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ANTI-SLAVERY BUGLE.

"NO UNION WITH SLAVEHOLDERS."

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Lysander Spooner on the Unconstitutionality of Slavery.

"DOMESTIC SLAVERY IS THE MOST PROMINENT FEATURE IN THE ARISTOCRATIC COUNTENANCE OF THE PROPOSED CONSTITUTION."—*Gouverneur Morris in the Convention of* 1787. Madison Papers, 1264.

We have read with attention the many columns which Mr. Goodell has showered upon us from various quarters, and can say, with perfect sincerity, without meaning to be satirical, that they contain nothing which needs any notice from us, or which can mislead a thoughtful reader of our previous criticism.

Next in order of time comes the Essay of Lysander Spooner on the Unconstitutionality of Slavery. We shall but fulfil an old promise in reviewing the argument it contains. Events beyond our control have delayed us till now, which we regret only as it seems to have led some of Mr. Spooner's admirers to imagine that the delay proceeded from an unwillingness, on our part, to measure lances with so skilful an adversary.—We exhort them, on the contrary, to believe that we have no innate antipathy to the idea of an Anti-Slavery Constitution—that so far from being obstinately wedded to our own opinion, Mr. Spooner, or any one else, shall find in us a most ready, willing, and easy convert to a doctrine, which will restore to us the power of voting—a right we much covet—and a direct share in the Government of the country—a privilege we appreciate as highly as any one can. Only *convince* us fairly and we will outdo Alvan Stewart himself in glowing eulogy of this new found virtue of the American Constitution. Indeed if merely *believing* the Constitution to be Anti-Slavery would really make it so, we would be the last to stir the question. If the beautiful theories of some of our friends could oust from its place the ugly reality of a pro-slavery administration, we would sit quiet, and let Spooner and Goodell convert the nation at their leisure. But alas, the ostrich does not get rid of his enemy by hiding his head in the sand. Slavery is not abolished, although we have persuaded ourselves that it does not exist. The pro-slavery clauses of the Northern Compact still stand there in full operation, notwithstanding our logic. The Constitution will never be amended by persuading men that it does not need amendment. National evils are only cured by holding men's eyes open, and forcing them to gaze on the hideous reality. To be able to meet a crisis men must understand and appreciate it.

All that we have to do, as *Abolitionists*, with Mr. Spooner's argument is to consider its influences on the Anti-Slavery cause. He maintains that the *Judges of the United States Courts have the right to declare Slavery illegal*, and he proposes that they should be made to do so. We believe that in part he mistakes fancy for argument; in part he bases his conclusions on a forced interpretation of legal maxims, and that the rest of his reasoning, where not logically absurd and self-contradictory, is subversive of all sound principles of Government and of public faith. Any movement or party, therefore, founded on his plan, would, so soon as it grew considerable enough to attract public attention, be met by the contempt and disapprobation of every enlightened and honest man. To trust our cause with such a leader is to insure its shipwreck. To keep, therefore, so far as our influence extends, the Anti-Slavery movement in its legitimate channel, to base it on such principles as shall deserve and command the assent of every candid man, to hold up constantly before the nation the mirror of its own deformity, we undertake the distasteful task of proving the Constitution hostile to us and the slave.

It is but justice to Mr. Spooner to acknowledge that his performance differs from most of those which have preceded it, not only in the ingenuity of the argument, but in the honest aim of the writer. With him "the wish" does not appear to have been "father to the thought." He did not first found a party and then stretch out both hands to clutch something that would sustain him in the right of voting at all. He did not violate his own convictions, and then, obstinately shutting his eyes cry out, "I don't see where I am inconsistent." His logic does not grow out of a lingering love of the ballot, or a secret desire to put "non-resistance *hors du combat*." He did not vote in order to save a corrupt and trembling Church and shield it from the storm of deserved rebuke, endeavor to build an ark of political refuge out of legal scraps and disjointed and misunderstood quotations. He seems to have persuaded himself of the truth of his own theory, and then to have thrown it out fearlessly to the world, trusting in its truth to make it useful, and with no ulterior object or private end to serve.

