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CIVIL LIBERTY

A Sermon

PREACHED IN FARMINGTON, CONNECTICUT,

July 13, 1856

BY NOAH PORTER, D.D.

PASTOR OF THE FIRST CONGREGATIONAL CHURCH

New-York

Pedney & Russell, Printers.

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Note:—The following Discourse is published by request of many of the hearers. Some of its leading thoughts are found in Dr. Leiber's two volumes on civil liberty and self-government, and are there amply illustrated. A recent perusal of that admirable work suggested the subject of this discourse, with the expectation of preaching it on the Lord's day, next succeeding our national jubilee. To those who have access to the volumes, a careful reading of them is warmly recommended.

N.P.

SERMON.

2 CORINTHIANS III, 17.

Where the Spirit of the Lord is, there is Liberty.

Christianity was propagated at the first, not as Judaism was, by means of the written word, but by the Holy Spirit, in and through those who preached; and is therefore sometimes called, “the spirit,” in distinction from “the letter.” In the preceding context, Paul speaks of himself as “a minister of the New Testament;—not of the letter, but of the spirit;” and here he says, “sow the Lord in that Spirit.” “The Lord Jesus Christ is that Spirit of which I have spoken—the author and subject and substance of that religion which, by the Spirit, is preached to the world, and *where the Spirit of the Lord is, there is liberty.*”

That liberty of which he speaks, you will readily understand to be spiritual—liberty of soul—freedom from the blindness and bondage of sin. The connection of the words indicates this. Speaking of the Jews, he says, “unto this day, when Moses is read, the veil is upon their heart; but when it shall turn to the Lord, the veil shall be taken away.” Now the Lord is that Spirit—the Lord Jesus Christ is the sum

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and substance of that Gospel, which, through the Spirit, is ministered to you; and “where the Spirit of the Lord is”—where the true Gospel in its power and effect is, “there is liberty”—freedom from the blindness and bondage of an enslaved mind.

As we have just entered on another year, and, in prospect, a most eventful year, in the history of our Republic, I propose to speak on this occasion of liberty in a sense somewhat different from that of the text, and yet allied to it—of civil liberty—and more especially of American liberty:—the liberty which has come to us, as a priceless inheritance from our fathers; for the sake of which they came to this Western world and planted here the American Colonies; and for which many of them fought and bled. I cannot indeed say, without qualification, that “where the Spirit of the Lord is,” in this sense of the word, “there is liberty.” There are, and, from the beginning, there have been multitudes of Christians—“born of the Spirit,” who have no civil liberty; and yet the terms of the proposition being reversed, it would express a general truth. Where civil liberty is—in whatever community it is established and enjoyed—there is the Spirit of the Lord. It can live nowhere else—the spirit and principles of the Gospel being the only secure foundation of civil liberty. In conformity with this proposition, I would explain the nature of our civil liberty, its foundation and support; and the duties incumbent on us for its guardianship and preservation.

I. THE NATURE OF OUR CIVIL LIBERTY

Of civil liberty it is difficult to give a precise definition.

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Familiar as the word is on our lips, the precious boon which it is meant to express, few men seem to have distinctly to understand. Liberty, in the general sense, is freedom—unrestrainedness of action—self-delimitation—the power of willing, and of doing what is willed, with no interference from without. But civil liberty in this absolute sense is impossible: because it is liberty in a state of society—in the union and co-operation of equals—and therefore necessarily involving some limitation of the unrestrainedness of action. Civil liberty is unrestrainedness of action limited by mutual regard to each other's interests and rights. Society involves government; government, law; and love, restraint; but this, so far from abridging with civil liberty or interfering with it, is necessary to it: the shield of its protection. There is no despotism like that of a mob—no subversion of liberty like that of anarchy—the absence of government, or a government too weak or too corrupt for the protection of its subjects.

