LETTER

TO

W. F. Gray

NOTE.

It was the intention of the writer to have appended the whole letter of Governor Seward to the Executive of Virginia, in the shape of an appendix. Upon reflection, however, as it would swell this pamphlet to an inconvenient size, and as his extracts from it have been ample in every instance, he has not deemed it necessary or advisable.

PRINTED BY WILLIAM OSBORN,
88 William-street.

1841.

LETTER

TO

HIS EXCELLENCY WM. H. SEWARD,

GOVERNOR OF THE STATE OF NEW-YORK,

TOUCHING

THE SURRENDER OF CERTAIN FUGITIVES FROM JUSTICE.

If Egypt's race should any claim pretend
O'er you by any law, or rule of theirs,
Because they say you are their nearest kinsman,
Who could withstand the plea, or argue it false?
Why, you must prove by your own native laws
That they have no such power.

The Supplices of Eschylus, 3, p. 32, *quoted by Grotius.*

NEW-YORK:
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TO

HIS EXCELLENCY WM. H. SEWARD.

Sir,

I PROPOSE to address you upon the subject of your pending controversy with the Executive of Virginia, touching the surrunder of certain fugitives from justice. They are charged "with having stolen within the juris- "diction of Virginia a slave, the property of a citizen of "Virginia, and with having fled to the State of New-York." The offence is a felony by the laws of the former state. The matter is one of grave moment to the peace of this country. A requisition is made for their delivery, under the second section of the fourth article of the Constitution of the United States; the language of which is as follows: "A per- "son charged in any state with treason, felony or other crime, "who shall flee from justice, and be found in another state, "shall on demand of the Executive authority of the state "from which he fled, be delivered up to be removed to the "state having jurisdiction of the crime." Your Excellency declines acceding to it upon the ground that the stealing of a slave, although a felony by the laws of Virginia, does not constitute one of *the crimes* contemplated in this clause of the Constitution. In other words, that slavery has been abolished within the limits of New-York, and that her authorities, therefore, can never recognize the principle that one man can be the slave of, or stolen from another. In support of these positions you have laid down several propositions which I shall examine consecutively. The first, and perhaps the most important in your argument, is, that the

object of the Constitutional provision " was to establish in " the intercourse between the states the principle of the law " of nations, which recognizes the mutual rights and obli- " gations of sovereign and independent governments to de- " mand and surrender fugitives from justice."* Having established this to your satisfaction, you go on to *assume* that by the principles of the law of nations and the practice of European governments, there is *no right* to demand, and it has not been the custom to surrender fugitives from justice except in cases of " crimes of great atrocity or deeply affecting " the public safety." The late Governor of Virginia very properly declines discussing these points with you; saying, very correctly, that the law of nations has nothing to do with the interpretation of the Constitution of the United States, and that to connect them in any way would only be unnecessarily to encumber and embarrass the question. That it is purely one of constitutional construction, and to be determined as all questions of this sort are—by reference to the language of the provision, and the intention of those who framed it. With this he contented himself. He did not deem it necessary to offer any observations in support of views so obviously proper. The consequence has been, that you have been left in undisturbed occupation of all your positions, touching the connection between the Constitution and the law of nations. Now, while I wholly coincide with Governor Gilmer in the above doctrines, I am not disposed to let your Excellency enjoy any advantage from the impunity which your arguments have enjoyed on this branch of the case. You complain, too, that in these views he takes different grounds from that of his predecessor, and thus shuts you out from the benefits of the victory which you very complacently assume to yourself to have gained over the latter at this stage of the contest. I shall not imitate the governor in this respect. I shall discuss the question in every possible aspect, and for this pur-

* Vide Appendix.

pose shall first, with your permission, review that part of the controversy between yourself and Lieutenant-Governor Hopkins,* which you complain is excluded from all consideration in the argument with his successor.

To begin then with your first proposition, that the object of the constitutional provision, just quoted, was "to estab- "lish, in the intercourse between the states, the principles "of the law of nations, which recognizes the mutual rights "and obligations of sovereign and independent nations to "demand and surrender fugitives from justice." It strikes me as so extraordinary a one, that if I did not know that the matter was too grave a one for jest, I should find some difficulty in believing your Excellency serious in asserting it. Why, sir, there are no such principles in the law of nations! As an American citizen, bound by his government's interpretation of national law, and by the weight of judicial authority in his own country, I feel authorized in making this declaration. As a professional man, examining for myself by the light of books and the practice of enlightened nations, I do not hesitate to confirm it. You admit yourself that there are eminent writers on international law who deny the existence of any such principle, and you say you are aware that it has been never practically recognized by the government of the United States. How then, sir, can you persist in positively asserting that the object of the constitutional provision was to incorporate this principle, and upon this arbitrary and unwarrantable assumption, proceed to determine so grave a question as this between you and the executive of Virginia Let us see the state of this question among the writers on national law. Voet, one of the most distinguished of them, and for a long time a professor at one of the established colleges of the United Provinces, distinctly says, that by the customs of *all Christendom*, (except Saxony), the surrender of criminals is not

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* The Acting Governor of Virginia before Governor Gilmer's election.

admitted save from humanity : " Moribus nihilominus, (non tamen Saxonicis) totius fere Christianismi nisi ex humanitate non sunt admissæ remissiones," Voet de Statutis, § 11, ch. 1, n. 6, p. 297. Puffendorf, on the same subject, has the following language : " If we are obliged to deliver up a criminal, it is rather in virtue of some treaty, than in consequence " of a common and indispensable obligation :" quoted in " 2 Burlamaque, p. 4. sec. 23, 24, 25, 26, 27. Martens writes : " No sovereign state is bound, except by compact. It may " punish foreigners whether they commit a crime in its do- " minions or in those of other states, but in neither case is it " *perfectly* obliged to send them for punishment to their own " country, nor to the place where the crime was committed, not " even supposing them to have been condemned before their " escape. The extradition however is voluntarily practised by " certain states as a matter of general convenience and comity." Marten's Precis du droit des Gens, lib. 2, ch. 3, s. 22, p. 107. Merlin, the celebrated continental jurist, holds the same doctrine. Merlin Repertoire de Universelle, et Raisonné Jursprudence, tit. Souverainete. The Marquis of Beccarai inclines the same way. Ch. 35, p. 134. Ward rests the matter on treaties and conventions. Lord Coke says— " It is holden, and so it hath been *rendered* that divided " kingdoms under several kingdoms in league one with an- " other are sanctuaries for servants and subjects flying for " safety from one kingdom to another, and upon demand made " by them are not by the laws and liberties of kingdoms to be " dilivered up, and this (some hold) is grounded upon the law " in Deuteronomy, non trades servum suo qui ad te confugerit." He cites three instances showing the practice of England at past periods of her history, first, that of Morgan and others, who were demanded of Henry IV. of France by Queen Elizabeth, as having been guilty of treason against her realm. The French king refused to surrender them, saying, " that " if they had machinated any thing against the queen in France " he could lawfully proceed against them, but if the offence

"was committed in England he had no right to take cogni-
"zance of it. That all kingdoms were free to fugitives, and
"that it was the duty of kings to defend every one the liberties
"of his own kingdom," and that Elizabeth had not long before received into her kingdom, Montgomery, the Prince of Conde, and other Frenchmen. The second instance is that of Cardinal Pool, who was demanded of the King of France by Henry VIII. of England, "as being his subject and attainted "of treason." The requisition was not successful, although Henry had a treatise written to prove its justice. The third case is that of the Earl of Suffolk, attainted of treason by parliament, and demanded by Henry VII. of England of Ferdinand of Spain. Ferdinand at first refused to give him up, although he afterwards consented upon the promise of the King of England not to put the earl to death. To these instances of Coke's showing the uniform refusal of England, France, and Spain, to recognize any such principle of the law of nations, a distinguished jurist has added the case of Perkin Warbeck, a pretender to the throne of England during the reign of Henry VII., who having fled to Scotland, was protected by its king.

In this country but two cases have occurred in which it was necessary to consider this question, and in both of these our government has distinctly repudiated any such principle. The first was that of Chevalier de Longchamps, a subject of the King of France, who, in 1784, before the adoption of the Constitution, was demanded of the Executive Council of the State of Pennsylvania, by the French ministry, to be sent to France to be punished for an insult offered to Mr. De Marbois, Secretary of the French Legation and Consul General of France. The council consulted the judges of the Supreme Court, and afterwards refused to deliver up De Longchamps. Vide, 1 Dallas, 11. The second case occurred in 1793. M. Genet, Minister of France, applied to Mr. Jefferson, then Secretary of State, for a warrant to arrest several persons, citizens of France, who had escaped from a French ship of war after committing crimes against the Re-

public. Mr. J. answered, "that the laws of this country "take no notice of crimes committed out of its jurisdiction. "The most atrocious offenders," he goes on to say, "coming "within its pale are received by them as innocent men, and "they have authorized no one to seize or deliver them up." General Washington was at this time President, and Hamilton Secretary of the Treasury. Afterwards, during the presidency of Mr. Madison, in the instructions from Mr. Monroe, then Secretary of State, to the Plenipotentiaries at Ghent, appeared the following language:* "Offenders, even "conspirators, cannot be pursued by one power into the ter- "ritory of another, nor are they to be delivered up by the "latter, except in compliance with treaties or by favor." In the speech of the late Chief Justice of the United States, in the celebrated case of Jonathan Robbins, who was delivered up to the British Government by the elder Adams, it is a very remarkable fact, says Chief Justice Tilghman, in the case just quoted, that no allusion is any where made to the doctrine of a binding obligation on nations to deliver up fugitive criminals.

This having been the course of our government from an early period down through Mr. Madison's administration, it would not be surprising that our courts should entertain correspondent views. Accordingly we find that after an elaborate consideration of this question, in the two cases of Commonwealth v. Deacon, in 10 Sergeant & Rawle, and in that of Jose Ferreire Jos Sentos, 2 Brockenbro', 492, it was decided by Chief Justice Tilghman and Judge Barbour, that there was no principle in the law of nations which imposes a *perfect obligation* on sovereign States to deliver up criminals seeking refuge within their territories, and that the United States consequently could acknowledge none. Their opinions are based upon a thorough examination of all the leading autho-

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* Vide 10 Serg. & Rawle, Commonwealth v. Deacon, 123. Opinion of Chief Justice Tilghman.

rities upon this subject, as well as the usages of the civilized nations of Europe. Chief Justice Story leans to the same doctrine in the case of the United States v. Davis, 2 Sumner, 486; and so does Chief Justice Parker, of Massachusetts, in the case of the Commonwealth v. Green, 17 Mass. 575. On the other hand, however, I will frankly acknowledge that there are writers of great celebrity, as Grotius, Heineccius, Burlamaqui, and Rutherford, who contend resolutely for the existence of such a principle, and the distinguished author of the Commentaries on American Law has given in his adhesion to their views.*

But is it not worse than idle to talk of a principle as engrafted into our Constitution, to guide the governments of the different states of this confederacy in their intercourse with each other, whose very existence is thus denied by the larger number of European and American jurists, disclaimed at different periods by the most enlightened nations of Europe, and expressly repudiated by our own government in the only two cases in which the question has come before it for consideration? You could not cast a graver reflection upon the wisdom of those great men who sat in the Convention of 1783. If such had been their purpose—if they had really designed to have incorporated any principles of the law of nations with the Constitution, one would have supposed that they would at least have deemed it expedient to have done it in language declaratory, and not have left them to be expounded by the thirty or forty future governors of this wide spread and growing confederacy, to some of whom the principles of Vattel and Grotius are as little likely to be known as those of the Talmud and Koran. What, under such circumstances, would probably come of that "sublime science, whose seat has been eloquently said† "to be the bosom of God, and whose voice the harmony of the "world." "Nec erit alia lex Romæ, alia Athenis, alia nunc

* Vide 4 Johns. Chan. 113.
† Hooker

"alia posthac, sed et omnes gentes, et omni tempore una lex "et sempiterna et immortalis contenebit,"* &c., exclaims the enthusiastic Roman while speaking of the law of nations. Alas! how different will be the language of some American Cicero in after years on this same subject, when the principles of this noble code shall be heard proclaimed from the Sabine, then from the Mandan towns, anon from Little Rock, and a dozen places intermediate, to Cape Cod!

Let it be admitted, however, for the sake of argument, that such was the intention of the framers of our Constitution, how, as the Governor of Virginia very properly asks your Excellency, are the questions arising under these embodied principles of the law of nations to be decided, if the states have conceded no power for this purpose to the federal government nor retained any themselves. The law of nations is intended for the regulation of the intercourse of sovereign and independent states, who have not parted with the power of declaring war, or of negotiating in cases of its violation. Without such power, the correlative rights and obligations are mere abstractions, utterly powerless to stay the ambitious nation in its career of aggression; and yet you would have us believe that it is to such shadows that the states are to look for the protection of their property under that Constitution which they signed and adopted for its more effectual security. Once sovereign and independent, they stood encircled by the walls which nations have thrown around each other in the shape of international law, while they held in their hands the great weapons of war or negotiation. Not yet secure enough, however, for their more effectual protection, in an evil hour they adopt a Constitution; which has but robbed them of their arms, given them none other in return, and left them but their walls, but now unmanned and undefended. You take from a man

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* Cicero de Republica, Lib. III.

the means of defence with which nature has provided him, persuading him to rely upon the more effectual protection of the laws, and when you have disarmed him, you then leave him in his unprotected state, a prey to the assaults of the brigand and the assassin. Delusive, indeed, would be the protection of the Constitution, and fatally would the states have impaired their *original* sovereign *rights* by its adoption, if these are to be the necessary results of a legitimate interpretation of its provisions! Your Excellency thinks not, however! The right claimed by Virginia in this case, you say, is not "one of the original rights supposed," nor do you think that the government of the United States would feel called upon in a similar case to demand a fugitive criminal from Great Britain, nor would it be justified, by the sense of the world, in declaring war in the event of a refusal to surrender. The *original rights of the States*, as understood by Governor Gilmer, and as must be obvious to every one, can mean but the rights of war and negotiation, and cannot be tested by reference to any probable or assumed course on the part of our government towards Great Britain, or any other power, in any supposed case of difficulty between them. That, however, which it has already pursued towards the latter kingdom in relation to the slaves driven some time since by stress of weather into the ports of Bermuda and New-Providence, on board of the schooners Emporium and Enterprise, evince a far different idea of the principle of the law of nations on the subject from that which your Excellency has manifested, and would indicate a very different result in the supposed case from that which you have ventured to predict. Their liberation has been demanded, and pecuniary compensation to their owners for the injury sustained by their detention insisted upon. The British government have yielded to the justice of both claims, the slaves have been set at liberty, and the necessary papers are now being prepared, or have been already transmitted to our diplomatic representative at the Court of St. James, to enable the two governments to agree upon the amount of indemni-

fication. Here, at least, in this instance, we see the United States peremptorily and positively enforcing, even in her intercourse with foreign powers, the proscribed principle that one man can be the slave of another, and insisting successfully, at least upon its practical recognition by them. What will be its course in any other given case arising under the principles of the law of nations, touching the surrender of fugitives charged with stealing a slave, I do not know and will not pretend to anticipate, believing as I do that no such principles exist. This one thing, however, is certain, if nations have a right to demand from each other the surrender of fugitives from justice in all cases of crime, and there should be no treaty between Great Britain and this country on the subject, and the former should refuse to give up a criminal charged with stealing a slave in the United States, our government would be false to its duties, to its compact with the states, and the spirit of the Constitution, if it did not enforce the demand in every way required by the dignity of a sovereign power. Be this, however, as it may, there can be very little doubt what course Virginia, under such circumstances, would pursue, were she not shorn of her strength by this Delilah of a Constitution.

But "negotiation," you say, remains in the *shape* of an amendment to the Constitution by three-fourths of the states. If this is the right of negotiation, or as it is otherwise called, the treaty-making power, it is indeed fearfully maimed and mutilated. Twenty-six sovereign states to be consulted in the adjustment of an international right in dispute between New-York and Virginia! Among so many and varying interests, with the adverse views and feelings of the different portions of this great confederacy on most subjects, and particularly on this, what probability do you think there would be of getting the consent of three-fourths of them to any measure of this nature? It is worse than mockery to talk of such a remedy. What would remain then? Submission to the wrong, or secession and war!

I now come to your second proposition—that the princi-

ples of the law of nations, (assuming it proved, as you allege, that the object of the constitutional provision in question was to establish them in the intercourse between the states,) would not authorize a demand for a fugitive from justice in a case like that of Virginia's. The only authority I can find that your Excellency gives for this opinion, is contained in the following quotation from Grotius: "That for some ages "past the right of demanding fugitive delinquents has not "been insisted on in most parts of Europe, except in crimes "against the state, and those of a very heinous nature." Now, sir, taking into consideration your avowed principles, I might safely proceed to argue this question upon this extract alone. You contend, you will recollect, for the existence of a clear and indisputable right on the part of a sovereign state, by the laws of nations, to demand the surrender of fugitives from justice escaping into the dominion of another power. If this be really a principle of the laws of nations, it must necessarily be based upon some other principle equally just and probably more obvious; perhaps upon the doctrine laid down by many writers, that penal laws are not local in their effects, but follow the criminal wherever he flies. Statutum personale ubique locorum personam comitatur.* This would at least seem intelligible and plausible. If this principle be then the basis of such mutual right and obligation of sovereign states, it is difficult to understand the reason of its limitation in practice to crimes of the highest magnitude, or those deeply affecting the public safety. There is certainly no such qualification of the principle of the ubiquity of penal laws; if they follow the criminal beyond his own government into the territories of another power, when he has committed treason, they do not stop at the confines of the two states when he has committed theft. But you may not perhaps be willing to concede that these rights of sovereign states are formed upon this prin-

* Voet de Statutis, § 4, ch. 2, n. 6, 123, quoted by Story on Conflict of Laws. Martin Precis du Droit des Nationes, b. 3, ch. 3, § 223.

ciple of penal jurisprudence. Let us see, then, what Vattel says upon the subject: "And since no sovereign should permit "his subjects to molest or injure those of another, much "less offer a grievous insult to foreign powers, it is his duty "to compel the offender to repair the damage or injury if "possible, or punish him exemplarily; or, according to "the case and circumstances, to deliver him over to the "offended government for punishment."* It will be recollected that you have been speaking of a *right and obligation* of states springing out of the laws of nations, and not of the *practice* of this or that nation in the exercise of such right, or the performance of such obligation. Keeping this fact in view, will you point out in the foregoing language, containing the statement of the duty in which said obligation has its origin, so far as regards the citizens of one's own state, that part which authorizes you to restrict such obligation to crimes of the greatest magnitude or those deeply affecting the public safety? If it is the duty of a government, as Vattel says, to see that its citizens do not murder those of another government, it must be equally the duty of a government to see that its citizens do not steal the property of those of another government; and if it is its duty to see that its citizens do not steal the property of those of another government, it must be equally the duty of such government to see that its citizens do not assault, slander, or maltreat, or otherwise injure such citizen of another government. This, I presume, your Excellency will not deny. If the duty, then, of a government extends to every species of injury which its citizens are capable of inflicting, must not the corresponding obligation to surrender the offender

* Et puis que celuici le (souverain de l'aggreseur) ne doit; point souffrir que "ses sujets molestent les sujets d'autrui ou leur fassent injure, beaucoup moins "quils offensent audacieusement les puissances etrangeres il doit obliger le coupa- "ble a réparer le dommage, ou l'injure, si cela se peut, ou le punir exemplaire- "ment ou enfin selon le cas et les cerconstances le livrer à l'etat offensé pour en "faire justice." Vattel Droit de Gen. Liv. 11, ch. vi. § 76.

be equally comprehensive, and include, therefore, the murderer as well as the traitor, the thief as well as the murderer. What is the language itself of the whole paragraph, part of which you quote from Grotius? "But in most parts of "Europe, for some ages past, this right of demanding fugitive "delinquents for punishment has not been insisted upon "unless the crime be such as affect the state, or are of a "very heinous and malignant nature. As for lesser faults it "has been the custom to connive at them, unless by the arti- "cles of the treaty it has been particularly agreed on to the "contrary."* Now, sir, with all due deference, permit me to say, I am at a loss to discover, even in any part of this extract, any authority for your limitation of the right of surrender to "crimes of great atrocity, or deeply affecting the public "safety." You will scarcely contend, because some European governments have not thought proper, from considerations of convenience, or from a common understanding, to insist upon its exercise, except in crimes of the deepest dye, that it has been annihilated so far as relates to those of a milder character. This would be a strange destiny indeed for a great original principle, having its origin, you say, in the law of nature, and the common and universal sanction of a civilized world! "The law of nations," says Burlamaqui,† "is the law of nature;" the law of nature is the law of God, traced on the hearts of us all, for our common happiness, and changes not!

