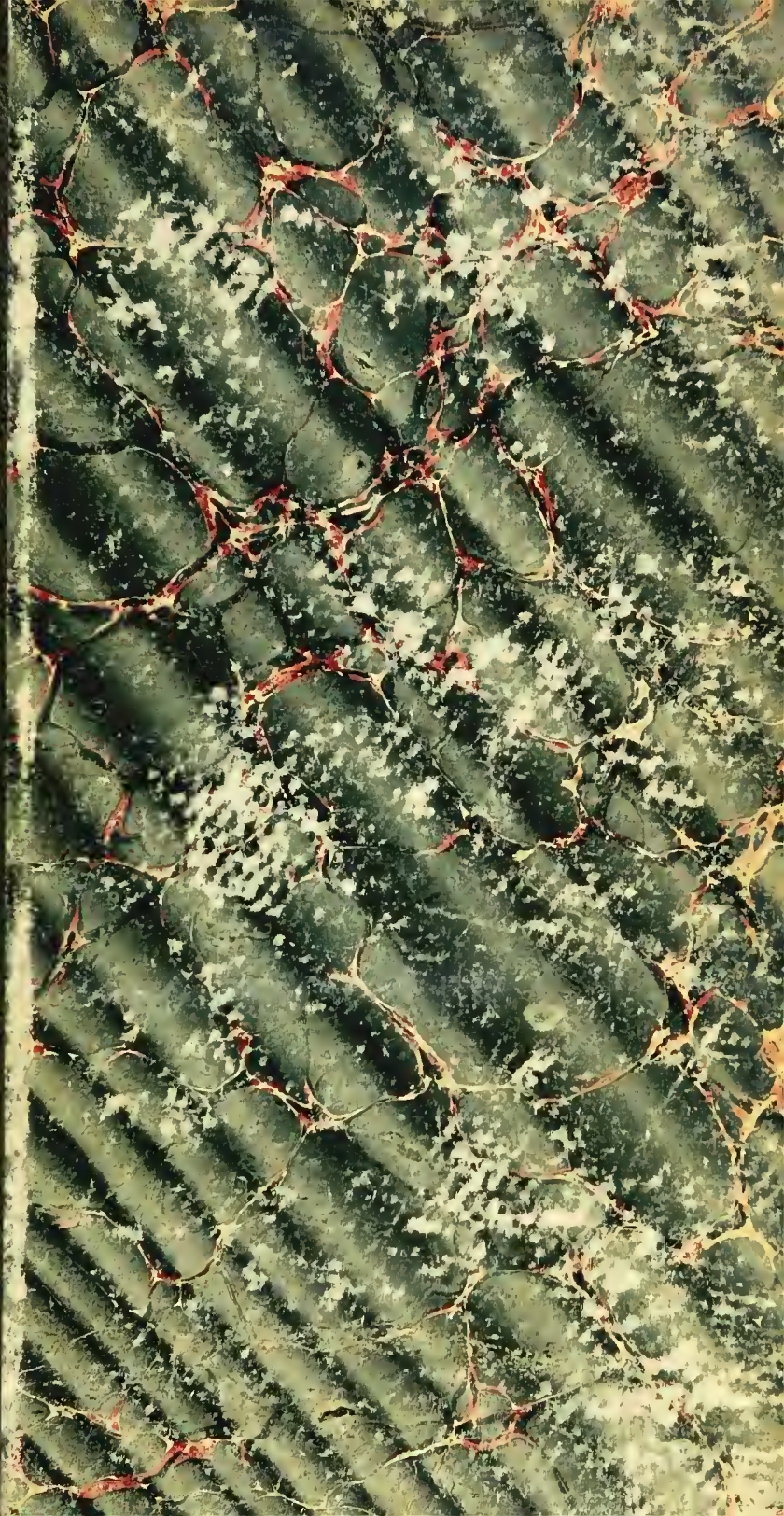


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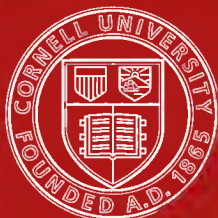


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SECRET SESSIONS OF THE SENATE :

Their Origin, their Motive, their Object, their Effect.

By DORMAN B. EATON.

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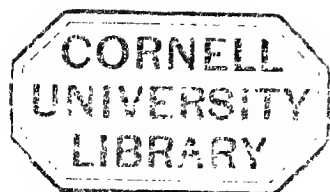
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EXPLANATORY.

IN the absence of some explanation it is very likely that, in speaking of the Senate as plainly as I shall, without ever having been a Senator, I should subject myself to the charge of presumption. Let me say, therefore, that for many years my interest in public administration has led me to reflections and inquiries as to the manner in which it is affected by secret sessions of the Senate.

Prior to April last, I had been for twelve years a Civil Service Commissioner, though for a portion of the time with no very active duties. This period covers the official life of three Presidents, as such, and a considerable portion of that of two others.

The duties of a Civil Service Commissioner afford unusual opportunities for learning and appreciating not only the object and effects of these sessions but the views taken of them both by Senators and Presidents; and I may add that these views are very diverse.

I had become so painfully impressed with the disastrous effects of these sessions, that, before leaving office, I had resolved to use the first opportunity for inviting public attention to them. These pages are the result.

D. B. E.

NEW-YORK, *December*, 1886.

SECRET SESSIONS OF THE SENATE.

NO. 1.—THE CHARACTER AND SIGNIFICANCE OF THE SECRET SESSIONS OF THE SENATE.

THERE is no part of the Government of so great importance or of such far-reaching influence which the people so little understand as the secret sessions of the Senate. Hardly noticed at all by the people generally, these sessions are at once an anomaly in our official life, an evasion of official duty and responsibility on the part of Senators, and one of the most prolific sources of partisanship and corruption in our politics. All intelligent citizens are aware that the Constitution of the United States requires the President to submit his nominations to the Senate, without whose approval appointments cannot be made. It is a matter quite generally known, doubtless, that the Senate acts on these nominations only at what are called secret sessions. But few persons, except students of political science and those who have had special experience in public affairs, have any conception of the origin, character, object, or practical effects of these sessions. One of the objects of the secrecy has been to keep the people in ignorance. The very fact that the sessions have been behind closed doors has not only kept from the view of the people the acts of individual Senators, which they would have condemned, but has made it practically impossible to directly trace to the secrecy of the sessions the responsibility for the disastrous consequences which the publicity, everywhere else prevailing, would have made manifest. Thus pro-

tected by the darkness and stealth of their own proceedings, and beginning in a limited way, at a time when appointments were rare, and the exercise of the appointing power was patriotic and pure, secret sessions became familiar before they became suspected. When at a later day that power had become not only potential in our politics, but a prolific source of partisanship and corruption, these sessions, from the very fact of their secrecy, for a long time escaped exposure and therefore condemnation. The prevailing view, until quite recently, has undoubtedly been that secret sessions are either a part of our Constitutional system, or that they are a necessary, or at least a justifiable, even if a mischievous, practice of the Senate.

The eminent statesmen who have been members of the Senate, the able and worthy men who are now Senators, the exalted functions of the Senate in connection with treaties, its great public debates, the leading part which, by reason of the longer terms of its members and their superior abilities and experience, the Senate has been enabled to take in our legislation, have all contributed to this favorable and forbearing judgment. In recent years, however, the profound respect in which the Senate had been held has given place to a growing suspicion and distrust of its action and motives, especially at its secret sessions. The increasing and alarming corruptions attending the election of Senators, the greater number of mere politicians or millionaires who have lately gained seats in the Senate, the uprising of the high and bold sentiment which has secured administrative reform, the vicious continuance of the Senatorial usurpation made under the tenure of office acts, the disinclination of Senators to surrender the patronage which a four years' term gives them, the arrogant and partisan spirit of the Senate, as illustrated by the revolutionary attempt of Senators Conkling and Platt to coerce President Garfield, the facility with which unworthy nominations have been confirmed without the people being enabled to fix the responsibility of a vote upon any Senator or upon either party, the growing habit on the part of Senators of combining for dictating nominations to the President, and, above all, the late audacious attempt of the Senate

to enforce publicity against the President while screening its own action in the darkness and irresponsibility of a suspicious and cowardly secrecy—all these considerations have turned a stern and relentless criticism upon the motive and effects of these anomalous secret sessions. The people are asking why Senators are so anxious to conceal their doings.

The Senate has shown that it feels the force of the aroused public opinion. Senator Platt, of Connecticut, has been encouraged to bring forward a resolution, already supported by three other Senators, and upon which the debate is to be resumed early in the approaching session, for public action on all nominations. It does not, however, relate to the approval of treaties where different considerations are involved. The first challenge and exposure of Senatorial secrecy have made its long toleration a matter of surprise and curiosity. It is instantly seen to be repugnant to that universal publicity which is at once the safety and the great characteristic of our Constitutional system. We are recalled to the fact that our Government is, above all others, one that needs and seeks to secure a citizenship thoroughly informed concerning the action of its public officers. Everywhere under the Constitution there are requirements for public action, appealing to public intelligence on grounds of public interest alone ; and nowhere are there to be State secrets or secret proceedings at the mere pleasure or for the benefit of public officers. Each House of Congress is required by the Constitution to keep journals of its proceedings, and to make them public. Every court must be a public court. The Constitution guarantees to every criminal a speedy public trial, and to all civil suitors a trial according to the common law, which was a public trial. The Constitution forbids any abridgment of the freedom of the press, which necessarily involves a right of access to official proceedings. No sentiment or conviction was more potential in framing our political system, and none has been more strengthened by it, than that which affirms that all its actions shall be based on public considerations, executed under the public eye by officers responsible to public opinion, and solely for promoting the public welfare. Of all the branches

of the Government the United States Senate alone has rebelled against this sentiment, and the spirit of these provisions, by concealing its action on nominations behind locked doors and barred windows, under rules secretly made ; thus suppressing in that great and vital sphere of action, which involves the highest range of appointments and removals all over the Union, that publicity which is a vital principle in a Republic, and violating at the same time that freedom of speech and freedom of the press which the Constitution expressly provides for.

Every grade of appointments and removals made by the President, from Ambassadors to Postmasters, from Judges of the Supreme Courts and Governors of Territories to Marshals and Auditors, from members of the Cabinet to Collectors and Postmasters, from Major-Generals and Admirals to Lieutenants and Paymasters, with all the corrupt influences, the bartering of votes in the Senate for votes for Senators or their friends, the scandalous relations between a Senatorial vote for a nomination and another nomination made or to be made which stand behind and determine the fate of so many nominations—together with all the vicious relations between the confirmation of Postmasters and Collectors, and the partisan corruption with which Senators may be connected in the States and cities—all these things are covered in the impenetrable, everlasting darkness and silence of these secret sessions, which Senators have interposed between themselves and the press and the people. It is upon these appointments and removals, and everything connected with them, more than upon anything else under the Government, that the fraud and venality of our politics are concentrated. It is in them, more than elsewhere, that our shame, corruption and peril arise. It is there, of all places, where light, fearless public speech, open votes, and free and relentless criticism are most needed ; yet just there, at its own mere pleasure, and for its own ends, the Senate enforces darkness and silence.

It is by no means easy to comprehend the breadth and importance of the vast sphere of official life which thus stands eclipsed in the dark shadow of Senatorial secrecy and usurpa-

tion. There are, it seems, 7,318 officers subject to confirmation by the Senate, of whom 3,593 belong to the civil service. These higher officers, to a large extent, fill the vacancies in a vast army of perhaps 120,000 officials below them. The term of the civil officers, confirmed by the Senate, is but four years, hence nearly 900 nominees for civil offices, and several hundred for military and naval offices, are before the Senate every year. Probably one-half of the time of Senators given to speaking and voting is given to the matter of filling offices. On an average there must be from three to four nominations to be acted on by the Senate every day of its session. Now, all the votes, all the speeches, and all the various and important action connected with these sessions is never reported, or seen or known by any one but Senators or their subordinates. They are never understood by the people. Yet no action of the Government more profoundly affects the moral tone of politics, the fate of parties, or the efficiency and economy of administration. If anything could add to our astonishment at such astounding results being possible under our system of freedom and publicity, it would be the fact that they have been accomplished, not by law, not according to the Constitution, not by any action of Congress, not by any consent of the Executive, not after any public debate, not by any consent of the people, but solely through arbitrary rules of the Senate, adopted in secret sessions, of which nothing was reported, and nothing known by the people.

NO. 2.—REVIVAL OF PARLIAMENTARY DESPOTISM IN THE SENATE.

A glance at the history of Parliamentary privileges and secret sessions in Great Britain will facilitate a correct understanding of the intentions of the framers of our Constitution and its true construction.

They had carefully studied this history. They knew that the House of Commons, which trembled before Henry VIII. and Elizabeth, which dared do little more than formally claim the right of free debate on its own floor under James I., which first ventured to plainly exercise that right in the first half of the reign of Charles I., nevertheless, within twenty years thereafter, became so inflated, ambitious and aggressive in the exercise of what it called its privileges, that it soon made these privileges as dangerous to justice and liberty as the royal prerogatives of those despots had ever been. On its sole authority, the House committed those it charged with crime to prison, inflicted arbitrary punishments, defeated the right of petition, arrested free speech among the people, suppressed free debate in its own hall, treated its proceedings as its own secrets, and denied any authority except its own to direct its dissolution or adjournment. For several generations, after royal prerogative had ceased to threaten the freedom of debate in Parliament, (even down almost to our Revolution,) its actions made it plain, that in the view of its members, the freedom they had won and the privileges they enjoyed were to be used, not for the benefit of the people mainly, but for themselves. They declared their speeches and votes in Parliament to be their own secrets, which it was a contempt and a crime for any one to publish. The right of the public press or even of a member of the House to report them was utterly denied and defeated. It was held to be a breach of the privileges of Parliament to inform the people of its doings. The House of Commons did not, like our Senate, confine itself to barred doors and closed windows, or to such cunning and

cowardly threats of dismissal and expulsion as the Senate rules provide for. It was as bold as its claim of privileges, bringing offenders against these privileges to its bar, and imprisoning proprietors of journals for venturing to tell the people how its members voted or what they said. In 1641 the House of Commons expelled one of its own members, Sir Edward Deering, and sent him to prison, for reporting his own speeches. The secret proceedings of the Star Chamber were, indeed, at an end, but the old Star Chamber doctrine of Scroggs and Jeffreys, that it was a crime at common law to speak ill of Government, survived in the despotic theory of Parliament that it was a crime to report or censure the official acts or sayings of its members. It was the duty of the people, in its view, to accept in silence as well as obey the laws as it might please Parliament to make them. It was a breach of privilege, as well as an impertinence, for the public press to tell the people why the laws were made, or who was responsible for making them. For several generations all reporting and censure of the doings of Parliament were, as far as possible, suppressed by the despotic exercise of its pretended privileges. The rule of secrecy as to nominations, now enforced by our Senate, was, in principle, relentlessly enforced by the British Parliament for more than a century, over the whole range of its action, on the simple theory that it was a Parliamentary privilege of members to be exempt from the annoyance and responsibility incident to criticism on the part of the press and the people. As late as 1747, the editor of the *Gentleman's Magazine* was arrested and brought to the bar of the House of Commons for daring to report Parliamentary proceedings.

