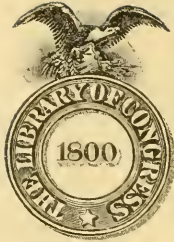




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PRESENTED BY

LESSONS

FROM THE

RIOT IN CINCINNATI

A SERMON PREACHED TO THE WOODLAND CHURCH,
WEST PHILADELPHIA, SUNDAY EVENING, APRIL 6TH
1884, BY

LEONARD WOOLSEY BACON;

AND PRINTED AT THE REQUEST OF MANY CITIZENS.

PHILADELPHIA
SIDDALL BROTHERS PRINTERS

1884



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I WILL sing of mercy and judgment; unto thee, O Lord, will I sing. I will will myself wisely in a perfect way. O when wilt thou come unto me?

I will walk within my house with a perfect heart. I will set no evil thing before mine eyes; I hate the work of them that turn aside; it shall not cleave to me. A froward heart shall depart from me: I will not know a wicked person. Whoso privily slandereth his neighbor, him will I cut off: him that hath a high look and a proud heart will I not suffer. Mine eyes shall be upon the faithful of the land, that they may dwell with me; he that walketh in a perfect way, he shall serve me. He that worketh deceit shall not dwell within my house; he that telleth lies shall not tarry in my sight. I will early destroy all the wicked of the land, that I may cut off all wicked doers from the city of the Lord. *Psalm CL. A Psalm of David.*

A VENGE not yourselves, beloved, but give place unto wrath: for it is written, Vengeance belongeth unto me, I will recompense, saith the Lord.

Let every soul be in subjection to the higher powers: for there is no power but of God; and the powers that be are ordained of God. Therefore he that resisteth the power, withstandeth the ordinance of God; and they that withstand shall receive to themselves judgment. For rulers are not a terror to the good work but to the evil. And wouldst thou have no fear of the power? do that which is good, and thou shalt have praise from the same; for he is a minister of God to thee for good. But if thou do that which is evil, be afraid, for he beareth not the sword in vain; for he is a minister of God, an avenger for wrath to him that doeth evil. Wherefore, ye must needs be in subjection, not only because of the wrath, but also for conscience sake. For this cause ye pay tribute also; for they are ministers of God's service, attending continually upon this very thing. *Romans, xii, 19 — xiii. 6.*

BE subject to every ordinance of man for the Lord's sake: whether it be to the king as supreme, or unto governors as sent by him for vengeance on evil-doers, and for praise to them that do well. . . . Honor all men. Love the brotherhood. Fear God. Honor the king. *1 Peter, ii, 13 — 17.*

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SERMON

James iii, 11, 12 — Speak not one against another, brethren. He that speaketh against a brother, or judgeth his brother, speaketh against the law, and judgeth the law: but if thou judgest the law, thou art not a doer of the law, but a judge. One only is the lawgiver and judge, even he who is able to save and to destroy: but who art thou that judgest thy neighbor?

As I have read successive lessons of Holy Scripture, this evening, from Old Testament and New, your minds have turned spontaneously to the frightful and shameful story of the Cincinnati Riot, which is in itself a comment on them. You might justly charge me with unfaithfulness to the example of the Lord* and the teachings of his apostles, if I were to shrink from pointing the application of these lessons to our personal duty, as illustrated by the lurid light of the conflagration of the Cincinnati Court-house.

These injunctions in the Epistle of James were not spoken concerning civil duties. The immediate application of them was simply to the conduct of members of those little Christian communities to whom the Epistle of James was addressed. They were a warning to these brethren against censoriousness and evil-speaking, because it was taking the law into their own hands, when they were aggrieved, and righting themselves by their own tongues, instead of leaving that to the great Head and Governor of the Church, who would redress all such wrongs in his own time. The *rule* is given to Christians in the church; but the

* See, among other instances, Luke xiii, 2, 4; xix, 12, 14, illustrating our Lord's method of teaching from current public events.