But to return to the language of Grotius; why, let me ask, did you confine your quotation to the first of the two paragraphs which I have just extracted? Can it be that the expression "connive at them," used in the latter in reference to the practice of the European governments on the subject of the lesser faults, could have escaped your observation, or that seeing it, you could have been unaware of the

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* Grotius de Jure Pacis et Bellin, B. 4, c. xx. n. 5.

† Burlamaqui, 164.

importance of its signification? I am strangely in error if this language does not emphatically show that Grotius still believed the original right to demand, and obligation to surrender, to exist unimpaired in all their ancient extent, and that the custom to which he alludes as existing among some nations for some centuries past, of limiting it in practice to crime of a heinous nature, had by no manner of means affected it. If this was not his meaning, why the use of such language as this, "as for lesser faults it has been the custom "to connive at them." If there were no right to demand or obligation to surrender lesser criminals, whence the necessity of conniving at their escape? A prompt and peremptory refusal would be all that could be required or anticipated, under such circumstances; and Grotius, in commentating upon the principle, would have said, perhaps, that an effort had been made by some nation to extend it in practice to lesser faults. It is impossible, it appears to me, to come to any other conclusion. He is speaking of a principle of the law of nations which enforces an obligation upon governments to surrender criminals who may have sought an asylum in their territories; and he goes on to say that although extending naturally to every species of crime, whether atrocious or venial, it has not been insisted upon in practice, for some ages past, by the nations of Europe, except in cases of the former character. In those of the latter—the lesser crimes or faults—although the right to demand, and the obligation to surrender, is equally strong by the principle of the law—it has not been deemed expedient to insist upon its rigid exercise or observance, either with a view of saving trouble, or from considerations of policy. Nothing would be more natural since these smaller offences do but little injury to the states or its citizens, and governments might well agree, by a sort of compact or common consent, to say nothing about them, and to connive at the escape of those charged with their commission. That this is a fair interpretation of the language of Grotius, no can-

did man, it appears to me, can doubt.* If it be so, then, according to his authority, the great original right to demand, and obligation to surrender fugitives from justice, which you contend for as an essential principle of the law of nations, and one embodied in the Constitution of the United States, still exists in all its ancient extent—comprehending every species of crime, whether great or small—was for centuries made the rule of practice among the nations of Europe, and has only lately ceased to be enforced, ("for some ages past,") and then not by all of them ("most parts of Europe,") in cases of the lesser faults. What is to be thought now of language such as the following, made use of by you in your letter of November 5th, 1840, to Governor Gilmer.† "The fact that it" (meaning the right to demand fugitives and the obligation to surrender them,) "has never been extended to other offences than those of "an atrocious or heinous description, and such as were re- "cognized to be of that character by the nation upon whom "the demand was made, affords the best evidence that "there is no good reason for its extension to any other "crimes." Here, with all due respect, is the gratuitous assumption of a fact, that the rule has never been extended to other offences than those of an atrocious and heinous description, in which you are not only *not* sustained, but indirectly contradicted by the very authority you yourself have quoted, and in addition to this the arbitrary limitation of the original right to such cases, and putting the question as one of extension of such right, when Vattel and this same authority make it as broad as the duty in which it has its origin.

I have now finished the consideration of your principles and authorities on this branch of the case: without re-

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* The same view of Grotius' meaning has been taken by Chief Justice Tilghman in the celebrated case before quoted, of Commonwealth v. Deacon, 10 Serg. and Rawle, 123.

† Vide Appendix.

ference to them your Excellency will now permit me to give you my views of it. All that I shall assume for the present is, that the stealing of a slave constitutes an offence or crime of some sort or other. Upon the subject of this mutual right and obligation of nations, you will find that Vattel, after alluding to the duty of sovereigns to take care that their subjects do no injury to the citizens of other governments, or the government itself, and the consequent obligation to punish the criminals themselves, or hand them over to the offended nation, uses the following language: "This is what is observed generally "enough with regard to great crimes, which are equally " contrary to the laws which all nations have enacted " for their security. Assassins, incendiaries, and robbers, " or thieves, are seized every where upon the requisition " of the sovereign in whose territories the crime has been " committed, and handed over to his justice. They go " still farther in states more nearly allied by friendship and " proximity. In cases even of the common offences, which " are prosecuted in civil actions, whether it be for satis- " faction for the injury, or for a slight civil punishment, " the subjects of two adjoining states are mutually bound " to appear before the magistrate of the place where they " are charged with having committed the offence. Upon " a requisition of this magistrate, which they term a let- " ter rogatory, they are summoned judicially, and con- " strained to appear by their own magistrate. Admirable " institution, by which many neighboring states live toge- " ther in peace, and appear to form but one republic!"* Farther on in the next paragraph he says: "The sovereign " who refuses to repair the injury caused by his subject, or " to punish the criminal, or to deliver him up, renders him- " self, in some measure, the accomplice of the injury, and " becomes responsible for it. But if he delivers the property

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* Vattel, Droit des Gens, Lib. 11, c. vii. § 77. 328.

" of the criminal for indemnification, in those cases which " admit of reparation in this way, or the individual himself " to undergo the punishment due to his crime, the offended " party has nothing farther to ask of him."* Of no part of these extracts from Vattel can I suppose your Excellency to have been ignorant, and yet in writing to Governor Gilmer of these crimes, which fall within the cognizance of the law of nations, and are alike contrary to the laws of all countries, you make use of the following language: " The science of jurisprudence is not as imper- " fect and vague as you suppose. The principles of " a moral law were written by the hand of God in " the hearts of men. The light of revelation brings them " out in bold relief, and I apprehend that on examination of " the common law, the civil law, and the statutes of all civi- " lized and christian countries, it will be found not only that " murder, treason, arson, burglary, forgery, perjury, rape, " incest, bigamy, and the like, are crimes, but also that they are " neither lesser faults nor ordinary transgressions, while " adultery, petty stealing, libels, trespasses upon lands, and " the like, are not regarded as crimes of great atrocity, or " deeply affecting the public safety." This enumeration, I take it, comprehends all the crimes which you suppose to come within the denomination of great crimes, and consequently within the meaning of Vattel, and the other writers on national law, when speaking of legitimate cases of extradition, and yet it contains no allusion to any species of theft, whether robbery or theft by force, grand larceny or theft by stealth. Passing by now your reasons, which it would be curious to know, however, for adding forgery, perjury, rape, and incest, to the catalogue, and taking robbery from it, let me inquire how, upon any fair rule of interpretation, or with a proper regard to the meaning of this last author's

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* Vide Idem. § 77.

words, do you consider him, in the paragraphs just quoted, to exclude theft, or grand larceny, from among those crimes which constitute legitimate subjects of surrender under the modern practice of nations? "Les assassins les incendiaires les voleurs," he says, are seized every where upon the requisition of the offended nation; and in states more intimately connected by friendship and neighborhood, they carry the practice still farther; they surrender even in cases of the smaller or common offences, such as are prosecuted by civil actions. Now, sir, permit me to remark, that the word "voleur," here used by Vattel, does not mean robber alone, as indicative of one who steals by force, in contradistinction to one who steals by stealth. In this conclusion I am sustained by the concurring testimony of dictionaries of highest repute in France, as well as more powerfully, if possible, by the context itself of the writer. *Voleur* is a generic word, applying to all classes of thieves, as well to those who rob by force, as to those who rob in secret, and it cannot be confined properly to either of the two kinds to the exclusion of the other.* That Vattel intended to use it here in its correct sense, and consequently as comprehending great thieves, or those committing the larger offences of simple larceny, as well as robbers, or those committing compound larceny, it is impossible to doubt without some better reason than any that appears in the section itself. Indeed, if we have reference to the entire context, as before intimated, this conclusion becomes a matter of almost positive certainty. After stating, as above, that assassins, incendiaries, and "les voleurs," are surrendered by all nations, he goes on to say, that in states more intimately allied with each other, they

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* Voleur celui, celle qui a volé, ou qui vole habituellement. Les voleurs des grands chemins. Voleur domestique voleur des nuit. Voler, v. a prende furtivement ou par la force la chose d'autrui pour se l'approprier. Voler le bourse de quel qu'un, voler d'argent. Dictionary of the French Academy.

Voleur, Latro. fripon qui vole, qui a volé, en general celui que par la force, ou par la ruse s'emparedu bien d'autrui. Boist. Universal Dictionary.

Voleur—thief. Boyer.

carry the custom so far as to surrender even in matters of common offences, "des delits communs," which are the subject of civil prosecution. Now, clearly, theft, particularly grand simple larceny, cannot be regarded as a common offence, nor is it punishable in a civil action for damages, and therefore unless the term *voleurs* is supposed to mean thieves, as well as robbers, the crime of simple theft, even in the most aggravated cases, would seem to have been excluded from all consideration in the intercourse between nations, and to constitute a clear casus omissus in their practice. This involves too gross an improbability to be believed for an instant, and I should be justified in resorting to almost any supposition that would remove the necessity for its adoption. I am authorized, then, I think, fully in concluding the correct translation of the word *voleurs* to be thieves, and the crime of theft, at least when grand larceny, to come within the practice of those nations of Europe on the subject of the surrender of fugitive delinquents, to whom Vattel and Grotius allude. This conclusion is powerfully, and most convincingly strengthened, when we reflect upon the utter absurdity of making any distinction between the crimes of incendiarism, robbery and theft, on the score of their repugnancy to the laws of the civilized world, and their incompatibility with those which every state has adopted for its preservation and security. "Des grand crimes qui sont également contraires aux lois de sureté de toutes les nations," (great crimes, which are equally contrary to the safety, or the laws of safety of all nations,) is the expression of Vattel. Murder, then, burning of houses, and robbing men of their property, are great crimes, equally contrary to the laws, or incompatible with the safety of all nations,—murder as destructive of life—incendiarism and robbery as destructive of the security of property. Arson, it is true, is said be a greater crime than theft, for some fanciful reasons which the writers on criminal law give; and so is robbery they say, because it is accompanied with an assault upon the person, but the atrocity of both

crimes, and the danger which they threaten to the safety of a community, are derivable alike from their violation of the right of property. Theft strikes at its very foundation, is punishable in England by death in the same manner as arson and robbery, and it may fairly be presumed to be contrary to the laws of every civilized nation on earth. It is wholly subversive of the great object for which society was instituted, utterly destructive of commercial intercourse, and the nation that permits it could not preserve its foreign relations for an hour, or live a day without an internal revolution. The laws which restrain it lie at the very foundation of social order, and may be said to be of more consideration than those which guard life itself, since the latter, without the means of sustenance, could not long be preserved. Can theft, then, be properly affirmed not to be a great crime, repugnant alike to the laws, and incompatible with the security of all nations?

Again, Vattel has this language: "But if he delivers up "the property of the offender by way of compensation, in "cases which admit of this species of reparation, or his per- "son, that he may suffer the penalty of his crime, the "offended nation has nothing further to ask of him." Now, it is a very remarkable circumstance that to no one of the crimes which you enumerate as coming within the principle of the law of nations, has pecuniary compensation ever been, or can it be, with any propriety, applied;—no judge or lawyer ever having heard, I presume, of giving money in satisfaction of murder, treason, arson, burglary, forgery, perjury, rape, incest or bigamy. There must, then, even according to Vattel, be some other crimes than these in which it is the duty of nations to surrender up fugitives from justice, or make atonement in some other way for the injury they have committed, and what they can be, if theft is not one of them, I confess I am unable to determine. These are obvious reflections, which I find some difficulty, you will permit me to say, in believing could have escaped a mind

of so much sagacity as your Excellency's, and my doubts are very much increased when I find that in two celebrated cases, determined, the one in the neighboring province of a great empire, and the other by a late chancellor of New-York, one of the two most distinguished living jurists of this country, it has been solemnly adjudicated that theft is one of the crimes which fall within the law of nations, and constitutes a legitimate case of surrender under its principles.

" The crimes," says Chancellor Kent, " which belong to " the cognizance of the law of nations, are not specially de- " fined, and those which strike deeply at the rights of pro- " perty, and are inconsistent with the safety and harmony of " commercial intercourse, come within the mischief to be " prevented, and within the necessity, as well as the equity of " the remedy. If larceny may be committed, and the fugi- " tive protected, why not compound larceny as burglary and " robbery, and why not perjury or arson? They are all " equally invasions of the right of property, and incompati- " ble with the ends of civil society."* " The objection," argues Chief Justice Reid, " that the offence charged against " the prisoner (theft) is not of that enormity as either to re- " quire or permit that the executive should interfere to deli- " ver him up can have no weight. It would be difficult to " establish a rule, where none has been settled, to enable us " to distinguish the shares of enormity of different offences, " their evil tendency or pernicious effects, so as to limit the " power of the prerogative as applicable only to such crimes " as are productive of a certain quantum of evil in a state. " The certain and positive rule laid down by all writers on " international law, and the decisions had thereon, as above " referred to, is, that where *a crime* has been committed, the " criminal may be surrendered to the offended country. " There is certainly great difference of opinion as to what " kind of crime this *ought* to apply, some holding it to ex-

* Matter of Washburn, 4 Johns. Ch. Rep. 113.

" tend to high treason, robbery and murder, while others, " apply it to minor offences, and even civil damages, but " where the general right is acknowledged it must be left to " neighboring nations to determine the necessity of enforcing " it according as to good policy and sound discretion shall " require."* This is not all: the existence of a power to surrender fugitives from justice being conceded to exist, the reasons for extending it to theft, as well as all other cases of felony, have been so obvious as to induce Mr. Chitty, in his Treatise on Criminal Law, vol. 1, p. 136, to lay it down as a general established principle, " that if a person, having " committed a felony in a foreign country, comes into Eng- " land, he may be arrested here, and conveyed and given up " to the magistrates of the country against the laws of which " the offence was committed." With these various decisions and authorities before you, for I am not at liberty to presume you to have been unacquainted with them, I confess, with all proper respect, I am utterly unable to conjecture any reason or justification for your deliberate exclusion of the crime of theft, from an express enumeration of those offences, which come alone within the principle of the law of nations, on the subject of the surrender of fugitives from justice, and, consequently, according to your doctrine, within the provision of the Constitution of the United States. If there were not a word in the pages of Vattel or Grotius upon the subject, and the principle had never come before the tribunals of New-York, or the United States, for consideration, your own unassisted reason, engaged in reflection upon its origin, its object, and its character, and apprized that incendiarism and robbery were among the crimes which came within its scope, as being contrary to the laws of safety of all nations, must at once, I should have thought, have led your Excellency to suspect that theft could not properly be excluded.

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* Court of King's Bench, Montreal, June 20th, 1827. Dom Rex v. W. E. Ball et al., 7, on Habeas Corpus, American Jurist, vol. I, 307.

Every obligation has its origin in a duty, and every law in some principle of public policy, or the protection of private rights. There is no imaginable duty which you could predicate of a government that would create an obligation to surrender an incendiary, a house burner, a counterfeiter, or a robber, and leave it at liberty to act as it pleased, when the thief who had stolen fifty thousand dollars of the property of a subject of a foreign government was demanded at its hands. There is no principle of public policy, or protection to private rights, that, violated by incendiarism, by arson, by forgery, or robbery, would not be equally violated by theft. These are propositions too obvious to admit of argument or illustration, and once conceded to be just, it follows, as a necessary consequence, that the great original right to demand fugitives from justice, and the corresponding obligation to surrender them, extend, by the law of nations, and the principles from which it is derived, to cases of theft, as well as those of arson or perjury; and if this be so, you cannot but be aware, that the practice of a few European nations in regard to its exercise, (admitting that it has been confined by them to certain classes of crimes,) observed perhaps from courtesy or convenience, from policy, or any other consideration whatsoever, cannot be otherwise than of the smallest possible moment to a state who is thrown back upon it, for the first time, for the protection of her domestic institutions, and the vindication of her violated laws. If, indeed, Virginia has received nothing else in exchange for her sovereign attributes of war and negotiation, she will proclaim her right to the principle in all its original and fullest extent, notwithstanding, in the language of Grotius, it has not been insisted upon in *most* parts of Europe for *some* ages past, unless in cases of crimes that affect the state, or are of a very heinous and malignant nature. These nations, doubtless, had good reasons for dispensing with a rigorous compliance with the principle in every instance, and had a full right to do so; Virginia, however, claiming but the same power of judging of the

expediency of giving up any portion of the right, deems it unwise, if she is dependent upon it alone for the protection of the property of her citizens, to imitate their example, and announces her determination to insist upon it in all its natural strength and comprehensiveness. Let it be conceded, then, and I humbly apprehend it cannot justly be denied, that theft comes within the principle of the law of nations on the subject of surrender—assuming always that there is such a one—and nothing more is required, as I shall presently show, to make out the case of Virginia. But I will not stop here. I go farther, and contend, that if it is admitted that there is a principle of the law of nations, recognized and sanctioned by the civilized world, which imposes a *perfect* obligation upon sovereign states to surrender, in any case, criminals seeking refuge in their territories from the justice of other states, that this principle is not confined to any particular crimes, such as murder, treason, robbery, or theft, or any others of the same grade, but that it extends to every species of offence, whether great or small, heinous or venial, punishable by fine, by imprisonment, or by damages in a civil action, and that the right or rule, as it may be called, as laid down by writers on national law, has no reference whatsoever to the grade of the offence, or the penal code of the government in whose limits the criminal may be found. Arguing, a priori, of the principle, this would seem to be the necessary conclusion; for, giving it any origin you please, whether the duty of a government to prevent its subjects from annoying another government, or its citizens; the justice of compelling him to repair an injury who has committed it; the obligation under which every man is placed to obey the laws of the country into which he is permitted to enter; the desire to perpetuate peace, and encourage commercial intercourse, or a general disposition among nations to keep down crime, and protect the enjoyment of property, and thus preserve the basis of all social institutions, it is utterly impossible to see any good reason which would render its limitation to any particular character of offences either necessary

or desirable. Arguing, too, of its extent, with reference to the dignity and sovereignty of nations, one finds as little cause for restricting it to crimes of any specific atrocity; all genuine principles, pertaining to both considerations, being quite as much implicated in the surrender of criminals charged with aggravated crimes, as they would be in the case of those charged with venial offences. When we come to the books which profess to treat of the principle, and of the construction which nations have placed upon it, we find these anticipations, as to its character and extent, fully sustained by their language. Your Excellency will in vain hunt, I apprehend, in the pages of Vattel, Grotius, Burlamaqui, or Puffendorf, for any authority, in the absence of treaty or usage in the particular case, for the restriction of the principle to crimes of great atrocity, or those deeply affecting the public safety. It will be invariably found, let me venture to say, that when these great jurists speak of this principle, although they do not expressly declare in so many words that it applied originally to every species of offence for which a man can be punished, and yet remains unchanged by the practice of nations, they yet make use of language from which such conclusions are matters of necessary deduction.