The theory that the people have no right to publish the laws or the proceedings of a legislative body without its consent was enforced even on this side of the Atlantic. A printer was arrested in Virginia, in 1662, for publishing the laws. Dongan, as Governor of New-York, in 1683, was instructed to suffer no such printing. When, in 1649, public opinion forced the magistrates of Massachusetts to allow the publication of the laws, they did so under protest, and the publication of public

documents appears not to have been provided for in Massachusetts until 1719. And the General Court of Massachusetts was the first legislative body in America to yield to the demand of the people for publicity of debates, which it did by opening them to the public, on the motion of Mr. Otis, in 1766.

The higher public opinion of Great Britain, as uttered through the public press, and more powerfully by Junius than any one else, relentlessly assailed these pretended privileges of Parliament. The contest between the public press, asserting its own right to free speech, and the people's right to know and criticize the acts of its officers in Parliament, on one side, and the claim of members of Parliament in behalf of its secrecy and its privileges, on the other side, continued through more than half a century. Before our Constitution had been formed, as its authors well knew, that contest had terminated in a brilliant victory for the press and the people, to the great mortification of Parliament. Secret sessions of Parliament were at an end. All proceedings of that body were being regularly printed when our Constitutional Convention was in session; and from that day to this there have been no secret sessions of the British Parliament. Referring to this great triumph of the press, Mr. May uses this language in his works, "Democracy in Europe" and "The Constitutional History of England:" "The right to criticize public affairs, to question the action of Government, and to question the proceedings of the Legislature, had been established. * * * Reporters and printers having overcome the resistance of Parliament to the publication of debates, the press was brought into closer relations with the State. Its functions were elevated, and its responsibility increased. Statesmen now had audience of the people. They could justify their own acts to the world.

"* * * The political education of the country had kept pace with its material and social progress. No single cause, perhaps, had more contributed to this result than the free publication of debates in Parliament. If the press had done nothing more than this for public instruction, this single service to the cause of popular government would claim the highest acknowledgment."

No. 3.—THE SECRET SESSIONS RULES OF THE SENATE UNCONSTITUTIONAL.

When the Convention to form the Federal Constitution assembled in 1787, the long contest between the British Parliament on one side, contending for its despotic privilege of secret sessions, and the British press and people contending, on the other side, for the freedom of the press, for the right to freely criticize the action of Parliament, and for open sessions, had, as we have seen, been ended by a splendid victory for the latter. Twenty-one years had elapsed since Massachusetts, yielding to the same demand then triumphant in England, had opened the debates of her Legislature to her press and people. Nine years had elapsed since the adoption of the articles of confederation which required the Continental Congress—a body which appointed all the civil and naval officers of the United States—to publish, “for the information of the people,” the complete journal of its proceedings, save only any parts relating to “treaties, alliances and military operations, which require secrecy;” it being then a time of war.

The members of that Convention knew well the history of that contest. They certainly did not intend to re-establish that old Parliamentary despotism in the form of Congressional or Senatorial privilege. We have seen that every part of the system they created requires publicity, and appeals to the intelligent judgment of the people. On the subject of the publicity of the proceedings of Congress the Constitution contains only this language: “Each house of Congress shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, *require secrecy*.”

The exception from universal publicity, it will be observed, applies alike to the Senate and to the House. There is no distinction based on the kind of business in which either house

may be engaged. The limit of discretion as to publicity is the same whether the proceeding be a debate or a vote on a revenue law, or on a confirmation of an officer to serve under that law. In each case alike there must be a journal kept and published, unless the requirement of secrecy shall, as to some part of the proceedings in the journal, be found to exist. Of the existence of this requirement each house must of necessity, in the first instance, be the judge in each case; that is, it must decide whether the facts of its proceedings are such as for some good reason *require* secrecy. A strict construction of the clause cited would not allow any determination as to whether secrecy is required until after the journal has been made up, and would, therefore, require sessions to be always open. But a liberal and, as I think, a reasonable construction, for attaining the end sought, would allow any session to be held with closed doors, at which, in the opinion of either house to be declared by its public vote, there should be good reason to think that facts must necessarily be stated which could not be then made public without peril.

No broader discretion than this on the part of Congress can with any reason be claimed under the Constitution. It plainly allows no arbitrary rule for keeping a whole sphere of Congressional action secret, irrespective of any peril from publicity. It clearly provides for publicity as the right of the people. A refusal to allow the people to know what their Representatives or Senators say or how they vote—a suppression of all possibility of public discussion—are not to be allowed unless some clear public interest requires it. Mr. Hamilton, in the *Federalist*, assuming it to be unquestionable that the Senate was to act publicly on nominations, contrasts the new system with the New-York Council of Appointment, which, he says, acts “when shut up in a private apartment and impenetrable to the public eye;” adding, that “every such Council will be a conclave in which cabal and intrigue will have their full scope.”

What, then, must be the nature of that requirement which can justify a surrender of a great constitutional principle of publicity and a suppression of that freedom of the public press

and of the right of free speech for which the Constitution has in express terms provided? Does such a requirement exist merely because members of the House or of the Senate prefer to act in secret, or would be more comfortable if neither the press nor the people could report or criticize their doings? Does it exist because members have made speeches or given votes which they dread to have exposed to public censure? Does it exist merely because the action of either House relates to the fitness of an appointment rather than to the fitness of the salary for which the appointee is to serve, or the law by which he is to be governed?

If no such theories can be maintained, then it is plain that every secret session and every omission to publish the full proceedings of Congress is unconstitutional, a mere usurpation of authority, unless in the particular case there was some public interest that would be imperiled, or at least prejudiced, by publicity. The mere fact that the proposed action is on a particular subject—as, for example, a nomination—is in itself no justification or requirement of secrecy, in the sense of the Constitution. The fact of the need of secrecy in each case must be determined for that case, and hence cannot properly be determined by a rule years beforehand.

In a speech in the Senate in February last Senator Sherman declared “there ought to be no secrets whatever in this Government of ours.” Upon which Senator Platt said, there is this single exception, viz., “that there is an absolute necessity for secrecy.” Many Senators then denounced secrecy in terms which are a direct condemnation of the practice of the Senate. The reason for the publicity established by the Constitution and for the secrecy allowed by it are in fact the same, being alike in both cases—the protection and promotion of the public interests. The need of secrecy can never be presumed, but must be shown in every case. Any other view of the matter would leave the freedom of the press and the information of the people subject to the selfish and arbitrary rules or caprice of either house of Congress.

If the clause of the Constitution cited means that either

house may by mere rules, based only on the subject-matter to come before it, provide for secret sessions, when there are no facts really requiring secrecy in order to prevent detriment to the public welfare, then that clause is reduced to this: "All proceedings of either house of Congress shall be secret or public, as may suit the pleasure of that house." It may, by one short, sweeping rule, declare that every speech and vote on every bill or resolution whatever, shall be in secret session, which would simply re-establish the arbitrary and despotic Parliamentary privileges of the seventeenth century. If the Senate should, after actually considering the question, whether in any of its proceedings there were any matter not safe to be made public, wilfully and falsely make a decision in the interest of the privileges and patronage of its own members, complete redress would indeed be difficult—far more difficult, undoubtedly, than when a Judge renders a corrupt judgment.

Nevertheless, it is an established legal principle, both in the State and Federal Courts, (*Burnham vs. Morrissy*, 14 *Gray Mass. Rep.*, and *Kilborn vs. Thompson*, *U. S. Supreme Court Rep.*,) "that the houses of Congress are not the final judges of their own powers, when the rights and privileges of the subject are concerned," and that "the legality of the action of either house in the assertion of privilege may be reviewed by the Courts." To bring the Senate's secret rules to that test, it is only necessary that a Senator should have the patriotic courage to disregard them—if only the Senate would dare expel him—when he can take the question before the Courts.

NO. 4.—THE SECRET SESSIONS RULES OF THE SENATE UN-
CONSTITUTIONAL.

Publicity is obviously regarded by the Constitution as a safeguard of justice, and beneficial alike to the people generally and to members of Congress.

Judge Story, the highest legal authority on the subject, in his work on the Constitution, referring to the clause relating to the publication of Congressional debates, declares his view in this emphatic language :

“The object of the whole clause is to insure publicity to the proceedings of the Legislature, and a corresponding responsibility of the members to their respective constituents, and it is founded in sound policy and deep political foresight. Intrigue and cabal are thus deprived of some of their main resources by plotting and devising measures in secrecy. The public mind is enlightened by an attentive examination of public measures. Patriotism, integrity and wisdom obtain their due reward.”

The justice and wisdom of these observations have never been questioned by any Judge or judicial writer, or, so far as I am aware, by any one else, except Senators engaged in framing rules or making speeches in aid of the secret sessions of their own body and the pretended privileges of its members. It is worthy of notice, here, as showing how decisive the purpose was in the Constitutional Convention to make the nearest approach practicable to the universal publicity of Congressional proceedings, that the qualification in the clause requiring it, which allowed secrecy on certain conditions, was sustained by the votes of only six States against four, while the other parts of the clause, which would have made publicity absolute and universal, was adopted unanimously. Mr. Gerry, of Massachusetts, absolutely refused to sign the draft of the Constitution, because he feared Congress would

be able, after all precautions against it, "to conceal its proceedings." He seemed to have anticipated the selfish and political interests hostile to publicity which are now a national peril.

It is obvious that every case of secret session, that every instance in which publicity of any part of the proceedings of Congress is refused, is so far a restraint of the freedom of the public press. That freedom, in a constitutional and legal sense, is not merely a right to publish and comment upon what the press may happen to know, but the right, as well, of having access to, and of reporting the proceedings of public bodies for the information of the people. Mere limitations or police restrictions, such as the despotic governments of Europe have imposed upon the press, are far less fatal restrictions upon its liberty than the secret sessions of our Senate, for the latter not only deprive the press of the very material upon which its freedom is to be exercised, but they deprive the people of the information which is the object of a free press, and the chief bulwark of free institutions.

In this view of the matter, we see the force of that clause in the first amendment of the Constitution, adopted almost contemporaneously with the original instrument, in which Congress is forbidden to make "any law abridging the freedom of speech or of the press." Is it possible, in face of such a provision, that Senators, by a mere rule, adopted for their own comfort, political advantage or exemption from unpleasant criticism, are at liberty to close the doors of the Senate against both the press and the people alike? If the Senate may do it, the House may do it. Where, then, would be the liberty of the press? The State Constitutions are significant on these points. "No law shall be passed to restrain the liberty of the press." * * * "The printing press shall be free to every person *who may undertake to examine the proceedings of any branch of the Government.*" This language, from the Constitutions of Massachusetts, New-York, Pennsylvania and Kentucky—and other Constitutions are nearly the same—makes plain the nature of the liberty and publicity intended to be secured. It means liberty to examine the proceedings of any branch of the Gov-

ernment, and not doors locked and barred against the reporters and the people. That was the kind of liberty of the people and of the press which was plainly intended to be secured by the Federal and State Constitutions alike. Speaking of the elements of safety under our Government, Dr. Lieber, in his treatise on "Civil Liberty," says: "The first of all we have to mention under this head is, 'publicity of public business.' It further implies, perfect freedom with which reporters may publish the transactions of public bodies." "Publicity, in connection with civil liberty, means publicity in the transaction of public business in all its branches. It is an alarm bell which calls public attention to the spot of danger." In Massachusetts, for example, it has been declared by its highest Court, "that the provisions in the Constitution securing the liberty of the press were intended to prevent any *previous* restraint upon publication." To bolt the doors of the State House, and exclude the reporters and the people from the sessions of the Legislature, after the model of the secret sessions of the Federal Senate, and the British Parliament two hundred years ago, would seem to be a pretty effectual sort of previous restraint. Judge Cooley's work on "Constitutional Limitations" repeats this view of the subject, condemning all such restraint.

Let us now compare with these requirements and aims the rules for secrecy which the Senate, and the Senate alone, enforces:

First. In aid of secrecy, but from no warrant in the Constitution, the Senate rules provide for three kinds of session: (1) Legislative; (2) Executive; (3) Confidential legislative—each to be separately recorded.

Second. When either of the two latter kinds of sessions are to be held the reporters are sent away, the people are ordered out of the galleries, the doors are closed, and none but Senators and a few confidential officers of the Senate (a little more than 80 in all) are to be present. The clerks are to be sworn to secrecy.

Third. All remarks, votes and proceedings at these latter sessions are to be kept absolutely secret until the Senate shall, by resolution, order their publicity.

Fourth. Any Senator who shall disclose any of these secrets is, by the rules, made liable to *expulsion*, and any such officer who shall disclose them is made liable to dismissal, and also to punishment for contempt.

Fifth. In addition to this universal and absolute secrecy covering everything which occurs in two of the three kinds of sessions of the Senate, there is a rule applicable to the whole business of the Senate, under which any two Senators may, at their mere pleasure, at any moment, compel such a secret session.

It is not too much to say that these rules are far more in harmony with that spirit which gave birth to the secret session of the Star Chamber, and which dominated the British Parliament under the first two Georges, than they are with the spirit of our Constitution and the rights and liberties of a free people. No gag of silence and servility imposed by a secret junta has ever been more despotic and humiliating than these rules. That publicity of official action, which, as we have seen, was the great aim of the Constitution, which is at once the grand characteristic of free institutions and the supreme condition of their safety, is made dependent upon the mere caprice of a majority of the Senate. The people are declared to have no right, not merely to criticize or condemn their servants, but no right to know what they say or do, without which all judgment of their acts is impossible. We are taken back to the beginning of the reign of George I., when Parliamentary privilege was exalted over public rights. Secrecy and darkness, high privilege and the irresponsibility of legislators to the people are made the rule in two of the three great divisions of Senatorial functions. Instead of publicity, which Judge Story and every writer on the subject hold to have been the object of the whole clause

of the Constitution relating to Congressional proceedings, we have secrecy, mystery, darkness, irresponsibility to the people, provided for by rules made with such intent, so that before there can be the least known by the people about the votes or speeches of their representatives, at any one of the hundreds of secret sessions held by the Senate every year, there must first be a repeal of this rule, or a direct vote ordering publicity. The whole theory and presumption of the Constitution are reversed. There is not even so much as the form or pretence of deciding whether there is within the meaning of that instrument any requirement or need of secrecy—any facts which could not safely be disclosed.

