

How is a military commission organized? What shall be the number and rank of its members? What offenses come within its jurisdiction? What is its code of procedure? How shall witnesses be compelled to attend it? Is it perjury for a witness to swear falsely? What is the function of the Judge-advocate? Does he tell the members how they must find, or does he only persuade them to convict? Is he the agent of the Government, to command them what evidence they shall admit and what sentence they shall pronounce; or does he always carry his point, right or wrong, by the mere force of eloquence and ingenuity? What is the nature of their punishments? May they confiscate property and levy fines as well as imprison and kill? In addition to strangling their victim, may they also deny him the last consolations of religion, and refuse his family the melancholy privilege of giving him a decent grave?

To none of these questions can the Attorney-general make a reply, for there is no law on the subject. He will not attempt to "darken counsel by words without knowledge," and, therefore, like Job, he can only lay his hand upon his mouth and keep silence.

The power exercised through these military commissions is not only unregulated by law, but it is incapable of being so regulated. What is that you claim, Mr. Attorney? I will give you a definition, the correctness of which you will not attempt to gainsay. You assert the right of the executive Government, without the intervention of the judiciary, to capture, imprison, and kill any person to whom that Government or its paid dependents may choose to impute an offense. This, in its very essence, is despotic and lawful. It is never claimed or tolerated except by those Governments which deny the restraints of all law. It has been exercised by the great and small oppressors of mankind ever since the days of Nimrod. It operates in different ways; the tools it uses are not always the same; it hides its hideous features under many disguises; it assumes every variety of form;

"It can change shapes with Proteus  
For advantages,  
And set the murderous Machiavel to school."

But in all its mutations of outward appearance it is still identical in principle, object and origin. It is always the same great engine of despotism which Hamilton describes it to be.

Under the old French monarchy the favorite fashion of it was a *lettre de cachet*, signed by the King, and this would consign the party to a loathsome dungeon until he died, forgotten by all the world. An imperial ukase will answer the same purpose in Russia. The most faithful subject of that amiable autocracy may lie down in the evening to dream of his future prosperity, and before daybreak he will find himself between two dragoons on his way to the mines of Siberia. In Turkey the verbal order of the Sultan or any of his powerful favorites will cause a man to be tied up in a sack and cast into the Bosphorus. Nero accused Peter and Paul of spreading a "pestilent superstition," which they called the gospel. He heard their defense in person, and sent them to the cross. Afterwards he tried the whole Christian church in one body on a charge of setting fire to the city, and he convicted them, though he knew not only that they were innocent, but that he himself had committed the crime. The judgment was followed by instant execution; he let loose the Praetorian guards upon men, women, and children, to drown, butcher, and burn them. Herod saw fit, for good political reasons, closely affecting the permanence of his reign in Judea, to punish certain possible traitors in Bethlehem by anticipation. This required the death of all the children in that city under two years of age. He issued his "general order," and his provost marshal carried it out with so much alacrity and zeal that in one day the whole land was filled with mourning and lamentation.

Macbeth understood the whole philosophy of the subject. He was an unlimited monarch. His power to punish for any offense or for no offense at all was as broad as that which the Attorney-General claims for himself and his brother officers under the United States. But he was more cautious how he used it. He had a dangerous rival, from whom he apprehended the most serious peril to the "life of his government." The necessity to get rid of him was plain enough, but he could not afford to shock the moral sense of the world by pleading political necessity for a murder. He must

"Mask the business from the common eye."

Accordingly he sent for two enterprising gentlemen, whom he took into his service upon liberal pay—"made love to

their assistance;" and got them to deal with the accused party. He acted as his own Judge-advocate. He made a most eloquent and stirring speech to persuade his agents that Banquo was their oppressor, and had "held them so under fortune;" that he ought to die for that alone. When they agreed that he was their enemy, then said the King:

"So is he mine, and though I could  
With barefaced power sweep him from my sight,  
And bid my will avouch it; yet I must not,  
For certain friends, who are both his and mine,  
Whose loves I may not drop."

For these, and "many weighty reasons" besides, he thought it best to commit the execution of his design to a subordinate agency. The commission thus organized in Banquo's case sat upon him that very night at a convenient place beside the road where it was known he would be traveling; and they did precisely what the Attorney-general says the military officers may do in this country—they took and killed him, because their employer at the head of the government wanted it done, and paid them for doing it out of the public treasury.

But of all the persons that ever wielded this kind of power, the one who went most directly to the purpose and object of it was Lola Montez. She reduced it to the elementary principle. In 1848, when she was minister and mistress to the King of Bavaria, she dictated all the measures of the Government. The times were troublesome. All over Germany the spirit of rebellion was rising; everywhere the people wanted to see a first-class revolution, like that which had just exploded in France. Many persons in Bavaria disliked to be governed so absolutely by a lady of the character which Lola Montez bore, and some of them were rash enough to say so. Of course that was treason, and she went about to punish it in the simplest of all possible ways. She bought herself a pack of English bull dogs, trained to tear the flesh and mangle the limbs, and lap the life blood, and, with these dogs at her heels, she walked up and down the streets of Munich with a most majestic tread, and with a sense of power which any judge advocate in America might envy. When she saw any person whom she chose to denounce for "thwarting the Government" or "using disloyal language," her obedient followers needed but a sign to make them spring at the throat of their victim. It gives me unspeakable pleasure to tell you the sequel. The people rose in their strength, smashed down the whole machinery of oppression, and drove out into uttermost shame king, strumpet, dogs and all. From that time to this neither man, woman, nor beast, has dared to worry or kill the people of Bavaria.