Before we touch on the argument of Mr. Spooner's Essay, we wish to call attention to two points:

1st. Allowing, for the moment, as he claims, that the Constitution contains no guarantee or recognition of Slavery—and granting him, also, in his own words:

"That the instrument was plain, and the people had common-sense; and those two facts cannot stand together consistently with the idea that there was any general or even considerable misunderstanding of its meaning."—(p. 126 2d Edition.)

We go on to ask, (of Abolitionists, not of Mr. Spooner,) how comes it that, as he all along confesses, Courts, Congress, and the people have uniformly warped and twisted the whole instrument aside and awry to serve and sustain Slavery? that the whole *Administration* of the Government, from its very commencement, has been pro-slavery? If the Constitution be guiltless of any blame in this matter, then surely there must be some powerful element at work in the Union itself, which renders it impossible for this to be an Anti-Slavery *nation*, even when blessed with an *Anti-Slavery* Constitution; and the experience of fifty years proves *Union* itself, under *any form*, to be impossible without guilt. In such circumstances, no matter what the Constitution is, whether good or bad, it is the duty of every honest man to join in the war-cry of the American Anti-Slavery Society, "*no Union with Slaveholders.*" For if we could not escape the infamy and the sin of such a pro-slavery *administration*, as ours always has been, under a Constitution pure as Mr. Spooner describes this to be, then, as we never can have a better, we ought to give up the experiment.

2d. As far as we can understand him, Mr. Spooner does not deny the universal Northern doctrine, that the Executive officers of the Government are bound, while they retain their situations, to obey and execute the laws in that manner and sense which the Supreme Court decide and enjoin. [His views of the duty of the Supreme Court itself we have stated and shall soon discuss. But from the importance he attaches to them we have a right to infer his concurrence in the opinion that the decisions of that Court are binding on the other departments of Government.—For if they are not so, of what consequence is it what those decisions are?] Of course no one has ever denied that the Supreme Court now construes the Constitution in a pro-slavery sense. This, then, is the law of the land until altered. Here again the position of the American Anti-Slavery Society is untouched. For whatever be the real character of the Constitution, if those who *now swear* to support that instrument are bound to support it in the sense which the Courts give it, then, surely, no Abolitionist can consistently take such an oath or ask another person to do so.

With neither of these points has Mr. Spooner himself anything to do. He, we believe, does not profess to be an Abolitionist; at least, in this Essay he considers the question simply as a lawyer, without entering into its further bearings. We suggest them for the benefit of those Abolitionists who try to hide themselves behind him, and make a use of his argument which he never intended, and probably would not sanction.

Mr. Spooner's first chapter is employed in answering the question, "what is law?"

"That law, I mean, which, and which only, judicial tribunals are morally bound, under all circumstances, to declare and sustain.

"In answering this question, I shall attempt to show that law is an intelligible principle of right, necessarily resulting from the nature of man; and not an arbitrary rule, that can be established by mere will, numbers, or power."—(p. 5, 2d Edition.)

His conclusion is, "that law is simply the rule, principle, obligation, or requirement of natural justice."—(p. 6.)

And finally he maintains:

"If, then, law really be nothing other than the rule, principle, obligation, or requirement of natural justice, it follows that government can have no powers except such as individuals may *rightfully* delegate to it; that no law, inconsistent with men's natural rights, can arise out of any contract or compact of government: *that constitutional law, under any form of government, consists only of those principles of the written Constitution, that are consistent with natural law, and men's natural rights*; and that any other principles, that may be expressed by the letter of any Constitution, are void and not law, and all judicial tribunals are bound to declare them so."—(p. 11, 2d Edition.)

We might pass this chapter by without notice as not concerning our inquiry, since Mr. Spooner not only conducts his argument afterward without reference to it, but distinctly allows that a definition exactly the opposite of his is the one usually adopted by the people, by Courts of Justice, and by Governments. So that,

"The very name of law has come to signify little more than an arbitrary command of power without reference to its justice or its injustice; its innocence or its criminality."—(p. 9.)