NO. 5.—THE SECRET SESSIONS RULES A CONDEMNATION OF SENATORS.

We have seen that these rules keep the people in utter ignorance as to what any Senator says and how he votes at any one of the secret sessions held for acting on an average upon eight hundred or nine hundred nominations each year for filling all the highest places in the public service. Between December last and the adjournment of Congress there are said to have been 2,456 nominations sent in, including 150 second nominations of the same person. The votes and speeches on them would be very instructive reading. We should know, for example, by whose votes so disreputable a nomination as that of Thomas, of Maryland, was confirmed. If the people had been in the habit of knowing the proceedings of the Senate on such subjects an attempt now made to cover them with impenetrable darkness for the first time would arouse a public indignation and distrust which would overwhelm the Senate.

Irrespective of the motive for these rules, what are the fair inferences from the simple fact of their existence? Why does the Senate keep such information from the press and the people? There can be but three explanations :

1. Unreasoning pride of precedent and a haughty conservatism obstinately insisting on continuing things as they have been (united with a belief, on the part of some Senators, that secrecy is useful) have doubtless had a powerful and half unconscious influence, blinding Senators to the fact that these rules are as much out of date and as needless as the sword which John Adams wore when he presided over the Senate, or the formal answers the Senate used to make to the President's speech.

2. A wish to cover with absolute secrecy the intrigue, the

vicious bartering of votes, and the miscellaneous patronage mongering and corruption which open sessions and published speeches and votes would certainly disclose. Every citizen wishes to be able to hold in high esteem the most eminent legislative body of his country. And it is but justice, as it is most agreeable to me, to endeavor to justify the action of the Senate on the basis of patriotism and honor. Let us, therefore, dismiss this abhorrent view for the present.

3. The only other explanation is that, in the opinion of the Senate, all the speeches, votes and other doings at these secret sessions are of such a character that within the meaning of the Constitution they cannot, without serious detriment to the country, be made public, and that, consequently, secrecy is a duty. We need not here inquire whether this view rests on the theory that the people cannot safely be trusted, that the speeches and votes would disgrace the Senate, or that facts would be disclosed which would imperil the public interests. Let us assume the latter, as most honorable and complimentary to the Senate.

What, then, is the inevitable conclusion? Only this, that such is the moral tone of Senators, even in the view of a majority of the Senate itself, that no sense of public duty, no feeling of faithful fellowship to each other, nothing less than the threat and fear of punishment by their own body, as declared in these rules, will restrain Senators from betraying alike the interests of their country and the confidence of their associates. In other words, neither the honor nor the patriotism of a Senator can be trusted. And what is the threat and fear which is alone deemed adequate? Not a censure, not a temporary loss of salary, which will keep a policeman to his duty; not even the infliction of an ordinary punishment for contempt, not a suspension for a term, which is effective in the army, but only absolute expulsion from the Senate, the highest and most disgraceful punishment which a legislative body can inflict upon its members. Nothing so severe, nothing so astounding, as this humiliating impeachment of Senators by their own rules has

been charged against them in the public press. But for these rules the people would gladly believe that honor and patriotism were as effective in the Senate as elsewhere. It is no wonder that in the late debate in the Senate a Senator, referring to this rule for expulsion, declared, in the face of his fellows—and not one of them challenged the declaration—that “no Senator can read it, and no Senator can hear it read, without a sense of personal degradation !” Nevertheless, I fear shame does not always survive in the Senatorial mind when honor has been lost, for it is hardly possible that a rule could be upheld of which every Senator is ashamed. Every Senator may be ashamed to have it go before the people. The significance of this threat of expulsion is not less, if we remember, that in the glorious days of the Senate—even down to the spoils system saturnalia of 1868—the honor and patriotism of Senators could be trusted, and were trusted. Until that date, no threat of expulsion or other punishment for Senatorial treason or treachery in the matter of confirmation had ever disgraced the Senate. At no time has Senatorial usurpation, insolence and patronage mongering ever been so great as in that year next following after the passage of the Tenure of Office Act in 1867—the most flagrant violation of the Constitution ever perpetrated—and next before its partial repeal in 1869. Senators lorded over the Departments, humiliated the President whom they declared in their power, and were the political autocrats of their States. What can be more absurd and suspicious than this universal threat of expulsion, regardless of the character of the offence? It is to be enforced against a Senator for telling his constituents that he voted for Tibbs for Postmaster, or against Dobbs for District Attorney to serve in their midst ; that he either supported or opposed the President’s nominee for Collector at Alaska ; that he spoke for John Snooks or against John Smith for Consul at Hong Kong ; or that some other Senator spoke or voted for or against some of those persons—harmless facts in every instance—which every constituent has a right to know, and every Senator should be ashamed to attempt to conceal. Under these procrustean rules, such petty communications rank in enor-

mity with the crime a Senator would commit who should betray pending negotiations to a hostile State, who should sell his own vote on a confirmation for money, or who should send to the leader of hostile armies the plans of our Generals for an approaching battle. Nothing so ridiculous, nothing so completely in the spirit of primitive savagery in legislation, can be found in the Criminal Code of a civilized State. It has always been a characteristic of usurped power exercised for vicious and despotic purposes, that it has threatened punishment of the highest grade regardless of the degree of guilt. When in the old times of despotic privilege in the British Parliament, there were 160 or more crimes punishable with death, they covered every grade of offence from treason, murder and rape, to poaching, heresy, stealing above a shilling, and shooting rabbits. If the great crime, in the view of the Senate, is disclosing the precious and profitable secrets of its members rather than damaging the public interests, its indiscriminate threat of the supreme punishment of expulsion is easily explained.

The only possible satisfaction we can find in considering such rules is the fact that some Senators are oppressed with a feeling of degradation when they read them. Before these savage rules for expulsion were adopted in 1868 that punishment had been thought of only for the highest offences. Senator Blount was expelled in 1797 for treasonable negotiations with an Indian tribe; later a Senator was expelled for taking money for recommendation for office, and Senator Bright, of Indiana, was expelled in 1861 for treasonable correspondence with Jeff. Davis. We may next have an expulsion of a Senator for stating that smoking, joking and bartering are the most constant proceedings of a secret session. In addition to the general rules for secrecy, there is another rule (35) which enables any two Senators, by simply making and seconding a motion to that effect—based solely on the mere opinion of either of them that secrecy is required—to compel the President of the Senate to send away the reporters, to clear the people out of the galleries, and close the doors for a secret session. This rule may well be remembered when we come to that courtesy of the

Senate under which a pair of Senators control the patronage of their State.

It is a significant illustration of the relative influence which public and private considerations appear to have had in providing for these precious secret sessions, that while a standing regulation (No. 15) governing the Senate end of the Capitol, does not permit any private citizen, however far he may have traveled, or however pressing his need to see a Senator on public business, to even send in a card to him during one of these sessions, yet a curious clause in the regulation declares that "every call made from the Supreme Court," that is, every notice that a Senator has a chance to leave the place of his duty to argue a case for a fee—perhaps through several days—must be handed to him at once. He may go, perhaps, to argue one of those land grant railroad cases, with which a majority of the Senate, in supporting Senator Beck's bill last winter, declared it unbecoming in a Senator to have any professional connection. But why, after all, if these entire sessions of the Senate are mere private and secret matters of Senatorial privilege, which the people have no right to see or know anything about, why are not Senators as properly in the Supreme Court earning fees as in the Senate Chamber dispensing patronage? I am glad to be able to add, for the honor of the Senate, that very nearly a majority of its members appear at all times to have been opposed to these secret sessions.

NO. 6.—THE JOINT EVOLUTION OF SENATORIAL COURTESY,
THE SPOILS SYSTEM AND SECRET SESSIONS.

The first Congress met in 1789. Both Houses were without a quorum until April. On the 8th of that month, the House, being fully organized, in the true spirit of the new political system, opened its doors to the press and the people. These doors have never since been closed, save in three or four instances, in times of war, I believe, where imperative reasons required secrecy. The Senate manifested an exclusive and haughty spirit from the beginning, claiming to represent the States, and not the people, and scorning the theory that its members are responsible to the people for their speeches and votes.

Disregarding the plain requirements of the Constitution, planting itself on aristocratic Parliamentary privileges, and making no distinction between legislative and executive sessions, the Senate began all its sessions and continued them with closed doors, voting down, in April, 1790, a resolution, renewed in 1791, and again in 1792, by Senator Monroe, for opening even its legislative sessions to the public. Its reasons for universal secrecy were the same which the British Parliament had given a hundred years before, and, curiously enough, were the same which Senators now give for secret executive sessions only; and no Senator would now, I venture to assert, dare repeat them, as reasons for secrecy in legislative sessions. And here, it should be said, the Senate has no executive power, in the sense of the Constitution, that power being conferred by it on the President alone. The arbitrary claim of the Senate to shroud itself in secrecy while performing certain of its duties under the name of executive functions, is not in the least strengthened by the classification or distinctions, which exist only in its own rules, for its own purposes. In 1793 the Senate defeated a resolution, which declared, in substance, and very nearly in these words, that "the publishing of the proceedings of the Senate in the

newspapers is the best means of diffusing information concerning the motives and conduct of its members, and that, without such information given to the people, the sense of responsibility on the part of the Senators to their constituents is in great measure annihilated, and the best security against the abuse of power is abandoned." Thus early the Senate boldly repudiated the great principle of publicity and official responsibility, on which the Constitution is based, and for which the freedom of the press had been established. There can be no more emphatic evidence than this of that defiant spirit of Senators, which, having become chronic and hereditary in the Senate, has controlled the votes of its majority on the question of publicity to this day, though it has been reinforced with very different motives in recent times. In February, 1793, after sitting behind barred doors for four years, the Senate first opened them for discussion on the question whether Mr. Gallatin was qualified to be a Senator, and later, in the same month, voted to open them during legislative proceedings from the beginning of the next session.

Neither during the first year, nor at any time prior to December, 1800—eleven years from the first session—was there any rule requiring a Senator to keep any vote, speech or proceeding secret. The honor and aristocratic exclusiveness of every member was trusted to preserve the mysterious and impenetrable secrecy, in which he doubtless felt a lofty pride, without having much of the selfish and partisan interest which in this generation has enforced secrecy by threats of expulsion. When, at the last named date, the first rule requiring secrecy was adopted, it was on a suggestion of President Adams, and it only related to confidential communications from the President and to treaties pending before the Senate, it being a time when our foreign relations were very threatening. This rule also trusted the honor and patriotism of Senators, without the least suggestion of expulsion or other punishment. More and more, as we advance into the present century, and the number of officers and appointments becomes greater, the evidence increases that Senators are valuing more highly and using with more effect the patronage incident to the power of confirmation. The desire of

concealment increased in the same measure. The conditions of success in the use of that power, so as to advance their favorites and control the politics of their States, are obviously the mutual assistance of each other by votes and speeches in the Senate, and the keeping of each other's secrets from the people. Here we have, at once, the source and the motive of the notorious "courtesy of the Senate" and of secret sessions, in the modern and venal sense. In this courtesy, and in these sessions, the spoils system has found its strength, its opportunities and its motive in the Senate.

When the time came that the doors of the Senate were closed, not so much in the assertion of a haughty privilege as to cover the disreputable secrets of patronage mongering under the courtesy, Senatorial honor naturally becomes unreliable for keeping such secrets. The more partisan Senators, dreading exposure, instinctively appealed to threats and fears. In 1813 the first attempt was made to impose by rule an obligation of secrecy relative to the action of the Senate on nominations. It failed utterly; and, until January 3, 1820, there was no rule of the Senate requiring secrecy in regard to such matters. Indeed, until 1829, the so-called executive journals were published. Ever since that date, as I understand, impenetrable night has hung over their pages, save here and there a page from which the awful injunction of secrecy has been raised for some reason unknown to ordinary mortals below the Senate. But before this date the evolution of Senatorial courtesy and of the spoils system had made them potential in the Senate and in national politics. Prior to 1820 that system, under the guidance of Aaron Burr, aided by Martin Van Buren, had been well developed in the State of New-York. In April, 1820, Mr. Crawford, the Secretary of the Treasury, who was being warmly supported by Mr. Van Buren, as a candidate for the Presidency, devised a scheme for more patronage, which was with indecent haste and without debate pushed through the Senate, and became a law ^{the next} in that month. This law had for its object the reducing of the Constitutional tenure of Collectors, Naval Officers, Surveyors of Customs, and various other officers, to a term of

four years—a term before unknown in the subordinate administrative service. That term vastly increased the patronage and political power of Senators. Jefferson wrote to Madison, November 29, 1820, that this law “would introduce a principle of intrigue and corruption which will soon leaven the mass, not only of Senators, but of citizens, and would make these officers sycophants to their Senators”—a prophetic view which Madison shared. Plainly enough, the Senate was then quite ready for a rule forbidding the disclosure of its action on nominations. In January, 1820, such a rule was for the first time adopted, but it contained no threat of expulsion or punishment for contempt. The Senate could still trust the honor of its members.

The unprecedented partisan proscriptions of Jackson’s administration, in which the Senate promptly acted its part, interpreted with emphasis the new spirit in our politics and made it plain why secret sessions were so greatly desired. In 1832 Senator Marcy, of New-York, naturally enough, in a secret session of the Senate, made the celebrated declaration that New-York politicians “could see nothing wrong in the rule that to the victor belongs the spoils of the enemy”—an approval of partisan savagery and of the code of the pirate and robber which, but for the chance removal of the injunction of secrecy, would have been attributed to some pothouse gathering of demagogues rather than to the American Senate. We know not how many other defences of the spoils system and of Senatorial courtesy are smothered in those concealed records of secret sessions. In 1836 the greed for more patronage, which had been rapidly growing in the Senate, caused the passage of a law reducing to a term of four years the Constitutional tenure of every Postmaster whose official compensation was \$1,000 or over ; a law which now annually sends from 500 to 600 nominations to the Senate, or at the rate of two every day it is in session. This patronage absorbs a great part of the time and thought of Senators, and not unfrequently determines the election of a Senator. The courtesy and the spoils system in the Senate—twin sisters in growth and corruption—had thus become fully developed. The need of secret sessions to cover their iniquities

was, indeed, unquestionable. Nevertheless, even in those times, there were patriotic Senators resolute enough to make motions—for which there was a strong vote—year after year—for open sessions and public action on nominations. Such a motion was made by honest Senator Allen, of Ohio, in February, 1841, which received 20 votes against 26 for silently suppressing it by laying it on the table. He renewed it 1842, in 1843 and 1848. A similar motion was made in 1853, and renewed at the next session by Senator Chase, which was supported in a speech by Senator Sumner. The spoils system and the courtesy were too strong in the Senate for such motions to succeed.