In the language of Chief Justice Reid, before quoted, "the general right is acknowledged" by them, and whenever they speak of limitation, it is only as historians narrating the practice of some European nation on the subject for some ages past. "And since no sovereign," says Vattel, "should permit his subjects to disturb those of another, or "do them an injury, much less audaciously offend foreign "powers, it is his duty to compel the offender to repair the "damage or injury, if possible, or to punish him exemplarily, or, according to the case and circumstances, to deliver him over to the justice of the offended state. Grotius' "language, to quote it again, is, "This *right of demanding fugitive delinquents* to punishment, has not *been insisted* upon, in most parts of Europe, for some ages past,

" unless in crimes against the state, and those of very hei-
" nous and malignant nature; as for lesser faults it has been
" the custom to connive at them, unless otherwise agreed
" upon by treaty." Burlamaqui repeats this language almost in the same words, and attributes like opinions to Puffendorf.* Now, when these expressions of the great founders of national law are closely considered, I really do not discover, if your Excellency please, any one phrase that authorizes you to deny that the principle of the law of nations on the subject of the surrender of fugitives from justice, if conceded to exist at all, applies to all cases of offences whatsoever; or to affirm, " that it has never been
" extended in practice to other offences than those of an
" atrocious or heinous description, and such as were recog-
" nized to be of that character by the nation upon whom the
" demand is made." The two positions, with all imaginable respect, strike me, may it please your Excellency, without shadow of pretext or plausibility. With Vattel the obligation flows from the duty of a government to see that its citizens do not molest or injure the citizens of other governments, or the governments themselves, and consequently must apply to *every case* in which an injury or annoyance has been inflicted. Grotius says nothing of the origin of the right or obligation, but speaks of it as an acknowledged thing, and only says it has not been insisted upon for some ages past, in some parts of Europe, in cases of the lesser offences. He gives no intimation that this has proceeded from any doubt entertained that the principle does not extend to such cases, but, on the contrary, he leaves you, by his language, under a violent presumption that it has arisen purely from considerations of convenience. It resolves itself, then, into a mere matter of practice of a few European nations, in relation to the minor offences.

Let us see, then, what this practice has been, and to

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* 2 Burlamaqui, p. 4, sec. 23, et seq.

begin, let me ask your Excellency if you know of any two nations in Europe whose acts on this subject have been regulated exclusively with reference to the principles of national law, who have conceded the right to demand in cases of the more heinous crimes, and denied it in those of a mitigated character. We have just seen England, France and Spain, at different periods of their history, successively disclaiming any such principle as obligatory upon them, even in cases of the crime which stands at the head of your list; and we find treaties on the subject of surrender of fugitives from justice as early as 1174, between Scotland and England; afterwards, in 1308, between the latter power and France, and in 1378, between France and the kingdom of Savoy. Here we have then the four chief and most enlightened powers of Europe—France, England, Scotland and Spain—each respectively repudiating any such principles of the law of nations as binding upon them in their sovereign capacities, and refusing to be governed by them, and making their rights and obligations on such subjects a matter of constant treaty stipulation. It is not from the example of these nations, then, clearly, that you can derive precedents or authority for matters of practice under the principle alone. To what others, then, are we to look? I humbly apprehend your Excellency will find but few, if any, and certainly not so large a number as would justify you, or any future commentator on the law of nations, in saying that the original principle had been at all modified or abridged by the modern practice of nations. The language of Vattel on this subject, in which he speaks of the letter rogatory as an institution which prevails in Switzerland, I have before quoted ;* upon it, by way of commentary, occurs the following passage in your letter to the Governor of Virginia of October 24th, 1839 :† "The name of letters rogatory, "and the remark that this is an admirable institution, and "that it is in force throughout all Switzerland, are sufficient

* Vide p. 19.

† Vide Appendix.

" to show, without other proof, that the usage or practice here " described by the learned author, is not an enlargement of " the law of nations, but that it is a municipal institution " established by the contract of federation between the " Swiss cantons, and that the law of nations is thus super- " seded by a written law, or, as we should describe it, a con- " stitution." Now, I venture to affirm, with all proper respect, that your Excellency has here totally misconceived the meaning of Vattel, or, apprehending it, that you have drawn unauthorized inferences from it. Your evident purpose is to show, that without letters rogatory, governments have no right, by the principles or practice of the law of nations, to insist upon the surrender of fugitives from justice in cases of common offences, and that as this is an institution peculiar to Switzerland, and established by its contract of federation, it cannot serve as a precedent or authority to other states. I humbly apprehend the real state of the facts of the case to be wholly opposed to the tendency of this reasoning. Switzerland, like England, France and Spain, recognizes no perfect obligation upon nations, by the law of nations, to surrender fugitives from justice, whether in cases of crimes of great atrocity or any others; and this very custom of asking for the delivery of fugitives by letters rogatory, furnishes to my mind the most conclusive evidence of the fact, and I think would have done to your Excellency's, if you had reflected upon the obvious etymological meaning of the phrase, and looked into the books which treat of its nature. " Commission rogatory, or letter rogatory," says De Ferriere, (I translate from the French,) " is a com- " mission issued by one magistrate, and addressed to another " who is independent of him, by which he requests him to " execute, within his jurisdiction, some mandate, decree, or " order of justice, or to inform himself of some fact, or to regis- " ter some act, or do some other thing. If the judge who issues " the commission happens to be the sovereign of the other, " the commission will *not be a letter rogatory*, but it will be

" despatched in the form of a decree, and these sorts of " commission are called letters of command, or letters com- " mandatory."* The term rogatory, thus we see, imports a request, addressed to the justice or friendship of the party applied to, and repudiates necessarily all idea of a right, in contradistinction to the *requisition* or *demand* which an acknowledged right would authorize, and which our constitutional provision meditates. Letters rogatory, in a word, resemble exactly the commissions which issue every day from our courts to take testimony in other states, which the persons whom it may be addressed are at liberty to disregard or not as they think proper, and they have been adopted expressly to prevent any prejudice to the jurisdiction of the government surrendering. They then afford conclusive proof of what I have stated in reference to the views which prevail in Switzerland on the subject of these supposed principles in the law of nations on the subject of the surrender of fugitives from justice. There is not a doubt upon the subject; but I will put the matter beyond doubt, and the confirmation is a very remarkable one, by again quoting the language of a celebrated jurist, alluded to in a foregoing part of this pamphlet: " Moribus nihilominus (non tamen " saxonices) totius fere christianismi nixi ex humantate non " sunt admissæ remissiones quo casu remittenti magistratui " cavendum per literas reversoriales ne actus jurisdictioni " remittentis ullum pariat prejudicium."† Here we have the testimony of one of the most distinguished authors of Europe, to the effect that by the customs of *almost all christendom*, the surrender, or the principle of the surrender of criminals, is not admitted, except as a matter of favor or humanity, and when done it is by means of letters rogatory, that there may be no prejudice to the local jurisdiction ! !

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* De Ferriere. Dictionaire de Droit et de Pratique, article Lettres Rogatoires, Tom. l. 2. New Paris edition.]

† Page 6. Voet de Statutis.

Your Excellency will scarcely contend, I presume, that Switzerland alone, of all the countries of Europe, is not included in a declaration thus comprehensive, and without qualification, to which Saxony is the only alleged exception. If not, then, here is conclusive confirmation of what I ventured to affirm a few lines back, that the principle of the surrender of the fugitives from justice was not received at all in Switzerland, and that the custom of letters rogatory had its origin in the fact.

The oppugnancy of this to any thing your Excellency may have said may not be apparent at first sight, for you do not go so far as to declare that this principle *does* prevail in Switzerland, but you would leave us to infer that it does, and that this institution called letters rogatory, was established by the articles of confederation between the cantons for the express purpose of supplying its absence in the cases of minor offences, and thus making it complete, and to extend to all classes of offences. In this view of the matter, the custom, so far from being evidence of the practice of nations under the principle, in relation to the lesser offences, as the Lieutenant Governor of Virginia would fain have persuaded you it was, goes, in truth, to furnish the strongest possible testimony of what you contend for, the limitation of the principle to crimes of great atrocity, or those deeply affecting the public safety. It is for this reason that I have deemed it a matter of some importance to the argument to arrive at the facts of the case as relates to Switzerland, and to see clearly the origin of letters rogatory, and the object of their establishment. I have before alluded to your conclusion that it is a municipal institution, established by the contract of federation between the different cantons, and must now be permitted to ask your Excellency for the proof of the fact. The name itself, you say, and the remark that Vattel makes, that it is an admirable institution, and that it is in force throughout Switzerland, are of themselves, sufficient to convince you of it. Now, sir, I will not

undertake to contradict you on this subject, but I venture to affirm that your Excellency will in vain hunt for any authority for the declaration in any contract of federation now or ever in existence between the cantons of Switzerland. Two writers of eminent consideration on matters of this country say, that there is no one single treaty or compact between *all* the cantons thereof, in their joint and several capacities as equal members of one great federative league, and that the only constitution truly national which Switzerland knows, is that of a federal army, organized in 1688 between the cantons and some associates of the league. The treaties which regulate the relations of the cantons with each other are as numerous as the cantons themselves, who are sovereign independent states, making war and peace, without the slightest reference to the national Diet.* If these views, then, of the meaning of letters rogatory, their object and origin, is correct, the example of Switzerland proves nothing in relation to the original extent of the principle of surrender of fugitives from justice by the law of nations, but becomes highly important as establishing the usages of an enlightened people, adopted from considerations of policy, propriety, justice, and good feeling, on a subject of vast importance to the harmonious intercourse of foreign states; and Vattel evidently designed, in its introduction, that it should be so considered. It certainly is not an enlargement of the law of nations, as you well say and I very much question, with all due respect, whether any one would say it was; nor does it, as I have intimated before, furnish evidence of what I cannot but think you would wish us to believe it does, the original

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* La seule constitution vraiment nationale que nous connaissons c'est l'etat d'une armée confédérale réglé en 1688, entre les cantons et des quelques associes de la ligue. Dictionnaire de la Suisse, Corps Helvetique, vol. 1, p. 71, Planta's Switzerland, vol. ii. p. 291.

limitation of the principle of surrender to crimes of great atrocity; much less is it a municipal institution established by the contract of federation between the Swiss cantons to supply the original defects of such principle in matters of the lesser offences. It is nothing more or less than a practical recognition of the expediency and justice of establishing between the cantons a right to demand, and an obligation to surrender fugitives from justice, in every instance of violation of municipal law; the custom in the first cases allowed from the considerations just mentioned, and afterwards in the lapse of time, and by continued sanction, acquiring the force of statute regulations, like those usages which at different periods have imperceptibly been blended with, and become a part of the common law of England. Your Excellency is not perhaps aware, that this institution, or custom of letters rogatory, is not peculiar to Switzerland, and the presumption, then, for it can be nothing more, even as you express it, that it has grown out of a constitutional provision in the articles of league between the cantons, is deprived of even the appearance of probability. It obtains, says the celebrated writer, so often before quoted in the United Provinces, "Id quod (speaking of the custom of letters rogatory) etiam in nostris "provinciis unitis est receptum,"* and doubtless also exists in the Germanic confederation, and many other states, which have, in the language of Vattel, more intimate relations of friendship and good neighborhood. The truth is, sir, and I think your Excellency will not, upon reflection, contradict it, there is perhaps not a nation in Europe whose practice upon this subject has been regulated upon acknowledgment of, and by reference alone to the original abstract principle of the right and obligation to surrender; nor among that number who have made treaties with each other, or between whom a custom has sprung up in the course of time, in the absence

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* Voet de Stat. § 11, ch. 1, 4. 6. 297.

of treaties, is there any general established rule having the force of universal sanction; and you will permit me to add it is unphilosophical to look for such a one. Every nation will judge for itself in such doubtful matters; be regulated exclusively by regard for her interests in the construction of the law, and in the language of Chief Justice Reid, "en- "force it or not, according as good policy or sound discre- "tion shall require." Should she acknowledge the existence of the principle, she will not consent to its observance in every or any instance, if it conflict with her peculiar interests or views; should she deny it, she will not the less admit the expediency of establishing such a rule, if it comport with them, and she will either sanction a treaty stipulation to this effect, or she will, from time to time, acquiesce in the practical attempts to accomplish it by usage.

Permit me now, sir, briefly to review your arguments and positions on this part of the subject, and to recapitulate what I have said in answer to them. You set out with the proposition that the object of the provision in our Constitution now in question, was to establish the principles of the law of nations on the subject of surrender of fugitives from justice; that it must consequently be construed with reference to such principles; that it can extend to no cases not reached by them, and that as such principles, and the practice of nations under them, have never applied to other than atrocious crimes, or those deeply affecting the public safety, the provision in question could not be said to possess any greater comprehension; and as the case presented by the Executive of Virginia was not one of this character, it could not, consequently, be said to come within its meaning, and that your Excellency would be, therefore, violating the Constitution to yield to the demand. In opposition to these views I have endeavored to show, and I hope not unsuccessfully, that no such principle as a perfect right and binding obligation on nations to surrender fugitives from justice exists in the law of nations; that it has been repudiated in practice by three of the most powerful and enlightened

empires of Europe, and if we may credit Voet, by almost every country in christendom; denied by the largest number of writers on national law, rejected by the highest tribunals of our states, and disclaimed by our government in the only cases in which it has ever come before it for consideration; and that it is preposterous, therefore, to suppose that our forefathers designed to incorporate any such apochryphal principle into our Constitution as a rule for the regulation of the international rights of the states. I have further endeavored to show, however, that if these national rights and obligations be deemed to exist, that they are as broad and comprehensive as the duties, or sense of justice, or considerations of policy in which they had their origin, and that they extend, according to Vattel, Grotius, Burlamaqui, and other most celebrated writers, to every species of offence, whether venial or otherwise, against the laws of a state; that they are not limited to crimes, nor any particular class of crimes, nor have they any connection with the penal code of the state to which the criminal flies. I have further endeavored to show, that this right, if it ever existed, has not been in the slightest degree abridged, modified or affected by the practice of nations, and that no one writer will be found to say that it has; and that it now exists as extended and uncircumscribed as it did a thousand years ago. That the practice of few, if any, European nations, has been regulated by reference alone to the original principle; that it has been almost invariably the subject of treaty stipulation, and that where a custom has originated it has been rather from considerations of expediency and policy, than from any obedience to the supposed obligation in the law of nations; that the customs of the same nations have been different at different times on the subject, and that wherever the right has been limited in practice, it has not been from any doubt of its extension to other cases, but purely from motives of convenience, and that even though it had not, the custom has not prevailed to a sufficient extent, or among a sufficient

number of nations, to have the effect of modifying the character of the original principle, and to make a binding case of practice—in a word, that there has been no universal, or even general usage on the subject, and that, consequently, it remains where it was, and what it was, when governments were first formed, and national laws sprang into existence, to keep harmony in a jarring world.

Now, sir, if in this recapitulation I have been just, and I have claimed nothing that I have not accomplished, I have disposed of the question as far as it is affected by the law of nations. Like Governor Gilmer, however, I have ever been of the opinion that there was no connection between the two subjects, and in what I have written so far, I have been influenced alone by the possible views of others. It is a question, as he says, purely of constitutional construction, and to be determined, as all such questions are, by reference to the provision itself, and the intention of those who framed it. The latter may sometimes be gathered from contemporaneous debate, and in default of this, is fairly deducible from the condition of the country at the time of the adoption of the provision, the professed object of its introduction, and many other circumstances. Resorting first to the most obvious means of interpretation, let us look at the language of the clause in question.

It provides for the surrender of all fugitives from justice charged with the commission of "treason, felony, or other "crime." Now, the first consideration that presents itself to the mind, when looking at this clause in reference to the requisition of the Executive of Virginia, is, whether the act charged constitutes a crime, and to determine this I know of no other method than to have recourse to the writers on criminal law, or, if you please, to the common lexicographers of the language, to see what a crime is. Christian says, that the word crime has no technical meaning in the law of England, and that it seems, when it has reference to positive law, to comprehend all those acts

which subject the offender to punishment.* By Blackstone, Jacob, and other writers, a crime is defined "to be an act "committed or omitted in violation of a public law, either "forbidding or commanding it."† The term, Jacob goes on to say, "may be considered, and is in fact a *genus* which con- "tains under it a great number of species, almost as various "in their names as human actions." By the laws of New-York it is synonymous with offence, and is defined to be any offence for which criminal punishment may by law be inflicted.‡ Crime being, then, found to mean any act in violation of public law, or any offence for which criminal punishment may by law be inflicted, the next inquiry that presents itself is, what is the law, or body of laws, or public law, whose violation is to constitute a crime under this provision of our Constitution. The public law of England, says your Excellency, and the laws of the civilized world. This is indeed strange! The public law of England to determine what is to constitute a crime as between the different sovereign independent states of the American confederacy. To little purpose have we become an independent people if, before we can punish a criminal who violates the laws of one of these sovereign states, and flees to another for protection, we are obliged to show that he has offended some law of the British empire. There is scarcely a state of the large number that constitute this Union, New-York not excepted, that has not taken the pains to define expressly the meaning of every word of doubtful import in her penal and civil code, and it would be strange indeed if the framers of our Constitution should have been less wise and provident, and alone, of all the legislators of our country, have left those for whom they made laws under the necessity of going to a foreign state to ascertain what they mean when thay speak of a crime. If,

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* Chitty's Blackstone, vol. 4, p. 6, note 5.

† Black. vol. 4, p. 5, and Jacob's Law Dictionary, word Misdemeanors.