But as there can be no liberty without government, so also, there can be none, if the government itself be employed only to annoy and oppress those whom it ought to cheer and protect. This may be the case. Vested as it must be in the hands of men, naturally prone to selfish ambition and aggrandizement, it may be perverted to the worst ends; and in fact has been from the beginning of the world. The severest oppressions, the most cruel outrages that men have suffered, have come directly from the government which God ordained for their protection. Civil liberty then, is freedom of action, restricted and protected by just and equal laws. But I remark more particularly:

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1. Civil liberty implies the right and the power of self-government. The country, the nation, the state, to be free, must be independent of foreign control. The government must not be imposed upon it by a foreign power, nor be sustained over it, without its consent, by a standing army. It must be established of the free choice, and sustained of the free acquiescence of the people. Such from the first has been the government under which we live. The British Colonies in this country from their foundation has a large share of civil liberty. There were constituted by the choice and consent of the people under the government of the British crown and that government was acquiesced in by those who succeeded the original founders, until their liberties were so invaded and threatened by arbitrary exactions of the crown, that they asserted and maintained the right and the power of renouncing its authority, and uniting themselves under a separate government of their own. So, eighty years ago, we became a free and independent nation.

2. Civil liberty implies firm guarantees of personal liberty. Under our own government these are three-fold—the principle that every man's house is his castle, constitutional provision against general warrants, and the habeas corpus act. These are legal phrases, and sound strangely in a Christian assembly; yet our times unhappily give them an every day occurrence, and it concerns us as Christians to understand their high significancy. On the continent the government claims the right to break into any house, by day or night—enter any room—force open any drawer, seize the papers, jewels, or anything else that it finds there, and gives no reason or warrant for so

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doing, but the hat, or coat, or button, which its officials wear as the badge of its authority. Under such a government it is impossible to imagine the people to be free. Always and everywhere they are under surveillance. In the sanctuary of home—in the seclusion of the bed-chamber, under the safeguard of locks and bolts, they have not the disposal of their own selves. It is accordingly a principle of English and American liberty, that “*every man’s house is his castle.*” No man’s house can be forcibly entered; and, when entered, neither his person nor his goods may be removed except in case of felony, and then only by a civil officer; and he must show his warrant, and take great care lest in any particular he go beyond it.

A warrant is an official paper justifying an officer of government in depriving a citizen of his personal liberty. In case of crime this is necessary for the safety of society. And yet it may become an instrument of oppression. The government may employ it to take out of its way, and imprison, citizens only for opposing its arbitrary measures. It has been the common expedient of tyrants to do this. Hence liberty guards the warrants which she gives. “A warrant,” the books say, “to deprive a citizen of his personal liberty, must be in writing—must show the authority of the person who gives it, the acts which it authorizes to be done, the name and description of the party authorized to execute it, and of the party against which it is made; and in criminal cases, the grounds on which it is made.” The Constitution of the United States demands that “the right of the people to be secure; in their persons, houses, papers and effects, against unreasonable searches and seizures,

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be not violated, and the no warrants be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Nor does civil liberty permit that the citizen who is arrested be held unconditionally under arrest. "The Habeas Corpus Act" insures to the arrested person that, at his demand, he may be brought, by the person detaining him, before a Judge, who may liberate him, bail him, or remand him. Its design is, not to turn criminals at large, but to insure liberty to the citizen when there is no just cause for depriving him of it; to insure to him, also, a speedy trial, a trial by the law of the land, and the lawful writ, and the requisite means of defence. No matter at whose command he is arrested, or for what reason; the Constitution prohibits "the suspension of the habeas corpus act, unless when, in cases of rebellion or invasion, the public safety may require it." Such constitutional guarantees does a free government provide for the security of personal liberty.

3. Civil liberty requires a well-secured penal trial. It requires this both for the protection of the person indicted, and also for the protection of society. When a person is penally indicted he becomes one party, and society, the State, the government forms another. The latter must be protected against crime. For this purpose penal laws must be executed without respect of persons. The judge and the jury must by no means spare the guilty, whether high or low, from fear or from hope. The supremacy of the law must be maintained, or liberty falls the victim of cupidity. But the person indicted must

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also have due protection, and for this purpose he must be insured a fair trial. The government must specify the act for which he is arraigned; must prove that he has done the act; must show that it is a violation of existing law; the trial must be open; the rules of evidence must be such as are established, and the verdict must be absolute.