reason for the rule is as wide as the whole field of civil polity, and includes the duty of citizens to each other and to the government. The language of it is the statement of a political principle, which is applied by way of illustration and accommodation to the moral duties of the brethren in those primeval Christian congregations. The man who takes the law into his own hands to redress his own grievances by pronouncing judgment on his fellow-citizen, by that act condemns the law and insults the government. He usurps the function of the State, and just in the measure of the gravity of his act, inflicts a blow upon its authority. That the State is at hand, with ample power, with willing intent, with prompt alacrity, to do its duty, leaves him without excuse in his invasion of its prerogative. The Christian apostle does more than teach this. He *presumes* it as a thing recognized and accepted — a thing that may be argued from as an admitted principle. It is a most impressive fact, containing more instruction and argument than we now have time to draw out from it, that these three Christian apostles, Peter, James and Paul, so widely unlike in their modes of thought and expression, should be accordant and constant in enunciating the fundamentals of political morality; that nowhere the instinct of vindictive justice should be rebuked as wrong; that constantly it should be marked as a thing not to be suppressed, but to be held in restraint from private expression and satisfaction, because God has ordained his own functionaries of civil government for this very end; and that the long oppressions and triumphs of the wicked are to be made tolerable by the thought that even when earthly governments fail of their duty the failures of justice will surely be redressed, and that with no long delay, by the Judge of all the earth. “Dearly beloved, avenge not yourselves, “but rather stand aside and give place to the wrath of God: for “it is written Vengeance is mine, I will repay, saith the Lord.” *Maran atha* — “the Lord is coming” — this was the watchword of their patient waiting.* *Maran atha*, they would whis-

* See I Cor. xvi, 22; Philipp. iv, 5; Hebr. x, 36, 37; James, v, 7, 8, 9; I Peter iv, 7.

per to each other, when persecution burned with fervent heat, "The Lord is at hand. The Judge is at the door"; — and not in vain, for the Lord *did* come and did not keep silence, but avenged his own elect, who cried unto him, "How long, O Lord, how long?"

This requirement to yield honor and obedience to the institutions of human government as being God's ordinance for punishment and reward, acquires immense emphasis from the circumstances in which it was pronounced. These apostolic scriptures that have come to us in the ends of the world for our instruction, were given at first (according to the common method of the Bible) to a particular people, with reference to a particular government at a particular time. And what manner of government was it which these Christians of the first age were required in the name of their Lord to obey and honor as God's ordinance for the execution of justice? This "supreme king," the Roman Cæsar, what is he? An irresponsible despot, whose tyrannical rule, through processes of military usurpation, has extinguished the historic liberties of the Roman republic. That proud people had taken the sword against the liberties of the world, and in the height of their success, their own liberties had perished by the sword. God "gave them a king in his anger"; and *such* a king! "Thus I will! thus I choose! take my will for a reason"; — this was the constitution of the empire. "Martial law" is defined to be "the will of the commanding officer." The empire was martial law; the word *emperor* means commander-in-chief. The emperor's word dethroned princes and set up mean men on high. It changed the face of kingdoms. The ends of the earth suffered in the fluctuation of his caprices, and Rome itself was his slave. The king was *supreme*. The apostle's word is not one whit too strong. In the authority which he arrogated, and in the adoration which he accepted, the emperor was a blasphemous usurper of dignities which belong to God alone.

And the "governors that were sent by the king," — what were they? The mere creatures of the emperor's whim; not instituted nor confirmed by any popular choice, but commissioned in the name of the Cæsar; foreigners from distant Italy,

imposed upon the subject nations by military force, and extorting a reluctant tribute from the people by means of an army of odious publicans: petty despots, the tools of a tyrant, whose title to their authority lay in the strength of their alien legions, and the dreadful name of Rome.

And when we come to the *personal* character of the rulers in question, what is it, as it appears in these very documents of the apostles' age? The occupant of the imperial throne, at the time, was that monster whose vices have made the name of *Nero* a proverb of wickedness in every language of Europe. The "governors" were such men as the forcible-feeble Pilate, the sneering Festus, the corrupt and rapacious Felix, who (as Tacitus says of him) "wielded the power of a king with the "temper of a slave.*" And the actual administration of this government was sometimes a course of persecution which counted it a crime to be a Christian, as to be a thief or a murderer.†

Such were the men, and this was the thing, to which these harmless Christians were required to yield submission and honor, first, as a *divine* institution, and then as a *beneficent* institution. There is nothing here about legitimate titles, — nothing about constitutional rights, — nothing about the consent of the governed. Nothing but the bare duty of submitting, with deference and respect, to one of the most corrupt, tyrannical, usurping and unjust governments in human history, just because, for the time being, it was *the power*, and, being the power, was God's ordinance, and God's ordinance for good. It is hardly possible for any government to be so bad but that it will do more good than evil. Its acts of wrong and injustice, however frequent, will be the exceptions, and its common course will be for the punishment of malefactors and the praise of them that do well. It was one of the noblest characters in English history — Richard Baxter — who, having suffered much from one of the vilest of governments, declared nevertheless that the worst of all governments was better than anarchy. So long as

Hist. v, 9. "Jus regium servili ingenio exercuit."