‡ Rev. Stat. vol. 2, p. 587.

indeed, in determining the meaning of the word felony, your Excellency were to contend for the propriety of a reference to the common law of England, the reason would be intelligible, if not plausible, for felony, by this law, has a technical signification; but I am utterly unable to conjecture any reason for such application in the case of the word crime. The clause in the Constitution contains not the slightest allusion to this body of laws; on the contrary, as you yourself say, the description is effected rather by a reference to the laws of the civilized world, than to those of any particular country. Your Excellency seems to be aware of the force of this fact, and its utter repugnancy to other of your conclusions, and you endeavor to obviate its effects by complacently assuming that this was done by the convention with a view to avoid the appearance of technicality!! "If, then," says your Excellency, after remarking that by the common law of England one man could not have property in another, "we are to look to the common law "for an exposition of the meaning of the convention, (in the "clause in question,) it would seem to be quite clear, that "the provision in question was never intended to embrace "such a case as that presented by your predecessor, (Gover- "nor Hopkins.) This view of the subject is substantially "the same taken in my former communication, where I re- "ferred to the *universal laws of the civilized world* as "affording the means of determining the kind of offences "intended to be included in the constitutional provision. "The common law of England *may be* said to define those "offences which the laws of the civilized world recognize as "deserving punishment at all times, and at all countries. "A desire to avoid the appearance of technicality induced a "description of these crimes by reference to the laws of the "civilized world, rather than to the system of a particular "country, although that system is acknowledged by us to be "the most perfect which has existed among men."*

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* Vide Appendix.

However willing to concede to your Excellency great sagacity in the penetration of the motives of men, you will forgive me, if, in the present instance, I am not disposed to acknowledge your infallibility, and should choose to cling rather to the facts, than to your explanation of them. In your earlier communications to the Lieutenant Governor of Virginia, you maintained, as it appears from this, that a reference to the universal laws of the civilized world afforded the only means of determining the kind of offences designed to be embraced under the provision in our Constitution. You are now disposed to change your grounds, and to look, not to the universal laws of the civilized world, but to the common law of England, which you say, however, is substantially the same thing, as the latter may be said to define those offences which the former recognize as deserving of punishment, and the convention wished to avoid the appearance of technicality, by referring to any particular system, although that system should be the source to which the framers of our Constitution intended us to apply for the true meaning of their language. As to the common law defining the offences which the civilized world agree generally in pronouncing worthy of punishment, your Excellency might, I apprehend, with equal reason, have made a similar declaration of the Napoleon Code, or the Spanish Recopilacion; and in relation to your conjecture touching the motives of the convention, I wonder it did not strike you, that your adversary might question the influence which you are disposed to attribute to a fear of technicality upon its members, and call upon you for the proof thereof. I do not deem it a matter of much moment, however, whether you contend for the universal laws of the civilized world, or the common law of England, as the proper source to which we are to look for the interpretation of phrases used in our domestic Constitution, although certainly it would be desirable to know to which of the two your Excellency, upon reflection, gives the preference. The truth is, sir—I say it with all imaginable respect—I am strongly inclined to think that, after writing

your first letter to the Lieutenant Governor of Virginia, in which you contended for the propriety of referring to the universal laws of the civilized world for the means of determining the meaning of the clause in the Constitution, that you began, upon reflection, to think that the word "felony" smacked too strongly of the common law and the laws of the States, to admit of any connection whatever with the codes of any other countries. Under such circumstances, it became necessary to modify this position in some way or other, and you could think of no better means than to assume that the common law defines those offences which the laws of the civilized world recognize as deserving of punishment at all times and in all countries. Be this so or not, however, it is not material to the argument, nor, as I before remarked, is it a matter of any consequence, as far as relates to the case of Virginia, whether we are to look to the common law of England, or the laws of the civilized world, for an exposition of the meaning of the word crime, except perhaps that property in slaves may be said to be sanctioned by the latter, while it is repudiated by the former. I am willing, then, to consider your Excellency as contending for the common law of England as the proper source of reference in the present instance. The first consequence that flows from this position is, that no crime, however flagrant, however subversive of society, and fatal to the public safety in the State where it is committed, can be looked upon as such as between the States, unless it happens to be prohibited by the laws of Great Britain, or the State in which the criminal shall be arrested. This, if true, is indeed a singular defect in the federal Constitution. Before we proceed, however, to ascertain whether it exists, permit me to ask your Excellency why you select the common law of England, rather than the law of France, of Russia, of Pennsylvania, or of Virginia itself, to find out the meaning of the word crime, as used in the Constitution. Crime, sir, as I have shown you, has no technical meaning by the common law of England. Felony has; and so has treason; and so has

grand larceny, and petit larceny, and many other *species* of crime; but crime itself, as we have seen, is, a *generic* word, designating all acts committed in violation of the public laws. The legislatures of the different States, as before intimated, have not been silent on the subject of its meaning. They do not compel your Excellency to have recourse to other States and other codes of laws, to ascertain the signification of phrases which they, in common with the federal legislators, make use of in the framing of penal statutes. New-York has defined expressly, as quoted in a preceding page, what is her idea of the meaning of the word crime. Here, then, we have the means, much nearer home, and equally legitimate, of coming at its true purport, and New-York certainly has as strong claims to have her statute book consulted on this subject as Great Britain. If New-York has, however, Pennsylvania has equal claims with New-York, and Virginia with Pennsylvania, and Ohio with Virginia; and thus, eventually, we should be obliged to have recourse to the penal code of every State in the Union, before a fugitive from justice could be surrendered. This would be obviously absurd; but, absurd as it is, such are the consequences of a contemplation of any other laws than those of the State in which the offence is committed, as a means of ascertaining whether a crime has been committed or not. It is not within the limits of possibility, I had nearly said—certainly not of probability, that our forefathers would have omitted to give the meaning of the word crime, if they had anticipated any such result.

By way of illustration of your principles on this point, let me suppose that your Excellency is called upon by the neighboring State of New-Jersey for the surrender of a criminal charged with that which is a crime under her laws and the laws of this State, but for which the punishment is different. Suppose it were for a robbery committed in New-Jersey by a citizen of New-York, and that the crime was punishable with death there, as in England, while here only with imprisonment in the penitentiary; what would your Excellency

do in such a case? You could not surrender a citizen of New-York, "whose liberty is dear to her, and guaranteed by her Constitution," to be hung in New-Jersey, for a crime which is only a slight offence, and punishable with temporary imprisonment, by the laws of his own State. This would be as bad as to surrender three of the free citizens of "New-York to Virginia to be punished for acts which are, in *themselves, innocent or meritorious*," or even to Pennsylvania to be tried for "*fornication*;" for the sovereignty and dignity of a State seem to me—although I may be mistaken—quite as much concerned in shielding its citizens from excessive punishments, such as death for venial offences, as it is in protecting them altogether from punishment for acts which constitute no offence at all by their own native laws. The principle is the same in both cases; and yet I do not see how you could refuse to give up the criminal to New-Jersey, for robbery is a crime by the common law of England, by that of the civilized world, and, what is worse than all, by the law of New-York itself. I fear your Excellency would find this rather an embarrassing case under your avowed principles, and I do not see how, with fidelity to them and the Constitution, you could act, unless with the surrender you would couple a condition that the punishment should be that of New-York, and thus present the extraordinary spectacle of a man tried by the tribunals of one State for the violation of *its* law, and receiving the punishment prescribed for such violation by the laws of another State, or otherwise prevail upon the Governor of New-Jersey to split the difference with you, and inflict a new punishment compounded of that of each of the States, well mixed up together. I do not design to treat the subject with levity, but really, with all respect, these seem to be legitimate consequences of your peculiar doctrines.

But to go back again to the provision: it provides that "any person charged in any state with treason, felony, or "other crime, who shall flee from justice, and be found in "another state, shall, on demand of the executive authority

"of the state from which he fled, be delivered up to be re-
"moved to the state having jurisdiction of the crime."
Looking at it, with its language so plain, and its object so palpable, without reference to the present controversy, it seems difficult to understand how it could be differently construed by any two persons. The first observation that occurs to one as decisive in considering it, and I would draw your Excellency's attention to the fact, is that it contemplates the making of the charge *in* the *state* from which the criminal flees, and *before* he flees. Now, sir, it is hardly to be supposed that an individual would be charged in any state with that which was not a crime by its laws; nor can you suppose that he would be exempted from accusations for any one of the various species of crimes recognized by the same laws. He would be liable to prosecution for all, and in no instance is it probable there would be any delay to ascertain whether that which was an offence by the laws of the state, was an offence by the laws of England, the civilized world, and, as a component part of it, the different States of the Union. The framers of our Constitution knew all this—they knew that the stealing of slaves was a crime by the laws of the slave holding states, and that the citizens of such slave holding states, and others thereunto coming, were liable to commit such crimes; to be there charged with them, and to attempt, like all other criminals, to escape by flying from the state; and yet you say that these men, coming all from slave holding states themselves, with the exception of the delegation from Massachusetts, with these obvious reflections present to their minds, purposely worded the clause which they were then about introducing in the Constitution on the subject of fugitives from justice, in such a manner as to exclude this, to all probability, large body of malefactors: thereby protecting such from punishment as were wary enough to escape, and thus indirectly doing all in their power to secure immunity to a crime against the peculiar species of property, that constituted the great bulk of their fortunes, and against the institution of all others upon

which they had hitherto exhibited greatest sensibility, and the security of which, until they, in their calm wisdom, should think proper deliberately to abolish it, was most closely wound up with their own personal safety and worldly welfare!! I do not know whether your Excellency, upon reflection, will deem this probable or not; in my opinion it cannot be brought within the range of possibility, save upon a supposition of such magnanimity in the sacrifice of personal considerations to an abstract principle of doubtful philanthropy as the history of man furnishes no parallel to, or else of such reckless indifference, or mole-like blindness, as my hand would tremble to record of those of our great ancestors who sat in the Convention of '83.

Let us see if the clause could have been rendered more explicit. Suppose, sir, they had added the words "known to its laws," after the close of the first part of the sentence, and that the provision ran thus: "Any person charged "in any state with treason, felony, or *other crime known to* "*its laws*, shall," &c., your Excellency certainly could not take the objection you now do. The only question under such circumstances would be, whether the offence was a crime by the laws of the state demanding the fugitive; and yet the provision does not seem to be rendered clearer or more intelligible by the additional words, for you cannot suppose that a man would be charged in a state with a crime that *was not known* to its laws. If charged with any thing within its jurisdiction, it would necessarily be for some violation of them; for to accuse a citizen of Virginia of committing in Virginia what was not an offence by its laws, but an offence by the laws of England, would be indeed an anomalous proceeding. On the other hand, it strikes me, sir, that if the framers of our Constitution had designed to confine the surrender to such cases of crime as were recognized by the common law of England, or by the laws of the civilized world, that they would have made known their intention by inserting in a proper place some words expressive of it. The clause might then have been, "any person charged in

" any state with treason, felony, or other crime *known to the* " *common law of England, or the civilized laws of the world* " generally, who shall flee from justice, shall be surrendered " up," &c. This would seem to have been a matter of obvious precaution, aware as they were of the existence of slave property in every state of the Union except one, and of the penal as well as civil laws for its protection. They must have foreseen, as before remarked, therefore, that there would be criminal prosecutions under these laws, as under all others; that the criminals would escape, and that the executives of the different states would be called upon for their surrender, under the clause they were then about to insert in the Constitution. Under such circumstances, to have left it as it is, with the purpose all the while entertained of excluding from its operation all crimes in relation to slave property, would have been such a piece of blundering folly or criminal wickedness as can hardly be laid at the door of the Convention of those who framed our Constitution. Oh no, sir ! no such design, I am satisfied, ever entered the heads of the members of that wise and patriotic body of men. The first syllable uttered expressive of it would have been denounced as treason to the slave holding states, and the Constitution, in which, like the wooden horse of Troy, it was sought to be concealed, would have been indignantly spurned by every representative they had on that august occasion.

To revert once more to the clause, let me ask your Excellency if you attach no particular importance to the expression " other crime," at the end of the first part of it. That the Convention who framed it did, is demonstrable from a fact which seems to have escaped your research, and has not yet been brought to bear on this controversy.* It is that un-

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* Since these sheets have been in the hands of the printer, the writer has seen an allusion to the circumstance he is about to narrate in the able argument of Senator Paige, delivered lately in the New-York Senate, on this same subject, and published in the Albany Argus of 23d April.

der the old articles of confederation the clause stood, "a "person charged in any state with treason, felony, or *other* "*high misdemeanors*," and that the words *high midemeanors* were expressly rejected by the Convention, when framing the one we are now considering, as having too technical and limited a meaning, and the words *other crime* substituted in their place in order, as Mr. Madison says, that the provisiom might "comprehend all proper cases."* This is the fact as stated by this distinguished reporter, and really, sir, with all due deference, seems to be decisive of your doctrine in relation to its limitation to crimes of great atrocity, or those deeply affecting the public safety. With the clause as it stood under the articles of confederation, "treason, felony or *other* "*high misdemeanors*," it would have been impossible, I imagine, for your Excellency to have connected in any way the principles of the law of nations. The language is too purely technical, and that of the common law of England, to have admitted of a reference to the codes of other countries. The Convention was aware of this, and as they did not design to restrict its operation to these, or any other specific characters of crimes or offences, they deemed it necessary to adopt other language, and therefore selected the word crime as being a general one, and embracing, according to the best writers on penal jurisprudence, and even by the common law of England, all acts in violation of the public law of the land. Here then is an express abandonment of technical phraseology, as being too limited for the purposes of the Convention and the substitution of other language peculiar to no code of laws, and having no technical meaning, according to the able commentator on Blackstone, even in that system to which your Excellency perseveringly insists we should look for the explanation of the phrases of our Constitution. Did the Convention accomplish nothing by this change? Have they been foolish enough to leave out one phrase as too restricted,

* The Madison Papers, vol. iii. 1447.

and adopt another which means the same thing? In a word, does the clause, as it now stands in the Constitution, mean no more than it did under the old articles of confederation? If it does, what are the offences which it embraces which the old provision did not? I will endeavor to answer these questions. Crime, we have just seen by the common law of England, has no technical meaning, and embraces ex vi termini, all acts without any distinction whatsoever, in violation of the public law. Crimes, however, are divided by the common law into crimes of a higher and crimes of a lower nature, and to the former is given the name of *felonies*, and the latter that of *misdemeanors*. The latter, however, do not cease to be crimes, and are only misdemeanors in contradistinction to felonies, the corresponding class of crimes. Misdemeanor, "in the law of England," says Jacob, "signifies a crime, and every crime is a misdemeanor." Blackstone uses crime and misdemeanor as synonimous when giving their definition: "Crime, or misdemeanor, (he says) is an act," &c., and he afterwards expressly says they are synonimous terms in the English law. If then the proper legal sense, and the etymological meaning of crime be any act committed in violation of public law, and if it embrace, therefore, as it necessarily must, all offences whatever, as well misdemeanors as felonies, and if the Convention designed to use it in its proper sense, then the clause covers the whole class of *misdemeanors*, and your Excellency is not at liberty to decline a requisition for surrender in any case even of these offences. But, you say, and you quote some writer whose name you do not give—Blackstone, I presume—to show that crimes and misdemeanors have different meanings in common usage, the former being used when speaking of offences of a deeper and more atrocious dye, while the latter is applied to denote smaller faults and omissions. You then go on to affirm that the framers of our Constitution intended to use

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* Jacob's Law Dictionary. Word Misdemeanor.

the word in its restricted sense, and you find, you intimate sufficient evidence of this in the Constitution itself, and in the pages of Vattel and Grotius!! The evidence to which you allude as existing in the Constitution consists in the use of the word *misdemeanor*, after *crime*, in the fourth section, second article; the language of which provides, that "the President, Vice-President, and all civil officers of the "United States, shall be removed from office on impeach- "ment for, and conviction of, treason, bribery, or other *high* "*crimes and misdemeanors*." "The addition of the word "*misdemeanor* shows," says your Excellency, "that, in the "opinion of the Convention, offences of that nature were "not included in the word crimes." I confess, sir, I am a little surprised at this idea. Do you really suppose the Convention to mean, by the word misdemeanors, in this clause, the offences, according to Blackstone, which are sometimes spoken of in contradistinction to crimes; and that their intention was that the President of the United States, and the other high functionaries of our government, should be removed from office on impeachment and conviction of the smaller faults and omissions which constitute such offences? This would be indeed treating the highest officers of the government with a degree of rigor unknown in any other state in the world, and not practised in the ordinary relations of life between man and man. I wonder that this reflection alone had not been sufficient to have satisfied your Excellency that the Convention could not have meant what you say it did by the word misdemeanors; a moment's consideration or research into any book on the criminal law of England must, I apprehend, have placed the matter beyond controversy. The expression *high crimes and misdemeanors*, is one of the most common in the English law, made use of in every impeachment before the House of Lords in England, and I have never heard its meaning, as applying alone to great and enormous offences, questioned, save by your Excellency. The English law knows no *impeachment*, I humbly venture

to say, for a lesser *fault or minor* offence. "An impeach-
"ment," says Blackstone, "is a presentment to the most
"high and supreme court of criminal *jurisdiction*, by
"the most. solemn grand inquest of the kingdom," for treason, felony, or other crimes and misdemeanors. "A
"commoner," he goes on to say, "cannot, however, be
"impeached before the lords for any capital offence, but
"only for *high misdemeanors;* a peer may be impeached
"for any crime.* The articles of *impeachment* are a kind
"of bill of indictment found in the House of Commons,
"and afterwards tried by the House of Lords; who are in
"cases of *misdemeanors*, considered not only as their own
"peers, but as the peers of the whole realm." "It is a
"custom," says Jacob, "derived from the Constitution of
"the ancient Germans, who sometimes, in their great coun-
"cils, tried capital accusations relating to the public." Licet apud concilium accusare quoque et discrimen capitis intendere. Tacitus de Mor. Ger. 12. It is thus clear, that having reference to the nature and character of the peculiar species of prosecution termed an impeachment under the English law, as well as to the great tribunal before which it takes place, it would be absurd to speak of an impeachment for one of the lesser offences or smaller faults, and I apprehend it must be equally so under our Constitution. This would be enough of itself to determine the question. But this is not all. In the language just quoted your Excellency will find that Blackstone makes use of the very term *misdemeanors*, or *high misdemeanors*, to express crimes of the very highest character, offences more enormous even than those for which capital punishments alone are inflicted. In addition to all this, we find Mr. Christian saying expressly, in one of his notes to Chitty's edition of Blackstone, that when the words *high crimes and misdemeanors*—the words in the Constitution—are used in *prosecutions by impeach-*

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* Vide 4 Black. 260.

ment, that the words *high crimes* have no definite signification, but are used merely to give greater solemnity to the charge.* Here we have the authority of this distinguished commentator to the fact, in opposition to your Excellency, that high crimes, when used as in the Constitution, in matters of impeachment, mean nothing, have no definite signification, and are merely used to give greater solemnity to the expression, and that the only word which does mean any thing, and which bears the sense, and makes the potency of the phrase, is the very word *misdemeanors*, which you contend means nothing more, in a similar phrase in our Constitution, than those lesser faults or minor offences, which the law punishes with a small fine and short imprisonment!!!

