar struggle between the Parliament and the King, the King stood out too conspicuously as the enemy of liberty to enable them to see its other enemies, though equally, perhaps even more, dangerous. Nor could it be expected of them to examine critically a view of the British Constitution which had received the sanction of Blackstone, and had been accepted by the popular assent of the English people. Neither must it be forgotten that they themselves were slave-holders, and, as they found slave-holding consistent with liberty, and as the serf-holding barons and their descendants were the principal opponents of

the King, the chief necessity seemed to be to do away with concentrated power; and this so much the more because the actions of the serf-holders were disguised by a glamour of chivalry and romance, and their motives concealed by images of a fancied freedom in a fanciful aboriginal forest. And there was nothing to counteract their false views of feudalism; for, on the one hand, political science was only at its dawn, historical science in its infancy, the records of the past hidden in darkness and piled up in inaccessible confusion. On the other hand, in the experience of their daily life they saw as yet nothing of feudalism in its recent form—the oppression that may be exercised by individuals over their peers in the eyes of the law, and the evils arising out of such an oppression. Money-lordism was yet an unknown factor.

Indeed, considering the times and the circumstances under which the Constitution was framed, the wonder is, not that the government it created is weak, but rather that it is not far weaker. If we remember that the conservative spirit—that is, the spirit which is falsely called conservative, which would conserve the swaddling-cloth of the babe for the garment of the man, which loves evil, provided that it is of the prevalent type—if we remember, I repeat, that this so-called conservative spirit was anarchic one hundred years ago, and was so formidable that unless concessions had been made to it no union of any nature could have been accomplished, we cannot blame the founders for having accepted the compromise of the division of powers, even if in their hearts they did not feel all the admiration for it and confidence in it which they expressed.

VI.

OUR DUTY.

BUT none of the reasons which account for and justify the introduction of the system of division of powers into the national Constitution can justify us for preserving it there. The idea of the State is no longer confused in our minds with the idea of an individual sovereign standing over and against the people, between whom and the people there is a necessary struggle in order that liberty may be preserved. It has been developed by the history of the last hundred years into the conception of the whole people; and the struggle between sovereign and people has become a contradiction in terms. Likewise, the conception of a government has grown from that of a class, depending on an individual sovereign, and consequently his tool, into the nobler

conception of an agency intrusted with the expression of the general will, of servants under the duty to execute it. And a fear of its servants is unworthy of a great people; nay, more, it is a factitious sentiment pernicious to the commonwealth, spread and kept alive by its enemies in their own interests. Political science has also advanced in these hundred years, and has dispelled most of the mystery which encircled feudalism and chivalry, and raised our conceptions of liberty into so high a plane that neither the barons of Runnymede nor the Bigots and Bohuns any longer count among its champions. We know now that the most insidious and dangerous enemies of liberty are those who claim absolute freedom for themselves to oppress, crush, and enslave all who are too feeble to resist them, in order that they may grow big and great by a toil not their own.

We know that the absolute monarchy, in spite of the cruelty of the Henrys, was a decided step forward in the direction of liberty, which can only exist and thrive where the strong hand of a supreme power watches over and protects it. And even if history and political science had not taught us, our own experience would be sufficient to point out where the danger to our free institutions lies concealed, and against whom it is necessary for us to be vigilant and spare no precautions. From an agricultural people we have changed into a commercial one, and come under the dominion of a spirit of enterprise and individualism; and there is no reluctance on the part of those whose genius fits them for industrial warfare to obtain possession, by force or fraud, of the means of production—of capital—in order that all others may become their servants and labor for their pleasures and aggrandizement. We have seen vast combinations springing up everywhere and in all branches, seizing for themselves that which ought to benefit and belong of right to the whole community, crushing out all competition with relentless cruelty, tolerating no equals, reducing to servitude all whom they do not destroy. We see them demoralizing and corrupting society, and undermining the State, which in the weakness to which it voluntarily reduces itself cannot resist them and looks on in piteous helplessness, while its own agent, the government, captured by its enemies because of its weakness, and strengthened by them in their own interests after having been captured, is turned with the weight of all the supreme powers confided to it against those from whom these powers are derived. The experience of one hundred years has indeed taught us one lesson at a bitter price; namely, that this spirit of revived feudalism will go on until it destroys all ves-

tiges of liberty and ends in a despotism more invidious than that of the absolute monarchy which displaced the extinct form, unless the sovereign people endow themselves with a courage to curb and restrain it by the majesty and force of their organized will.

