

unprofitable tenantry, with no better hope than to procure bread enough to gratify the calls of nature. If such children and parents of misfortune, were permitted to occupy as their own, even the sterile and bleak districts of land, which no one at any price would buy, they would feel more like free men. Yes, if their lands were too poor to produce any thing but the green grass, their situation would be infinitely more happy, than to be doomed to the homeless drudgery of a perpetual underling servitude. Open a door to a general freehold population, and the government at once receives new strength as a consequence of the attachment which all men have to a home. When this is the situation of the people, let external or internal commotions arise, they will be irresistible in war, and as priceless as Fabius against bribery and corruption. When the endearments of home and family are entertained together in the heart of the citizen, and the preservation of these dependant upon the salvation of his country, he is then prepared to die for it. If such lands are valueless to the Union, then the cries of the needy are the demands of justice and sound policy. The Indians still abide among us.—

Here they are, wasting away like the snowflake before the fervid rays of the sun. Give them the christian religion, give organic laws, give them separate estates in lands, give them privileges and make them citizens, or appeal to the general government to assign them a place of their choice beyond the Mississippi, in a country suitable to the chase or the establishment of a government of their own, to which they may emigrate if they please. To suppose that the barbarian with all his savage feelings and manners and horrid customs, can long exist in the heart of civilized society, without unpleasant collisions, is about as probable as to expect a union between fire and water, for a mutual existence. One or the other must prevail, and it is not to be supposed that the civilized will yield to the savage state. It would be the part of wisdom to give them speedily what must be fixed upon them by the force of circumstances in the ultimatum; but in love and without force.

The Sunday mail question is still alive. Like other abstractions, not susceptible of being formed into law by us but bearing upon our rights or privileges, we may consider this a subject of legitimate notice. Still it should form no part of our purpose to diminish in the least that deep veneration which is so justly entertained for the christian sabbath, or to inculcate an unfavorable opinion to the divinity of its institution. Few things which form a part of the social compact, human or divine, are productive of more salutary effects in this world of moral evil than a sabbath or day of rest and meditation. But we wish to have the protection of this sacred day where we found it, in the hands of the Almighty, its divinity upon the testimonies of the bible and the punishment of its violators to him who ordered it. If this is the Lord's day and of his appointment, it is under his protection and he will preserve it. Let the mails run until they are stopped by a higher power than congress. If this body shall assume a jurisdiction over the sacred writings on a single subject the wedge is then entered, and there is nothing further in the way to prevent them from taking complete cognizance of the whole. The orthodoxy of this, and the heterodoxy of that creed, would soon follow in the train of a fruitful source of new legislation concerning the scriptures. That system of ethics which will not stand alone and recommend itself by its own graces, without the white washes of the law, deserves a tomb among the rubbish of other human follies. And that one which claims for itself perfection over all others, in the midst of an extended religious toleration is not likely to escape suspicion for its presumption. It is the natural and constitutional right of all to think as freely as they please, without responsibility, and to act under it.

It will become your province, at the present session, to lay off the state into new senatorial and representative districts. The usual difficulties growing out of this task will be found to present themselves as almost insurmountable obstacles among your best exertions to do equal justice, and at the same time give complete satisfaction, to all the counties in the state. If you are governed in the formation of districts by any definitely fixed ratio, whether it remains as it is or increased, there are many counties which will be deprived of separate representative privileges, now enjoying them. The most satisfaction will, doubtless, be given, by rather leaning to a system of compromise, than to too close an adhesion to exact numbers. Owing to our prodigious increase of population, during the last five years, an increase of members in both houses must be the consequence of even an increased ratio, which, in either case, to too great an extent, we are admonished by economical considerations, and the representative principle, to be guarded against. Within the last ten years we have risen in numerical strength from one hundred and forty odd thousand, to about four hundred thousand. Such an unparalleled rise in so short a time, will enable us to indulge the presentment, that unless we receive an unforeseen check in some

way, by the year 1840, progressing at the rate of the past, a million of souls will live in Indiana.

You may, or you may not, make the congressional districts, under the late census, this session. You can form them subject to contingencies before the ratio bill is passed by congress, or absolutely afterwards. Our new delegation will not be elected until August, 1833. Perhaps it might be most agreeable to form the state and federal districts at the same time, and be rid of the subject.