Especially does civil liberty demand a well-secured trial for the protection of the citizen under charge of treason. Government is a power, and like every other power, is desirous of carrying its point; and especially when, as in cases of treason, it is directly opposed, is not only, as in other cases of crime, the prosecuting party, but the party offended and irritated, while it has also the power to annoy, to persecute, to crush. In despotic governments accordingly, we find that whatever protection is granted to the subjects in common criminal trials, is withheld in trials for treason; while in free countries, as in England and the United States, greater protection is given in the latter than in others. A modern writer truly says, "The trial for treason is the gauge of liberty; tell us how they try people for treason, and we will tell you whether they are free." Our great charter of freedom says, "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

4. Freedom of communion is indispensable to civil liberty. This is one of the most precious rights of the individual; one of the most important means of social improvement, and therefore one of the most vital elements of civil liberty. No person can consider himself free as a man, if his communion with

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his fellow-man is forcibly interrupted or subject to surveillance; or that he is free as a member of society, if he may not confer with fellow-members concerning its interests and dangers; and yet experience has shown that this liberty is one of the first objects of jealousy and attack whenever arbitrary power is aiming to establish itself. Hence all free states demand and guarantee free communion of speech, freedom of assembling, freedom of debate, the right of petition, the liberty of the press, and the sacredness of epistolary communication. The Constitution of the United States expressly ordains that no senator or representative, for any speech or debate, in either house, shall be questioned in any other place. And it is remarkable that, although the Constitution distinctly declares that the government of the United States shall have no power or authority, not positively granted in that instrument, and it was therefore unnecessary to say what the government should *not have the right to do*, yet, so scrupulous were the people in guarding the liberty of communion, that, in the first article of additions and amendments to the Constitution, Congress is forbidden to make a law, abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. And if it is thus important to forbid the government to interfere with the liberty of communion, it is equally important that there be no other interference with this sacred right. The worst oppression is often of a social character. Mobs, dueling, personal violence, slander, or anything else done by individuals or companies to injure any one for what he may have spoken or published, not forbidden by law

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or rule, is an invasion of one of the most precious of human rights.

I have entered upon a subject which it would require a volume to expound. All I would propose, is to open it and give some direction to your thoughts in the study of it, now that, in the present condition of our public affairs, it so much engages and so seriously calls for your attention. I have said that civil liberty in general is liberty in a state of society; liberty of equals in union with each other; liberty of action restricted by efficient laws from interference with the rights of others, and protected by the same laws in the enjoyment of our own. It implies more particularly the right and the power of self-government, as opposed to a government imposed by a foreign power, or sustained by a military force against the will of the people; firm guarantees of personal liberty, that is, protection against arbitrary and unreasonable search, seizure, arrest, and imprisonment; a fair and impartial administration of the laws in penal trials, and especially under indictments for treason; and the liberty of communion as opposed to restrictions on the liberty of the press, the liberty of speech, and the sacredness of epistolary correspondence. But there is also the liberty of conscience; the liberty of emigration; the liberty of property—of enjoying the fruits of our own labor, invention, and skill—of holding what is our own against the demands, not only of individuals, but also of the government, whether in the form of taxation or more direct appropriation, except by our direct or indirect consent; and, finally, the liberty of self-defence, subject only to the supremacy of the laws. But these I can only name.

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I would more gladly speak of liberty as implying self-government, in distinction not only from a government imposed on a people from without, but more especially from a centralization of government in the community itself—that self-government which leaves the State, the Shire, the Town, the District, the Corporation, of whatever character, to manage its own affairs in its own way, subject only to the laws which bind them together in one general organization, for the support, defence, and effectual in-working and working together of the whole. There is no peculiarity of our government which furnishes a stronger safeguard of liberty than this; none which is a more powerful spring to enterprise and self-improvement; none which is more vital to the progress of society. It is one, too, into which we have come, in the good Providence of God, without human foresight and calculation; which resulted from the colonial character of the first settlements of New-England, and the education, habits, and spirit of the colonists—which grew up with the people in their habits of life, and became imbedded in their domestic, social, religious, educational, and economical institutions. But I must pass on to speak, as proposed,

II. OF THE FOUNDATIONS AND SUPPORT OF OUR CIVIL LIBERTY

We often hear it said that civil liberty is founded in popular sovereignty. A free government, it is said, is an elective government—a government in which the people rule. Popular sovereignty is, no doubt, one of the most important safeguards of liberty; but it is not liberty itself, nor does it always secure it; and much less is it necessary to it. A government of the people is not, of course, a free government. The will