And now, I ask, shall we let that spirit which presumes on the name of conservative, but which is nothing but the spirit of self-destruction,—for it is that of indolence and moral torpor and imbecility,—shall we allow that spirit to keep us in the current which ends in despotism, in the destruction of all that liberty for which our ancestors struggled and were glad to die; shall we entail upon ourselves the curse of future generations for the endless struggles which we are bequeathing to them; or shall we imitate the example of Hamilton and Madison, Washington and Franklin,—surely not men of radical temperament,—and take steps to preserve the freedom of our institutions, which as a sovereign we are set over to guard?

When we compare what is required of us with that which they set out to do, our task seems in truth easy. The change they made was more than formal—it revolutionized the whole state of society. It converted into a nation a confederation of sovereign States, loosely bound together by an unrespected form, and kept apart by the separation and conflict of interests and ideas, as well as bitter jealousies and furious quarrels. The formation of the Constitution was, indeed, a tremendous step,—a leap in the dark, its opponents called it. Nothing similar to this is required of us. We are a nation in every sense of the word; State patriotism and sectional patriotism have been merged in a patriotism embracing the whole country. All that we require is to make the merely formal change necessary in order to adapt the existing organization to the present needs of society; to forestall a revolution, not to make one. All that we require is to regain for the people, by a mere formal change, that which by stealth and fraud was snatched from them: the control over their governmental agents, and the use of the agency for public purposes. And this is accomplished as soon as we put an end to the system of a division of powers, which has enabled private individuals to usurp that control and that use.

Let us, therefore, end the system of division, of checking, balancing, hemming in, hindering, and clogging, which has been the prime source of public corruption, and let us replace the irresponsibility consequent upon the division by a union which will mark the very man who is responsible for inaction as well as for action. By this means the moral

tone of our legislature will be raised, and to do service in the public cause as a representative and agent of the people will be esteemed higher than to serve private individuals. It will satisfy the aspiration of the most ambitious. Besides, the consciousness that all his actions are under the public eye, and that accountability for his failures cannot be shirked and thrown off on other shoulders, will make the practice of statesmanship the first aim of the statesman; and the consequent disuse of patronage-mongering will make a true civil-service reform not only practicable, but even desired; for the chief of the government, with his great and weighty responsibilities and high motives to devote himself to the public cause, will feel, as Gladstone recently expressed it, glad to have no other appointment at his command than that of his private secretary. And then no fear of a government perpetuating itself will be entertained, for the whole system of henchmen and retainers, the whole elaboration of party machine government, will disappear when the temptations disappear to hold on to office on account of the corrupt revenues of the offices, after the administration is no longer in accord with the country. The government then will be a strong government and a responsible one; and with strength and responsibility combined, it will be able to protect our liberty against all enemies, while it will not be able to convert its trust into its own private property. Having a government thus formed, the people will be able to grapple with all the great problems which, under the present system, baffle it. They will be able to regain the control of the national highways of commerce, and put an end to the humiliating and ruinous power of taxation usurped by private individuals for their aggrandizement, and at the same time eradicate the gigantic evils dependent upon and arising from this usurpation. The question of the tariff, which now keeps the country in a continuous state of suspense and distraction, can then be settled in a way satisfying the just demands of both free-traders and protectionists. And, indeed, in a country possessing resources which, if righteously distributed, are more than sufficient to support in comfort all its inhabitants there is no reason why the conflict between capital and labor itself could not be satisfactorily settled so as to secure the laborer against oppression and afford him the just share in the values which he creates, while at the same time guaranteeing to the capitalist a fair return for his outlays. In short, the people will have an agency which will truly express their will, and enforce it when expressed.