Our only object is to abolish Slavery, and not to correct the fundamental ideas which men hold as to law or Government; and hence, all we have to do with law is to find out what it *practically* is, and then amend it if we can. We might, therefore, we repeat, pass this chapter by, taking *law* to mean what Mr. Spooner allows that our Judicial tribunals, our Government, and the general sense of the people have defined it to be, in the words he quotes from Noah Webster, "a rule of civil conduct prescribed by the Supreme power of a State, commanding what its subjects are to do and prohibiting what they are to forbear."

Or as Heineccius describes it:

"Civil laws are the commands of the Supreme power of a State."

Or as Chancellor Kent defines it:

"Municipal law is a rule of civil conduct prescribed by the Supreme power in a State."

Or with Nathan Dane, the author of the Ordinance of 1787:

"Municipal or civil law is the rule of municipal or civil conduct prescribed by the superior power in the State commanding what the Legislature deems right, and prohibiting what it deems wrong."

Or with C. Justice Wilmot:

"Statute law is the *will of the Legislature* in writing—common law is nothing but statutes worn out by time."

Or with the Roman law, from which Mr. Spooner takes some of his definitions:

"What the people command, let that be law." XII tables of Rome.

"The will of the Prince, that is law."—Justinian's Inst.

"The rule which each State chooses for itself, that is the law of such State." Ibid.

We might extend these, but they are only the varied expression of what Mr. Spooner *allows* is the generally accepted definition: further quotation is useless.

We shall, however, dwell awhile on this chapter. Mr. Spooner himself draws the line very clearly and fairly between his own speculations and what he allows to be the generally received definition, and never confuses the two. But that portion of the Abolitionists who are misled by his book, often find their greatest difficulty in the points discussed in this chapter. We shall endeavor therefore to unravel it a little, since the views it contains are not new, but have been floating a long time in the Anti-Slavery horizon—and only spared because no one has cared to notice them.

Mr. Spooner's doctrine is, that "only what is just and right is law." This proposition is both true and false, simply because the word *law* has many meanings, like its Latin synonym *jus*, which Dr. Taylor says (Elem. Civil Law,) has forty significations. The most usual source of mistake in argument is the use of ambiguous terms. Now, Mr. Spooner's proposition is true of the law of Nature, which Cicero calls "*right reason, the same thing at Athens as at Rome*;" but it is false when applied to municipal, national, civil law, which is often a very different thing at Louisville from what it is at London. It is with this civil law only that we have to do in an argument like the present. Mr. Spooner's quotations at the close of this chapter, relate mostly to the law of Nature, to law in its most comprehensive sense, or the science of Justice; such as Hooker's sublime poetry, assuring us of law "that her seat is in the bosom of God, and her voice the harmony of the world."

This discussion, however, is a matter of no consequence to the argument. Leaving it, therefore, let us consider Mr. Spooner's main proposition. "Only that which is just, is law, and all judicial tribunals are bound so to declare;" taking law to mean the rule of civil affairs in a nation, the only sense of the term with which this argument has anything to do.

In the first place a proposition may justly be suspected not to be sound, when the author confesses in regard to it, as Mr. Spooner does here, that,

"It may make sad havoc with constitutions and statute books," and "it is *possible, perhaps*, that this doctrine would spare enough of our existing Constitution to save our Governments from the necessity of a new organization!!"