I may safely conclude, at least, after this, I think, that the Constitution furnishes no evidence that the word crime is used in contradistinction to misdemeanors. Let us see now how the supposition can be reconciled with the act of the Convention just alluded to. If this body used crime in this sense, it can only be by reason of the distinction to which Jacob alludes when he says: "Every crime "is a misdemeanor, yet the law hath made a distinc- "tion between crimes of a higher and a lower nature, the "latter being denominated misdemeanors, and the former "felonies."† It appears, however, that by this distinction all *crimes* are *felonies*, and that the word felonies, therefore, comprehends all offences which are crimes in contradistinction to misdemeanors, while it is only those offences which being of a less atrocious character than crimes that are denominated misdemeanors. What then did the Convention mean when they struck out the words *high misdemeanors*, and substituted "other crime?" Why did they not let the phrase remain as it was, or, after striking out high misdemeanors, why did they add any words at all, if they meant,

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* Vide Blackstone's Com. vol. 4, p. 6, note 4.

† Jacob's Law Dictionary, word Misdemeanor.

by the word *crime*, as you say they did, only offences of an atrocious character, and if " felonies," being synonimous with it in the English law, would have expressed all these. Treason *and felony*, under such circumstances, would have covered all that, according to your views, the Convention designed to embrace. Changing, then, the phraseology of the old clause, and substituting the words " other " crime," would have been a matter of such palpable folly as one can hardly attribute to the framers of our Constitution ; and were they alive now they would not be much complimented to be told that they had been guilty of it by reason of their ignorance of the meaning of the words they were using in their legislation ; and that a phrase of which they took the trouble expressly to alter the language, remains the same, and means but what it did before. But this cannot be so, sir. We must believe that the Convention were aware of the full meaning of the word *felony* in the English laws, because they could not know that the word *crimes* was ever restricted to offences of a higher nature, as you contend has been done by them, without being aware, that whenever this was the case felony was synonimous with it, covering every offence that it did, and that the term *misdemeanors* embraced all the other offences that remained, and were not *crimes*. We are driven, then, to suppose, that when the Convention struck out the term *high misdemeanors*, as being too technical and limited in its meaning, and adopted the present expression of " other crime" in lieu of it, in order to comprehend all proper cases, that they must have meant thereby to embrace some offences which were not *felonies*, and consequently *not crimes*, and, therefore, necessarily *misdemeanors*, unless there are some intermediate offences ; and if there are, I should be glad if you would put your finger upon them. I may over estimate the force of this reasoning, but I humbly submit to your Excellency whether it is not conclusive. One thing at least you will not deny, and that is, that the phrase, as it stood under the old articles of confede-

" ration, treason, felony, or other high misdemeanors," or even with the words *high misdemeanors* omitted, would have comprehended all the crimes you enumerate as coming within the purview of the Constitution, such as " treason, murder, arson, " burglary, forgery, perjury, rape, incest and bigamy :" for I take it for granted that you will admit that there is no one crime of all these that is not a felony or high misdemeanor at common law. When, then, they struck out high misdemeanors, and substituted *other crime*, they must necessarily have designed adding some offences which were not comprehended by the old clause, and consequently are not within your catalogue. What these additional offences are, if not misdemeanors, I must again apply to your Excellency to know. If it could be necessary to offer any thing farther in confirmation of conclusions which are so self-evident, it might be found in reflecting upon the extreme probability of the Convention's adopting some general comprehensive phrase like the present in lieu of the language of the old provision under the articles of confederation. They were well aware of the various legislation of the states, and the various phraseology of their statute books, and providing a clause, as they were about to do for them, it would have been very absurd to have retained language which, having a technical meaning under the system from which it was derived, might very naturally have a technical meaning among them to be variously used. And now, sir, permit me to say, I do not perceive, with your Excellency, any great objection to the extension of the principle to misdemeanors, and indeed *every case* of violation of the municipal law of the state. It is done, Vattel says, in many states which border upon each other, and have very friendly relations. Switzerland does it, as appears by your own acknowledgment, whether by means of a constitutional provision, or from long established usage, is a matter of no moment. If Switzerland, then, carries it thus far, composed as it is of thirteen republics, only joined together, as it were, by a league offensive and defensive, the parties to which, in

every thing that does not touch the liberties of each other, are as sovereign and independent as great Britain, and have religion and laws as opposite as those of any two countries in Europe,* it would not seem extraordinary that the same practice should be pursued in the different states of this Union, who are, to all foreign purposes, one people; who have a common constitution, and a common government, the laws of which act upon them, unlike those of the Swiss Diet, in their personal capacity as citizens, and to which they have delegated the chief attributes of their sovereignty. But Switzerland is not the only country in which this principle is thus extended; the United Provinces have deemed it proper to give it an equal comprehensiveness in their intercourse with each other. As far then as example goes, your Excellency finds it in the two governments of Europe that bear the closest, and I may say the only resemblance to our own; and when it comes to considerations of expediency and justice, I am the more surprised that your Excellency should take the views you have done. I confess it does not seem to me so horrible a thing to surrender a citizen of New-York to be tried for every violation of the laws of one of her sister states, even though that violation be "fornication," or "adultery," or even any thing less censurable that constitutes no offence by the laws of New-York. Fornication and adultery are both crimes by that book which most of us bow to as authority, but whether they are or not, or whether they are by the laws of New-York, is a matter of no moment. It is enough that they are crimes by the laws of Pennsylvania, and that he who committed them did it within her territories, while he was under her own laws, and within her jurisdiction, and in defiance of her express commands and her public policy; and New-York, in the language of Vattel, is bound to presume that "she has acted with justice," "and not by her doubts or suspicions to break up an institu-

* Vide Planta's Switzerland, vol. 2, p. 292.

" tion or custom so necessary to preserve good harmony be-
" tween states, as the surrender of fugitives from justice in
" every case of offence."* Your Excellency is not at liberty to suppose that the different states of the Union would ever make it a crime " to omit paying a debt," or " to neglect " going to church," or to " look upon a magistrate," or " to " shelter and clothe a free negro," or that they will declare any other " harmless act a felony." You surely cannot be justified in such an expectation from Virginia making it a felony to steal one of her slaves, nor can you be from New-Hampshire and Pennsylvania affixing a slight penalty to fornication and adultery, absurd as it may be, as long as you recollect that the Mosaic law prohibits both offences; and if you were, and the justice of a man being punished for the violation of the laws of a state which he has been permitted to enter upon the implied promise that he would obey them, would not justify the act and make a state indifferent about the surrender of the offender, the possible result can constitute no just objection to the principle. Vattel contemplates the possible abuse of even letters rogatory, for, he says, if a " continued experience shows the sovereign," *le supériéur de l'accusé*, " that his subjects are harassed by the magis-
" trates of the neighboring states by whom they are sum-
" moned to appear before, he will be permitted, doubtless, to " think of the protection due to his people, and to decline " obeying the letters rogatory until they explain the abuse and " correct it." That I am correct, however, in concluding the provision in our Constitution to apply to *misdemeanors* I have at least the authority of the supreme court of this state in the case of Clark, so often referred to in the correspondence between you and the Governor of Virginia. Commencing at the bottom of the 221st page of the opinion of the court, delivered through Chief Justice Savage, your Excellency will find the following language: " It was also objected

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* Vide Vattel, lib. II, c. vii. § 76. 328.

"that a crime of greater atrocity" (the crime with which Clark was charged under the laws of Rhode Island, was that of fraudulent management of a bank, the penalty for which was a fine of $5,000) "was intended by the Constitution "than is here charged. It seems that when proceedings "are instituted by the comity of nations, they apply only to "crimes of great atrocity, or deeply affecting the public "safety. 1 Kent, 35. The statute of our state to which "Chancellor Kent refers has been repealed, and I have not "found the substance of it re-enacted in the Revised Sta- "tutes, but what may have been intended as a substitute; "that certain offences committed out of our jurisdiction may "be punished within it. 2 R. S. 698, § 4. With the "*comity of nations we have at present nothing to do*, unless "perhaps to infer from it that the framers of our Constitu- "tion and *laws intended to provide a more perfect remedy; "one which should reach every offence criminally cogniza- "ble by the laws of any of the states.* The language is, "treason, felony, or other crime; the *word crime is synoni- mous with misdemeanor.* 4 *Black. Com.* 5, *and includes* every offence below felony punished by indictment, as an offence against the public."*

Here, then, I humbly apprehend, we have, after argument and due consideration, the solemn judgment of the Supreme Court of this state to two points involved in, and, if I mistake not, decisive of, the controversy between you and Virginia. First, that the word "crime" in the constitutional provision touching the surrender of fugitives from justice, is synonimous with misdemeanor, and farther that it reaches not only such offences as are misdemeanors in *all the states*, or *at common law*, but any and all acts that are misdemeanors, or, in other words, criminally cognizable, by the laws of *any one* of the states. Now, sir, you cannot object that these

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* In the Matter of Clark, 9 Wendell's Rep. 221—2.

questions were not raised in the progress of the discussion, and that these opinions, therefore, are mere dicta. It was distinctly alleged, in the very outset of the argument of Clark's counsel, that the clause in the Constitution contemplated a crime of greater atrocity than the one alleged to have been committed under the laws of Rhode Island. They assumed, indeed, as your Excellency has done, that it applied only to crimes of the highest nature, and "*universally so considered*;" and as the offence charged in the certificate of the Rhode Island Governor, was only a civil one, or, if criminal, punishable with a fine, that it could not be said to come within its contemplation. Under these circumstances the court found it necessary to pass upon these points. They did so, and their opinion, as before quoted, was, that it was not necessary that the offence charged should be an atrocious one, nor was it necessary, whatever it might be, that it should be an offence universally so considered, or by the laws of all the states, but that it was enough if it were an offence, whether misdemeanor or felony, *criminally cognizable by the laws of any of the states.*

Does not this language cover the case of Virginia? Is she not here sustained in her demands even by the court next one of the highest resort in that very state upon whose justice she urges them? Can any thing be clearer? Can any thing more be desired by Virginia? Is not the offence with which Johnson, Smith, and Gansey, are charged, and for which they are demanded at your hands, an offence "criminally cognizable by the "laws of one of the states," yea, by the laws of nearly one half of the states that compose our confederacy, and not merely a misdemeanor, but a felony? It can scarcely be necessary to stop to answer these questions, and yet your Excellency, on this very case of Clark, makes use of the following language in your letter to Governor Gilmer.* "The

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* Vide Appendix.

"question whether the alleged offence was a crime recog-
"nized by the laws of New-York, was not even raised in the
"case, and was not discussed by the court. In fact the
"offence was *one familiar to our* laws, and there was, there-
"fore, no *occasion to examine the nature of the crime*
"*charged.* I have been unable to discover, in the reason
"assigned by the learned Chief Justice, any ground for
"supposing that the Supreme Court intended to intimate
"that the Governor of this state was bound to submit his
"judgment in regard *to the class* of *cases falling* within the
"constitutional provision to that of the executive by whom
"the requisition was made. Indeed the principle that the
"decision upon the obligation to surrender fugitives de-
"manded rests with the executive upon whom the demand
"is made, is recognized not only in the case of Clark, but in
"every case in which the question could be raised."

At language like this, with the case of Clark open before you, I must be permitted, with all proper respect, to express my unbounded astonishment. The question whether the alleged offence was a crime recognized by the laws of New-York "was not raised," it is true, in so many words, but as I have before stated it was distinctly maintained by the counsel of Clark, and urged upon the court throughout the whole argument, that the offences which the clause in the Constitution contemplated were those alone of an atrocious nature, or deeply affecting the public safety, and universally so considered, and could not, therefore, apply to an offence which was not punishable in all the states, and even under the laws of Rhode Island, was but a civil one, and the court could not have decided these points without deciding this very question, whether raised or not. There were no means by which it could have sustained the executive, and refused the discharge, without adjudging the meaning of the word crime in the Constitution to be a misdemeanor, and that it applied to every act, whether misdemeanor or not, made criminally cognizable by the laws of any one

of the states. It was not pretended by the attorney for the commonwealth, that the crime alleged in the certificate of the Governor of Rhode Island to have been committed, was a crime at common law, in the states generally, or by the laws of New-York, and therefore a proper subject for the operation of the clause; nor are such facts alleged in the opinion of the court to sustain its decision. It was absolutely necessary, therefore, in order to meet the points of the counsel for Clark, and to refuse the application, that the court should determine that the clause applied to every offence made criminal by the *laws of any of the states*, and that, consequently, whether it was so at common law, or by the laws of the state of which the demand was made, was a matter of indifference. The question, then, "whether "the alleged offence was a crime recognized by the laws of "New-York," though not distinctly "raised" or "discussed," was necessarily passed upon by the court, and must be considered as settled wherever the decisions of the Supreme Court of the state are considered as authority. This view of the case, and the judgment of the court, will be placed still further beyond the reach of controversy, if I may be permitted to doubt the correctness of what your Excellency alleges when you say that the offence with which Clark was charged "was one familiar to the laws of New-York, and "that therefore there was no occasion to examine the nature "of the crime charged." I will not venture to contradict one whose knowledge is far greater than any I can lay claim to; but really, sir, I have been utterly unable to discover any trace of such a crime as the mismanagement of a bank in any statute of New-York, however familiar the public here and elsewhere may have become with such offences of late years. Whether there was "no occasion to examine the "nature of the crime charged," or not, I will leave it to you, and the judges who sat in the cause, to determine. Probably there would not have been, if they had agreed with your Excellency on the subject of the knowledge which our laws

had of the offence; but one thing is very certain, and beyond doubt, that the court *did examine into the nature of the crime charged*, and very minutely too.* If *you* infer that there was no occasion for examining into the nature of the crime charged, because the offence was one familiar to our laws, surely if it is proved that the court did examine into the nature of the offence charged, *I* may be permitted to infer that the offence was not familiar to our laws; at all events, that it was not familiar in the opinion of the judges of this court. If I am correct then in supposing the offence not to have been known to the laws of New-York, the conclusions which I have expressed are even more strengthened yet; for if it was not an offence by the laws of New-York, it must have been known to the court, and the opinion that they considered the bearing which this fact had upon the question, and deemed it not at all affected by it, gains such force as to admit no longer of being assailed.

Such, I understand, construed with all possible stringency, to be the case of Clark, as decided in the Supreme Court of this state. But to proceed, and come now, although at a late hour, to what I deem to be the true consideration on which this matter hangs, let me ask your Excellency how you can possibly imagine that it was the object of the Convention who framed our Constitution to exclude from its operation all crimes thereafter to be committed against the existing laws for the protection of slave property? Pause for a moment, sir, and look at the condition of this country at the time of the adoption of the federal Constitution, and the circumstances which attended the introduction of the clauses in relation to property in slaves. Under the old articles of confederation, the states being only bound together by a sort of league offensive and defensive, it was not thought necessary to say any thing on the subject of the peculiar insti-

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* "It has been objected that no offence has been committed. If we look into the statute of Rhode Island, we find a criminal offence," &c. Ch. J. Savage's Opinion, p. 221.

tutions and laws of each state, and great, very great difficulty was experienced on the subject of runaway slaves, by reason of the absence of any provision like the one which exists in the present Constitution, authorizing their reclamation in other states. When it was resolved, however, to adopt a more perfect and permanent form of government, it became necessary to provide a remedy for this, and consequently to consider the existence of this peculiar species of property; and the result, after an angry and long continued debate of many weeks, was the introduction of the second sections of the 1st and 4th articles of the Constitution; the one providing for the apportionment of representation and direct taxes among the different states, and the other forbidding the states to interfere with the relations of master and slave, and requiring them to deliver the latter up. The first provides, "that represen-"tatives and direct taxes shall be apportioned among the seve-"ral states which may be included within the union according "to their respective numbers, which shall be determined by "adding to the whole number of *free persons, including those "bound to service for a term of years*, and excluding "Indians not taxed, three fifths of *all other persons.*"

"The last provides "that no person held to service or labor "in one State under the laws thereof, shall be discharged "from service in consequence of any law or regulation in the "State to which he escapes, but that they shall be delivered "up to the person to whom such service or labor is due." Here, sir, then, beyond all peradventure, is a distinct and solemn recognition of the institution of slavery, and not in mere words of acknowledgment only, but in the shape of constitutional provisions for the avowed object of its protection; for that that was the purpose of the first clause just quoted, is placed beyond controversy, from the declarations made at the time of its adoption by the representatives of the slaveholding States. It was introduced and urged upon the Convention as a measure imperiously called for, and indispensably necessary to the security of this species of property; and while all lamented the necessity of such a precaution, they did not

attempt to disguise from the Convention their unchangable resolution to adopt no form of government into which it did not enter as a component part.* Could any thing short of direct legislation be more plainly eloquent of the intention of the Convention in relation to slave property? Does not the language of Mr. Randolph and the other Southern members constitute a preamble, as it were, to this clause, declaratory of this as the object of its introduction? It cannot be affirmed that they are represented in any other light than as property. It cannot be as free men, because they are to be added to the persons designated as free men; nor can it be as persons born to service, for all these are to be included with the free men; nor can it be as Indians, because they are expressly excluded; and I have yet to learn that there were any other class of human beings in the United States at the time of the adoption of the Constitution, than free men, including apprentices born to service, Indians, and slaves. There is no evading the force of this language of the Constitution, whatever may be thought of the other two provisions in question. But this was not all. They were not satisfied with throwing the safeguard of the Constitution around slave property in the place of its existence, by providing for its distinct representation upon the floor of Congress, as long as a vestige of it remained in any part of this expanding empire. They demanded that the arm of the federal government should follow it wherever it might be found, even within the territories of their sovereign sisters, and be ready, in the hour of danger, to defend it from the assaults of its enemies; and the states therefore were forbidden to pass any laws in subversion of the master's rights, and were required to lend their civil power, and open their courts of justice for their vindication. Is it possible for the imagina-

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* "Express security ought to be provided for including slaves in the ratio of representation. He lamented that such a specie of property existed; but as it did exist, the holders of it would require this security." Speech of Mr. Randolph, of Virginia. Madison Papers, vol. 3, p. 1083.

tion to conceive stronger evidence of the intention of the Convention to recognize property in slaves? And yet you say it never designed that the provision in relation to the surrender of fugitives from justice should extend to crimes committed against this property—a species of property constituting, in a great measure, the wealth of twelve states out of the thirteen of the Union, distinctly guarded by constitutional provisions, one providing for its specific representation, and the other its inviolability, even within the territorial limits of the single free state, and yet left out of all consideration when framing a clause to punish crime against property and to prevent the escape of fugitives from justice!! The civil laws of the states constituting and providing for the protection of this anomalous species of property, not only recognized, but fortified by additional provisions; and yet the criminal laws which participate in giving its security expressly repudiated!! "The "better to secure and perpetuate mutual friendship and inter- "course among the people of the different states,"* and for the more effectual execution of the laws for the protection of property, and the security of the citizen, the people of the United States adopt a clause providing for the surrender of fugitives from justice in all cases of crime, and yet exclude from its operation the offences connected with that species of property which constitutes a large portion of the wealth of a majority of themselves, and upon the rights connected with which they have exhibited more sensibility than upon any other subject!! They are property to all intents and purposes; represented as property;† property in their own states; property all over the United States, wherever they may flee, as between their masters and themselves, and between their mas-

* "Property he did not think to be the rule of representation? Why, then, should the blacks, who were property in the South, be in the rule of representation more than the cattle and horses of the North?" Speech of Mr. Gerry of Massachusetts. Mad. p. 842.