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of the people, by necessity of the case, is in reality the will of the majority; but the will of a majority may be as arbitrary and oppressive as the will of an individual. Majorities have no more public spirit and less conscientiousness than the individuals who compose them. Majorities, indeed, will do, with scruple, what those who compose them would tremble, or blush to do, in their individual capacity. There is no manner or measure of usurpation and wrong which a majority may not, and has not been found to perpetrate. A majority may even vote away liberty and establish a despotism. Absolutism may rest on this as on any other basis, as we now see, in the condition of France. Liberty, on the other hand, may exist under a monarchy. The most important principles and safeguards of our own liberties were adopted from the government of England. The founders of our independence, in their declaration of it, acknowledged this. After a long recital of deeds of misrule ascribed to the king, it says, "A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people," in this manner acknowledging that under the British crown, they had considered themselves, though wronged, a free people.

Education has also been considered by many as a secure basis for civil liberty. It is unquestionably true that a widespread and sound education is indispensable to liberty. But it is not liberty itself, nor does it lead to it. Prussia is one of the best educated countries, and yet liberty finds no dwelling-place there. And the event will show whether these United States, distinguished as they are above all other nations, by institutions for popular education, are always to be a free people. Recent outrages, tolerated and

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even encouraged by our government, have excited an alarm on this subject in which our most enlightened and sober minded citizens partake. Many indeed have said, and some have believed, that the reports which have gone abroad concerning these outrages, have been fabricated, or at least materially aggravated, for political effect. But the facts, as certified by Commissioners of Congress, appointed and sent out to the scenes of these outrages, for the purpose of ascertaining the truth in regard to them, by legal evidence, are now spread out before the world, in long and shocking detail, and are found even to transcend in atrocity all that had been published before.* The cause of alarm is not so much that liberty lies prostrate and bleeding where she had so lately sought a home under the wings of the Republic: it is not so much that the Executive of the Republic has connived at the wrongs done

* The Commissioners, after an induction of a multitude of facts, testified to before them on oath, come, in their own well-considered and guarded language, to the following conclusions, viz:

“Spurious and pretended Legislative, Judicial, and Executive officers have been set over them, by whose usurped authority, sustained by the military power of the Government, tyrannical and unconstitutional laws have been enacted and enforced;

“The rights of the people to keep and bear arms have been infringed;

“Test oaths, of an extraordinary and entangling nature, have been imposed as a condition of exercising the right of suffrage and holding office;

“The right of an accused person to a speedy and public trial, by an impartial jury, has been denied;

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, has been violated;

“They have been deprived of life, liberty, and property, without due process of law;

“The freedom of speech and of the press has been abridged;

“The right to choose their Representatives has been made of no effect;

“Murders, robberies, and arsons, have been instigated and encouraged, and the offenders have been allowed to go unpunished;

“All these things have been done with the knowledge, sanction, and procurement, of the present administration.”

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her, and even employed the national arm to encourage them; as it is that the nation itself—the People of these United States, so extensively approve—if not of the wrongs themselves, at least of the policy that has led to them, and avow their determination of carrying it out in a future administration, for the very purpose of sustaining and extending the power to which it has become subservient; and all this, not because the fountains of knowledge have been stopped, but because so many of them have been corrupted—the teachers and guides of the people have called evil good and good evil; have put darkness for light and light for darkness.

Where, then, is the basis of our liberty? Not our popular form of government—not our popular system of education—important, and even necessary as these may be supposed to be; but it is the virtue of the people—the moral integrity—the fear of God—“the Spirit of the Lord,” forming and moulding the sentiments and habits, pervading and determining the political acts of the people. This is the ultimate and only secure foundation of all the civil and religious liberty that characterizes our day. The proof of this is open to all men. It was the Spirit of the Lord—the power of the Gospel in the hearts of men, that threw off the yoke of papal tyranny in the glorious Reformation in Germany; that asserted and maintained the claims of liberty in the struggle of Puritanism with arbitrary powers in England; that induced our forefathers, in that struggle, to seek an asylum on these distant shores, and here plant the colonies of New England; and that formed and nurtured the institutions, constitutional, legislative, judicial, educational, ecclesiastical,