In 1867, the first Tenure of Office Act, as we have seen, was passed. It was equally unconstitutional for its plain invasion of the power of the Executive, and its vast augmentation of the power and vicious influence of the Senate. Under that act no removal or suspension of an officer could be made by the President without reporting the reason of his action to the Senate, and securing its consent. The Senate became arrogant, aggressive, and powerful in a degree before unknown. It never before had so good a reason to wish to conceal its action in regard to nominations, or to fear that its secrets would be disclosed by its own members. Senatorial honor and confidence fell as patronage and spoils increased. It was on the 25th of March, 1868, that a rule was first adopted—the rule already cited—for enforcing common honesty in keeping dishonest secrets of the Senate by threats of expulsion and of punishment for contempt. It is, indeed, a humiliating record.

We can afford to state again that it was of this rule, prompted by such influences, made to conceal such things, that Senator Platt, speaking amid universal silence in the Senate Chamber last winter, made this ever memorable declaration: "No Senator can read it, and no Senator can hear it read, without a sense of personal degradation."

No. 7.—WHY SECRET SESSIONS INCREASE VICIOUS OFFICE SEEKING AND CORRUPTION.

It was a much debated question in the Convention which framed the Federal Constitution, whether the whole power of appointment should be vested in the President, or be divided between him and the Senate. Senators having no direct responsibility for good administration, it was feared they would yield to selfish motives and partisan influence, as had been the case with the councils of appointments in New-York and other States. To this objection it was answered by Hamilton, that these councils acted in secret, but that the Senate was a whole branch of a Legislature, which, in the words of the *Federalist*, "would be immediately under the public eye," by reason whereof, in the language of Judge Story, "intrigue and cabal are deprived of some of their main resources, by plotting and devising measures in secrecy." We have seen how, from the beginning, the Senate, by secret sessions, has defeated these expectations, and has, at last, made a high Senatorial crime of the smallest part of that universal publicity on which the fathers of the Constitution staked the wisdom of their work and their hopes of their country. Could that Convention have foreseen that the "public eye" was never to see the proceedings of Senators on nominations; that almost in the first instance in which the dark curtain was lifted from such proceedings, they would find the record proclaiming that "to the victors belong the spoils;" that within seventy-nine years from the date of the Convention, the rules of the Senate would declare it a ground of expulsion to disclose to a constituent, or even to a Governor, a single line of these secret records; and, finally, that not a single Senator would have the moral courage to rebel against a restraint of liberty so arbitrary and degrading: I think we may well believe that the Senate would never have possessed the power of confirmation.

Secret sessions of the Senate, solely based on the honor of Sen-

ators, had become familiar facts, in the narrow sphere, where known at all, before there was material for or, perhaps I should say, a thought of the great abuses which they invite and aggravate. In the first forty years there were less than one hundred removals, ? and all the officers of the Government, down to mere clerks, were fewer in number than the nominations of superior officers on which the Senate has acted in a single year since the giving of the information which a constituent has a right to know has been made the supreme offence on the criminal calendar of the Senate. It was only when there were near one hundred thousand Federal officers ; when rotation in office and corrupt office begging became a trade and a peril ; when character and capacity were subordinated to partisan services and official favoritism in making removals and appointments ; when a third of the time of Senators was occupied by office seekers, and half their speeches and sessions were given to confirmations ; when Senators, having become patronage purveyors and political potentates of their States, openly rebelled, because they could not dictate nominations to the President ; when the intrigues and corruption attending their own elections had degraded State politics, and begun to threaten the national life ; it was only then, after the great uprising for administrative reform had stirred them to thoughtfulness, that the people began to comprehend the significance of the secret sessions of the Senate, and to concentrate their attention upon them. What is it that the Senate wishes to conceal ? Why do Senators seek darkness and secrecy, rather than light ? What right has the majority of the Senate to conceal from us that action which should be in the public interest and for the public eye ? These are questions the people are asking, and will continue to ask. Senator Logan, in a speech last winter in support of Senator Platt's resolution for suppressing secret sessions, stated that "there is a strong desire on the part of a great many Senators to have secret sessions every day." Why this strong desire ?

What valuable, disinterested plans for serving the people have they in view which cannot be safely trusted to the public ? If it be disagreeable for them to answer these questions, perhaps

most people can answer for themselves. There are, doubtless, several very conservative Senators, little exposed to partisan pressure, and with a constitutional deference for precedents and privilege, who can make a curiously innocent apology for secret sessions; but all well informed people know that Senatorial fondness for such sessions is generally measured by the corrupt intrigues, the patronage mongering, and the indefensible votes and speeches which they wish to conceal, and that opposition to such sessions is generally measured by the wish to suppress such abuses. It is hardly less than an affront to common sense to seriously argue that the abuses referred to have not been caused and aggravated by secret sessions. What would be the effect if the inscrutable mystery and secrecy of these sessions were extended to every officer, State and Federal, and to every act connected with appointments and removals, so that nothing should be known from the first intrigue for a nomination until the issue of the commission? Could the Government long endure? By that universal experience, which guides our judgment with the promptness and certainty of an instinct, fraud, corruption, vice, cowardice, mean motives—or at least something wrong—are always associated with the desire to conceal the discharge of a public function. The officers thus skulking from the light are believed to be knaves or cowards. We know that all vice, crime and corruption seek concealment and thrive on it. Who believes that our courts would keep down crime, that our Legislatures would stand against bribery, that general speculation could be prevented in administrative offices, if they were closed in impenetrable secrecy, like the Senate, against the press and the people? Who does not believe that every criminal and lobbyist would rejoice at secret sessions of those bodies? And does the lobbyist who threatens Senators with the wrath of a party, or the criminal who tenders a Senator the bribe of a millionaire for his speech or vote in secret session, hold different views of such sessions from those held by their fellows at the doors of courts and Legislatures?

By common consent the greatest abuses under our Government stand connected with the corrupt bargains, the gross

bribery, the vicious intrigue, the demoralizing partisan pressure which are concentrated upon the appointing power in all its grades from the President to City Aldermen, from the election of Senators to the appointment of Marshals and policemen. Nowhere else is the clearest light, the most absolute publicity, the boldest criticism of the press, the stern gaze of the public, which most deepen the feeling of responsibility—nowhere else are they so much needed as where selections for office are made. Yet just here is where the Senate of the United States first set the example of irresponsible and impenetrable secrecy, and now leads the States and the municipal councils in a cowardly concealment which facilitates corruption, disarms the power of the higher public opinion, prevents good men getting office, while helping bad men into office. Who so much as the man of pure life, unstained reputation and high capacity desires his scrutiny in the Senate to be absolutely public, or declines so manfully that opportunity for revengeful slander and partisan influence, without possibility of self-defence, to defeat him behind the barred doors of the Senate? Who, on the other hand, is so much emboldened and aided by that secret test as the partisan schemer, the adroit scoundrel, the serviceable henchman, who secretly collects recommendations, secretly slanders his competitors, secretly matures his plans with a Senator, secretly deceives the President, with the certainty that if he can stealthily gain a nomination, all is dark and safe beyond? The Senate's rules of secrecy are a public notice to the vilest office seekers of the land that they need not despair merely because they would shrink from a public session, or Senators would not dare publicly to vote for them.

Senator Logan, in the late debate in the Senate, said: "The traducer of character and the condoner of bad records will both shrink before the free and open consideration of Executive nominations;" and in the same debate Senator Butler declared that if secret sessions were suppressed, "opportunity would not be given the assassin of private character to secretly ply his avocation. Many an improper person would be kept out of Government employment and many a good man escape slaugh-

ter in the darkness of secret session." Senator Gibson used language of the same import.

As every motive likely to influence Senators tends to restrain such confessions by them on the floor of the Senate and in the face of their fellows, we may be sure there is no exaggeration in such statements. If, scorning all cowardly concealment and rising to the dignity of the duty of its high place, the Senate would open its doors and speak and vote bravely as befits a great nation upon all nominations, thereby letting it be known that no man whose life and character cannot bear the public gaze need apply for its approval, a vast mass of vicious office seeking and patronage mongering would be suppressed, political morality would be raised, and the Senate itself would at once secure a far higher place than it now holds in the estimation of the people.

No. 8.—HOW THE “COURTESY OF THE SENATE” CONDUCE TO
SECRET SESSIONS AND PATRONAGE MONGERING.

By a curious perversion the attractive name of courtesy—“courtesy of the Senate”—has been used to cover one of the least understood and most vicious practices. The framers of the Constitution believed that the conspicuous dignity of a Senator, performing his duty under the public eye, was a sufficient guarantee that the action of the Senate on nominations would have controlling reference to character and capacity. Nevertheless, knowing well those frailties of human nature, especially liable to be exhibited by a legislative body having authority in connection with appointments, they were not without solicitude, as this language from the *Federalist* shows: “In every exercise of the power of appointing to office by an assembly of men we must expect to see a public display of the private and party likings, * * * attachments and animosities which are felt by those who compose the assembly.” With a striking prescience of possible evils, the same work supplies an admirable definition of the “courtesy of the Senate” in these words: “Give us the man we wish for this office, and you shall have the one you wish for that office; this will be the usual condition of the bargain.” So it has been, in fact, with the courtesy in practice. It would be untrue and unfair, however, not to say that a large proportion of the appointments have been based on merit ever since the courtesy became dominant, and that many Senators have always condemned it, and some have refused to observe its code, however lamentably the conventional and seductive etiquette of the Senate may have suppressed their indignation. Few men have public virtue enough to refuse the lordship of patronage in their own State on the condition of being relieved of trouble about it in other States. The essential conditions of the courtesy are these:

(1.) The Senators for each State are to have their way in regard to nominations for their own States.

(2.) Their wishes are to be accepted by the Senators of all the States.

(3.) No Senator need make a real scrutiny, or can be held to a real responsibility beyond his own State.

(4.) In other words, the Senators of each State gained the position of patronage masters-general therein as the consideration for abandoning their duties in all other States.

There have been, doubtless, many exceptions to the exact enforcement of the courtesy. It could not be strictly applied to the more prominent officers, like foreign Ministers ; and where the Senators from the same State were of different parties, there were complications. Still, many persons think, and especially those who understand New-York and Pennsylvania politics as they were some years ago, that Senators of opposite politics have not found much more difficulty than New-York Aldermen of opposite parties in apportioning their patronage and aiding each other according to the inmost spirit of the courtesy. The courtesy was always, in substance, a corrupt barter of duty and honor for power and patronage. And because it was between some of the highest officers in one of the most conspicuous places of the nation, it has been lamentably demoralizing. Its practice was a violation of justice, and a disregard of truth and good character which directly tended to degrade Senators, to keep worthy men out of office, to put bad men into office, and to make office getting suspicious and disreputable. There cannot, in the nature of things, be a refusal or neglect to perform a high moral and legal duty in a conspicuous place before the people, without a degradation of the national morals, and general suspicion and distrust among the people, which are in themselves demoralizing. "Every Senator knows," said Senator Platt, in the late debate, "that very largely through this country the idea

is, that we bargain with each other about confirmations, * * * or that, through some idea of 'Senatorial courtesy,' we fail to oppose men whom we ought to oppose, or favor men whom we ought not to appoint." The establishment of the courtesy naturally made Senators ten times more anxious than before for secret sessions. The speeches and votes for enforcing it, if made at open session, would expose the courtesy to the people. Publicity would be as fatal to it as it would be to all the abuses which it greatly aggravates.

Senator Logan, in that debate, said: "Let the doors of the Senate Chamber be open when men's names come before the Senate, and confirmations through the mysterious agency of 'Senatorial courtesy' will give place to the honest man whose fair record boldly courts inspection." The vicious influence of this courtesy was by no means confined to confirmations or even to national affairs. By uniting all the Senators together in a common bond of selfish interest and mutual aid for increasing the patronage and the political power of each to the utmost against the President and all rivals, it made Senators political potentates in their States as well as at Washington. It made the Senate more than ever before an arrogant and aggressive body. Every Senator, in no merely formal sense, spoke, under the courtesy, if not for the whole Senate, at least for his party in that body. Senators were thus enabled to dictate nominations to the President, and they long used that power successfully. "I think the history of the Senate will show," said Senator Gibson in that debate, "that a great many of the leading Senators have in times past regarded their wishes to the Executive as omnipotent. * * The public patronage has been considered, in large measure, as the political right of Senators from the State in which the appointments were to be made." When the stern reform sentiment of the country gave President Garfield courage to resist such a demand, Senators Conkling and Platt still felt sure that Senatorial courtesy would confirm any candidate they could force him to nominate. That usurpation of power, secured by the Senate through the Tenure of Office Act of 1867, which destroyed the counterpoise of the Government, had its motive and

its strength in the courtesy of the Senate. When the Senators of a State could thus control the selection of all the high Federal officers to serve within its borders, they inevitably became the purveyors general and lords paramount of Federal patronage. It has been easy for Senators to condition the recommendations for an appointment or votes for a confirmation of a collector, postmaster, or any other officer upon the henchmen and flunkies of Senators being made clerks, messengers and chimney sweeps under such officers. I have seen several letters from Senators unmistakably hinting such terms for their influence or votes. Thus Senators become almost as much political despots and patronage mongers as they were legislators, thereby degrading the Senatorial office itself. Hence in large measure the power, intrigue and corruption which, partly causing and always reinforcing bribery by money, has been one of the causes of so many scandals attending the election of Senators within the present decade.

The aggressive spirit fostered by the courtesy, the Tenure of Office Acts, and the irresponsibility of secret sessions aiding each other, have emboldened Senators to claim authority over removals as well as appointments. The danger of offending a Senator, who has not the least moral or legal right to interfere with them, had been for many years before the Civil Service Act the terror of the clerks in the Departments and Custom Houses.