† Articles of Confederation, Art. 4.

ters and the other state governments; and as long as the Constitution stands, no legislature, whether it be that of New-York, or any other, can touch the relation, and yet they cease to be slaves, and it is no crime to steal them, whenever it shall suit the sovereign will of the Executive of any of the states to say so. Miserable mockery would a Constitution prove that could tolerate such consequences as these. Dark the conspiracy against the rights of their southern brethren was that of these members of the Convention of '83, who meditated them and disclosed them not. Will you libel the memory of any of the great men of that august assembly by attributing it to them? If ever there was an occasion on which the bad passions of the human heart were at rest, and the nobler feelings alone awake, it must have been when our forefathers met in council at the close of the revolutionary struggle. They came to exchange greetings upon their escape from its terrors. Gratulations that they had achieved that glorious purpose which had nerved them for many a long year, and in many a dark hour of adversity. They were full of a solemn sense of gratitude to the Almighty Being who had watched over them so far with his protecting hand. They had come to give a government to an emancipated people about to take their first step in the career of their newly acquired liberty. The divinity of Washington's virtues, and the majesty of his character, were there among the influences of the hour! He, too, was a slaveholder, and it was of his property they were legislating!

But to proceed; the language of the 2d section of the 4th article, before alluded to, is, that "no person held to service or labor in one "state, *under the laws thereof*, shall be discharged," &c. In this case you admit that "the laws of the states concern-"ing slavery are recognized by the Constitution." Let me ask you, then, what laws are here recognized? Laws, I take it, establishing a relation of master and servant between the white and black man. Where are we to look to ascertain the nature of this relation? To the laws, says the Constitution, from whence the slave and master come. By what

word is this relation characterized under the laws of such state? Slavery. What is protected under such clause of the Constitution? The rights constituting this relation, and springing from it. What are these rights? To hold another in perpetual servitude, and enjoy unmolested the fruits of his labor. This the Constitution has solemnly guaranteed to the slaveholder. This is the Constitution of the people of New-York, and they are bound by this guarantee, not only as far as they are concerned, but as against every other state of the Union. How are these rights, thus guaranteed to the slaveholder, protected in the state where they are enjoyed? By civil laws giving property in the slave, and by penal laws punishing those who attempt to steal it from him, or take it away forcibly, or injure it in his possession. The civil laws, then, and consequently the principle that one human being can be the property of another, are recognized, and a provision is adopted to provide for their effectual enforcement all over the Union, and the different states are forbidden ever to interfere with them. The penal laws, however, which are as essential to the protection of this right of property, thus solemnly guaranteed and guarded by the Constitution, and a right to the enforcement of which is among the rights of the master under the laws of the state from which he and his slave come, are to be regarded as a dead letter, because the Constitution nowhere recognizes the principle that one man can be the slave of, or stolen from another! Rights are secured and protected, and yet the violation of them is not to be punished! The master's claim to his slave can be enforced any where in this wide spread confederacy, and no human power dares come between them, and yet this master cannot bring the felon to punishment who robs him of his slave! Such are the glaring inconsistencies of your doctrines. To do your Excellency justice, however, I must confess I can nowhere find that you distinctly affirm that the Constitution of the United States does not recognize property in slaves, although I have so far assumed such to have been your opinion, because I could not

believe that you could doubt the paramount authority of the Constitution over the laws of New-York, and if it did sanction such principles, you could not but acknowledge that it would matter but little whether they were condemned or approved by the laws of the state. Your language on your subject is as follows : " In one state it has " been already declared by its fundamental laws, that no " human being can be held as a slave within its boundaries. " The same principle is established in this state, except so " far as the Constitution and laws of the United States re- " quire the surrender of a *fugitive slave* held to service or " labor in another state, by the laws thereof, when demanded, " and upon proof that he is a slave." This language might be, perhaps, considered as admissive of the fact, rather than a denial of it. I can find none more explicit. Your object seems rather to have been to show, by reasoning of various kinds, that the constitutional provision did not embrace crimes in relation to slave property, than to deny that the Constitution any where recognized the principle of slavery. Your Excellency repeats, however, over and over again, that the laws of the state of New-York no where admit the principle that one person can be the property of another, and consequently cannot admit the possibility of one man being stolen from another. Now, that the present laws of New-York, passed by them as a state, do not admit these principles, I will readily concede. That the people of New-York, together with the other " people of the United States" who adopted the present federal Constitution, did not admit such principle, and do not still, I am inclined, with all due respect, to deny. " We, the people of the United States, in order " to form a more perfect union, establish justice, insure " domestic tranquillity," do ordain and establish this " Con- " stitution." This is the language of the preamble to that celebrated instrument. By that instrument the right of one man to hold another as property is distinctly recognized, and provision is made, as we have just seen, to secure the inviolability of such right within the jurisdiction

of every sovereign state in the Union, whether the domestic laws of such state recognize it or not. The people of New-York, in their general capacity as people of the United States, to adopt the northern construction of the Constitution, or the state of New-York, in her sovereign capacity, in the southern view of the question, adopted this Constitution for their government. It is as essential a part of the government of the people of New-York, as our own state Constitution. It is, indeed, perhaps, more so, because the obligations which it imposes are paramount and supreme over those which her own state constitutions and laws impose, and New-York can never, while she remains within this Union, pass any law incompatible with any one of them. The people of New-York, by this integral portion of their complex government, then, have distinctly recognized the principle that one man can be the property of another, and bound themselves by an obligation always to recognize such a principle. They go farther—they not only recognize such a principle, but they solemnly enter into a compact that their own domestic tribunals shall ever remain open for the assertion of this principle, and the enforcement of the rights consequent upon its recognition. But perhaps I am in error when I imagine this to amount to a recognition of the principle. It may be that a nation may throw open her courts for the assertion of a principle, and yet be said not to recognize it; for the vindication of the master's rights to property in his slave, and yet not be supposed to recognize the principle that one man can be the property of another. I will not undertake to affirm that this is not so, but I humbly apprehend that this is not the view which our English forefathers took of *recognition.* It will be readily conceded that the common law of England does not recognize the principle, to use your Excellency's language, "that one person can be the property of another;" but is there any court within the mighty empire of Great Britain where the American slaveholder can be heard in support of his right to property in his runaway slave? I humbly apprehend not, sir. The principle of liberty

meets the latter upon his landing on English ground, and dissolves his chains like the breath of some enchanter. He is ever after a free man, and moves guarded by the spirit of the English Constitution. No such principle meets the Virginia slave when he touches the soil of New-York. Free as is the air of this sovereign commonwealth it loosens not his fetters. They still clank as he treads the soil, and no human power, save his master, can unbind them from around him. The fanatic may rave, and misguided humanity itself weep, but it will be all in vain, for the stern genius of the laws keeps watch by his side till his master comes. *His* presence announced, and he is handed over through this omnipotent influence, though he have flown for refuge into the sanctuaries of your justice, and crouched at the very feet of your judges! And this is not strange. The same flag floats here over him and his master that waved its ample folds over their common home. The latter is still among his fellow countrymen who signed a solemn compact with him for the security of his property, and the government which sprang into existence from that compact still stretches its broad and beneficent arms over him. That compact still stands the paramount law of the land, and the signature of the people of New-York to it yet remains uneffaced! It is as binding upon her now as it was the hour she signed it, and Virginia will never release her from its obligation. And let it never be forgotten, sir, that at that time New-York was herself a slave holding state. The clash of chains was heard, with its gloomy dissonance, all over her border, and no voice was raised in condemnation of the now never-enough abused principle of property in human beings. She, at that time, whatever may be her feelings now, had no sanctimonious horror of incorporating such a principle into the Constitution of the United States, particularly as she did not thereby perpetuate slavery within her own limits, or in the limits of her sister states, but only gave security to rights which she, in common with her fellow citizens, then enjoyed. And I may be permitted to add, that

the citizen of New-York who had at this period proclaimed his abhorrence of a principle which had been incorporated ever since 1625 with the laws of his state, must have been far in advance of his age. You may find a few instances, perhaps, in the world's history, of men magnanimous enough in legislation to sacrifice their present personal interests to an abstract principle of questionable humanity, but I much doubt whether you will find one entire nation of such sublime patriots. The construction of the constitutional provision which you contend for, strikes at the very foundation of slavery; and the people of New-York, that you supposed to have *voted for it with this view* in 1787, did not, *for twelve years afterwards, take any step for the final removal, or the intermediate mitigation of this evil within their own territory!!** If New-York, then, at a period when she had peculiar domestic interests to consult, and her own laws recognized the abominable principle, that one human being could be the property of another, did not deem it incompatible with her feelings and religion to incorporate such a principle with the Constitution she was then about framing with her sister states, she must not be surprised if these sister states should now hold her to her act, even though a change of principle should have followed the change of interest. The moment that the people of this state proclaim, through their proper organ, that they repudiate any such principle in the Constitution, and refuse to be bound by it, that moment they violate the Constitution, rend asunder their solemn compact with their fellow citizens of the other states, and put themselves without the pale of the Union. It will be the first measure of practical abolition, on the part of a state, and accomplished, too, through means of a nullification which presages more danger, as the violation of a vital principle of this Union, and the vested rights of a large

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* Vide Kent's Com. vol. 2, p. 256. Moulton's History of New-York, therein quoted, vol. 1, p. 373.

portion of its members, than any which has yet appeared to threaten the stability of our institutions! But I will never believe, sir, that it is the purpose of the people of New-York thus deliberately to violate their constitutional obligations; and without violating them, permit me again to add, they can never refuse to recognize, as between themselves and their fellow citizens of the slaveholding states, the principle of property in slaves. And this fact, thus qualified, cannot be too strongly, or too often urged upon the public mind, for the whole question is supposed by many to be summed up and disposed of when it is said that New-York has abolished slavery, and cannot, therefore, admit that it is a crime for one man to steal another. New-York, as before remarked, has abolished slavery as between her own citizens, but she has not abolished slavery as between her own citizens and government and the citizens and government of slaveholding states, and as between the citizens of slaveholding states themselves; and this she can never do as long as she recognizes the Constitution of the United States as the paramount law of the land. It violates the whole theory of our government for any one state to pass laws in any way interfering with her own relations to her sister states, or their relations to each other. To the Congress of the United States has the Constitution assigned this duty. To it is delegated the power of regulating the commerce and intercourse between the different states of the Union. The Constitution itself secures to citizens of all the states the rights of citizens in each state, and provides, as we have seen, for the arrest and delivery of criminals in one state, charged with crimes committed in the others. To the federal government, in a word, belongs all matters between the citizens of different states, and between the governments of the different states. The doctrine of its exclusive control over these matters has been carried so far, as to make it questionable whether a slaveholding state has the right to prevent the introduction of slaves into her territory from other states. The states, on the other hand, regulate exclusively the relations of their own citizens.

On this subject their power is supreme, except so far as its exercise interferes with some federal obligation which they assumed in derogation of their sovereignty at the time of their entrance into the Union. The construction which your Excellency gives to the Constitution would utterly violate this whole theory of the appropriate spheres and power of the different portions of our complex system of government. You claim for New-York the right of judging what shall be a crime, not alone as between citizens of the state of New-York, which she has the manifest right to do, but what shall constitute a crime in Virginia between her government and the citizens of other states, and even as between her government and her own citizens. You thus not only claim that she shall disregard this division of powers which leaves the Constitution and Congress the regulation of the intercourse between the citizens and governments of the different states, but you insist that she shall, as far as she can, do what Congress itself has no power to do! It matters not, as far as the principle is concerned, that New-York does not enter Virginia and snatch the arrested felon from the hands of her judicial authorities. If your Excellency is correct, she would have the right to do so, and in the case of her own citizens she would be under the highest possible obligation to do it, that of the protection which a government owes to its citizens; and I am satisfied she would not be deterred from its performance, if such were the case, by any motives of expediency, or apprehension of danger. Had Alexander McLeod never have been arrested, Great Britain would not have surrendered him to be tried for an offence for which he ceased to be individually responsible when his government assumed the responsibility of it. McLeod *is* arrested, and the same government demands his liberation upon the same ground upon which she would have refused his surrender, and will doubtlessly declare war if he is not discharged! The protection which New-York owes to her citizens, her dignity and sovereignty as an independent state, forbid, you say, that she should surrender her

citizens to Virginia to be tried criminally for an act that is "*innocent* and *meritorious*" by her own laws. If this individual was arrested in Virginia for such an offence, New-York, by the same principle, should feel herself imperatively called upon to demand his surrender at the hands of the government of Virginia, and, if you are right, would be fully authorized, had she the power, to declare war, in the event of a refusal to give him up. What a figure she would cut at the bar of nations for declaring war against a government for punishing a criminal who had violated the laws of its territory, without assuming the act as her own, I will not attempt to picture. But this is not the worst consequence of your doctrines. You permit New-York to interfere between the citizens of Virginia and their own government; for, as I have before said, and as your Excellency must be aware, the principle of the law of nations on the subject of the surrender of fugitive criminals, applies even with more force to the citizens of the government surrendering, than to the citizens of the government demanding;* and if, therefore, you cannot surrender a citizen of New-York under this provision, much less can you surrender a citizen of Virginia. I repeat, then, you would have New-York interfere between the citizens of Virginia and their own government. You would have her pass the common line of division between them, violate her territory, outrage her sovereignty, paralyze her laws, and arrest the execution of her criminal justice. It is true, as in the case of the citizens of New-York, you do not literally enter her territory with an armed force and do all this, but it is done virtually, and quite as effectually, when, in answer to a requisition of her Governor, under her constitutional provision, for the surrender of one of the citizens of the state who has committed a criminal offence against her laws, you reply that this crime is no crime by the laws of New-York, the criminal committing it no criminal, and that, therefore, you cannot surrender him

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* Vide 4 Johns. Ch. Rep. 113.

for punishment even by tribunals of his own state. It is nothing that Virginia tells you that the offence is a crime by her own laws, and that it was committed within her own jurisdiction; that the person committing it is one of her citizens, and therefore amenable to her jurisdiction; that New-York cannot interfere with her domestic Constitution; that slavery has been recognized, and property in slaves protected by the Constitution of the United States; and that states are forbidden to interfere with it, and that to promote tranquillity and good feeling between them, provision has been made by the same Constitution for the delivery of criminals from one to another, to be there tried by the tribunals having jurisdiction of the crime.

The obligations imposed upon the states, by the 7th section of the 4th article, Governor Gilmer tells you have been sustained by the highest judicial tribunals of New-York; but this, you say, does not affect the question of delivering a fugitive from justice charged with stealing a slave. The reason, you say, is to be found in the difference between the two provisions. "In the first of these cases, the laws of the "state concerning slavery are recognized by the Constitution: "'No person held to service, or labor, in one state, under "'the laws thereof, shall be discharged from such service, &c.' "The other constitutional provision makes no reference to "the laws of the state from which the fugitive flees, but leaves "its term open to construction upon general principles, like "any other form of expression in the instrument. There are "good reasons for the difference in the language of these pro- "visions. The section in regard to fugitive slaves, relates "to a civil right of a citizen, for the establishment of which "the courts of the state where the person claimed as property "may be found are opened to him. In the other case, a *pub-* "*lic wrong* is alleged to have been committed, and the free "citizen of a state is demanded, that he may be tried and "punished in the jurisdiction of another state, and under "its laws. They are then as different as the assertion of a

" private right and the punishment of a public offence."*
" The provision concerning fugitive slaves can in no case
" affect the right of any citizen of this state; but the clause
" concerning fugitives from justice embraces citizens of this
" state, whose liberty is dear to her, and guaranteed by her
" Constitution."

Your excellency will permit me, with all due respect, to say that I do not apprehend the force of this language. In the first of these cases, you say, the laws concerning slavery are recognized by the Constitution, and then you quote the language of the Constitution—" no person held to service, or " labor, in one state, under the laws thereof "—as proof of it. Now, sir, will you allow me to ask you if you do not perceive that this language is purely descriptive, and that the prohibition could not have been made in any other words? Suppose it had said, " no person held to service or " labor in one state," and omitted " under the laws thereof," would not these words have followed as a matter of course, and been supplied in the mind of every one who read it, and would not any court in the world have decided that they were meant? Certainly, because no one ever heard of a man held to service, or labor, in one state by the laws of another state. "Held to service or labor" is but another expression for slave, made use of in some of the State Constitutions and in many acts of Congress. Suppose it had said, " no slave in one state, escaping into another, should be liberated by the laws of the last. Would not this naturally have carried with it an equally obvious reference to the laws of the state whence the slave came? Suppose it had omitted all words after slave, and simply said, " no slave escaping shall be liberated by the laws " of the state to which he flees." Even then the clause must have been confined in its execution to the slaves of the slaveholding states of the Union, and consequently have been supposed to import a reference to the laws of such states alone, or else a clause of her own Constitution would make it ob-

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* Vide Appendix.

ligatory upon New-York to surrender the runaway slaves of all the powers in the world that have such property. The phrase then, I contend, is purely descriptive of the condition which makes a man a slave, and was absolutely necessary to enable them to frame the prohibition, which it was the object of the clause to establish. It makes no further reference then as recognizant of the laws of the state from whence the fugitive flees, than the other clause, which requires the delivery of the fugitive from justice charged with crime in the state from which he flees. This, necessarily, and in as pregnant a manner as possible, imports a reference to the laws of the state where the crime is committed; and if the object had been to confine it to such offences as are recognized by the common law of England, or the civilized world, or New-York herself, the framers of the Constitution would have made known their intention, as before remarked, and as Governor Gilmer properly says, by adding words to this effect in a proper place in the sentence. The only important thing, as Chief Justice Savage says, in the case of Clarke, is the "*charging*," and it is no more to be supposed that a man will be charged with *what is not an offence by the laws of the state* where the charge is made, than it is likely that it would to be considered before the charge was made, whether the offence was one by the laws of England or the civilized world.