† I Peter iv, 12 — 16; James, i, 12; ii, 6.

the power is *the power*, able to assert, maintain, vindicate and enforce itself, submission to it is not only a necessity, but a duty. It is only when the power ceases to be power and becomes impotency, and the real power passes into other hands, that the right and duty of revolution can arise. Mere futile resistance to settled governments is a crime and always a crime. This is Christian morality, and it is sound political philosophy. Neither in Christianity nor in polity is there any provision for assassins or dynamite conspirators. There is no right residing anywhere to make turbulent and aimless resistance of law, or to begin unsuccessful revolutions.

This seems a hard saying to you — this command of submission? It will be a hard saying, until we come to apprehend the double application that it has to us Americans. To the *subjects* of a great empire, the New Testament Scriptures prescribe the duty of submission; to its *rulers*, they prescribe the duty of using the sword of power efficiently, and for the enforcement of justice. You will never fully understand, fellow-citizen, the bearing of this teaching on your duty, unless you learn to see its relation to you as being in your own person both subject and ruler. You have thought yourself, perhaps, not exactly one thing nor the other, but something between the two, with not much subordination as a subject, and not much responsibility as one ordained of God to civil power and trust. A low and unworthy conception both of your duty and of your dignity! Your authority, in the trust of government with which you are invested, bears with it not less of the sanction of the King of kings than did that of the grandest Cæsar that ever throned himself amid the glories of the Palatine Hill, or that of the most legitimately descended Stuart or Bourbon that ever wrote himself "King by the grace of God." And on the other hand there is no duty of submission to existing government that was demanded in the name of the Lord from the humblest Christian under the dominion of the Roman Empire, that does not devolve on us reinforced by tenfold sanctions unknown to them of old time. The American citizen is not the less a *subject* for holding in his hand a share in the supreme authority of the State. He is not one inch the less a king, for being the most loyal and faith-

ful of subjects. It is one natural consequence of the false Jacobin notions of the merely human sanction of government, which we love to teach to each other and to our children, that we lose that religious reverence for human law which is an essential article of Christian morality; that we think it a light matter to be unfaithful to laws of our own making; inasmuch that so acute an observer as Herbert Spencer declares that he recognizes in American society a marked "decay of the sentiment of justice," and that a judicious writer of our own characterizes the tendency of this age by saying that we are becoming "a nation of law-breakers."*

And now, fellow-citizens, having spoken to you, in the first place, of your duty of *obeying*, I turn,

II. — In the second place, to speak to you of your duty of *enforcing obedience*. By just as much as it is your duty, being subjects, to submit to those powers which by God's ordinance bear the sword; by just so much is it your duty, being ordained of God as rulers, to bear the sword; and bear it not in vain. The sword: it is a lethal weapon, meant to maim and slay. To bear the sword: it means, being translated into current forms of modern speech, to wield not only the policeman's club, but the musket and bayonet, to handle the battalion, to train the Gatling gun. And this terrible duty it is, which, by virtue of that supreme civil authority wherewith you, the citizens, are divinely invested, is imposed upon you, and which you are charged to fulfil not vainly, as giving account thereof to God.