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charitable, economical, mechanical, and commercial, which are now the grand pillars of our Republic, and on which, from that day to the present, the beauty, symmetry, and strength of this Palladium of civil liberty has been dependent. Take away the Spirit of the Lord from the colleges, schools, churches, courts, legislative assemblies, and other institutions that are brought together in the fabric of society here, and substitute for it the spirit of partizanship, of intrigue, of venality, of lying; of revenge, which characterize the spirit of this world of apostacy and sin, and the freedom, the life, the glory of the Republic is departed. It is the Spirit of the Lord which inspires the love of liberty, and the love of law, as the guardian of liberty; which impresses man with the true dignity of man, and the true equality of men in their claims of social and civil relations; which appreciates the worth of the soul and of the life, liberty, and happiness in which the soul attains its ends; and, in short, which teaches us at once to understand the nature of our own interests and rights, and to regard as our own, the interests and rights of others. Hence comes the historic fact, that where the Spirit of the Lord is, there, if it be not overpowered by “ruffianism” from without—there, so far forth as its own tendencies and energies have their proper development, is liberty. Hence result as I would now show—

III. THE DUTIES ESPECIALLY INCUMBENT ON US FOR THE PRESERVATION OF OUR CIVIL LIBERTY.

1. There is the duty of prayer. Never, probably, since the adoption of our Constitution, have the union and liberties of these States been in such peril as now. The present seems to

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be the very crisis of our affairs for freedom or bondage. Much too, in the aspect of the times, and especially their moral aspect, the political debasement and corruption; the tyranny of partizanship and the willing blindness of its subjects; the desperate wickedness of the leaders, and the ignorance and venality of multitudes led by them, to bring us to God, with the feelings of Jehosaphat, when in a time of invasion he stood amidst the assembled people of Judah and said, "Our God—we have no might against this great company—neither know we what to do, but our eyes are unto thee." God is our refuge and strength; a very present help in trouble; he has the hearts of men in his hand; and, whatever appearances may be, his eyes are over the righteous and his ears are open to their cries. We have heard with our ears: our fathers have told him what wonders he did in their day. They called unto Him and were delivered; and he is the same God now that he was then. O then let our prayers daily and constantly, in our closets, our families and our public assemblies, ascend to the God of our fathers, that He will have mercy upon us, and avert his impending judgments.

2. There is the all-comprehensive duty of fearing God and working righteousness. Under a government like ours, our real danger can never lie ultimately in the corruption of our rulers, or their mal-administration of the government; but it must be traced to the source of power—the corruption of the people. The fountain must be pure, that the streams may be healthful. The heart of the nation must be sound, that it may send the current of life through the body. Again and again it has been said, and the crisis to which we have now come is

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powerfully calculated to make us feel, that virtue, not wealth, not learning nor numbers, is the basis of the Republic; and national virtue is the virtue of individuals who constitute the nation; for which we are personally responsible each one for himself before God. The primary duty, therefore, incumbent on every one, in order to our national, as well as individual well-being, is that which Daniel urged upon the King of Babylon, in connection with the interpretation of his dream—“Wherefore, O king, let my counsel be acceptable to thee, and break off thy sins by righteousness and their iniquities by showing mercy to the poor.” Whatever makes our hearts, our families, our neighborhoods, our nation, the dwelling-place of the Spirit of the Lord, tends to make the nation the dwelling-place of liberty.

3. There is the more particular duty of using the elective franchise in the fear of God. What shall be done, in the present crises, for the free-state people of Kansas, there need of higher wisdom than mine, to decide. This, however, seems to me clear, that their cause is ours; and whatever can wisely be done to sustain it, concerns us and our children. The question at issue with this nation is, whether States, permitting Slavery in their constitutions, shall be added to our Union; and this seems to me, in effect, whether the States that are nominally free, shall be free, indeed. The operation of Slavery in this country has given us painful cause of questioning its compatibility with civil liberty, wherever it exists. The fundamental principle of civil liberty, as it is laid down in the Declaration of our Independence, is this—“that all men are created equal; that they are endowed by their