Again, your Excellency says, the section in regard to fugitive slaves "relates to a civil right of a citizen. In "the other case a public wrong is committed, and the free citi- "zen of a state is demanded that he may be tried and punished "in the jurisdiction of another state, and under its laws." Now, as you are, at this point of your argument, stating matters of principle, and not describing the case between you and Governor Gilmer, why did you not say that the one section related to a civil right of a citizen, and that in the other, public wrong in a neighboring state is alleged to have been committed, and the free citizen of such state is demanded that he may be tried and punished in the jurisdic-

tion of his own state, and under its laws. This is the true difference between the two sections when stating the case as strongly for Virginia as the principles involved admit; and as nothing is ever gained by imperfectly representing the position of an adversary in argument, I wonder that your Excellency did not so announce it. That it does not happen to represent the exact circumstances of the present case between you and this state, is owing simply to the fact that the criminal demanded is a citizen of New-York; but as you have taken the law of nations as your guide in the construction of the Constitution, and insist upon its being so considered by Virginia, and as the law of nations applies more rigorously and strongly to the delivery of *your own citizens* than those of any other power that may have sought refuge within your territories, this is a fair statement now of the principle involved in the two sections, and will be of the facts of the next case, when, as no doubt, you will soon be applied to for a citizen of Virginia, who has fled to New-York for protection against his crime. The difference, then, between the sections is, that one relates to the civil right of a citizen of Virginia, for the vindication of which the tribunals of New-York are opened to him, and the other to a public wrong to the state of Virginia, alleged to have been committed; and the individual committing it a citizen of Virginia, is demanded, that he may be tried and punished by the courts of his own state, according to the laws he has offended. Can any possible objection be imagined to this, unless, indeed, your Excellency is altogether opposed to the surrender of criminals, and think it, in every case, inconsistent with the dignity and sovereignty of a commonwealth. As it is a citizen of Virginia, it cannot "embrace" any more than the clause concerning runaway slaves, "citizens of this state whose liberty is dear "to her, and guaranteed to her by her Constitution," and as this seems to be the only reason why you cannot surrender the "meritorious" and "innocent" men, whom the executive of Virginia has demanded of you in the present case, it is to be presumed there would be none other. But if you would sur-

render a citizen of Virginia, as before intimated, a fortiori, must you surrender a citizen of New-York, because publicists tell us the law of nations makes no difference as to the obligation to surrender fugitive criminals between citizens of one's own state, and citizens of a foreign government, but rather applies with more force and cogency to the former than the latter.* Now, unless your Excellency designs to avail yourself of the principles of this code one moment, and to reject them the next—insist upon them when it suits your views, and to disclaim when it conflicts with them—they would seem to be decisive of this question at this exact point.

But, to go back again to these sections, upon what principle, let me ask you, (and that it must be upon some principle I suppose you will admit,) do you suppose the Constitution to rest the provision respecting the arrest and delivery of fugitive slaves? Can it be upon other than the principle that one man can be the property of another? You say yourself, "the laws of the states concerning slavery are recognized by "this provision;" and permit me to say, that you have here inadvertently conceded the whole question, as I shall presently show. Slavery, then, is recognized, not only in the states where it exists, but the laws of such state, and among them those which consecrate this principle, and give the master the right to the slave, as his property, are to be binding all over the Union, to be respected all over the Union, and enforced by the state tribunals all over the Union; and thus the principle that one man can be the property of another, and consequently that one man can steal another, is recognized, by virtue of the Constitution, all over the Union, goes wherever it does, and the state governments, whether of free states, are for ever rendered incapable of dissolving the relations which this principle has given birth to. It is, then, clearly sanctioned by the Constitution; and New-York,

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* Vide 4 J. C. R. 109.

as one of the parties who adopted this Constitution for their government sanctioned it, and yet you refuse to deliver the criminals Virginia demands of you, because neither New-York or the Constitution recognizes any such principle. You cannot surrender a citizen of New-York, to be tried in Virginia, for having committed a crime there, which the Constitution of the United States must recognize as theft, since it recognizes property in slaves, and by your own admission, "the laws of the states concerning them," because you say this Constitution nowhere admits this principle; and yet you will surrender up the fugitive slave to his master, under the same Constitution, when it can be done upon no earthly principle than this very one which you say the Constitution repudiates. You say the two things are as different "as the assertion of a private right, and the punishment of "a public offence." Really, sir, I do not perceive the force of this distinction. Private rights and public offences are generally very intimately associated. The private right here asserted is the private right of a citizen of Virginia, not exercised, because it can in no case affect the rights of any citizen of this state, but because the Constitution of the United States recognizes it, and compels you to acknowledge it, and your tribunals to respect it. The public wrong, in the same way, is a public wrong against the state of Virginia, arising from the violation of this very private right of the citizen which the Constitution compels you to respect in the other case; and the Constitution requires you to surrender up the author of this public wrong and private injustice; and your Excellency cannot refuse, I apprehend, more than in the other case, because he happens to be a citizen "of the state of New-York, whose liberty is "dear to her, and is guaranteed by the Constitution;" unless, indeed, you deem the exemption of citizens of New-York from trials for their offences against the laws of their sister states of paramount importance to their most sacred constitutional obligations, a regard for justice, and the peace and perpetuity of the Union. I

cannot believe that this doctrine can ever be sanctioned by the people of New-York. It is too selfish to be sound. It is utterly at war with the genius of our institutions, and the spirit which led us, shoulder to shoulder, through the dark days of our revolution. It is utterly at war with the spirit with which our forefathers met in the council chamber, and from the genial influence of which our Constitution sprung into life. It is inimical to the best feelings of the human heart, to the best interests of the confederacy, and to the friendship and harmony of its members. It will make enemies out of brothers, and point the dagger where the right arm of friendship should be extended. It will weaken the binding influences of our government, and strengthen those which tend to draw us asunder, until, at no distant day, the cable which now connects us shall part like threads of flax, and the different orbs of our system, loosened from restraint, shoot madly from their spheres, and be extinguished, or ever afterwards breathe but hostile influences. No act of any state government, or political party, has ever, I regret to say, indicated so unfraternal a spirit, or one so utterly repugnant to the character of our Constitution, as this simple refusal on the part of your Excellency to surrender a criminal charged with violating laws of vital importance to the safety and welfare of one of the states, because he happens to have been born, or to have become, by twelve months' residence, a citizen of New-York. I will not now speak of the nature or extent of the protection which a government owes to its citizens. Nor will I consider the propriety of a state's interposing its sovereignty for the protection of crime, in disregard even of the common courtesy and common justice which hostile nations practice towards each other, and which self-respect, and a lofty sense of honor, would alone seem to dictate. I speak now alone of the feeling it evinces on the part of the people of this state to their brothers of the confederacy. One would have looked, I confess, for a different one. So far from bringing such a consideration to weaken, or to limit a constitutional obligation, designed

for the protection of the rights of your fellow citizens of your sister state, one would have thought that you would have been more rigorous in the case of one of your own citizens than in that of one of the latter. While an impulse of humanity, or chivalry, would make you naturally reluctant to surrender up a citizen of another government who had sought refuge in your territory, a feeling of magnanimity or delicacy would seem to prompt the delivery of a citizen of New-York, lest a refusal to give him up might be attributed to a feeling of greater regard for him than for the citizen of the other state.

Singular, indeed, would be the position of the black man of the South, under the Constitution and laws of the United States, if your views are correct. You make him a slave one moment, even within the jurisdiction of New-York, and a free man the next, even in the state where he lives in bondage—a slave as between his master and the government and citizens of the neighboring states, and a free man as between the government of Virginia and the government and citizens of New-York, and even a free man as between the citizens of Virginia and their own government. Let him run where he pleases he carries his bonds with him, and his master can follow him, as before remarked, and take him as his property. Let him be stolen, however, by a citizen of New-York, or even a citizen of Virginia, with the unhallowed purpose of trafficking in his flesh in some southern mart, and your Excellency emancipates him upon the spot, not, indeed, to give him freedom, however, but that you may throw the egis of your state sovereignty over the person of the felon who has stolen him from his home, and thus, perhaps, torn him from his only friend to sell him among strangers. He is a slave as between his master and himself, a slave as between his master and the federal government, and yet not a slave, because you say the Constitution does not recognize the stealing of him as a crime—a slave as between his master and the government of the other states, and between his government and the governments of the

other states, and yet not a slave, because the governors of the other states refuse to surrender the criminal who has stolen him upon the ground that he is not property, and cannot, therefore, be stolen. What sort of being is he who is thus free, and in bondage, at the same moment; into whose nostrils passes in and out the breath of liberty a hundred times in an hour—whose shackles fall and close around him again at will at the capricious wave of the wand of executive power?

Now that I have noticed your doctrines, and stated the objections to them, let me briefly review the grounds of your opposition to the views so ably and eloquently presented by the late Executive of Virginia. What is it that he asks at your hands? Why, that an individual charged with the commission of an offence against the laws of Virginia, a sovereign state, should be surrendered to be tried where the offence was committed, and by the tribunals having jurisdiction of the crime. Is there any thing very extraordinary in this? Is it inequitable, unusual, in violation of law, either domestic or national, contrary to the established usages of states, as observed in their own territories, or in their intercourse with each other; or is it repugnant to the political principles which have ever been the guiding lights of the states of this Union? With due respect I think not; and yet your Excellency is pleased to observe to Governor Gilmer, that it was not the least among the subjects of "complaint by our ancestors "against the British king, that he had combined with others "to subject them to a jurisdiction foreign to their own con-"stitutions, and not acknowledged by their laws. It is not "to be supposed, you go on to say, that those who have de-"livered themselves by force from this intolerable oppres-"sion, would perpetuate it in another form." Now, sir, *I* have strangely misread the history of our revolution, "if it "was not the least among the subjects of complaint by our "ancestors against the British king," that he was doing precisely what Virginia complains your Excellency is doing in the present case, removing men charged with the commis-

sion of offences from the place where they were committed, and the courts which alone have jurisdiction of them, to be tried by others having no jurisdiction of the offences, and strangers to the laws under which they were committed. The colonies asked that the offenders should be tried under colonial laws, and by colonial courts, where the crime was committed, and not remitted to English tribunals which were "unknown to their Constitution, and "unacknowledged by their laws." Virginia asks that Johnson, Gansey and Smith, should be tried in her courts, and by her laws, where the offence was committed, and not remitted to the tribunals of another state, unknown to her Constitution, and unacknowledged by her laws! There is only this difference between the treatment of the states by the British king, and the treatment of Virginia by your Excellency, that the former insisted upon trying American criminals under English laws, whereas your Excellency insists that Virginia criminals shall not be tried at all. In a word, sir, with all due deference, I humbly apprehend there is not the slightest imaginable resemblance between the cases of New-York and Virginia and that of the colonies and the mother country. According to your views of the matter, New-York claims that her citizens shall be exempted from all responsibility for the violation of the laws of Virginia, committed even after entering upon her territory and voluntarily subjecting themselves to her jurisdiction. The colonies only asked that their citizens should be tried by their own tribunals which had jurisdiction of the crime, and were charged with the execution of their laws. They dared not have asked what your Excellency claims for these men, entire exemption from responsibility; because the laws of Great Britain, which were alleged to have been violated, were the laws of the colonies, in the same way as the federal Constitution is the law of Virginia and New-York. The colonies, in a word, admitted that the offence charged were crimes, but contended that the offenders should be tried by their own courts. New-York contends that the offences committed are not crimes at all, even though

so considered by the authorities where they were committed; and thus in fact tries them by her own tribunals. The citizens of the colonies were to be taken from the vicinage in which the crime was committed, and whence the jury is to come, by the English laws. Gansey, Smith and Johnson, are demanded that they may be brought back to the vicinage. The colonists were at home under their own laws. The citizens of New-York, in another state, under other laws.

Virginia, then, asks nothing, as your Excellency seems to think, which is incompatible with the principles of our revolution, or those of our declaration of independence. She, in truth, but asserts a principle of natural law, natural justice, and civil policy, which, I venture to say, will be found in the government of every country in the world pretending to the least civilization or system, from the earliest period up to the present time; and this is, that offences are to be punished in the place where they are committed. Although, in the language of a celebrated French writer, it was not in the genius of the Roman legislators voluntarily to put limits to their power; although, under these conquerors of the world, the Roman law was the law of the universe, we yet find laws in their code which consecrate this principle. Crimes, says the Emperor Theodosius, cannot be punished except in the place where they have been committed. Oportet enim illic criminum judicia agitari ubi facimus dicatur admissum. "In considering," Merlin goes on to remark, "this question which we have discussed, both "as it relates to civil and criminal laws, Bodin in his Re- "public, Charondas in his Pandects of French law, Mornac "in his Commentaries, decide unanimously that a tribunal "cannot take cognizance of matters of facts and acts, or acts "and things occurring between strangers, and in a strange "country. The most renowned ultramontane doctors have "also decided, that in like cases the tribunals of their own "country have followed the same doctrines. "Fatetibur "enim in hacspecie," says Covarruvias, "ad locum delicti re-

" mittendum fore. Farinocius, Balde, Alexandre et Julius " Clarus, profess the same doctrine."*

Here, then, we find this principle consecrated and in force throughout the whole extent of the Roman empire, afterwards adopted, along with the civil law in France, prevailing throughout Italy, and many other countries of Europe, and no doubt the basis of the custom which prevails in Switzerland. I need not remark that it is one of the earliest principles of the English Constitution and laws, and I suppose there is not a state in this Union which has not incorporated it into her code and government. The principle is based in part upon the obvious impossibility of the tribunals of one country judging of the violation of the municipal laws of others. It leads, as in the Roman empire, and more recently in that of Great Britain, and in the different states of this confederacy, to the regulations which exist for the remission of the criminal, wherever arrested, to the authorities of the place where the crime was committed; and as between independent nations, and nations leagued, like the Swiss cantons and the United Provinces, it leads to the custom of surrender, or extradition of fugitive criminals.

So far it seems to be consistent with some of the obligations of nations, and does not appear to be irreconcilable with justice. Is it incompatible with the sovereignty of a state, or with the protection due from it to its citizens? Your Excellency thinks, and this seems to be your main objection to a compliance with the requisition of the Executive of Virginia, that in the present case, as between the different states of the Union, it would be wholly subversive of the one, and utterly in violation of every just principle of the other. It would " impair the sovereignty of the " states, and deprive their citizens of the protection of their "own laws and tribunals." The question " seems to me (your " Excellency) to involve not only the essential principles of " civil liberty, and the federal relations of the states, but also

* Merlin, Tit. Souver.

" their sovereign and reserved rights. It is the old question " that has agitated the country since the adoption of the " Constitution, concerning what has been surrendered by " the states, and what has been retained. Virginia contends " for a construction of the Constitution which is incompati- " ble with the true dignity and sovereignty of the states." This is your language, gathered from various parts of your letter, and really, with all due respect, I cannot but think it evinces a misapprehension of the whole matter of sovereignty of states, and of the protection due by governments to their own citizens. The principles on these subjects, happily for nations and Virginia, are clearly understood and laid down by publicists, and your Excellency cannot, and will not be permitted to extend them beyond their long established limits. The protection which a government owes to its citizens, one would naturally suppose, would be that which was necessary to enable them to perform their duties, or to enjoy uninterruptedly life, liberty, and the pursuit of happiness. In the section in which Vattel treats of the duty of the sovereign, or government, to protect its citizens, he speaks of it as consisting in their protection from oppression. " Whoever maltreats " a citizen, undoubtedly offends the state, whose duty it is to " protect the citizen. The sovereign of the latter should " avenge the injury, &c., otherwise he will not obtain the " great end of civil association, which is security."* In another chapter on the subject of the jurisdiction of a government over its own territory, he says, that " the sove- " reign," or government, " should never interfere in cases " of its citizens in foreign countries, and accord them its " protection, except where there is a denial of justice, or some " palpable and evident injustice, or a manifest violation of " rules and forms, or, in a word, some obvious distinction " made to the prejudice of its citizens, or strangers in gene- " ral." Gathering our ideas of the duty of protection from

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* Vattel, Droit Des Gens. Vide Liv. II, c. vi. § 71., and Id. ch. vii. 333. 84.

these extracts, let me ask your Excellency if you find any thing in the demands of the Executive of Virginia which comes in conflict with it in any way? Hardly, unless you consider a nation "maltreats" a man whom she wishes to punish for a violation of her laws, or unless you consider such a desire to involve some "palpable and evident injustice." This, however much disposed as you may be, you will not be permitted to affirm with the extracts of Vattel and Merlin just spread before your eyes, announcing the solemn obligations of strangers to respect the laws of the government upon whose soil they land, and establishing the right of such governments to punish them if they infract them. The requisition, then, of the Governor of Virginia, violates no part of the principle of protection due citizens by their government. This, however, but half expresses the truth.

The Governor of Virginia but enforces a right which his state enjoys by the law of nations, the exercise of which she owes to herself, and is due to the protection which she owes to *her* citizens; and your Excellency violates one of the most solemn obligations imposed upon a state by the law of nations, when you refuse to surrender the criminals. "But, on the "other hand," says Vattel, "the nation or sovereign ought "not to suffer its citizens to do an injury to the subjects of "another government, much less permit them to offend "the state itself; and this not only because no sovereign should "allow those who are under its power to violate the pre- "cepts of natural law which interdicts every species of in- "jury, but because nations should mutually respect each "other, abstain from all offence, all wrong, all injury, and in a "word, from every thing which can do hurt to others. If a "sovereign who is able to keep his subjects within the rules "of justice and peace, permits them to maltreat a foreign "nation, either in its public capacity, or in the person of its "citizens, he does do a less injury to them than if he mal- "treated them himself. In a word, the safety itself of the state, "and that of society in general, demands that care and atten-

" tion from every sovereign. If you leave your subjects " to act as they please against foreign nations, they will leave " their subjects to act in the same way towards you; and in the " place of that fraternal society which nature has established " between all men, we shall have a frightful scene of nations " of brigands pillaging and robbing each other." This is the noble language of justice, christianity and law. It comes from God, and the principles it inculcates are innate in the bosom of every man, and have been farther consecrated by the universal approbation of the civilized world. They are as essential to the harmony of nations as gravitation to that of the planetary system. You cannot deny them, nor can you elude their force. And you well recollect, too, that they come from that code of laws which the greater part of your argument goes to prove it was the object of the provision in question to embody in the Constitution; and from them, or rather as a consequence of them, springs, says the writer just quoted, the obligation to punish the criminal yourself when he escapes into your territories, or to deliver him over to the offended state.*

Here, then, it would seem, that there are positive and fixed principles which make it your solemn duty, independently of the constitutional obligation to surrender up the men demanded by Virginia. They went into that state under the implied condition imposed by the law of nations, that they would respect her municipal laws and social institutions. Without this understanding they would not have been permitted to enter. Virginia had a right to suppose, too, that New-York guaranteed this contract of her citizens, for it is her duty, we have just seen, by the same law of nations, to take care that her citizens do no injury to other states, or to their subjects. In violation, however, of this implied compact, against every principle of justice, and propriety, and kind feeling, and in disregard of their implied promise to their own state, to for-

* Vide Vattel, Liv. I, c. xiii § 169. Vattel, Liv. II, c. vi. § 72. 326. Id. § 76.

bear from acts of aggression on other states, they undertake to rob a citizen of Virginia of his property, and thus are guilty of committing a flagrant assault upon her laws and institutions. Had they have been apprehended in Virginia, Virginia would have punished them, and your Excellency would not have dreamed of remonstrating against the act. They escape, however, and Virginia might have safely appealed, one would have supposed, to the friendship of her sister state to aid her in carrying out the same principles. She would find it difficult to imagine any possible reason why a proud state, who has always felt a stain on her honor like a wound, should desire to make her territory a refuge for criminals, even though they sprung originally from her own bosom. She could not but believe that she would spurn the wretches from her presence, and bid them seek some other shelter for their crimes.