Some steady and uniform mode of doing county business throughout the state, is recommended, alike by its benefits, and the evils of the present one. What most appears to be the ground of complaint is, the different kinds of county tribunals within the same commonwealth. In some counties there are boards of justices, and in others commissioners. Such a diversity of special legislation in this matter, will lead in time to a lamentable confusion. After a while, by its institutions, one will scarcely be able to know when he is in the state or out of it. Legislation should always be general, producing uniformity in its effects; and opposition by minorities to the solemnly declared will of the majority, is no apology for special acts afterwards to commit havoc upon the beauty and order of a state system. At what point is the practice to stop? The examples already on our statute book, if persisted in, will in time produce a heterogeneous & deformed policy, without comeliness, wisdom, or public security. The philanthropic exertions, making, too, in some counties in the state, for the erection of asylums for the poor, upon farms, might induce the state to make them common, under the constitutional injunction. If an application were made to Congress, for the location of a section of land, for every county in the state, for such humane purposes, I flatter myself that it would succeed. Why not? If the lands are ours, and Congress holds them in trust only for us, surely we may dispose of them in our own way.—And how could about two townships of land be better disposed of? Indeed, there is much reason for making such applications for the domain, in all of the states bordering on the Ohio and Mississippi rivers. And could it be said by any of the old states, that this is another scheme for the western states aggrandizement exclusively? No—for the doors of these asylums would be open to the unhappy victims of misfortune, of every state and clime. Many a son or daughter of affluent parentage, in the old states, might, under adverse circumstances have the tear of affliction dried up, in these nurseries of benevolence. The shores of our principal rivers, already vocal with the cries of distress, should answer the objection, that such grants would be of local benefit.

Applications are frequently made to the Governor, to fill vacancies, created, or supposed to be created, by the absence of officers. The length of time that an officer must have removed or absented himself from his office or place of residence, to constitute a vacancy, appears not to be specified by law. This is necessary. When an officer dies or resigns, there is no difficulty in filling the vacant place. But how long a man may absent himself before he abandons his office, is matter of opinion. The public sentiment is divided on this subject; and therefore the time should be fixed by law.

In the present advanced and refined state of the human mind, in those governments which justly stand at the head of the civilized world, the propriety of inflicting capital punishments, is, from the experiments of bygone ages, growing more and more questionable. The right of society to take away life, and then the policy of doing so, publicly, though sustained by the hoary advocate of time and usage, are among the most problematical of the settled practices of the age, which have so uniformly received the acquiescence of nations. Shall the antiquity and universality of these customs, however, secure them against assault, and sanctify the doubtful reasoning which sustains them? Or may we, under the lights of experience, teeming from all quarters of the globe, and as the disciples of all wholesome reforms which are improvements, venture to doubt whether they have not failed to answer the ends of this kind of punishment. It is true, that in taking life, all opportunity is cut off from the offender to commit other offences; but this is only one of the objects which punishments design to effect. They look to a reformation of their victims, and to examples to society, to deter others from the commission of similar crimes for which the criminal suffered. Are these designs to be consummated, by placing it without the power of the convict, to undergo the one, or by making him the instrument of a finished burlesque upon the other? Is the brief period between the gallows and conviction a suitable or sufficient time for the culprit to make his atonement to his country or his God? Is not the day of

public execution one of curiosity and amusement to many, rather than one of lasting impressio? Is it the purpose of the spectator, in travelling far days to such exhibitions, to learn his duty to his fellow man or barely to see one of his race hang and die? The answers which the close observer would give to these queries, would be such as to make the supreme power of a state, pause to examine this question in all its bearings. Confinement at labour in the solitary cell, responds to all of the reasons for punishment, and has been found to be practicable without its supposed concomitants, madness, inhumanity, and gradual mortality. But what weighs most in argument against life-taking is—that all men are fallible and some corrupt, and that when vitality is taken away from the creature through either of these infirmities, nothing but supernatural agency can again restore it. When the perjury of witnesses or the frailties of a court or jury, shall snap the thread of life, there is no redress; but when through them other corporeal punishments are inflicted, or fines, or loss of estate, or reputation, or other injury, is the consequence, the wrong is not remediless. The conservative and remedial principles of our institutions, may cure all of the errors of society, but that of taking away life from innocence. When there is no redress for such a cruel deed, with what a trembling caution are we bound, by every sacred duty, to guard against it, by law and practice. Whilst the *quo animo*, by which men act and are judged, lies concealed in its congenial microcosm and hidden from the keenest penetration, most attempts to arrive at a certainty with regard to it, must prove abortive. The actions of the correlatives, mind and matter, as being the interpreters of each other, are often treacherous. Effects are sometimes ascribed to causes which never produced them. Misapprehension and mistake follow. The scene closes with one of the primitive but barbarous customs of the early and rude stages of society, when even witchcraft was believed in by legislators and judges as learned as Matthew Hale; and life taken to appease the superstition of the law and judge.

At the request of the legislature of Alabama, I shall lay before you a memorial from that state to congress, praying for relief to land debtors to the U. States, so as to allow pay for improvements on forfeited lands, and to suspend their sales, &c. This document has merit.