Surely mankind cannot be presumed to have so uniformly mistaken what they were about, as to have *uniformly* set up Governments, that were not *legal* in their own sense of the term! And as surely words must be interpreted according to the sense mankind chose to put upon them, and not according to the caprice of an individual. Mr. Spooner is at liberty to say that much of what the world *calls* law, is not obligatory because it is not just in the eye of God; and there all good men will agree with him. But to assert that because a thing is not right it is not *law*, as that term is commonly and rightfully used, is entering into the question of what constitutes the basis of government among men; and according to a man's theory of Government, will be his denial or assent to the proposition. Does Mr. Spooner mean to say merely, that a nation in making its laws has no right, in the eye of God, to perpetuate injustice? We agree with him. It is a doctrine certainly as old as Cicero, and may be traced through Grotius and Locke, and all writers on the subject, down to Jefferson and Channing. Nations are bound by the same rule of right and wrong, as individuals:—agreed. Or does he mean to say that in settling what shall be *the rule* of civil conduct the voice of the majority is not final and conclusive, or its own officers in *all the departments of Government*? Then we differ from him, entirely, and assert that on his plan, Government is impossible. An individual may, and ought to resign his office, rather than assist in a law he deems unjust. But while he retains, under the majority, one of *their* offices, he retains it on *their conditions*, which are, to obey and enforce *their* decrees. There can be no more self-evident proposition than that in every Government, the majority must rule, and their will be *uniformly* obeyed. Now, if the majority enact a wicked law, and the Judge refuses to enforce it, which is to yield, the Judge or the majority? Of course the first.

According to Mr. Spooner, no provision would be law until it had secured the assent, not only of the Legislature—the power appointed to *make* laws—but of the Judiciary also—the power appointed only to *construe* and *apply* them. Apply this principle to our Union and it brings upon the present Constitution a similar disease to that which killed the old Confederation, under which laws were of no practical value unless the several States *chose* to execute them. According to Mr. Spooner, however, it is an evil inseparable from all forms of Government, since every decision of the National Legislature must be *perpetually* subject to the discretionary power of every Court in the twenty-eight States!

"Only that which is just, is law, and all judicial tribunals are bound so to declare." This is Mr. Spooner's proposition. Grant, for the purpose of this argument, that only what is just is law. We allow that no laws in support of slavery are morally binding.—Possibly Mr. Spooner means the same thing, only expresses it more forcibly. The only important point at issue is—*when Governments enact such laws, what is the proper remedy?*

This question has been answered in three ways.

1st. Old-fashioned patriotism replies with Algernon Sydney, "Resistance to tyrants is obedience to God." Mr. Spooner states that "the only duties any one owes to a wicked Constitution, are disobedience, resistance, destruction."

2d. Next comes the Christian rule, that too sanctioned by Locke, and by Plato—the course of the Quakers—the motto of the American Anti-Slavery Society—"SUBMIT to every ordinance of man"—but suffer any penalty rather than JOIN in doing a wrong act; meanwhile, let your loud protest prepare a speedy and quiet revolution.

3d. Thirdly comes Mr. Spooner's plan:

"If the majority, however large, of the people of a country, enter into a contract of Government, called a Constitution, by which they agree to aid, abet, or accomplish any kind of injustice, this contract of government is unlawful and void—and for the same reason that a contract of the same nature between two individuals, is unlawful and void. Such a contract of government confers no rightful authority upon those appointed to administer it."

* * * * *

"Judicial tribunals, sitting under the authority of this unlawful contract or Constitution, are bound, equally with other men, to declare it, and all unjust enactments passed by the Government in pursuance of it, unlawful and void. These judicial tribunals cannot, by accepting office under a Government, rid themselves of that paramount obligation, that all men are under, to declare, if they declare anything, that justice is law; that Government can have no lawful powers, except those with which it has been invested by lawful contract; and that an unlawful contract for the establishment of Government, is as unlawful and void as any other contract to do injustice."

* * * * *

"No oaths, which judicial or other officers may take, to carry out and support an unlawful contract or Constitution of Government, are of any moral obligation."—(p. 9.)

And here begins the real and only important dispute between us. The reader may forget, if he pleases, all we have said. Mr. Spooner's differences and our own, up to this point, are mere questions of theory. It matters little which side be adopted. His position now is;

That laws and Constitutions which violate justice, are void. They are as little binding in the eye of the law, as in the eye of God. They are *legally* as well as morally void:—

So far we agree with him, or differ so slightly, that here we care not to dispute the matter. He goes on:

A Judge *holding office under such Constitutions* is authorized and bound to treat them as *void*, and to decide cases, not according to them, but as his sense "of natural justice" dictates.