This Senatorial courtesy was naturally imitated by the Senates of States and the Aldermen of cities, where secret sessions have been as much desired and the abuses of secret confirmations have been as great as at Washington. There is not probably a corrupt legislator in Ohio nor an indicted Alderman in New-York who would not, as much as the most partisan and venal member of the national Senate, regret the abolition of secret sessions and the suppression of the courtesy.

We need not nicely inquire when the courtesy was first established at Washington, nor how far it has yielded, though I am sure it has yielded very much of late, to the bold sentiment demanding administrative reform. Its foundations were certainly

well laid in 1832, when Senator Marcy dared declare, at a secret session of the Senate, that "to the victor belongs the spoils." It was apparently in full force when, in 1877, Mr. Garfield declared that "the President could remove no officer without the consent of the Senate, not often given, unless the appointment of the successor is agreeable to the Senator in whose State the appointee resides." As it was still later in full force, apparently, when Senator Hoar cautiously, but not less significantly, said, that "in this way the Executive may be subjected to another branch of the Government." It would seem not to have wholly disappeared when, less than five years ago, Senator Pendleton, speaking of the prevailing system, declared, in the Senate, that "it drives Senators * * * into the neglect of their chief duties of legislation, * * * and too often makes the support of an Administration conditioned upon the obtaining offices for their friends;" and Senator Dawes added, that "it destroys his independence, and makes him a slave." I fear there is even ground for doubt whether it will ever disappear, so long as a majority of the Senators are not ashamed to provide for enforcing in secrecy a system they dare not publicly defend, and for secretly giving votes and making speeches behind barred doors which they would not dare make in public.

No. 9.—SECRET SESSIONS OF THE SENATE NEEDLESS AND AN
OBSTRUCTION TO THE REFORM OF THE CIVIL SERVICE.

Senators speaking in the presence of their associates and under the strongest natural bias in favor of the Senate will be the last persons in the world to exaggerate its wrong doings. Yet this is language bravely used by them in the debate of last winter :

“ There is not now, and there never has been,” said Senator Logan, “ any necessity for the consideration of nominations in “ secret sessions.”

“ I affirm now,” said Senator Platt, “ that I never heard a “ word said in executive session *which ought to have been “ said there*, which might not just as well have been said in “ open session, in relation to confirmation of nominations.” Speaking of the rights of the people, Senator Gibson said : “ No “ public interests requires that any of the proceedings of the “ Senate should have kept secrets from them.”

“ My experience here,” Senator Butler declared, “ convinces “ me there is no necessity *or excuse* for secret sessions, except, “ perhaps, in considering treaties with foreign countries, * * “ and it is a somewhat curious fact that this is the only Parlia- “ mentary body in the world with, perhaps, one exception, * * “ which * * has rules for secret sessions.”

Secret sessions being thus shown to be utterly needless by language thus publicly flung in the face of the majority of the Senate, which clings to them, how are we to explain its suspicious and mysterious pertinacity for darkness and barred doors, upon any theory less creditable than that which I have but too mildly set forth ?

Senators know well the effects of secret sessions upon the reform of the civil service, and this is their unchallenged judg-

ment : Senator Logan declared that " open executive sessions " for the consideration of nominations must aid in purifying " the public service."

" If it were once understood," said Senator Gibson, " that " entire publicity were the rule respecting all appointments, the " chief difficulty in the way of the thorough reformation of the " public service would be removed."

" My observation and experience teach me," said Senator Butler, " that the nearest, surest and safest road to reform in the " civil service is to throw wide open our doors for executive as " well as legislative business."

" We shall never have a real thorough reform of our civil " service," Senator Platt declared, " until the widest possible " publicity is given to the methods of Presidential nominations " and Senatorial confirmations." * * " It is a farce, a mockery " and a delusion to talk about Civil Service Reform as an ac- " complished fact while this goes on."

These Senators do not, as my experience compels me to believe, exaggerate when they thus present the secret sessions of the Senate as a source of corruption, and as being at this moment one of the greatest obstacles in the way of advancing the reform of the civil service. The simple, disgraceful facts proved are that the highest legislative body of the nation, claiming a right to decide as to all removals, and potential over all the higher appointments, has, without any need or justification even in the partial estimate of its own members, been holding its sessions, in defiance of the Constitution and the higher sentiments of the people, behind the barred doors of the National Capitol, asserting the arrogant privileges of the Star Chamber, and haughtily denying all responsibility to the people for speech or vote. It has held trials without evidence, and condemned without self-defence, leaving no record, and allowing no appeal to public opinion in perhaps a hundred sessions and near a thousand cases every year. These facts and proceedings have created such general suspicion in the national mind, have so lamentably impaired faith in the Senate and in public virtue itself, have so consolidated a vast army of mercenary, secrecy-loving office

seekers and politicians, that thereby the reform of the civil service was made much more difficult than it would have been had the Senate acted openly.

A reform policy is utterly repugnant to every element which is a part of either the motive or the object of secret sessions. These sessions are an agency through which offices are secured by secret influences, on secret recommendations aided by secret intrigues, for reasons which the people are denied any right to know, and all opportunity to learn, in irresponsible and inscrutable disregard of character and capacity to any extent which may suit the policy, the politics or the interests of a majority of the Senators, or—under the courtesy—of two Senators, or one only in some cases.

Under the Civil Service Rules publicity is complete. Before the examination begins, every applicant must, under oath and in writing, state his birthplace, age, residence, physical condition, business and occupation and where he has resided each year for the last five years. He must prove himself of good character, free from gross vices, and that he has not been recently guilty of any criminal offence. A public examination, with all competitors, then follows, and the entire record is preserved. On superior merit, as shown by this public ordeal, all the appointments of such applicants rest.

But there is quite another sort of antagonism between the two systems. Every one of the more than fifteen thousand places now filled through examinations had been a part of the direct and vast patronage of Heads of Departments, Collectors, Postmasters, and various other officers, who are subject to confirmation by the Senate ; but a part of the indirect, but *real* patronage of Senators ; for the power of confirmation was, under the courtesy and through opportunities of secret sessions, practically a power, on the part of Senators, which they freely used, to dictate appointments under the officers named, as a condition of confirming their nominations. A Senator could thus gain places for his favorites, not only in his own State but in other States, when his vote was needed. Such favors are,

I am assured, reciprocated between Senators as a part of the courtesy.

If the President should to-morrow extend the civil service examinations, so that they would cover other post offices and revenue offices, for example, in Ohio, Pennsylvania, Indiana, Kansas or other States, he would greatly diminish Senatorial patronage in those States, and greatly affect the votes of Senators and the election of Senators. We need not go beyond these points to find an explanation of the significant facts that the courtesy, the spoils system and secret sessions have so many friends and enemies in common.

No. 10.—THE ONE REASON GIVEN FOR SECRET SESSIONS.

Various specious excuses and apologies have been presented for secret action on nominations, but the one reason given is this : that there is something in the very nature of that action which ought not to be made public. I have looked in vain for any definite statement of what it is. If public offices are the spoils of party victory, if the power of confirmation is a perquisite of Senators, if Senators have a right to evade responsibility by hiding themselves in their lock-up and keeping the people in ignorance, if the courtesy of the Senate for a secret division of patronage is defensible, if an applicant for office has no claim to know by whom he is assailed or for what reason condemned, if the press has no right to know and report the official proceedings of the Senate, if the convenience of Senators is paramount to the enlightenment of the people,—then, indeed, such sessions are as justifiable as they certainly are convenient, not for determining who ought to have office, but for saving Senators from the wrath and contempt of the people.

But if, on the other hand, public office is a public trust, if character and capacity are the supreme tests for appointments, if the people have a right to know the action of their servants in a vast and vital sphere of government, if freedom of the press is not limited to what the majority of the Senate may find it convenient or for their interest to make public, then it seems plain enough that there is something in the very nature of such sessions which requires publicity. It is for the apologists of a secret tribunal for testing character and doing justice to prove how secrecy can aid such results, or, in other words, that it was a mistake to abolish the Star Chamber. The experience of all the most civilized nations has caused publicity in all investigations, in all tribunals of justice, in all legislative and executive bodies, especially when character and the claims of justice are involved, to be so identified with honesty, truth and right, and secrecy and concealment to be so identified with fraud, corruption and wrong, that everything

which shrinks from publicity and light is instinctively condemned. There are, and can be no arguments in favor of secret action on nominations, which, to any person but a Senator, do not seem suspicious, cowardly or absurd.

No answers to the one reason given for secrecy can be so convincing as those coming from Senators themselves. Their statements, on the floor of the Senate, and in the faces of their fellow Senators, must have been a painful duty. I shall quote the language of four Senators ; two from the North and two from the South—two Democrats and two Republicans. No one, I think, can read it without being astonished that the great evils of secret sessions they arraign should have been so long tolerated, or without a feeling of respect and gratitude toward the four Senators who have had the moral courage to disclose and denounce these evils in such patriotic and manly terms :

Senator Gibson, of La. : “ Now, Mr. President, there are two
 “ methods for filling the offices created by the Constitution and
 “ laws, one by election and the other by appointment ; and I
 “ submit that the reasons which compel and justify the utmost
 “ publicity in the discussion of the merits and qualifications in
 “ one case should prevail in the other. The offices belong
 “ to the people, were created for their benefit and not for the
 “ benefit of the office holders * * nor for the Senate. * * The
 “ people have a right to know all about their qualifications when
 “ they come to be appointed or elected.” Referring to publicity, Senator Gibson further says : “ It would impose greater
 “ circumspection and responsibility and better methods upon
 “ the appointing power.” * * “ Senators, Representatives and
 “ gentlemen in private life, who now carelessly give their recommendations right and left, without scrutiny, would be more
 “ careful when it was understood that the measure of their responsibility was likewise to be declared to the country and
 “ not hid away in the archives of the Committee rooms.” * *
 “ It would relieve the Senate from the constant discussion of
 “ attacks upon private character, which secrecy holds out as a
 “ temptation to those who would gratify personal malice or re-

“venge by striking under cover in the dark.” * * “The duty to investigate in secret and by secret methods the character of the persons assailed and the assailants, *is the most humiliating and disgusting work ever committed to gentlemen.*” “Let us open the doors of the Senate, and we shall be no longer required to pass on charges springing from such motives. Publicity is a process of purification, while secrecy breeds suspicion of intrigues and excites odium and discontent. No doubt the effect of *this change would be to deprive the Senate of the opportunity of seeking party advantage in the matter of appointments.* * * It would undoubtedly *tend to relax the grasp of the Senate itself upon the public patronage* as one of its prerogatives, and to transfer the responsibility to the appointing power, where it properly belongs.”

Senator Butler, of S. C. : “We are here as agents and servants of the people, exercising a great trust for them. Should they not have a full and complete account of how that trust is discharged? * * Yet when we come to transact administrative duties as important as any other, namely, pass judgment on public officials, we shut the doors, close the blinds, and shroud ourselves in the mystery of secret sessions—at least that is the purpose, though it is not always realized. * * Instead of greater secrecy in our deliberations, there ought to be greater publicity. None but those who could stand the focused light of the public gaze would be sent to us, and great good would accrue to the public service.”

Senator Logan, of Illinois, referring first to the evils of secret sessions, and the motives which sustain them, and the good which would come from publicity, said : “The applicant for public place, with crooked record, who expects to steal his way through the mysteries of secret sessions to an official position, would seek other places than the halls of the Senate of the United States. * * I said it was demoralizing. * * I mean secret sessions encourage Senators, if they are so disposed, to utter what they would not desire to do in other places. * * We have a rule in which we declare that we will expel any member from the Senate who gives away the secrets

“ of the Senate. Are they not given away ? * * This mysterious thing of doing in secret session what you will not do openly is not manly. *It gives the chance for men to vote in secret one way and talk in open Senate another way.*”

Senator Platt, of Conn. : “ Secrecy is odious to every human being, except when he practices it himself. It is against the spirit of a free government. * * It is a lineal descendant of the Privy Council. * * Publicity is the one thing upon which we must rely in this country for the correction of evils. Why do we investigate matters ? We order here and in the other House investigations, because we think something is done in secret which ought to be revealed. * * It is true now as it was eighteen centuries ago, that men love darkness rather than light, because their deeds are evil.” * * “ The incompetent will not be presented here for us to discuss, as they are now presented, if it be understood that their character and qualifications are open to public discussion and are to receive public consideration. The whole business of appointment to office will change.” * * “ Sir, this argument becomes something farcical when you look it in the eye. It is a plea for *personal privilege on the part of Senators ; it is a plea to be exempt from unpleasant duties.*” * * “ Is there any other argument ? Yes, I have heard one other ; that it is a Senatorial prerogative. I do not want to stop and discuss that question, but I believe that *right in that argument, perhaps, is the greatest disinclination which some Senators may have to the opening of these doors.*”

Thus it appears, by the highest possible evidence, from an experience disregarding all interests of party or locality, from words possible only under an overwhelming sense of duty, that no public consideration, no private right, no intrinsic necessity, no patriotic motive, but audacious assumption, insolent grasping for mediæval privileges, a cowardly dread of responsibility and an overpowering desire to conceal something which will not bear the light, are the controlling influences which preserve the darkness, the mystery and the mischief of these secret sessions. But I do not doubt that a few Senators really believe that these sessions are useful.

No. 11.—HOW SECRET SESSIONS ARE DEFENDED BY SENATOR
HOAR AND SENATOR MORRILL.

Hardly anything connected with secret sessions is more remarkable than the attempt made by two Senators, Mr. Hoar, of Massachusetts, and Mr. Morrill, of Vermont, to justify them. I have great respect for the character and public services of these gentlemen. It may at first seem strange to some that two Senators, each of them conspicuously free both from the temptation and the vicious use of patronage—one of them from a State where there has been the least corruption in politics—and the other from a State where the suppression of the spoils system by civil service examinations is most advanced—should be the only two Senators to speak in defence of a practice which four Senators have in substance declared to be not only the bulwark of that system but the great fortress and ambushade of cowardice and patronage mongering.

Yet it is all quite natural. The slowest man to come to the work of reform is very likely to be one quite innocent himself, and quite ignorant of the corruption elsewhere. Whenever any secret order, falling under suspicion, is finally arraigned by public opinion, those most zealous and indiscreet for its defence are quite sure to be some of its most worthy members, who naturally feel most compromised and most sensitive to criticism. I have often noticed that when a clergyman gets into trouble with any of the sisters of the Church, his first and most vehement defenders are the deacons.