VII.

THE PARTICULAR MEASURES TO BE TAKEN
IN ORDER TO MAKE OUR GOVERNMENT
RESPONSIBLE TO US.

I SHALL NOW venture to designate in particular the few steps which will be necessary to accomplish the needed results. In the first place, Congress must be enabled to settle all questions of national concern, and must have the range of the objects under its dominion extended sufficiently to prevent any petty local legislature from being able to thwart the will and endanger the welfare of the whole people. It must have full power to regulate the entire question of transportation, in order that artificial boundaries may not be the shelter and refuge of those powerful combinations who now regulate it to suit themselves. For the reason that transportation is so intimately allied to commerce that the two cannot in practice be separated, as well as for other reasons hardly less cogent, the establishment of a uniform code of commerce for the whole country must be included within its province.

In the second place, the separation of the executive from the legislative must be ended; the executive must be entitled to propose laws necessary for the preservation of the public welfare, and the legislative must be enabled to control the execution of all laws passed. For this purpose the chiefs of the administrative departments must be members of Congress, ready at all times to enlighten it regarding the wants of the great departments of state, and to urge the passage of the laws required to meet these wants. One of them must stand out so conspicuous above his fellows, that upon him will be fixed the ultimate responsibility to the whole country for all the action and inaction of both Congress and the administration. At the same time the tenure of the clerical force required for the administration of public affairs must be made so secure, and so thoroughly regulated, that the public offices can no longer be converted into private patronage. Indeed, while the sense of their responsibility is developing, the public spirit of our legislators

will be correspondingly developed, so that they will neither desire nor have cause to desire a continuation of the practice of spoils and booty. They will have something better to do.

In the third place, and as a corollary from the foregoing, the legislature ought in no manner to be allowed to shift its responsibility on the judiciary. The necessary and proper function of the latter is to interpret the will of the former, not to control it. Until the legislature has become the sole and responsible judge of the constitutionality of its acts, true liberty will be without our reach; for uncertainty of the law, of necessity, tends to tyranny. So long as the law-abiding citizen, who has regulated his conduct in conformity with an act of the legislature, is liable at any moment to be declared a law-breaker, and punished for his very obedience by a tribunal which, however eminent, is yet practically and necessarily irresponsible for its judgments, so long laws are not the solemn declaration of the sovereign will that they pretend to be, but partake rather of the nature of snares to entrap the unwary.

Nor is a step forward in this direction a difficult one, since the Supreme Court itself has declared by two remarkable decisions that its powers do not extend to political matters;* that it has no right to preserve the Constitution against infractions on the part of the legislative in matters of a public nature. And it would seem that necessarily the greater includes the less; that if the political guarantees of a constitution cannot look to the Supreme Court for preservation, the private interests certainly ought not to be permitted to disturb the regular functions of the law-making supremacy of the people.

In conclusion, I would recall the maxim, "Eternal vigilance is the price of liberty." We have not been vigilant. In our scramble for a mess of pottage we have left our birthright unguarded, and it has been stolen from us. We cannot recover it from our formidable enemies unless we be well armed and equipped. Herein is work for a Constitutional Convention.

Isaac L. Rice.

[NOTE.—In the time which has elapsed between the writing and the publication of this article, two important events have taken place which must be noticed. The one is the abolition of the division of powers in the municipal government of the city of New York; the other, the decision of the United States Supreme Court in the legal-tender case (110 U. S. p. 421). This last case, in fact, hardly falls short of the principle contended for in this article, as far as the limits of the power of the judiciary are concerned. The Court holds that when Congress is not expressly prohibited from passing a certain law, it is left to its sole judgment whether or not it be a constitutional law. This doctrine Mr. Justice Field—the only dissenting judge—considers a rule "which, fully carried out, changes the whole nature of our Constitution, and breaks down the barriers which separate a government of limited from one of unlimited powers."]

* *Georgia v. Stanton*, 12 Wallace; *Mississippi v. Johnson*, 14 Wallace.