I am also requested to lay before you, resolutions of the states of Connecticut & Georgia; the latter for, & the former against an alteration of the constitution of the U. States, relative to the presidential election. One of these states is averse to any alteration whatever. The other wishes such a modification of it as will give the election exclusively to the people, without the intervention of electors or congress.

The secretary of war has forwarded to this state 179 copies of artillery and 2172 of infantry tactics, which are subject to such distribution as you may direct.

The various duties required of the executive, by several resolutions of the last general assembly, have been strictly performed, which will be made manifest to you at a proper time.

The same economy and improvement may be introduced into the probate system, by exchanging the county for a circuit probate judge, which *exempli gratia*, has distinguished the usefulness of the circuit over the county prosecutors. By making a competent judge his own clerk, and requiring a record to be procured & kept in each county, the business may be done for less and far better than under the present mode.

The records of this court should display as much critical and legal acumen, as any in the state. There is none more important. And unless the proceedings are marked with strict accuracy, an endless litigation will grow out of them.

Good faith and approaching necessity require, that the donation at Indianapolis should be sold to create a fund for the erection of a state house. The collection of materials for such a building as the state will have funds to erect, will be the work of considerable time. The balance of the land laid out in twenty acre lots, would be most likely to bring the most money. It is time that some definite conclusion was taken in this affair.

I feel myself bound again to digress, for the sake of opinions which I hold dear, to notice some attempts, by heads of voluntary associations, to undermine the grand superstructure of republicanism and overturn the first principles of the representative system, within the past season, in this state. Political heresies, if left uncombated will soon fasten their fangs upon the object. The hydra should be slain in its own element, in *limine*. If unauthorised bodies are in future to usurp the names and places of their constitutional "co-peers," and assist in regulating the state, or are permitted to usurp the dic-

tatorial office, their evil practices and their creed ought to be rendered as harmless to the body politic as possible. It seems to be contended, in true federalist *sang froid*, that when a man is elected to office he becomes at once a kind of omnipotent being, and independent of the people.—That the presumption at once attaches, that as he is selected for his "talents" and other merits, he is, therefore, above the people, the law, and the constitution. The inference drawn is—that it is contended an officer cannot acquit his conscience and at the same time serve popular whims and caprices. He must, to be useful, be absolute. This is pure aristocracy. It is the delusive theory wielded by kings to enslave the multitude. They take it for granted that the people at large are beasts of burden, and incapable of self government. Our new recruits to this doctrine, must act upon the same principles, to sustain the position—that the officer who will violate constitutional constructions, given to him from the legitimate source—either the people or the legislature as the case may be—on any point whatever,—can hold fast to the people's office, a moment afterwards, and hurl defiance at the power who gave it. We have found with a vengeance, that we have those who not only contend for such notable notions, but those who practice them under license. This class of old side lawgivers, have yet to learn, or if informed, are too sinister to avow it, that there are few who will in these enlightened times, call in question that important maxim, "that all power and authority are radically in the people." And it is becoming evident, that fewer will ever dispute it in time to come. To such as have not yet found it convenient to believe in these things, let me say—My soul come not thou into your secrets; unto your assembly, mine honour, be not thou united. Though qualifications in agents and other qualities, constitute a considerable item in support of representative government, in its favour, it is evident from the nature of things, that convenience and safety, are by far the most prominent inducements to its preferences of any other. The people are always safe in their own hands, with light.

All know that it is inconvenient for the people en masse, in pure democratical form, to act, dispersed over immense territories; yet it must be admitted, that they possess the CAPACITY; or they have not capability and sagacity enough to choose one to act for them. They retain in their own hands all powers not expressly named in their charter, to be wielded by them, through their agents, and under their supervision. Surely, then, it is their right to be heard and respected, in every thing which concerns them, in the administration of their government. And he who will not bow to the omnipotence of public sentiment—either in Congress or in state Legislatures, or elsewhere—and suffer the people or their representatives to make him their organ, whatever may be his "own former opinions," deserves a destiny as unenviable as that of the late Charles X., because he is as tyrannical. The agent is employed by an election to do the people's business, and he must do it in their way and not in his own, or give place to those who will. He who consents to be elected to office upon party ground, agrees to sacrifice his general independence, becomes a slave to opinions not his own, and belongs to his party; and like a late Kentucky Senator, is bound to sacrifice the interest of his state to sustain the principles of a party, or be expelled from his ranks. He who is elected upon his merit, by the free suffrages of all parties, or by the people, without a party contest, is free; and may be independent—will feel himself under obligations to his entire constituents and friends, without knowing or wishing to know, where they stand in politics—is fettered by no foreign incumbrances; and may, like an honest man, act from his own views of right and wrong, and always be found on the side of principle and the interest of the people at large. But no mode or number of elections, should ever withdraw the eye of the agent from the wishes of his constituents, or make him indifferent to the will of the majority. He who forms his opinion in advance, to oppose or support, any man, men, or party, without allowing himself latitude for reflection and investigation, puts his mental independence in chains, and his principles under the lead of a disciplined aristocracy. It is true, that when the popular will is full and fairly expressed in placing men in power, their acts should in every instance be supported; not as much on their own account as from respect to the power which created them—when their aim is honest & their tendency the advancement of the public good. But to make men first the nucleus of a party rendezvous and suffer them to dictate the measure at their own pleasure, is inconsistent with republican institutions. Measures first and then men to sustain them, and none but such as will sustain them, ought to be on the title page of the text book of the