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Creator with inalienable rights; that among these, are life, liberty, and the pursuit of happiness.” These are natural rights of men—their rights antecedently to the consideration of their political relations—their rights, considered simply, as creatures of God—his rational offspring. In this respect they are equal. They owe each other equal benevolence. As so says the law—“Thou shalt love thy neighbor as thyself.” Accordingly, the Declaration proceeds to say, “that to secure these rights Governments are instituted among men, deriving their just powers from the consent of the governed.” On these principles the preamble of our Constitution avows the great object of our Union under it, as a nation, to be, “to establish justice, ensure domestic tranquility, provide for the common defence, and secure the blessings of liberty, to ourselves and our posterity.” Now, do our Southern politicians truly and heartily adopt this principle of our independence? And do they accordingly unite with us to secure the great and glorious objects specified as the objects of our national organization, in the constitution? To say nothing of their treatment of the colored race, now about four millions—born among them, of the same accountable and immortal nature with themselves, whom they hold it to be necessary, and therefore right, to exclude from all personal as well as civil liberty—do they concede even to those whom they acknowledge to be on the same standing with themselves, “The People of the United States,” the liberties which the Constitution was expressly ordained to secure? In which of the Slave States is the liberty of speech and of the press not trampled upon by every outrage which the wrath of man can suggest, with impunity? What imaginable violence has not been done to the liberties of the

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unoffending emigrants from the Free States to the territory of Kansas, for the purpose of crushing out the spirit of Freedom from that fair land; and, as the consummation of measures, to establish the ascendancy of some eighty or a hundred thousand slaveholders in our national councils? And who may not see that all has been done, that could be done, to break down all freedom of petition, freedom of debate, and freedom of action, on this subject, in both houses of Congress? It is painful to say these things here in God's house, and the more especially because, in saying them, I contravene the sentiments and feelings of some whom I love as God's people; but I say them because I believe that they exist, and are to us and our children matters of solemn concern. It is plain as day-light, that where the spirit of Slavery is, there is *not* liberty. Slavery creates a necessity of infringing on civil liberty. See the facts of the case in our country. Fifteen States of our Union have based their social condition on the system of Slavery. Whether right or wrong, they deem it a necessity that the system be sustained. But it cannot be sustained, if freedom of speech and of the press be allowed in connection with it. The pulpit must not speak out against it. Tracts must not be dispersed abroad to expose it. Assemblies of the people must not be convened to deliberate freely concerning it. Civil liberty cannot be exercised by citizens of this free Republic who live where Slavery is. Such, too, is the blighting and exhausting power of the system that, to be long sustained, it must be extended. The virgin soil of our domain must be opened to it, and other States, in succession, must come under the yoke: and, for this purpose, the power of the national government

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must, by all means and at all hazards, be kept on its side. Hence the struggle, in its ultimate bearing, is a struggle for the freedom of the nation: for Freedom not only as opposed to Slavery, but also as opposed to despotism; civil freedom—freedom of speech—freedom of action—the enjoyment of our inalienable rights under the protection of just and equal laws. The South have no objection to an enjoyment of freedom in the abstract. They plead for it. They glory in it as their own inheritance, and disavow all purpose and desire of interfering with it in the other States. But there is a single exception. Their system of slavery is a necessity upon them, and therefore they demand, as a matter of necessity, our surrendering of the liberties that conflict with it. Shall we yield to this demand? The approaching election will decide. It is with these views that I have now addressed you. It is because I consider it one of the most solemn and imperative obligations under which it is possible for an accountable being to lie, that we all, on whom the elective franchise is devolved, to employ it intelligently, prayerfully, and in the fear of God, for our country's liberties, the rights of man, and the kingdom of our Lord and Saviour Jesus Christ; and that we persuade others to do the same; —that, renouncing all party interests and minor objects of concern that hinder, we move on together with one mind, in the high and solemn office of choosing the nation's political head, for the nation's rescue. Let there be no angry strife, no unhallowed excitement, no blear-eyed prejudice or personal ill-will. Let us be informed of the real matters at issue—and, as we have the means and the opportunity, inform others; and having, in such peaceful ways, done

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what we can to preserve and transit to our posterity the precious inheritance, for which our fathers toiled and bled, let us commit the event to Him, “who is our King of old, working salvation in the earth.”