Here we differ from him, maintaining that the position of the officers of such a Government differs from that of private individuals, their duty is to resign their post whenever unwilling to fulfil the conditions on which they receive them, and then, AS MEN, *treat the laws as void.*

This question is not to be confounded with one somewhat similar to it, and which has been sometimes discussed, especially in England, whether a Judge there may disregard an unjust statute? Our present question is different, for it should be remembered that in England there is no written Constitution.—Even if a Judge had such powers there, WHICH HE HAS NOT, it would by no means follow, that he had the same under our form of Government. There the Judge swears, simply to bear true allegiance to the King. It might, therefore, with some plausibility, be argued that having no test to which to bring acts of Parliament, except the rules of natural justice, Judges were authorized to declare them void when inconsistent with those rules.—Such a doctrine, however, is repudiated by the almost unanimous voice of the English law.

However the case may be in England, here the case is different. Our Government is founded on contract. So agrees Mr. Spooner:

"The Constitution is a contract; a written contract, consisting of a certain number of precise words, to which, and to which only, all the parties to it have, in theory, agreed. Manifestly neither this contract, nor the meaning of its words, can be changed, without the consent of all the parties to it."—(p. 123.)

"A contract for the establishment of Government, being nothing but a voluntary contract between individuals for their mutual benefit, differs in nothing that is essential to its validity from any other contract between man and man, or between nation and nation."—(p. 8.)

"Our Constitutions are but contracts."—Note p. 8.

Under our Constitution then, the people and the office-holder make a contract together. They grant him certain specified powers, and demand of him certain specified duties. He deliberately looks over the catalogue (that is, the Constitution)—assents to it—swears that he agrees to it, and will perform his part—and so takes office and acquires power. *That power*, Mr. Spooner thinks, he may retain while he refuses to perform the conditions on which he received it; and *that power*, granted him expressly, and only for the support of the Constitution, he is *bound* to use for the destruction of that instrument. Mr. Spooner's ground is that, "immoral contracts are void." Granted; but if they are absolute nullities, then the Governments supposed to spring from them, do not exist, since they have nothing to spring from. Accordingly, the supposed Judge is *no Judge*, and has no authority to *declare or decide anything*. As Mr. Spooner says, (p. 9.) "Such a contract of Government confers *no rightful authority* upon those appointed to administer it." Of course he would not have a Judge use a *wrongful* authority for any purpose.

Again, "immoral contracts are not binding." True. But if I receive a sum of money, on my promise to commit murder, and afterward, my moral sense awakens, and I refuse to do the deed, does that authorize me to retain the money? Such a moral sense would be a most accommodating one! and such godliness might well be "accounted gain"!

The rule plainly is that if power is put into our hands on certain conditions, and we become, *from any cause*, unable or unwilling to fulfil those conditions, we ought to surrender back the power to those who granted it. If, therefore, the Constitution is pro-slavery, (as Mr. Spooner and ourselves are now supposing it to be,) the Judges have agreed to do certain pro-slavery acts, and they must perform their whole contract, or yield up the power they received on that condition.—Judges are the people's servants, employed to do certain acts. If they cannot *do those acts*, let them "be no longer stewards."

This argument seems to us conclusive as it stands. But Mr. Spooner's principles give it additional force. He says (p. 99, 2d edition,) that

"Here office is not given to any one because he has a right to it, nor because it may be even a benefit to him. It is conferred upon him, or rather confided to him, as a trust, and solely as a trust, for the sole benefit of the people of the United States. The President, as President, is not supposed to have any rights in the office on his own account; or any rights except what the people, for their own benefit, and not for his, have voluntarily chosen to grant to him."

If this be so—if the President, or Judge, has *no right* but what the people have granted him, will Mr. Spooner affirm that the people ever granted to any Judge the right to disregard the pro-slavery clauses of *their* Constitution? If office be a "trust, and solely a trust," is the trust-holder to execute his duty according to his own views or according to the trust deed?