All these are but so many different ways of using the arbitrary power to punish. The variety is merely in the means which a tyrannical government takes to destroy those whom it is bound to protect. Everywhere it is but another construction, on the same principle, of that remorseless machine by which despotism wreaks its vengeance on those who offend it. In a civilized country it nearly always uses the military force, because that is the sharpest and surest, as well as the best looking instrument that can be found for such a purpose. But in none of its forms can it be introduced into this country; we have no room for it; the ground here is all preoccupied by legal and free institutions.

Between the officers who have a power like this and the people who are liable to become its victims, there can be no relation except that of master and slave. The master may be kind and the slave may be contented in his bondage; but the man who can take your life, or restrain your liberty, or despoil you of your property at his discretion, either with his own hands or by means of a hired overseer, owns you and he can force you to serve him. All you are, and all you have, including your wives and children, are his property.

If my learned and very good friend, the Attorney-General, had this right of domination over me, I should not be very much frightened, for I should expect him to use it as moderately as any man in all the world; but still I should feel the necessity of being very discreet. He might change in a short time. The thirst for blood is an appetite which grows by what it feeds upon. We can not know him by present appearances. Robespierre resigned a country judge-ship in early life because he was too tender-hearted to pronounce sentence of death upon a convicted criminal. Caligula passed for a most amiable young gentleman before he was clothed with the imperial purple, and for about eight months afterward. It was Trajan, I think, who said that absolute power

would convert any man into a wild beast, whatever was the original benevolence of his nature. If you decide that the Attorney-General holds in his own hands or shares with others the power of life and death over us all, I mean to be very cautious in my intercourse with him; and I warn you, the judges whom I am now addressing, to do likewise. Trust not to the gentleness and kindness which have always marked his behavior heretofore. Keep your distance; be careful how you approach him; for you know not at what moment or by what a trifle you may rouse the sleeping tiger. Remember the injunction of Scripture: "Go not near to the man who hath power to kill; and if thou come unto him, see that thou make no fault, lest he take away thy life presently; for thou goest among snares and walkest upon the battlements of the city."

The Right of the Executive Government to kill and imprison citizens for political offenses has not been practically claimed in this country, except in cases where commissioned officers of the army were the instruments used. Why should it be confined to them? Why should not naval officers be permitted to share in it? What is the reason that common soldiers and seamen are excluded from all participation in the business? No law has bestowed the right upon army officers more than upon other persons. If men are to be hung up without that legal trial which the Constitution guarantees to them, why not employ commissions of clergymen, merchants, manufacturers, horse-dealers, butchers, or drovers, to do it? It will not be pretended that military men are better qualified to decide questions of fact or law than other classes of people; for it is known on the contrary that they are, as a general rule, least of all fitted to perform the duties that belong to a Judge.

The Attorney-General thinks that a proceeding which takes away the lives of citizens without a constitutional trial is a most merciful dispensation. His idea of humanity as well as law is embodied in the bureau of military justice, with all its dark and bloody machinery. For that strange opinion he gives this curious reason: that the duty of the commander-in-chief is to kill, and unless he has this bureau and these commissions, he must "butcher" indiscriminately, without mercy or justice. I admit that if the commander-in-chief, or any other officer of the Government, has the power of an Asiatic king, to butcher the people at pleasure, he ought to have somebody to aid him in selecting his victims, as well as to do the rough work of strangling and shooting. But if my learned friend will only condescend to cast an eye upon the Constitution, he will see at once that all the executive and military officers are completely relieved by the provision that the life of a citizen shall not be taken at all until after legal conviction by a court and jury.

You can not help but see that military commissions, if suffered to go on, will be used for most pernicious purposes. I have criticized none of their past proceedings, nor made any allusion to their history in the last five years. But what can be the meaning of this effort to maintain them among us? Certainly not to punish actual guilt. All the ends of true justice are attained by the prompt, speedy, impartial trial which the courts are bound to give. Is there any danger that crime will be winked upon by the judges? Does anybody pretend that courts and juries have less ability to decide upon facts and law than the men who sit in military tribunals? The counsel in this cause will not insult you by even hinting such an opinion. What righteous or just purpose, then, can they serve? None whatever.

But while they are utterly powerless to do even a shadow of good, they will be omnipotent to trample upon innocence, to gag the truth, to silence patriotism, and crush the liberties of the country. They will always be organized to convict, and the conviction will follow the accusation as surely as night follows the day. The Government, of course, will accuse none before such a commission except those whom it predestines to ruin and destroy. The accuser can choose the judges, and will certainly select those who are known to be the most ignorant, the most unprincipled, and the most ready to do whatever may please the power which gives them pay, promotion and plunder. The willing witness can be found as easily as the superserviceable judge. The treacherous spy, and the base informer—those loathsome wretches who do their lying by the job—will stock such a market with abundant perjury, for the authorities that employ them will be bound to protect as well as reward them. A corrupt and tyrannical

government, with such an engine at its command, will shock the world with the enormity of its crimes. Plied as it may be by the arts of a malignant priesthood, and urged on by the madness of a raving crowd, it will be worse than the popish plot, or the French revolution—it will be a combination of both, with Fouquier Tinville on the bench, and Titus Oates in the witness' box. You can save us from this horrible fate. You alone can "deliver us from the body of this death." To that fearful extent is the destiny of this nation in your hands.

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