Is there any thing in this principle, let us now inquire, which conflicts, in the present case, with justice, or the proper rights and privileges of a citizen. "As soon," remarks the eloquent publicist whose writings I have had occasion so often to quote, "as a man has touched the soil of a foreign power, at the very "first step he takes, he has sworn to respect the laws and insti- "tutions established among those who inhabit it. Upon this "condition alone has the permission to enter it been given him."* This doctrine is also laid down with great force and clearness by Vattel. "The sovereign," he says, "is supposed "not to give access to a stranger, but upon the tacit condition "that he will submit himself to the laws. In virtue of this sub- "mission, strangers who commit offences ought to be punished "according to the laws of the country. The end of punish- "ments is to cause the law to be respected, and to maintain

* "Des qu'un homme à touché le sol de l'empire etranger, des le premier pas qu'il a fait il a juré de respecter les lois et l'ordre etabli parmi ceus qui l'habitent. C'nest que à cette condition que l'entree lui à eté ouverte." Merlin, Tit. Souver. § v. n. iv.

"order and public security."* If these are principles of the law of nations, founded as they are in reason and justice, what possible objection can your Excellency urge to their application to the case between you and Virginia? Virginia asks nothing more. She only requires that the citizen of New-York shall pay the penalty of his violated oath to respect her laws and institutions. She only requires that the only condition on which he has been permitted to enter her territory should be faithfully kept. It is a condition imperatively required by regard for the safety of her citizens, the permanency of her institutions, and the preservation of her sovereignty within her own limits. It is a principle which she is willing to observe in her intercourse with her sister states; of universal and binding force among nations from the Atlantic to the Ganges, and she has some difficulty in believing that her fellow citizens of New-York, with whom she has a common government and common Constitution, will alone, of all the world, refuse obedience to its precepts. Nations, like individuals, must respect the principles which have been established for the maintenance of justice and harmony between them, and the former, no more than the latter, can long violate them with impunity. They cannot be made to bend to suit the views of every state that shall erroneously conceive its dignity or its sovereignty involved in the protection of the felon who violates the laws of those with whom it is leagued in peace Retribution comes sooner or later, either in the form of war, or the universal scorn and contempt of the civilized world.

Now, to this principle there is no limitation whatever. The stranger must obey all the laws of the foreign country, whether abhorrent to the principles of jurisprudence which prevails in his own or not; whether they recognize the principle of property in human beings, or repudiate it. In the same way to the obligation which the law of nations

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* Vattel, Liv. 1, c. viii. § 343.

imposes upon governments to take care that its citizens do no injury to those of other states, you can place no limit, nor annex any qualification. It is their duty to punish them, or hand them over for punishment to the offended nation, whether they do violence to institutions which conflict with their own principles of law, or are in harmony with them. The only question, in the language of Vattel, is, whether there has been an injury inflicted. No laws of any other government than the one against whom the offence is committed, can have any possible influence upon the course to be pursued towards the individual ; for the object of punishment in all such cases, is to cause the laws of the state where the offence is committed to be respected, and the existence or non-existence of the same law in the state of the offender, cannot affect the importance of this object in any way.

If, now, then, I have properly explained the nature of the duty of protection which a government owes to its citizens, it does not forbid a compliance with the requisition of the Executive of Virginia. *Your* idea of it, you will permit me to remark, is one which, if followed out, may lead to fearful results. There are, for instance, a certain class of men whom all the civilized world have agreed to call pirates, and to punish as such, because they equally violate the laws of all nations. Suppose, however, it be established as a principle that the citizens of no nation are bound to respect any laws unless they are to be found in the code of their own government, and that governments are not bound to surrender up or punish any criminals save those who in violating the laws of other countries, violate their own as well. Nothing more would be necessary after this, than that states of Barbary should abolish their own laws about robbery, or stealing, or pass a law legalizing these offences when committed against foreigners ; and acts of this kind would cease to be piracy, and these governments would be justified in refusing to deliver up their subjects to be punished for them. I need scarcely be told that the cannon of the com-

bined world would be the only answer to such mockery of law and justice. Such, I apprehend, however, are, with all due respect, the legitimate consequences of your Excellency's doctrines. But whether they be so or not, however, there is one equally frightful to be contemplated which most assuredly will be. You will make New-York a point from which expeditions will be organized against the property and institutions of the southern states. Nothing is to prevent large masses of armed men assembling together within your territories, and that of Pennsylvania, and precipitating themselves upon the soil of Maryland and Virginia, driving slaves away by night, and selling them farther south, or setting them at large, and giving them their freedom in open daylight, in defiance of the state laws, and in defiance of the Constitution of the United States. The felon will wrap himself up in the robes of the fanatic, and they will both rob with the words of God in their mouths, and your Excellency must take them alike into your arms on their return. Virginia and Maryland will not be able to prevent it, for they are shorn of the powers of war. They must remain tranquil until the people can be assembled whose aggressions call for redress, and their consent obtained to amend the Constitution; and in the meantime they will present the wonderful spectacle of nations at peace, while war, to all intents and purposes, is raging within their limits, and all along their borders. This is the result, the possible, the probable, nay, the inevitable result of your construction of the Constitution. How long will it stand, does your Excellency think, under such circumstances. Not longer than it will take the people of Virginia to rush to the capitol and tear down its pillars. A cry of vengeance will go forth like the shouting of a thousand winds, and in the stillness which follows you would soon hear the clash of resounding arms. God save us from such an end!! Your Excellency would lead us to it.

But admitting that the protection which a state owes to its citizens does not forbid the surrender of the fugitives, the dignity and sovereignty of a state render it impossible you

say. The sovereignty of a state means nothing more, I apprehend, than the power to do what it pleases within its own territory, and over its own citizens, as well as in its relation to other states. It has been found, however, advisable for the peace and interests of the world to subject such sovereignty, or supreme power, to the control of certain principles of justice, and sovereign nations have agreed to do so. Among these principles are the two so often mentioned in the course of this letter, the one requiring the stranger who lands on a foreign soil to respect its laws, and the other making it the duty of governments to see that its citizens do no injury to others, and, as a consequence, requiring them in cases of such injury to punish themselves, or deliver them up to the offended nation to be punished. Erase these principles from the law of nations, release New-York from their obligation, and Virginia then *does* make a demand, which, however just, might be deemed incompatible with the dignity and sovereignty of the former. But as long as they exist, and are binding upon her, it cannot be so considered. The proudest and haughtiest nations of christendom have acknowledged their obligation and it has remained for your Excellency to discover that they are incompatible with the dignity and sovereignty of a member of the American confederacy. Virginia asks nothing more than that they shall be enforced. She does not ask New-York to surrender to her tribunals the jurisdiction of crimes against her own laws, nor does she wish to make her statutes, law in the territory of New-York. She acknowledges the competency of the latter to try her own citizens for their crimes against her own laws, but she denies her competency to judge of their offences against the laws of another state, committed in her territory; and claims, in accordance with a well established principle of jurisprudence, that they be remitted to the only tribunals that have jurisdiction of them, and are capable of pronouncing upon them; those of the place where they are committed. Virginia does not ask the surrender of a single one of the sovereign powers of New-York. New-

York cannot judge of a crime committed in Virginia, because, from the very nature of things, her tribunals can have no jurisdiction of such offences. New-York cannot enforce a statute of Virginia by her own judicial decrees, because it comes in conflict with her own state laws. Virginia, therefore, asks but that she be permitted to do what New-York cannot do even as a sovereign state, enforce her own laws, and punish her own criminals. Is there any thing in these demands or expectation at all incompatible with the most exalted sense of national dignity or sovereignty? Your Excellency says, "It is the old question that has agitated "the country since the adoption of the constitution, con- "cerning what has been surrendered by the states, and what "retained." Now, I must be permitted to say, that the old question which has agitated the country since the adoption of this constitution is essentially a different one, in my opinion, from the present. That has been a question as to what was surrendered to the federal government by the states, and what retained by them. This relates to what has been surrendered by the states to each other in their state capacities, and what retained. The old question of which you speak led to the doctrines of states rights on the one hand, and consolidation and federalism on the other. The present question is altogether one of states rights, state rights against state rights, states against states, for on whatever banner victory perches, a state gains. The federal government has no interest whatever in the matter. In an early part of your Excellency's argument, if I mistake not, you contended that the object of this constitutional provision was to establish, in the intercourse of the states, the principles of the law of nations. The question, then, assuming these your Excellency's views of it, at this state of the argument, is only as to what are the principles of the law of nations touching the surrender of fugitives from justice, and what has been the practice of nations under them; how far they have been affected by our constitutional compact; whether they were adopted in all their original extent, and thus embraced all offences, great or small,

crimes or misdemeanors, or whether the states have consented that they shall be, as they have been in the practice of some European nations, limited to those only of great atrocity, or deeply affecting the public safety. It is in this point of view, and this only, a question of surrender or retention—surrender of rights which they might have had as sovereign states, to the delivery of every criminal charged with the violation of their laws, or in the event of refusal to give them up, an assumption of responsibility for their crimes. But, sir, it is neither the one or the other; it is neither the old question which has agitated the Union since the Constitution, nor is it a question touching the extent to which the laws of nations have been incorporated in the Constitution. It is only a question touching the meaning of certain words in it, and with the history of our country before us, its condition at the time of the adoption of our government, recollecting the spirit of our institutions, the nature of our confederacy, the feelings of the different states towards each other, and the explicitness of the language used, it is only surprising that there should be a question at all. It has perhaps escaped your Excellency's observation, that the Congress of 1793, together with that great man who presided over the Convention which adopted the Constitution, the first President of the United States, entertained on this subject similar views to that of the Executive of Virginia. By the 4th section of the act of Congress of February 12, 1793, it is made criminal to obstruct the master or his agent in seizing his runaway slave, or to rescue him when arrested, or to harbor him after notice that he is a runaway slave; and the person doing it is to be fined the sum of five hundred dollars, and the courts of the states are thrown open to him for the recovery of the penalty. Washington, then, and the Congress of 1793, may certainly be deemed to have been of opinion that it was a crime under the Constitution to steal a slave in a slaveholding state, for they have made it criminal, even in a free state, to obstruct the master in his

efforts to recover him when runaway. This could have been done on no earthly principle than that the slave is the property of his master. Here, then, we find that it is an offence not only in a slaveholding state to interfere with the property of the master in his slave, but criminal even in New-York, on its own soil, and under the very shadow of its own tribunals; and the latter are compelled to entertain actions for the recovery of the penalty from the citizen who commits the offence. This is perhaps not conclusive, nor would any thing, I am afraid, be likely to be so with your Excellency short of positive legislation; but as the deliberate opinion of men deeply imbued in the eloquent language of Governor Gilmer, with the spirit which established our independence and formed our Union, one would suppose that it would have been calculated to make you pause and ponder well ere you went counter to it. In conclusion, your Excellency will pardon me if I venture to say that I think your whole views on the subject of slavery to be fundamentally wrong; and that when you go so far as to declare that the stealing of a slave in the United States, involves "no moral "guilt, contravenes none of the principles of moral justice, and "is exempt from censure by the universal law of the civi- "lized world,"—that you lay down a doctrine which cannot be sustained either by reasoning or reference to facts. That slavery is not repugnant to the law of nature was acknowledged by the Roman civilians,* has been asserted by distinguished writers both of ancient and modern times, by Aristotle,† by Reyneval‡ of Spain, by Grotius§ of Holland, and by Paley‖ of England. It existed among the chosen people of God, and our Saviour found it on earth and rebuked not men for it. That it is not repugnant to the law of nations, and

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* Inst. Lib. 1, Tit. V. Institutiones de Libertinis.

† Aristot. Polit. Lib. 1, Cap. 5.

‡ Reyneval Instituciones Del Derecho Naturel.

§ Grotius, B. 2, ch. v. n. 27.

‖ Paley's Principles of Moral Philosophy, 156

that even the slave trade is not, has been solemnly decided by the admiralty courts of England and this country; in the cases of the Louis Dodron,* The Madravilles,† and the Antelope.‡ In these cases it was held that prisoners were slaves by the law of nations in Africa; and as the slave trade was not prohibited by international law, its interdiction could not be enforced by the right of visitation and search. I will not deny that there are many able and distinguished writers, Rousseau, and Blackstone, and many others, who contend, on the other hand, that slavery is repugnant to the law of nature; but speculations on this subject matter but little to the universal consent of the civilized world, for centuries past, to consider slaves as property, and to traffic in them as such. That England, and many other countries, have agreed to abolish slavery throughout some portion of their territories, and to prohibit the trade in them altogether, does not affect the principles upon the subject which she herself once recognized, and which nothing short of an universal understanding among the nations of the earth can practically change. The stealing of a slave, then, even by the law of nations, if not nature, and consequently by the laws of the civilized states, does involve moral guilt, does contravene the principles of moral justice, and is not exempt from censure by the universal law of the civilized world. This, however, is a matter of the least possible importance in the present instance, where we have a Constitution, which, as I have just shown, acknowledges slavery, and enforces its principles, and all of the signers to which were slaveholding states with the exception of one. But putting aside this Constitution, and admitting that stealing a slave is no crime by the law of nature or nations, but only by that of Virginia, and then leaving the question to be determined by the law of nations under such circum-

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* Adm. Rep. vol. 11, p. 238.
† King's Bench, 1820.
‡ Wheaton's Rep. vol. x. p. 66.

stances, your Excellency could not be sustained even then in your refusal to comply with the demands of Virginia. "But if "what is laid to the charge of the refugees," says Grotius, "be not a crime by the law of nature, or that of nations, it "must be determined by the civil law of the state they come "from, which is excellently shown by Eschylus in his Sup- "plices, where the King of Argos is introduced, thus ad- "dressing himself to the daughters of Danaus coming from "Egypt:

'If Egypt's race should any claim pretend
'O'er you, by any law or rule of theirs,
'Because they say you are their nearest kinsman,
'Who could withstand the plea, or argue 't false?
'Why, you must prove by your own native laws
'That they have had no such power.
'3 Supplices, p. 32.'"

In no possible aspect, then, in which I can view this question, can I find any good reason for the course your Excellency has thought proper to pursue in relation to it. Against the doctrines contended for by Virginia, I confess I am unable to discover any sound objection. They contemplate no invasion of foreign jurisdiction, no attack upon foreign sovereignty, no assault upon national dignity; they proceed upon a becoming confidence that all christian nations are interested in the suppression of crime, and will unite cordially in every measure calculated to secure its object. They presuppose a reliance among nations upon the good faith of each other, which is peculiarly in harmony with the fraternal nature of our confederacy, and the intimate associations and connections of the people of the different states. On the score of public policy they come fortified by the strongest considerations. "In the "whole extent of a political state there should be no place "independent of its laws. Their power should follow every "subject as the shadow follows the body. Sanctuaries and "impunities differ only in degree, and as the effect of punish- "ments depends more on their certainty than their greatness,

" men are more strongly invited to crimes by sanctuaries,
" than they are deterred by punishment."*

I may be permitted, before I conclude I hope, here to express a sincere regret that party lines should have been perceptible this last winter in the position of the members of the legislature of this state in relation to this matter. Constitutional questions of grave moment like these should never be mingled up with party politics. I belong myself to that portion of the community which, in the political divisions of the country is termed Whig, and I have been as sincere in the condemnation of the measures of the late administration, and am as likely to be an ardent supporter of the one now in power, as the warmest of your friends, but heaven forbid I should be willing to sacrifice the Constitution, the peace of our country, the permanency of the Union, and the rights and feelings of millions of my fellow citizens, to any partisan purpose of sustaining your Excellency, or any other man, in all your official acts. I cannot believe either that such political devotion could give you any pleasure, particularly when, as in the present case, it behooved you so much to have the guidance of all the impartial wisdom you could summon around you; for whatever course the people of New-York may deem it proper ultimately to pursue in this matter, your responsibility is such to your countrymen and the world, as I confess I should think no conscientious man would covet.

Your Excellency may think lightly of it. You may deem it matter of small moment to array large masses of men belonging to the same government in hostile array to each other. You may deem it a matter of small moment to destroy the feelings of fraternal friendship which now bind the free citizens of two sovereign states of this confederacy, and substitute in their place a spirit of deadly hostility! You may deem it a matter of small moment to sweep away from men's

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† Beccaria on Crimes.

minds the belief that this Union tends to their advantage, and place there a deeply settled conviction that it is fatal to their security! You may deem it a matter of small moment to break in upon the feelings of veneration with which the people of this confederacy have hitherto looked upon the framers of our Constitution, by teaching them that that instrument which they have given them for the protection of their property, is to be the means through which its ruin is to be accomplished! You may deem it a matter of small moment to put arms into the hands of thousands of fanatics to wage war upon their peaceful and unoffending fellow citizens of the South! You may deem it a matter of small moment to drive a sovereign state of this Union to the hard alternative of secession from it, or quiet acquiescence in a ruthless war upon her dearest rights and institutions. You may, perhaps, even deem it a matter of small moment to tear asunder this glorious Union, for the building up of which Providence itself has worked, and men will live in story long after every vestige of the present inhabitants of this country shall have been swept away.

I will not venture to answer for you. One thing, however, I will make bold to say, and that is, that your countrymen and the world will not deem these things unimportant; and that they will follow an adherence to the doctrines which you have laid down, I religiously believe. Dismemberment will come as assuredly as that dissolution follows when the principle of life is gone. Let not the people of this country shut their eyes to the truth. Whether there be many that are prepared to look upon the result with indifference I will not pretend to say. The hour, however, that sees the golden link broken which binds this confederacy together, will see the curtain rise upon a scene of horrors that would make the blood of an American run cold to look upon. The people of England and France will hear it as it goes asunder, and could they see across the Atlantic, millions would be beheld making to its shores, and standing tiptoe, looking over to watch the effects of the awful catastrophe.

Sublime as seems the truth, and common as its expression, the hopes of the enlightened world, and the cause of free governments, is bound up with the fate of our republic. Europe may be said to lie disabled on her sick couch, as the knight in the romance, while the liberal press, like the fair Jewess, stands looking out and reporting the result of that battle going on here between the principle of freedom and its adversary, upon the result of which depends her death or restoration to political health and freedom. Let but the tide of battle go inauspiciously, and our republic go down; and the cause of civil liberty, if not ruined for ever, will receive a shock from which it cannot recover for a hundred years. This is not an exaggeration; nor is it strange. There are two great principles abroad in the world, and they cannot live together any more than life can take up its abode with death. One has long swept over this vast continent in all the majesty of unopposed power. It has crossed the Atlantic, and is now slowly but surely upheaving, and recasting the foundations of civil polity in the older world that lies beyond its waters. The friends of strong governments there are awake to the truth, and are watching its progress every hour. They know it comes westerly from our institutions, as light from the evening sky, and that with them alone can it die! They know, too, that the fate of these institutions is wound up with that of the Union of the states! Would that these truths had always been, and could ever hereafter be present, in all their solemn sublimity, to those minds on this side of the Atlantic who preside over the councils of our country.

A VIRGINIAN,

NOW A CITIZEN OF NEW-YORK.