Senator Hoar sets out with some astounding declarations and assumptions which involve all that follows as argument. I can notice only the most striking. He says he has heard of only one person, not connected with newspapers, who thought a change of secret sessions desirable! I have just quoted the opinions of four of his fellow Senators against them. And I must express my astonishment that any Senator can be unaware of the distrust of secret sessions pervading thoughtful minds

beyond the Senate ; though Senators would not often be directly told of the public feeling toward themselves or the Senate. Senator Hoar next declares, that " The public sentiment of this " country demands that the Senate shall do what, on full " deliberation and discussion, it thinks just and right. It makes " no other demand on us whatever ;" and further states, " that " the Senate never stood higher in the estimation of the people " than now."

I venture the opinion that the popular estimation of the Senate is the very contrary of this. The Senate is believed to be so interested in the preservation of its patronage and its privileges, and to have so many members who care more for their own interests than for the public interests, that it is incapable of wise action as to secret sessions, unless coerced by public opinion. No fact is clearer to well informed people, outside of the Senate, than the fact that it has been falling in public estimation, and that intrigue, partisan influence and bribery by money, are becoming more and more potent in the election of Senators. Such people, however, know the mighty spell of the " idol of the tribe," and are not greatly astonished when they find a Senator utterly misled as to the state of public opinion concerning the Senate. I might justify my view by merely quoting the opinions of his fellow Senators, soon to follow. It is, however, but an act of justice to Senator Hoar to allow him to show that he is not always so misled.

In the very month that Senator Hoar thus presented the Senate as a body so admirably disinterested, that, when its privileges and its patronage are involved, the dear people need have no higher thought than to trust implicitly to its wisdom and justice, he wrote a report and delivered a speech, in arraignment of the alarming action of the Senate in the Payne election case, quite in my way of thinking, and of which I should be proud to have been the author. In that speech, and in the report (in which Senator Frye joined) Senator Hoar used this significant language : " For the Senate to refuse to listen to " this complaint, so made, would, it seems to me, be, and be " everywhere taken to be, a declaration that it is *indifferent to*

“ *the question whether its seats are to be, in the future, the subjects of bargain and sale, or may be presented by a few millionaires as a compliment to a friend.* No more fatal blow can be struck at the Senate, or at the purity and permanence of republican government, than the establishment of this precedent.” * * “The vote in that caucus, and it is a *pretty significant suggestion*, was by *secret* ballot. The Payne men, against the earnest remonstrance of the members of the other party, insisted on having the vote by secret ballot.” Here, I may stop to say, the Senator was as fully convinced that there was fraud and corrupt motives because the ballot was secret, as the people are now convinced that the secret votes of the Senate spring from the same cause. But he continues: “I think this inquiry is demanded *for the sake of the Senate*. It is vital to that free and pure government, without which no republic can endure. The precedent of this case, if the Committee be sustained by the Senate, will render corruption easy hereafter, when its example will be most pernicious, and its efforts worse.” True, brave and noble words, for which the country should thank Senator Hoar. But, sad to say, that investigation was not made; that disastrous precedent was established, and that blow was struck at the purity and permanence of republican government. Corruption hereafter was made the easier by the Senate itself, to its everlasting shame. The Senate never made a more humiliating declaration of the moral tone of its majority. It was justly declared by Senator Hoar, in the debate, that a magistrate who had refused an inquiry, on such evidence as called for an investigation in the Payne case, would have been impeached, and that a District Attorney neglecting to make it would have been removed. The significance of these declarations is, that they, in effect, declare the view of the Senator to be that the sense of honor and duty, both among the people and on the part of the Executive, is higher than in the Senate; as otherwise his comparisons are obviously unwarranted.

The new millionaire Senator affected by such facts was left undisturbed in his seat and he sat through all the humiliating debate, without the least hint that he desired an inquiry for clearing his own record—a fact that astonished Senator Hoar.

Is that Senator quite certain that the Senatorial theories and standards of honor and duty, which, one would think, might naturally enough spring from skulking behind barred doors for discharging the highest public functions, from indulging a cowardly dread of public criticism, from substituting the fear of expulsion for the honor of a Senator as the guaranty of patriotism and good faith—is he quite certain that these theories and standards will not go far toward explaining what so astonished and mortified him in the Payne case?

Senator Logan, with open eyes, well knowing the public opinion of the West—a Senator, by the way, whom Senator Hoar, though worthy to be Vice-President and to preside over the Senate—gave, in the same debate, this fit and true answer to Senator Hoar's theory of secret sessions and of the people's estimate of them. The people say, says Senator Logan, "these chamber
" doors shall be open, and not only that, but they will thunder
" at them until they are opened; and, mark what I tell you,
" they will be opened. It will not be long either. * * You
" gentlemen may revel in the dark for a while over nomina-
" tions, and delight yourselves to go out and know something
" that the people do not know. * * I warn my friends here
" that the people of this country will know what you do. They
" will open these doors and they will look in upon you. They
" are entitled to, and until these doors are opened the people
" of this country cannot have an opportunity of full knowledge
" of the workings of the Government."

Senator Platt, knowing the public opinion of the East, adds this answer from that section to Senator Hoar's laudation of the Senate: "This is not a popular body, * * it is fast
" becoming a very unpopular body in the estimation of the
" citizens of this country. Public sentiment compelled open
" legislative sessions of the Senate, and it now demands open
" executive sessions of the Senate. * * I venture to say,
" that of the nearly fourteen thousand newspapers, probably ten
" thousand of them—a very large proportion of them—have de-
" clared their belief that this measure should be adopted."

No. 12.—HOW SECRET SESSIONS ARE DEFENDED BY SENATORS.

Senator Hoar tries to justify secret sessions by declaring that the members of State Senates, and of municipal corporations, have generally followed the example of the National Senate in hiding themselves from the public eye, when dealing with the patronage. The example is unquestionably attractive to any one having something in hand which will not bear the light. The New-York Aldermen, a few months ago, followed the national example, as faithfully as any State Senators ever did in dispensing patronage for carrying elections, when they locked the doors and shut the blinds, before selling a municipal franchise for \$500,000 cash in hand. If the fact that States have followed the bad practices of the nation justifies the latter, then the denial of the right of petition by Congress and the condemnation of John Quincy Adams, for maintaining the freedom of debate in its halls, were altogether right; for these examples were followed or approved by many States.

Indeed the Senator's argument has the full force of the logic of the gambling grandfather, in the play, who justified his habits by declaring that all his children and grandchildren were gamblers like himself. There is a public opinion aroused, I think, which will soon settle this matter with the whole family, though it is now dealing with the grandfather. In New-York, however, the attack has been made at the other end of the line, also, by a total repeal, last winter, of the law giving the New-York City Aldermen the power of confirmation.

Both Senator Hoar and Senator Morrill insist that if Senators are to act publicly on nominations, so should the cabinet, and Senator Hoar adds, so should grand juries. The Senator from Vermont indulges his imagination somewhat grotesquely, and with a very broad license in dealing with this whole matter, as if the case was one of impertinent intermeddlers, obtruding into the sanctuary of Senatorial privilege, instead of a righteous and

indignant public opinion, calling public servants to an account. He brings in the President, without the least sarcasm, I assume, under the appellation of the "manliest of men," and then the President's wife, as one "glittering like the morning star," and, finally, the "corps diplomatique," as a part of his assembly, trying to make them all ridiculous together, with that kind of success that I should have supposed the speech intended to amuse a rollicking secret session, and not for the public eye, were it not for a memoranda in the official report which tells us that the Senator was too ill at the time to read—and perhaps I may add, to revise—his speech.

Mr. May, somewhere in his work on the British Constitution, tells us that great men never reason so poorly and strangely as when trying to defend their usurpations and increase their power. I know no other explanation of the strange fact that a Senator tries to find an analogy between a grand jury and a secret session of the Senate. A grand jury is for a mere preliminary investigation, and a precaution against unfounded rumors. It makes formal charges with probability of truth. Thereafter comes the trial, where no secrecy is allowed, where the venerable precedents of justice prevail, where there is defence by counsel, where law, facts and principles are discussed, and the record is made in the open face of day; and after all there is an appeal. The Senate, acting on nominations, is grand jury, State's attorney, petty jury, judge and executioner, with the safeguards of neither, all mingled in one body, blinded by partisan prejudice, and dominated by Senatorial courtesy. This body, afraid to trust its own members unless coerced to fidelity by threats of expulsion, shuts itself up behind bolted doors, and there, in everlasting secrecy, proceeds to try and judge character and capacity, without legal evidence or opportunity of self-defence, rendering decisions without recognizing precedents, entering decrees without leaving any record, enforcing them without allowing a chance of appeal,—all with absolute irresponsibility to the higher public opinion on the part of any individual Senator.

The reference to the Cabinet as an argument is not more fortu-

nate. The Cabinet is not a body known to the Constitution or to the laws. In the theory of the Government, the Cabinet has nothing whatever to do with nominations subject to confirmation by the Senate. The President is solely responsible for them, and could make all of them if he had no Cabinet, or, if having one, all its members were in the moon. The most important of all nominations—those of the members of that ideal body itself, called the Cabinet—made by him, are made before that body can have any sort of existence. And here, I may say, the President acts publicly. The nomination he publicly sends to the Senate is his vote, and much more than a vote, given in the face of the nation. Secrecy begins when the Senate hides the nominations, and is continued only in the secret votes and speeches of Senators. All is public again when the inquisitorial proceedings of the Senate are at an end.

And more than this, both these Senators, and all the other Senators so anxious for secret sessions, insisted last winter that the members of the Cabinet are more emphatically the subordinates of the Senate than of the President, claiming that the Senate has the right to demand their correspondence, as well as facts of their co-operation with the President, to be put into the secret archives of the Senate for use at its secret sessions.

I am glad to notice, that even so exuberant a defender of secrecy as Senator Morrill condemns, in the rules of his body, the threat of expulsion for Senatorial treachery, declaring that "the sense of decency and propriety may be trusted." I hope it may, but, in view of the scandalous frequency with which, according to the statements of several Senators, the precious secrets of their sessions have been betrayed, and especially in view of the fact that two whole treaties, within a year last past, have been published in the public journals before they were acted on by the Senate, leads me to doubt.

Senator Hoar declares the belief, and, I believe, Senator Morrill also, that the power of confirmation would never have been given to the Senate, had so many nominations been anticipated. As every case of confirmation involves the same principle and duty as a thousand cases involve, one would think that if the co-

operation of the Senate in the matter is useful at all, it would be most needed when many cases press upon the President. Still, I agree with them in thinking, but for very different reasons, that had the result been foreseen, that power would never have been given. The framers of the Constitution, plainly enough, never imagined that Senators would conceal themselves to escape responsibility to the people, or give votes or make speeches they were ashamed to have made public. It may be, that the taking of the power of confirmation from the New-York City Aldermen is but the beginning of a reaction that will reach the National Senate.

Both these Senators base an argument for secrecy on its alleged fitness for what they call "confidential relations;" and they might as well call them secret relations as they present the subject, between the President and the Senate. The Constitution recognizes no more confidential relations there than it does between any other branches of the Government. These pretended relations of confidence are the mere creation of the rules of the Senate, in aid of secrecy and of the protection of Senators from criticism. The only confidence known to the Constitution, or needed by the people, is, that the President and the Senate alike shall be faithful to their respective trusts, fair to each other, each having confidence in sound principles and the trustworthiness of the people. All confidence beyond this is the confidence of partisanship and patronage mongering. All pretended "confidential relations," which keep the people in ignorance, and give great officers impunity from criticism, are as utterly vicious as they are repugnant to the spirit of our institutions. In the matter of pending negotiations and treaties, the obligation of confidence does not grow out of any relations between the President and the Senate, but out of the duties of each to the people. It rests on Representatives and all other officers as absolutely as on Senators.

When the President and Senate are of the same party, and the appointing power is secretly used between them to reward their respective henchmen, pay off the party camp followers, supply its working force, and fill its treasury for the next

election, the meaning of "confidential relations" is plain enough. But what do confidential relations mean, in the view of these Senators, when the majority of the Senate is opposed to the President, and when both the Senators attack, ridicule, and in some particulars, as I think, greatly misrepresent his acts? though I am neither the apologist of the President nor an adherent of his party.

We are not left wholly in the dark as to the practical application of "confidential relations," for Senator Morrill uses this pregnant language: "A nomination sometimes reaches the Senate which the Executive cannot, apparently, afford to withdraw, and which the Senate is almost unanimously agreed should neither be rejected nor confirmed." Put into plain un-Senatorial English, such language comes to this—not as the admitted code of the Senator, of course, but as the Senatorial theory of politics—that a President, to gain a State, to silence an adversary, to bribe an editor, may deceitfully promise a foreign mission, a consulship, a post office, to any number of unworthy fellows, with the safe assurance that the Senate will have neither the patriotism to reject nor the courage to approve the nominations, but will smother them in its lock-up, under the dirty blanket of "confidential relations." In other words, these relations are those of barter, deception and cowardice. Such defences of secrecy as these lend new force to the declaration of the four Senators already quoted, who say that our administrative abuses can never be removed so long as secret sessions continue. We may be sure there are always some Senators who will never thus aid Presidential fraud and cowardice, without their reward in the form of the nomination of some of their favorites. These are all "confidential relations."

NO. 13.—HOW SECRET SESSIONS ARE DEFENDED BY SENATORS.

Senator Hoar, by citing instances in which the Senate has taken the lead of the House in reform legislation, and mainly that of the civil service reform bill, tries to remove the suspicion and the presumption of indefensible motives, which he justly assumes to arise from the fact of the secrecy of the Senate. He is not successful. That bill did not originate in the Senate and was not welcomed by its majority. The Senate had ten years before received with silent hostility a request for legislation in the same spirit made by President Grant. The origin of that bill and that formidable power behind it which the Senate did not think it safe to confront, were both in that same higher public opinion which now beats on the barred doors of the Senate. It was necessary to go to the opposition for a champion where the courtesy and "confidential relations" afford far less opportunities. I would be glad to have Mr. Hoar name any Senator of his party who had a serious thought of framing such bill, although four-fifths at least of its strength was then in the ranks of that party.

I hesitate as to the fit response to some parts of the speech of the Senator from Vermont. Senator Logan tells us that the Senate at the outset haughtily claimed that it represented only the States, and was not therefore responsible to the people. It might consequently slam its doors in their faces. Senator Platt knowing well the real views of Senators, formally replied to a claim covertly made but not publicly stated by Senators, that the old privilege and pretensions should be preserved in order to magnify the power of the Senators. Now, as Senator Morrill, reared in the charming simplicity

of rural Vermont, is as far from needing such a reply as any one long in the Senate can be, the cautious words of his written speech cannot overstate the longing for increased power on the part of his fellow Senators. Nevertheless, this mild and amiable Senator uses language which a Duke of the United Kingdom would accept. Here are some specimens: "Open sessions would leave the Senate with a 'diminished independence.'" Certainly they would; there would no longer be independence to make such a disgraceful confirmation as that of the ballot box stuffing Thomas, of Maryland, without the votes of Senators being known.