Put away from your mind that debased and unworthy notion that government is a system of coaxing and humoring by which everything is to be made pleasant to everybody. It widely infects the American mind from the misreading of that doubtful aphorism that "governments derive their just powers from the "consent of the governed" — an aphorism which is doubtless capable of being read in a true sense, but which is commonly and most mischievously read in a false one. Settle it clearly in

* "Dangerous Tendencies in American Society," reprinted, with other valuable papers, from The Atlantic Monthly.

your minds that government implies law, and that law is not good advice; that the statute-book is not, as some zealous reformers seem disposed to consider it, a volume of moral essays, nor the Legislature a sort of Tract Society on a large scale, whose business it is to enact "prohibitory" laws, for the sake of moral impression, without reference to their being enforced; understand that law is not law unless it is enforced by penalty; and that civil penalty can be enforced because, in the last resort, those military powers that are symbolized in that syllable, "the sword," are ready to be wielded, whenever the emergency requires. I have seen too much, in one unhappy little city, of the miserable working of the idea that the art of good administration consisted in a genial compromise — a tacit compromise, of course — with law-breakers; in judicious winking at the lesser, and sometimes the greater crimes; and in a happy-go-lucky getting along with things until after the next election; that the criminal classes had their rights as such, and that if they did not have rights, they certainly had votes, so that it was very unwise to alienate their good-will, and that a good local government ought not to be in violently unfriendly relations with brothels and tippling-houses.

O citizens of this noble and historic city, put wholly from your minds such base and cowardly and wicked thoughts; and learn by the light of burning Cincinnati, that the only right, the only prudent, the only *tranquil* relation of society toward persistent law-breakers, is a relation of unceasing *war*.

The supreme ruler, whether it be the emperor or the body of the citizens, must of course wield the sword of society in part by other hands. It is his responsibility — your responsibility, O citizens, — to see that it is committed to hands that are both able and faithful. Make sure that the executive head of such a vast community as this is not a man who is too popular. Let him be a man, always, who hates a scoundrel, and whom scoundrels hate and fear. And make sure that the high executive trusts, both civil and military, are held by men of nerve as well as of discretion — men who know that there is only one humane way to use the sword, and that is the prompt, swift, severe way; men who won't be guilty of the inhumanity of firing blank cartridges.

or firing overhead, — a course that never yet was taken with a mob, without involving five-fold manslaughter; — men who will not flinch from severity against rioters out of consideration for “innocent bystanders,” but who know that the bystander in a riot *isn't* innocent, but is an integral though inactive part of the riot, without whose presence the riot would promptly cease; — men the very names of whom, whispered among the mob, when the bayonet tips are seen above the crowd, will be the sure promise of bloody wounds and death to some one, quick, sudden, as soon as the last syllable of the Riot Act is read, — if there is any crowd left by the time that syllable is reached. Such officers are humane. All others are cruel, — like that tender-hearted sheriff in Cincinnati, whose warning to the militia to fire overhead involved the slaying and maiming of two hundred people.

But, citizens, and especially young citizens, this wielding of the sword by proxy, by committing it to brave and resolute hands, is not the whole of your duty in the case. You can not be quit of your responsibility to God for your share in the government, on any such easy terms. The duty of bearing arms in the maintenance of that government in the royal dignity of which God has by birthright given you a share, is a *personal* duty not to be fulfilled by the payment of a commutation tax, or the finding of a substitute. What the State wants in this service is not your paltry dollar or two, or your cheap man; it wants *you*. And the reasons which you will perhaps allege to your own mind to excuse you from this personal service in arms are reasons why you ought to serve. Have you many cares for business and property? This should be the first of them. Do you enjoy the quiet of your own fireside? This is the protection of it. Have you high social position and tastes to which the associations of the service are uncongenial? Then you are the very man that is wanted in the ranks to make it evident that that position is beneath no man's dignity. Do you suspect that you would encounter some things there that would not be agreeable to your feelings as a professing Christian? Then it is the very place where you are wanted. You would much rather join the Young Men's Christian Association, and seek some opportunity of

Christian usefulness there? There is no conflict between the two; but if you can not do both, you would much better join a militia-company, and behave yourself therein as a good soldier of Jesus Christ. It is as good an opportunity of Christian usefulness as you are likely to find anywhere.