Again, Mr. Goodell had maintained that Governments have certain inherent powers, as that, for instance, of abolishing Slavery, and executing justice, &c.—that these enter into the very idea of a Government—and every Government possesses them, whether specifically granted to it or not; but Mr. Spooner (p. 8,) scouts as "an imposture, the idea of any necessary or inherent authority or sovereignty in our Government, as such"—and maintains that they are nothing but "contracts." If, then, they are only contracts, will he explain where Judges get a power which the other party to the contract never meant to give them?

When, therefore, Mr. Spooner or any one else has shown us an English Judge, for instance, putting aside an act of Parliament because of its injustice, he has not then reached our case. Let him show an English Judge holding himself authorized to disregard the terms of the union between Scotland and England, and between Ireland and England, and he will have advanced somewhere within sight of the position of an American Magistrate under our Constitution. Even those, however, are not equally strong cases, for such a Judge has never *expressly sworn* to maintain those compacts.

The royal oath to maintain "the church established" comes nearest to our case, and it is well known with what scrupulous anxiety even the profligate Geo. IV. clung to what he fancied his duty under that.

"These Judicial tribunals, says Mr. Spooner, cannot, by accepting office under a Government, rid themselves of the paramount obligation that all men are under to declare, if *they declare anything*, that justice is law."

"If *they declare anything*?" that is a very significant "IF." Was there a lurking doubt in the writer's mind whether our view was not the correct one? whether Judges had a right to "declare anything" in such circumstances? If there was let him cherish it.—True, such Judges cannot rid themselves, *as men*, "of the paramount obligation to declare, if they declare anything, that justice is law." But it is as men, as simple individuals, units in the sight of God, that this "paramount obligation" rests upon them. God knows them not as Judges. Their only "paramount obligation" as Judges, is to do what they agreed to do when they were made Judges, or quit the bench. God does not require of any of his creatures to juggle their fellows out of the gift of power, and then use that power contrary to their promises, in order to serve humanity. That were to ask "robbery for burnt offering."

But putting out of view this point of *contract*, between the people and their servants, we maintain that such a line of judicial duty is inconsistent with the existence of uniform and regular Government. It is the first step toward anarchy.

"Only what is just and right is law."—Granted, but who is to decide what is just and right? We say that *for the purpose of the civil government of any nation*, the majority of that nation is to decide, and their decision is final, and constitutes for that nation LAW. Mr. Spooner thinks not; he thinks that each Judge is to decide for himself and act accordingly. We say that a uniform Government is impossible on this plan. "Statutes, says Webster, are but recommendations, if each man is to construe them as he pleases." *Quot homines, tot sententiæ*, (many men many minds.) Law would be one thing in Maine and another thing in Maryland—one thing to-day, another thing to-morrow. And each day and each Court would think itself infallibly right. "Orthodoxy is *my* doxy," said the English Bishop. "By *right reason*, says Atterbury, every one would be willing to mean *his own*." "Discourses about Natural Law," says another eminent writer, "are the fullest of mistakes and most liable to error." Let us look at it. In these United States some think that neither men nor nations have the right to make war—to take life by the gallows—to authorize the holding of the soil as individual property—to debar women from the right of voting.—One not inconsiderable sect holds that the magistrate should enforce theological orthodoxy. Will Mr. Spooner inform us on his principle what is *law* on each of these points; and also what a Judge in such case is to pronounce? He will not, of course, maintain that a principle is right merely because the majority entertain it. A vote-receiver is sitting at the ballot-box; a woman appears and offers him a vote. His own opinion is that natural law, "the rule of natural justice," obliges him to receive it. The majority have told him, by specific statute, to receive the votes of men only. Which way is he to act? Which is "*law*" to him? A Judge is sitting on the bench—the jury find the prisoner guilty of murder. His own opinion is that no Government has a right to take life—the majority have ordered him, by specific statute, in such case made and provided, to doom the culprit to the gallows. How is he to act? Which is "law" to him? We say to him, quit the bench rather than violate your conscience. Mr. Spooner instructs him that all laws inconsistent with natural justice are void, and that he is bound to stay there and declare them so. Accordingly as every man's own conscience is, for the time being, his highest and holiest guide, he must set up his own idea of right; and as of old, every man's foot rule was regulated by the length of the reigning King's foot, so now Judges are to reverse the advice of Lord Coke and "be guided by the crooked cord of discretion, and not by the golden metwand (yard-stick) of the law."