The Senator next tells us that members of the Senate "know the propriety and value of closed doors in Executive sessions far better than any outsiders." Happy the people, let me say, who have their highest wisdom and sense of propriety in the Senate, even if according to this Senatorial assumption, all outsiders, like myself and the public journals, are thus admonished of their utter incompetency to speak of such high subjects as secret sessions and Senatorial privileges. The Senator applies to the people much the same language which Queen Elizabeth applied to members of Parliament when they obtruded their views about the great affairs of State. I had not thought of denying that Senators are by far better judges than outsiders of "*the value of closed doors.*" To all honest outsiders they are absolutely valueless. It is, however, a new doctrine in this country that an outsider is on the score of propriety incompetent to criticise a public officer, though in England it is as old as the time of the first outsider being sent to prison for obtruding his opinion against the infallible wisdom of members of Parliament.

The Senator next tells us, with the same unrivalled frankness, that "the public would bring through open doors "no valuable contributions, nothing but premature curiosity "and unsolicited advice."

Could a Roman or Venetian Senator have used prouder language? Does not the Senator from Vermont think, as the whole Senate once thought, that the same is true of open doors for legislative sessions also? There have been public officers, in every age, I believe, who have thought they so completely embodied the highest intelligence and virtue of the nation, that it was a real misfortune to have the journals and the people continually obtruding their unwelcome opinions through the open doors of official life.

I know not to which this exalted theory of the Senator as to the inability of all outsiders to contribute anything to Senatorial wisdom worthy of respect can be the more profound consolation; to a people thus assured that their supremest efforts through speech and the press to improve the government are but "premature curiosity" when measured against the uncomensurable attributes of their Senators, or to these Senators themselves who can dwell, like the God of the Buddhist, in the everlasting contemplation of such sublime qualities incarnate in themselves alone among fifty millions of people! Still speaking from these sublime Senatorial heights, the Senator from Vermont next tells the ever curious and valueless outsiders, that the matter they humbly bring to the doors of the Senate, being a new conceit of the "so-called reformers," at which he several times laboriously sneers, "has not yet reached the dignity of a public question." Nevertheless, he kindly adds that the Senate will listen, for which the outsiders should be grateful; but he expresses a strong preference for the "venerable precedents" of the fathers. I hope the Senator will excuse me for refreshing his memory a little. There were no Senate rules requiring secrecy as to nominations until 1820—thirty-one years after the organization of the Senate. The rule for punishing tattling about secret session by expulsion was adopted at the height of the spoils system—senatorial courtesy—confiden-

tial relations—*saturnalia* in 1868—seventy-nine years after that organization. Which of these rules, in the Senator's view, is one the venerable precedents of the fathers which he prefers? For a period of nearly five years from its organization the Senate, reasserting the aristocratic Parliamentary privileges of a former century, kept the doors of even its legislative sessions closed. This is certainly one of the "venerable precedents" of the fathers, but does the Senator wish to revive it?

And now as to the age and dignity of the question of open sessions. It was raised and defeated in 1790, was renewed in 1791 by James Monroe, but defeated by a vote of 9 to 17. Since then it has been raised at various dates, as in 1792, 1793, 1800, 1813, 1820, 1841, 1842, 1843, 1848, 1853, 1862, and 1868. Until last winter there does not appear to have been an effort to open the doors of the Senate since 1868, either because—just as the Senator prefers to have it—there was no man in the Senate with patriotism or moral courage enough to raise it, or because the Senate was so given over to "courtesy" and "confidential relations," that there was no reasonable hope that its doors could be opened. The debates on several, at least, of these motions to suppress secrecy were long and earnest. That submitted in 1853 is particularly interesting, and was lost by a vote of 14 to 23. It was made by Mr. Chase—once Senator, Secretary of the Treasury, Chief Justice of the Supreme Court of the United States—and was supported by Mr. Sumner, the predecessor of one of the present champions of Senatorial secrecy. Mr. Sumner declared that "executive sessions with closed doors shrouded from the public gaze and public criticism, constitute an exceptional part of our system too much in harmony with the proceedings of other governments less liberal in character. The genius of our institutions requires publicity."

Such is the new question hastily raised by the "so-called

reformers," which the Senator from Vermont treats as lacking that age and dignity which deserves the serious attention of the Senate.

And now we must come down from the Senatorial heights and to a very low level, indeed ; for the defenders of secrecy, having first presented Senators to us as far above ordinary mortals, next present them as impetuous, outrageous persons, quite unsafe to be trusted.

Senator Morrill, for example, says that if sessions were open there is danger that "they would make outrageous "charges in speeches," and would protract the debates, talking for buncombe. This dreadful body of outsiders would, he further says, be tempted to fill the galleries "to witness a free spectacular entertainment," in which, of course, the Senators would be the actors. Senator Hoar further exposes Senatorial frailties by declaring that it would be dangerous to enable any Senator to provoke a debate on the character of a nominee. I believe I have never said any thing so uncomplimentary to the good sense, justice or manners of Senators. I had not supposed them to be so dangerous, or that they were hid in secrecy as friends hide their crazy relatives. There is much more of the same sort in these kaleidoscopic speeches. An outsider feels himself rapidly sinking as he reads them, because he is assured that, low as Senators may fall, the position of an outsider is always on a plain far beneath.

Any person who has not been a Senator would think it possible, by some fit rule, to muzzle the mouths of such buncombe orators and defameis. Are these Senators quite certain, since the Senate has never tried it, that the opening of its debates would make mere boors and demagogues out of Senators long refined by secrecy? There are people who think that sometimes the gallery restrains the Senators to decency, and that both Senators and reporters sometimes co-

operate for improving the grammar and eliminating the vulgarity in speeches thought well enough for Senators, but not thought well enough for outsiders. This view seems to accord with the fact that in every other country Parliamentary publicity has increased with general refinement, intelligence and liberty. Still the effect may be different on the American Senate, which has such peculiar views as to the relative values of light and darkness. As bearing on the question whether Senators are affected much like other men by publicity and light, I may mention that several of them have told me that the manners of their associates are by no means so good in secret sessions as in open sessions, mentioning that there is in the former more smoking, more boorish lounging, more violent language, and more—but here, as I am concerned for the good name of the Senate, I omit the more striking comparisons.

It is well known how Senators, longing to smoke in open sessions, skulk into dark passages to do so. We need not assume smoking to be a serious immorality, to make it illustrate the restraining influence of having the public in the galleries; for even Senator Morrill does all that for us by admitting—to use his own language — “the inevitable fumigation at every session as soon as the doors are closed.”

And Senator Logan, after stating that “secret sessions are “in many respects demoralizing to Senators,” declares that “if they were abolished our sessions would not only be more orderly, but debate would be of a more dignified and elevated character than possible under existing circumstances.” I am compelled, therefore, to believe that vicious human nature just as naturally prompts a Senator to secrecy for rejecting a good nomination and confirming a bad one, as it prompts a bad boy to choose the night for stealing water-melons or robbing a hen roost.

14.—HOW SECRET SESSIONS ARE DEFENDED BY SENATORS.

We have now reached some very peculiar arguments for secrecy—pathetic, ludicrous, humiliating—which shall I say? First, Senator Morrill brings forward the modest, deserving young men of high sensibilities (from Vermont, I suppose, which, I think, alone produces this breed), “who would decline the gauntlet of sharp tongues in open session of the “Senate.” How shocking to think that Senators,—who, as he has told us, are the supreme judges of propriety,—will thus torment such rare and charming boys! How grievous the mistake in our Government of having so many elective officers, when the gauntlet of criticism to be run is not that of Senators alone but of the whole body of people. Having passed my boyhood in Vermont, and never seen a boy there of the sublime modesty referred to, I wish the Senator would tell us how many of that kind there are in the State. During my experience as a Civil Service Commissioner, I have, speaking within bounds, heard hundreds of young men, after rejoicing in the opportunity of a free public competition where merit can win a place, express their indignation and disgust by reason of the servility to Senators or other party managers, and the exposure to secret and corrupt influences, which are inevitable in seeking office through Senatorial patronage. But never have I seen a single young man or woman, even from Vermont, with the fears referred to by its Senator.

Next Senator Hoar seriously argues for secret sessions because he fears that in public sessions injustice would be done to the insane, the servile, and to “persons of mental idiosyncracies” who may be nominated! I am not certain which

this argument is intended to more severely arraign, the President for submitting such nominations, or Senators for not having good manners and a sense of justice sufficient for dealing with them as publicly and fairly as they would be dealt with by an ordinary commission of lunacy or Court of Justice. It would not seem to require Senators to very frequently make the effort of restraining themselves within the limits of propriety, if sessions for such cases were public ; for Senator Hoar tells us, in the same speech I have been quoting, that out of 2,087 nominations sent in by President Cleveland, the Senate, even under the virtuous inspiration of secrecy, has rejected only sixteen for all causes ; though truth requires me to add that the Senate approved some of the worst nominations submitted. Perhaps the advocates of secrecy would be willing to compromise on a rule especially limiting secret sessions to the few cases of such unfortunates ? I do not mean to say this would wholly prevent such persons being nominated, for some of them are sent under the pressure of Senators themselves, for the purpose of transferring them from their own hands to the National pay-rolls.

According to the code of "confidential relations," in 1870, General Garfield declared in Congress that, "We press for appointment * * Senators, &c., throng the bureaus ; * * the patience of officers is worn out. * They at last give way and appoint men, not because they are fit, but because we ask it." And in April, 1872, he stated in his place that "For many years Presidents of the United States have been crying out in their agony to be relieved of the unconstitutional, crushing, irresistible pressure brought to bear upon them by the entire body of their party in *the legislative departments*, which elected them."

This pressure, on the part of Senators, has been as great since the present administration came in as ever before ;

and because the President has not yielded, some Senators have lost both their temper and their senses. Senator Platt used this language in the Senate last winter :

“ I have found it the general, if not the universal, custom
“ of Senators to solicit nominations at the hands of the
“ President, and then come here and act on these nominations
“ in secret session. If there be a more monstrous impropriety
“ than that, I do not know what it is !” Yet Senators, we
are told by the Senator from Vermont, are the supreme
judges of propriety. And I may add that a Senator came
to me, as a Civil Service Commissioner, three times in one
day to get a pretty woman into office in violation of the
Civil Service Rules.

The Senator from Vermont and the Senator from Massachusetts both use the argument—putting it in plain English—that secret sessions are needful to prevent injustice to half reformed or intermittent drunkards !

This is certainly a surprising plea, which, I think, no one but a Senator would have thought of, or used if it occurred to him. Are Senators so very hard hearted, or always so destitute of congenial experience in their body in afflictions of this nature, that they cannot be trusted to deal with this class of frail office seekers in open sessions ?

Here again let me suggest a special rule which should recite that, “ Whereas, the public interest requires that chronic
“ old drunkards and shy young tipplers, who fear the light,
“ should not be deterred any more than they have heretofore
“ been deterred, from pressing for the public service, as they
“ would be by the fear of the ungovernable abhorrence of
“ their habits sure to be expressed by Senators in open ses-
“ sions, that, therefore, all such cases shall be considered in
“ secret session.” It is true that some puritanical persons, in
presence of the situation in Mexico, or recalling the drunken
debauches of a Consul-General at Cairo not long ago, or

some other of the many cases in which the nation has been dishonored by drunkards confirmed by the Senate, might denounce such a rule. They would insist that it would become the Senate to apply a scrutiny to such cases as stern and as absolutely public as the people themselves apply to toppers old or young who stand for election to office. Some extremely puritanical people might, even, be so cruel as to suggest that it would be both honorable to the Senate and salutary as an example, if Senators had the courage to publicly declare by their votes, that neither cranks nor imbeciles nor drunkards would meet any favor, though pressed by party leaders or tendered in exchange for favors to be expected. But such suggestions coming in through open doors, would be of no more importance than any other valueless contribution from the public, which no Senator is bound to respect.

I hardly need hint to the intelligent reader that such reasons, suggesting standards for the public service indefensibly low, and extending probably to not more than two or three per cent. of those nominated for office, would never have been offered to justify universal secrecy by any persons but Senators whose judgments, like those of their associates, have been unconsciously biased by Senatorial etiquette, by long familiarity with a seductive practice, and by a pride wounded by the stern tones in which the public voice now challenges haughty old privileges, and the power usurped by the Senate. After more than twenty years service in Congress, in part as Senator, Mr. Blaine makes this declaration : " There is nothing of which a public officer can be so easily persuaded as the enlarged jurisdiction which pertains to his station. If the officer be of a bold mind, he arrogates power for the purposes of ambition ; and even with timid men, power is often assumed as a measure of protection and defence."

It may be mentioned here that there would be little occa-

sion for speeches in such cases and very few would be made. All the reasoning on the assumption of such speeches is merely specious. No Senator would be compelled to make any speech, but every Senator would be compelled to vote *publicly and have his vote recorded and go before the people. That is precisely what he dreads.* Yet no Senator has referred to the public vote.

It has been with regret that I have felt compelled to dissent so widely from the views of the two eminent Senators from New England. As a son of New England I must say I am not proud that she alone has defended Senatorial secrecy. These Senators may think me very presumptuous in attaching so much importance to publicity, and in expressing so strongly my convictions that they have been too unmindful of the spirit of a not less worthy generation, and have been unconsciously biased by the conventional philosophy and etiquette of the Senate. Let me, therefore, take shelter under this language of one of the fairest, purest and most gifted minds, in the sphere of our inquiry, which New England has ever produced : "As to the votes of Senators and Representatives in Congress," says Judge Storey, "no man has yet been found bold enough to vindicate a secret or ballot vote, as either more safe or more wise, more promotive of independence in the members, or more beneficial to their constituents. So long as known and open responsibility is valuable as a check or an incentive among the representatives of a free people, so long a journal of their proceedings and of their votes published in the face of the world, will continue to enjoy public favor and be demanded by public opinion." (Com. on Const.) This was written in 1833. We have men bold enough now to vindicate not merely secret ballots, but secrecy as a general principle, lest cranks, half reformed drunkards, over modest boys, and confidential relations suffer prejudice at the hands of Senators.

NO. 15.—FEAR AS AN EXCUSE FOR SECRET SESSIONS.