Or perhaps your excuse to yourself for shirking this common duty of a good citizen is this, that you are always ready, when the exigency arises, to come out and give your service to the cause of law and order. Very likely you are, or think you are. There are commonly men enough, when, for lack of adequate force to begin with, the mob has gathered head, and property and government are in peril, — men enough to rush tumultuously together and form something like a second mob to fight the first. But this is not what society wants of you. It needs your steady, trained and disciplined support. It does not want you by-and-by to put down a riot. It wants you *now*, so well equipped, so drilled to soldierly duties, so conscious of the touch of your comrade's elbow, that no riot shall ever dare to begin to be. You are impatient of this mere sham and show of military service — this child's-play of martial dress and parade? It is a childish notion indeed in you to suppose that this is nothing but child's-play. It is manly work. The holiday parade, that displays through these magnificent streets the formidable battalions of a well-equipped militia drawn from the best citizenship, is something more than holiday parade; it is law; it is government; it is public order and security. The latent consciousness that such a force exists invisible in the midst of society, and that in an hour, from shops and factories, from banks and counting-rooms, from schools of learning and libraries of elegant leisure, the summons of the State would evoke it, as the horn of Roderick Dhu called his clansmen forth from every rock and bush — this it is that makes the baton of an unarmed constabulary as potent as the cannon, and causes the courage of the most audacious criminal to wither and collapse, when the sheriff's finger touches him upon the shoulder. That is the truly efficient militia which is *so* efficient that it never has to be called on for any service but drill and parade, and never fires ball cartridges except at targets. The battalions that are sneered at by fools as dandy regiments

and carpet-knights, may well be satisfied with the record that they have borne the sword as ministers of God, and borne it so far from in vain, that there never has been need to stain it with the blood of an extinguished insurrection.

I am assured, and glad to be assured, that in the present character of her citizen soldiery this State, and especially this city, has no occasion for any sentiment but pride and gratitude. And nevertheless these arguments, enforced by the recent bitter experience of a neighbor State, are not untimely. For if the character of this honorable service is to be maintained against the continually recurring tendency to decline and decay, it will be due to the well-instructed conscience of the younger citizens. And if it does decline — ah, well! I need not prophesy. Some awful page of future American history will tell our posterity what followed, in some of the now approaching conflicts of society, in certain States in which the militia was left to be recruited and officered from the whisky-shop and the beer-garden.*

I have spoken, I, of the Christian duty of submission to government; and II, of the Christian duty of enforcing submission to government. It ought not to take long, now, to show: —

III. — That the one object of maintaining the power of government, and the sole condition on which, in the long run, this power can be maintained, is this, that it should be used in the interest of righteousness. When this object is habitually defeated, and this condition fails, government will still go on for a while — longer or shorter — until by-and-by suddenly it finds that the strength has gone out from it; and losing its strength, it has lost its right; for God has ordained the *powers*

* It seems due to the citizens by whose invitation this discourse is printed, to give it substantially as delivered; otherwise I should have wished to add, at this point, some words on the unfairness of leaving an undue share of the pecuniary expenses of the service to rest upon the men to whom we appeal, for conscience sake, to give themselves to it in person, with its large exactions of time, and its occasional interruptions of business by serious work and exposure.

that be — he has not ordained the imbecilities and impotencies that be. This is the history of many a righteous revolution.

Or it will find, as in Cincinnati, a new power suddenly emerging, whose strength lies in the failures of the government to fulfil the vital functions of government, and which snatches at the reins of authority, intent, for the time, to usurp and perform the abdicated duty. And this compels a fight — short or long — a riot, we call it, if it is brief, — a civil war if it is protracted; in either case, a miserable shame and calamity in any State or nation. Compels, I say; for such insults to its authority, such invasions of its most sacred prerogative, government must resist, or must by-and-by perish. What blindness, as well as what cowardly baseness, in the sneer of the Cincinnati editor, “we have lost our Court-house, and our records, and our two hundred dead and wounded citizens, but we have saved our jailful of criminals! Was it worth the cost?”* Saved your criminals! You have saved your *honor*. — No! not *yours*; don’t talk about the honor of the dastard who could write a paragraph like that. *The government* has saved its honor, and vindicated, at not too great a cost, the authority of law. It has declared, and has made good its word, that no mob shall usurp its God-given prerogative of executing justice upon criminals; and meanwhile it has learned a salutary lesson, which we too may lay to heart, that the government which holds this prerogative only to neglect and pervert it, will not hold it long. The ruler who bears the sword, and bears the sword in vain, will presently not bear the sword at all.