United States' politicians. Schooled in this theory, peace and good neighborhood will again return, and deception be rendered more difficult. When men are presented as the rallying standard, we may behold a fine exterior; affable deportment—the gentleman—scholar—an intelligent face—elegant mien—traits of honesty—semblances of morality—and much more, to command our admiration; but, the seat of intention is still invisible; and we may woo and wed, at last, secret designs & infirmities common to man in his greatest perfection. But when principles and measures summon us to become their votaries—they are thrown open to our view unmasked—we can behold their very soul, their body, and their end—we can examine them with our mind's eye, investigate their causes and effects, and probe them to the core.—& when approved, we can embrace them as leaders that will not deceive us—that cannot desert us—that will live immutably amidst the jarrings of party strife, to point the way to certain and glorious victory. Men must yield to measures—not measures to men.

Among the numerous subjects which a desire to avoid further prolixity, has induced me to reserve for your superior wisdom and penetration, about which much anxiety is felt, permit me respectfully to recommend:—That you bestow a suitable attention upon the condition of our navigable rivers, as calling for appropriations out of the three per cent. fund for their improvement, to secure the safety of the descending craft; and to encourage the steam boat to venture upon those streams, which, but for their natural obstructions would invite her to visit their extensive shores. That you take into consideration the condition of our college, and foster it with that parental care which shall preserve it free from religious sectarianism or political partyism, that it may form ripe & liberal scholars, such as will be ornaments to the state, and benefactors to their race.—That you enquire, whether our state roads have not failed to receive the amount of labour due them by law and the physical force of the state, as an effect of too much reliance upon the three per cent fund.—That you may compare the 13th, 14th, and 17th sections of the constitution, which prohibit imprisonment for debt, unless for fraud, secure the right of bail, and forbid the requirement of excessive security, with the 4th section of the practice act, the 14th section of the execution laws, and the insolvent debtor act, which provide for the imprisonment and release of debtors, under the *capias ad respondendum* and *capias ad satisfaciendum*, in order to be satisfied that the constitution is general in its application to all stages of proceeding in actions, and that the laws make a distinction in rights of the debtor upon *mesne* and *final* process. Our laws aid the debtor in obtaining his release upon execution, without a resort to the insolvent law, and where there is no presumption of fraud; but the original writ still takes the body to jail unless bail is given or a schedule is filed. Is the failure to give bail, that presumption of fraud intended by the constitution which may imprison one? The debtor may be unable to give bail, and yet have property enough to pay his debts, and be unwilling to file his schedule. The constitution has abolished imprisonment for debt, but authorizes it for fraud or presumption of fraud. The propriety and constitutionality, therefore, of imprisoning the body, either by the first or last process in a suit for debt alone, without providing some way of attaching fraud to the defendant, is extremely doubtful. To owe without the means of payment is a misfortune, but to act fraudulently is a crime. Great abuses have been practised under the 4th section of the practice act. It authorises bail in actions of "covenant detinue, &c." without any affidavit of the amount due. It is easy to evade the constitution by suing on a covenant, not for the payment of money or liquidated damages, lay the damages at ten times the amount forthcoming, file no affidavit to any amount, imprison the defendant until the trial; and thus demand excessive bail and violate the constitution. This has been practised. In the one of these cases, an affidavit should be made in all cases where there is no sum certain; and in the other, the relief given on the *capias ad satisfaciendum* should be extended to the *capias ad respondendum*.

It will, doubtless, be to you an agreeable service to authorise the presentation of the contents of two boxes of public documents, to the Indiana college, or its worthy President, in behalf of the state, and at the instance of the Secretary of State of the United States, in conformity to an act of Congress: & also, two boxes of the same from the same, to the first established historical society in Indiana. The above named boxes have come to hand.

In any attempt to revise the military laws, the growing necessity of a classification of the militia into voluntary and sedentary corps, with a view to a more efficient organization and to afford complete relief to the conscientiously scru-