I now come to an excuse for secret sessions which is by far the most comprehensive and significant of all.

It is the excuse of *fear*, which both the Senator from Vermont and the Senator from Massachusetts have presented. It is, as I understand their language, in substance, an averment that, by reason of danger, Senators may, with propriety, not only avoid public criticism and responsibility for their official votes and speeches by refusing to publish them, but that they may use the doors of the National Capital and the public officers who serve there—whom the people pay for serving the public—for keeping the people beyond hearing distance.

As Senator Hoar states the justification with the most precision and breadth, I give his language, which is this :

“ It is important to the public that the Senator should be
 “ free from the bias occasioned by the desire to make friends,
 “ or the fear to make enemies when he votes upon nomina-
 “ tions, as that he should be free from the corrupting influence
 “ of personal gain. The Senator who votes to reject an un-
 “ worthy aspirant * * is pretty sure to have to ac-
 “ count to somebody. Public discussion here must involve
 “ public discussion elsewhere with every disappointed man.”

Saying it is a matter of public and not private interest, he further says that : “ It is as much for the public interest to
 “ protect the independence of the Senator in this way, as it is
 “ to protect the independence of the Judges by a life tenure.”

The language quoted has obviously no force except as it assumes that Senators have such fears of making enemies, and of being called to account for their votes, that they can-

not be trusted to vote honestly in public sessions, wherefore, it is justifiable and necessary for them to skulk into secrecy to reinforce their courage !

The Senators named, I am sure, are as fearless as any others, and the excuse they present therefore takes no hues from their personality, but fairly exhibits the moral tone and the fears of the majority of the Senate which has supported secrecy. In what I have to say of this excuse, I have no personal reference to either of the two Senators. It has been made clear, I trust, that the Constitution contemplated public debates and a public record of votes and proceedings. The questions of the danger to Members of Congress by reason of their public acts and of the need of a tenure of some strength to give them courage for these duties, were both carefully considered in framing that instrument ; and it was decided that a term of six years for Senators and an exemption from all liability to be called to account elsewhere for words spoken in debate were quite sufficient. This plea for secrecy from fear is not only an impeachment of these provisions but an excuse for violating the Constitution. It says, in substance, that inasmuch as the Constitution has not given Senators a tenure for life, and a majority of the Senate has not the moral courage to publicly reject a bad nomination, or approve a good one, it may go and hide itself in secrecy, and do in the dark what it is too cowardly to do in the light. Every person seeking the office of Senator should know its responsibilities and his own weakness. If he finds his courage is unequal to the position, it would, perhaps, become him to withdraw.

It seems to me better for Senators and for the country that this rule of secrecy should stand in its naked ugliness, with all the suspicions and indignation which it awakens without any attempt at apology, rather than be

justified at the expense of the manhood and the dignity of the Senate.

But let us look further and see whether the matter has any better aspect, whether there is any cause for fear on the part of Senators. For every nomination made by the President, he has to resist the solicitations, the threats and the cunning intrigues of from five to fifty other applicants, frequently with noisy, partisan delegations behind them. Upon the public selection of one of them to send to the Senate, the wrath and revenge of all the others are concentrated upon the President alone. The seventy-six Senators altogether have to deal with only this singly nominee; or if, with any of the other applicants, only by reason of the vicious hopes, which are born of their secret sessions, bringing some of the baffled office seekers to their doors. Nor is this the worst of the pressure upon the President; for among those with whom he has to contend may be from one to ten Senators, in many cases, who in no mild language assert their pretended right to control patronage from their own States, if they do not make it plain enough to him how they propose to retaliate, if their claims are not conceded. I can command no language adequate to express my indignation and disgust at instances of that nature of which I have had very convincing proof.

It is safe to say that the President has to stand more pressure and more threats every month in connection with appointments, saying nothing of removals, than all the Senators in a whole year. Two Presidents have had the pistols of angry office seekers levelled at their hearts and a third lost his life by reason of his high responsibility. The Surveyor of the Port of New York is now incapacitated by the shot of an office seeker in consequence of the discharge of his duty to advise a removal. But who ever heard of a Senator being even threatened in connection with the power of confirmation?

Every collector and postmaster at the head of a large office, and every head of a Bureau and Secretary at Washington has to take a responsibility in connection with appointments and removals much more embarrassing and ten times more dangerous than any action of the kind pertaining to the office of a Senator, even if we include his patronage mongering activities—being much the greater part—which are mere usurpations and intermeddlings. What would be said if one of those officers, if from fear he declined to make a recommendation for office, unless he could do it in secrecy.

Senator Hoar makes the suggestion that if a Senator had a life tenure, like a Judge, he might, like a Judge, have the courage to discharge his duties publicly. The Police Justices of New York City, with a limited term of years, have more than 60,000 criminals, many of them desperadoes of the worst kind, before them every year. They publicly fine and send to prison more dangerous fellows every month than all our Federal Senators together have to deal with in a decade. The Judges who condemned the Anarchists in Chicago and the Molly McGuires in Pennsylvania had terms but little longer than those of Senators. Their risks were a hundred fold greater. Many of the policemen and nearly all the Marshals, Constables, Sheriffs and Justices of the Peace, all over the land, who in the discharge of their official duties act publicly and alone, incurring a peril many times greater than a Senator is ever exposed to, have terms of office shorter than those of Senators ; yet they would be disgraced if found devising plans for eluding personal identity and responsibility in the discharge of their duties. It would disgrace any one of these officers to be found afraid to arrest single handed the most dangerous fellow ever nominated to the Senate—or even the whole sixteen rejected by the Senate at the last session.

The Senators of Rome are said to have been unawed when barbarian soldiers crowded and brandished their arms before

them, and history tells us, I believe, of those who had the courage to leave their places to go and die for the honor and manhood of a Roman Senator. Coke and Pym braved a Stuart King for free speech and went to prison for it, as Digges and Eliot for the same cause braved another Stuart King, with the same certain fate before them, which cost Eliot his life in prison.

The seventy-six American Senators having, according to the figures of the Senator from Massachusetts, risen to that lofty height of heroism required for rejecting 16, while conferring 1,749 of President Cleveland's nominations, are now so frightened at the thought "of having to account" to these awful sixteen, that they persist in using the Senate end of the Capital as a citadel of refuge and the public officers as sentinels and guards for keeping everybody at a distance. Surely, every Senator ought to have an armed body guard as well as a clerk?

But, seriously, if this generation has witnessed anything so ridiculous and cowardly, in this great country, as this danger-theory of the Senate in presence of the facts, I know not what it is. The frightening of regiments to a place of shelter with batteries of quaker guns is respectable in comparison, for these guns give at least the appearance of danger.

I am quite aware that this fearfulness of the majority of the Senate is of a peculiar kind and is altogether different from physical fear. Its results are alternately so lamentable and so comical that it is worth while to glance at its nature. It is most exactly described as "Senatorial cowardice," though it is thoroughly despised by many Senators who are never attacked by the disease.

It goes very hard with Senators who are candidates for the Presidency, that is with a majority of all such candidates. It is most severe, however, with Senators just before the expiration of their terms, especially in States where the vote is

likely to be close. There is not a prescription known to medical science, whose healing powers are so rapid for a cure, as a re-election is for this disease. What those afflicted with this disease especially dread is the loss of patronage and the diminution of influence. Senators who would brave a lion or stand unmoved in the iron hail of battle and carnage are almost certain to have a nervous prostration whenever, near the end of their terms, a party journal is angry or a disappointed office seeker threatens.

It is a striking peculiarity of this disease that its prostrating effects are greatly aggravated by yielding to any natural fears, as a fear of criticism for example.

Such yielding tends to fix the disease upon the back-bone, where it soon becomes chronic. Those who have studied the disease most carefully are strong in the belief that if Senators had years ago boldly faced the impudent office seekers and openly challenged public opinion by public action based on character and sound principles, instead of disclosing the existence of this Senatorial cowardice by hiding themselves in darkness behind sentinels, the disease would have nearly or quite disappeared before this time, much in the way that witchcraft disappeared when people had the courage and good sense to confront and expose its pretensions.

Other beneficial effects beside the suppression of secret sessions might have followed. The whole Senatorial character might have been as manly, noble and unsuspected as the character of any other persons of distinction. Senators, in that event, would now, like all other persons of intelligence, be able to comprehend the inexpressible absurdity of pleading fear as a justification for secrecy. They might look with a noble contempt upon the puny threats of revenge made by a few disappointed petty-office seekers. They might have a clear and consoling conviction that a strict obedience to the Constitution, a paramount regard for character, capacity and the

public interests when acting on nominations, and the utmost publicity in all the proceedings of the Senate, are at once the glory of that body, the strength of a party, and the honor and safety of a Senator.

I must refer again to the fact that it is not any embarrassment in connection with speeches or the making of them public which Senators most dread. One of the salutary results of publicity would be that Senators would no longer attempt to exercise a usurped power over removals. If they spoke at all on that subject, it would be as it should be, for the public ear, by attacking or defending the policy of the Administration in that regard.

Each Senator would feel compelled to look into the merits of each nomination so far as to give a public vote that would not disgrace him, which is more than is now done. Only in comparatively rare cases would speeches be made on nominations, or could they be useful. Mere explanations would be quite sufficient and would be all the talking done, save in the cases where the nomination of an officer of a high grade, or for a peculiar service, would be a sort of declaration of policy, involving public interests, upon which public speeches for public information would be as proper and salutary as upon any question which could come before the Senate.

The need of taking the trouble of knowing the facts before venturing a public vote on a nomination is a reason why some Senators desire secret sessions, but is far from the main reason. The main reason is that the publication of votes would expose the bargains and their consummation under the courtesy.

It would disclose to the President, to office seekers and to the whole country, not only how far Senators were true to their professions, but what Senators are responsible for good nominations being defeated and for bad ones being approved. A Senator could no longer, as now, according to the confessions of

some of them, vote one way and cause it to be understood that they voted the other way. We should know what Senators share the responsibility and all the precious secrets of these courtesy patronage mongering intrigues and bargains through which a Senator from Virginia has brought nearly as much dishonor upon one party and President as a Senator from Maryland has in the same way brought upon another party and President. If the votes, to say nothing of the speeches, upon the disgraceful confirmations of Thomas and Dement, and the rejection of Goode for Solicitor-General and of Matthews, the colored man nominated for Recorder at Washington, could be made public, I have reason to think the cause of public sessions would be much strengthened among the people. Well authenticated rumor has it that Senator Hoar thought the rejection of Mr. Goode an outrage ; but, of course, no un-Senatorial mortal is ever to be wiser on these points.

Senator Edmunds is reported to have explained (in an interview published in the "New York World" and "Boston Post," last August), the facts alleged by some persons, that many unworthy nominations have been confirmed under President Cleveland (which I infer that Senator holds to be the case) by declaring that "the Democrats vote solidly for them as a general thing," and that "certain Republicans who believe in the spoils idea, vote with the Democrats." I hope that distinguished Senator is able to see, as I am, that such public statements and charges, united with that concealment of the facts by the Senate which prevents the people from knowing where the responsibility rests for such official prostitution or the facts concerning it, constitute, alike whether the Senator's explanation of the interview be true or false, one of the strongest possible arguments for public sessions of the Senate. It is about equally a national misfortune to have nominations thus disposed of, and to have the public statement of such charges forever remain unanswered. I am

nevertheless not without fears that the Senator's long championship of the largest claims of the Senate, in derogation of what I must regard as the constitutional functions of the President, will lead him to support secret sessions in aid of these claims, however incompatible that position may seem to be with his extreme demand for executive publicity made in the Senate last winter.

I must pass over various other arguments by which the great benefits of open sessions might be illustrated. One guarantee of their being early established is the disagreeable and sometimes false positions in which the representatives of the Press frequently place Senators in their natural anxiety to give the people the information they have a right to. I might quote the ample language in which Senators have pathetically and indignantly expressed their disgust and helplessness, because unable to put themselves right before the public by declaring the simple and harmless truth. The position of Senators is indeed as humiliating as it is annoying, and if a man was obliged to be a Senator, he would be a legitimate object of sympathy.

The acceptance of the rule of secrecy, under the threat of expulsion for its violation, is a compromise of the true manhood of a statesman, if not a suggestion of servility. It is not complimentary to the self respect of Senators that no one of them has yet had the courage to apply the proper remedy. Senator Logan, who was a hero on the battlefield, tamely says in his speech last winter: "If I dared to do it, I would tell every day what my vote was in every secret session." Why not tell it, with something of the heroism of Coke and Eliot? Why not show that moral courage, which is higher than all physical courage, by publicly declaring in the Senate that he denies its right to impose on him a new obligation, the obligation of servile secrecy—as to his acts as a public servant—in violation of the Constitution and of the higher senti-

ment of the people, as one of the conditions upon which he holds his place as a Senator from Illinois? So noble a defiance would cause a thrill of patriotic admiration from one end of the Union to the other, which, if it did not make him President, would make him more famous in the civil than in the military history of his country. I do not mean to say the Senator would in fact incur the least danger of expulsion. The time is past for that. No body so scared by reason of its secrets as to threaten expulsion for tattling the most trifling of them would ever have the courage to expel a Senator for proclaiming the whole of them from the housetops. If in a panic the Senate should expel the Senator, Illinois would send him back, not by a majority of one, but of many, and the thundering applause of her people would resound from ocean to ocean as the death knell of secret sessions. If he loses this grandest opportunity of his life, I, nevertheless, quite agree with him that secret cannot long continue; but I also think he should never again declare he does not fear to have all the votes and speeches of his life made public. For people generally think that a man of true moral courage will always prove it, rather than merely declare it, when it is a plain duty and there is a fine opportunity to do so.

Several influences will powerfully aid the cause of publicity. The public press, now fully awakened to a sense of its right and duty to know and to inform the people of the proceedings of the Senate, will be far more vigorous and persistent than formerly in the pursuit of the facts and in setting forth its conclusions as to the votes of Senators and the reasons for them.

The rapidly increasing number of the nominations to be acted upon will, with the growing demands of legislation, soon make it impossible for the Senators to act the meddling and mischievous part they have in connection with appoint-

ments and removals. But beyond all this and quite as potential will be the aggressive activity and fearless discussion springing from that high public sentiment which has already done so much for administrative reform. It is sure to grow more and more intelligent and powerful. The cause of publicity and the cause of reform have as a rule only common interests and common enemies.

—If the Senate has not now the discretion to open its doors, they will soon be opened from without, as the proclamation of a victory as glorious for the people as it will be humiliating to the Senate. I believe the Senate has now the courage and the wisdom to do its duty.