For this clear teaching of the New Testament is corroborated by the common experience of society, and especially by the

* I quote from recollection. There is something inexpressibly base in this cool regret at not having purchased the forbearance of the mob by betraying the charge of the State, and handing over its wards to be hung from a lamp-post. It is worse than that public opinion which glorified the man who attempted to murder a prisoner entrusted to his custody, and which pleaded for his pardon with the President of the United States; and pleaded successfully.

wretched experience of many of our own States. The violent invasion and usurpation of the prerogatives of government *will* surely take place, either in the form of private revenge or of wild Lynch-court justice, whenever society has lost confidence in the administration of justice by the State. The infallible consequence of the abdication by the State of the duty of punishing criminals is not that criminals are safe from punishment, but that that grave function is delivered over to the wild, uncertain justice of the mob, or the frantic hand of private vengeance. Where lies the safeguard of public order in times of public indignation against atrocious crime? Does it lie in the truncheons of a drilled constabulary? in the bayonets of an organized militia? in the squadrons and batteries of a standing army? Yes, here; but not here alone. Back of all these lies the conviction, deep in men's minds, that *the Law* may be trusted to punish. *This* it is which suffers the suspected criminal to lie safe for the time within the prison-walls. *This* speaks to the heady passion of revenge and says, "put up thy sword, for they who take the "sword shall perish by the sword." God himself deigns to make appeal to this confidence in his public justice, saying, in Paul, "Avenge not yourselves; give place to my wrath; vengeance is mine, I will repay." And when human government can not make like appeal, armies and constabularies can avail only for a while. The instinct of a wild justice flings aside police clubs like grass, and bayonets like rotten wood, and leaps like a tiger on its victim. Lynch law, private assassination, do not prevail in communities where strong and faithful government is quick to follow crime with adequate penalty. Such acts as these are the opprobrium of any government, as it is written, "he that judgeth his brother, judgeth the law." The murder of every assassinated malefactor, — of every victim of the Lynch court, is recorded to the shame of a derelict State. The magistrates by their derelictions, the citizens by their unfaithfulness, become accomplices with the assassin in these deeds of blood.

That defeat of public justice which is the peril of our commonwealths, infects all the three departments of government, the Legislative, the Judicial, the Executive.

1. — *The Legislative.* For in many, not to say most, of the American States, a wretched tradition of English law prevails, by which those crimes which above all others most incite to fierce and deadly vengeance, crimes against the sanctity of the family, like adultery and seduction, are, either by legislation or for want of legislation, excepted from the list of crimes that are known to the penal law. And with what result? To inaugurate a common law, set forth, not, indeed, in judicial decisions, but in jury verdicts, which authorizes assassination, which constitutes the assassin a popular hero, and erects the open, unblushing perjury of juries into a public virtue. In Pennsylvania, where adultery and seduction are punishable (however inadequately) as felonies, this law of assassination and perjury has no pretext for existing; — the more disgrace, then, to the perjured jury, and the infatuated citizens, and the judge accessory after the fact, who have lately done what they could to establish it by precedent.

2. — The responsibility for the defeat of justice resides in part in the *Judicial* department of the state, and specially and notoriously in the way in which the jury-system is operated for the protection of known criminals from just and lawful punishment. The mischief wrought by certain bad and false traditions of English law, which were never right, but are more than ever false and demoralizing when they are brought into this country and this century, discredits the law in the minds of the people. The old fiction — which was always a fiction — that the motive of a criminal prosecution is the personal animosity of the king against the accused, is the teeming mother of other fictions yet, that still survive on this side of the sea, and disturb the equal course of criminal justice. We made our declaration of independence a hundred years ago, but we shall not have gotten through with establishing our independence until more of the corollaries of that old maxim of despotism have been eliminated from the course of criminal procedure. This is too large a subject to be treated here; but happily the perils to the State involved in the abuses of the jury system seem now, at last, to have

roused the alarm of the people, and secured attention from competent heads and pens.*

3. — The responsibility for the defeat of justice resides in part in the *Executive* department of the State, in consequence of

* It is the defects and perversions of the jury system which are just now prominently before the public; but these are by no means the only faults by which the judicial department of the State government contributes to the failure of criminal justice, and thus to the peril of public order.