Cicero, the *heathen*, maintains that for a merchant in time of famine to conceal the fact that a plenty of grain will come to-morrow, and thus grind a high price to-day out of the starving people, is contrary to "natural justice." Paley, the *christian*, thinks such conduct right. If such a sale is brought before Mr. Spooner, to be enforced, which way will he decide? What is law? this eternal, unalterable, unmistakable law, he so much praises.

Gerrit Smith thinks the three-fifth slave basis an Anti-Slavery provision, "a bounty on liberty—an attempt to promote the Anti-Slavery cause." Mr. Spooner thinks just the reverse. Which way shall the poor Judge, in search of *natural law*, interpret the clause? Incidit in Scyllam cupiens vitare Charybdin.

If he steers clear of Spooner one way, he is sure to run foul of Smith the other. How grateful will he be to the author for getting him clear of the "old chaos of conflicting edicts," and introducing him to such a "natural, unalterable, universal, *simple*, intelligible principle," which supercedes *all* other law, and "is *necessarily the only law*"!!!

If Mr. Spooner, to escape this dilemma, shall explain his principle to mean that a Judge is to decide, not according to his own individual idea of right, but the general sense of the age or nation in which he lives, we hardly care to dispute such a proposition with him—for it is of little practical importance; since in the *words of its statute-book* will each magistrate always find the best, if not the only evidence of what his nation thinks just and right. "The laws," says Aristotle, "are the morals of the State and the character of the whole people taken collectively." If Mr. Spooner should feel disposed to appeal from the decision of one nation to the general sense of Christendom, he will find that there never was a sin, for which any Judge, desirous of supporting it, could not find abundance of philosophers to uphold him in thinking it right; and surely Slavery at present, finds many such, both in Church and State. Hence, on either plan there could be no uniform and regular Government.

We shall conclude our discussion of this point by showing that the almost unanimous, if not unanimous voice of lawyers and judicial tribunals repudiates this power. Our extracts will be drawn from as many different sources as possible, because it has been a favorite course with Liberty party debaters and others to maintain that all acts of Parliament or of any legislative body, contrary to reason and justice are void, and that Judges may treat them as such—a proposition identical with Mr. Spooner's, and clearly not sound.

This doctrine is usually sustained by disconnected quotations from Blackstone, among which the following generally occupies the first place:

"This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid, derive all their force, and all their authority mediately or immediately, from this original."—Blackstone, Vol. 1, p. 41.

It will be observed that Blackstone only asserts that *bad laws are void*, without touching the question of the remedy in such case, or whether Judges may declare and treat them so. His able commentator, Prof. Christian, in a note on this passage, discusses this point, and decisively rejects the doctrine. He says:

"If an act of Parliament should, like the edict of Herod, command all children under a certain age to be slain, the Judge ought to resign his office rather than be auxiliary to its execution; *but it could only be declared void by the same legislative power by which it was ordained.*"

With this, the other commentators, Chitty and the rest, agree. Sedgwick unites with them in the same opinion. Woodeson, Blackstone's second successor in his professional chair, adds his assent in these words:

"We cannot expect that all acts of legislators will be ethically perfect; but if their proceedings are to be decided upon by their subjects, Government and subordination cease."—Chitty's Blackstone note, p. 41.—Wood El. Jur. 48.

Blackstone himself, in a subsequent page of his work, distinctly denies the doctrine which some might infer from the general terms he had used above. On the 91st page of his volume, he says:

"I know it is generally laid down more largely, that acts of Parliament, contrary to reason, are void. But if the Parliament will positively enact a thing to be done which is unreasonable, I know of no power, in the ordinary forms of the Constitution, that is vested with authority to control it; and the examples usually alledged in support of this sense of the rule, do none of them prove, that, where the *main object* of a statute is unreasonable, the Judges are at liberty to reject it; for that were to set the judicial power above that of the Legislature, which would be subversive of all Government. * * *