As this pamphlet is passing through the press, there falls under my eye the official statement of a prosecuting officer made in open court, which is pertinent to my argument. The following is an extract from the report of the trial of Emma Bickel for the premeditated murder of William J. Menow by lying in wait and shooting him through the heart from a window by the street. It is taken from the *Philadelphia Press* of April 29th: —

“The law relating to murder of the first and second degree, was defined, and then Mr. Bregy made a statement to the jury, which “caused the lawyers to prick up their ears. ‘With all the obstacles that “can be thrown in the way of justice,’ said he, ‘the appeals, the carrying to the Supreme Court, the appointment of commissions in lunacy “and what not, I do not think this woman will ever hang, although it “is fully admitted that she committed a premeditated murder. She “may get imprisonment for life, but that is all.’”

The *ex parte* opinion of a prosecuting officer as to the facts in a case, before the trial, may be taken with allowance. But his official declaration that crimes “fully admitted” will probably not receive their due punishment, even after conviction, is entitled to full weight. And when this statement is offered to a jury in a capital case, by way of encouraging them to convict, and is met neither by rebuke from the court, nor by protest from the opposing counsel, it amounts to much more than the statement of an individual officer.

The lawyers present, it seems, “pricked up their ears.” (I am not responsible for the implied similitude.) So, doubtless, the Cincinnati lawyers had been wont to “prick up their ears” in the presence of like facts, and the Cincinnati citizens to read of them in the morning papers, until at last “the flood came and carried them all away.” They see the bearing of them now. And the time will probably come when the people of Philadelphia will see the bearing of Mr. Attorney Bregy’s remark to the jury in the case of Emma Bickel.

the perversion, perhaps we ought rather to say in consequence of the existence, of the pardoning power. There never yet has been in any State, a Governor so wise, so virtuous, so resolute, that it was safe to trust him with the pardoning power. There is no State in which the pardoning power, wherever vested, is habitually used, that would not be stronger and happier if there were no pardoning power at all. Generally speaking, the pardoning power is simply an expedient for sacrificing the immense interest which society has in the constant, steadfast, impartial course of public law and justice, to the individual interest of her least deserving members. The commonest and most plausible pretext for the use of the pardoning power is a self-stultification — the claim, in a given case, that later disclosures of fact have made it probable that the prisoner was unjustly convicted. Such a case as this is no case for pardon. Send back the man to the courts to be tried anew, under all the advantages and all the difficulties of a judicial investigation; and then, if he can make good his claim, send him forth into society, not a guilty man pardoned, but an innocent and injured man acquitted and vindicated; and if there is to be any pardoning done, let the State, in the person of its highest officers go humbly suing to the feet of this innocent and liberated prisoner, and ask *him* to pardon the State for the wrong that it has inflicted on him; but let us have done with this demoralizing and absurd business of pardoning innocent men for having committed no crime. And let us have done to the very utmost with the business of “executive clemency” — clemency to the criminal that is cruelty to the State. Abolish the pardoning power, and it might no longer be impossible for the State to avoid the dreadful necessity of the gallows.*

As we would avert the perils of the State and put far away the danger that the ruined walls and crumbled statues of your public buildings shall some time stand, like those of Cincinnati,

* On this subject — the total abolition of the pardoning power — I refer to an argument by my brother, Theodore Bacon of Rochester, New York, entitled “The Defeat of Justice,” contained in *The Galaxy* for January 1878.

the awful monument of a government that bore the sword in vain, let us endeavor that from legislation, and from judgment, and from the execution of the awards of law, shall be eliminated those uncertainties and partialities which are the emboldening of crime, and which, when they accumulate, are maddening to the people's sense of justice, until at last, under the provocation of some surprising wrong, the reins of self-control break in the hand, and in the frenzy of the hour, anarchy and riot seem for the moment to be public virtues.

These then I leave with you as the lessons of the Cincinnati Riots: —

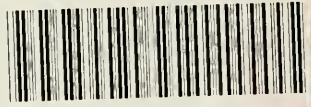
1. — The duty of obedience to law and constituted government.

2. — The duty of enforcing obedience to law, (*a*) by vesting its executive powers in capable and faithful men; (*b*) by personal service in bearing arms.

3. — The duty of seeing to it that government is so administered, in all its departments, legislative, judicial, executive, in the steadfast, sure execution of justice on evil-doers, that the enforcement of obedience shall not be impossible.

And for the fulfilment of this great and solemn trust, O citizens, may God give you an understanding mind, a strong and courageous heart, and a will inflexible and incorrupt. AMEN.

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