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ARTICLE I.

MEMOIR OF ROGER B. TANEY.

Memoir of Roger B. Taney, LL.D., Chief Justice of the Supreme Court of the United States. By SAMUEL TYLER, LL.D., of the Maryland Bar.

This volume will be interesting to many readers, on account both of the author and the subject. The author is a gentleman of deserved distinction in several important and independent spheres of intellectual exertion. In the profession of which Chief Justice Taney was so brilliant an ornament—the profession of the law—and in the principles of jurisprudence, he is known to be profoundly versed. More than twenty years ago he had the honor to be appointed one of a select committee to codify the laws of his native State, Maryland, and is understood to have performed his work with such philosophic insight, such practical sagacity, such mastery of details marshalled and adjusted on comprehensive principles, as to afford equal satisfaction to the Legislature and to the profession. But he is not less widely known in letters than in law. He has contributed various articles to the *Princeton Review* on questions connected with theology and philosophy, which have deservedly attracted marked attention. In pure philosophy he was pronounced by Dr. Thornwell inferior to no writer which this country has produced. His writings in elucidation and defence of the metaphysical doctrines of the late

ARTICLE VIII.

THE GENERAL ASSEMBLY AND THE COLUMBIA SEMINARY.

It is with no little hesitancy, and we might say reluctance, that we approach this subject. Nothing is more difficult than to divest one's self entirely of prejudice, in discussing this unhappy affair, and to look at the issues involved without allowing a personal element to enter into the decisions of the judgment. It is only because we are confident that we cherish none but the kindest feelings and entertain the sincerest respect for all concerned, that we venture to say one word. There can, of course, be nothing improper in expressing honest differences of opinion, while the views we hold are presented in respectful language and supported by legitimate arguments.

Having premised thus much in general, we desire to make several preliminary statements, lest, in the course of the discussion which is to follow, we be understood as advocating all that has been associated in the public mind with the positions which we shall undertake to defend.

In the first place, then, we think that nothing is clearer than that the Faculty of the Seminary had a right, under the Constitution, to appoint a Sabbath service in the chapel, and to make attendance upon that service obligatory.

In the second place, after mature consideration, we feel constrained to endorse the following language of the protestants in regard to the conduct of the students who did not attend the chapel service: "Whilst freely and fully conceding that these young brethren, concerning whom we have from the Faculty accounts in all other particulars favorable, pursued a course which at the time they thought right, they labored under a grave mistake as to the duty which an enlightened conscience would have dictated. That duty was to have promptly, quietly, and respectfully withdrawn from the Seminary when they discovered that they could not conscientiously obey a regulation made by the Faculty; not to remain there in a position of open defiance

of authority, and compel the Faculty to sterner measures of discipline." (Minutes of General Assembly, p. 525.) These young brethren, without seeing the bearings of their conduct, were really acting upon a principle at war with all sound ethics. And whatever views upon this subject may have been entertained during the period of excitement and agitation, we believe that all men of sober judgment and sound principles must come to admit as much as has here been asserted.

In the third place, we would say, with all due deference to the Assembly, that in our humble opinion its deliverance would have been improved had there been inserted in the first of the two resolutions which were added by way of amendment to the majority report, a statement to the effect that it approved the action of the Faculty in disciplining those of the students who had refused to attend chapel service. It is true that as much is implied in the reply to the protest. It is there plainly stated that "the discipline deemed proper by the Faculty, in connexion with the subject, was administered, and now remains in force. The Assembly does not propose to interfere with that discipline." (Minutes, p. 526.) It is simply extravagance to insist that this is not impliedly an indorsement of that discipline. We, however, in common with many others, think that it would have been better had there been a clear deliverance upon this point in connexion with the more general expression of confidence in the Faculty.

In the fourth place, we would add that we heartily agree with a writer in the October No. of this REVIEW, in his round condemnation of the doctrine that "the OBLIGATION [on the part of the students] to obey this Seminary regulation, which was neither *unscriptural* nor *unconstitutional*, was incompatible with their Christian liberty." (SOUTHERN PRESBYTERIAN REVIEW, Vol. XXV., p. 461.) If it be said that in such a case conscience may release one from any obligation he may have otherwise been under to obey, we utterly repudiate the teaching. Conscience has no office here, except to instruct him who feels oppressed to submit quietly while he remains, or to withdraw promptly, quietly, and respectfully. We trust that there are none within the folds of our Southern Church who deliberately teach that conscience

may absolve the subject of a government from obedience to any requirement of that government which is neither anti-scriptural nor unconstitutional. If there be such, they are "fully abreast with the spirit of the age," and ought at once to "avow their allegiance to the *higher* law of conscience." We fully agree with our brother, that this principle would hinder all discipline on the part of any Church court. If our Church ever endorse it, she will thereby declare for "Broad Churchism," and we shall be under the necessity of departing in sorrow from her fold, or of giving the right hand of fellowship to Prof. Swing or any other heretic who may choose to become one of us. While we are upon this point, we would say that if there be any persons in our Church who hold such a doctrine and deliberately promulgate it, it is the *duty* of those who have evidence of the same, to prefer charges in the regular way, and bring the offenders to a speedy trial. We live most assuredly in a "slack time," and delay is dangerous. We honor the noble conduct of Dr. Patton, of Chicago, in standing up in the face of all opposition, to protest against heresy. He finally came off victorious, and we firmly believe that the truth is mighty and will always prevail. Surely we have some among us who will not hesitate to come boldly to the front and institute measures at once by which the spread of this noxious heresy may be arrested.

With these preliminary statements we trust that we shall not be suspected of sympathy with the doctrine of "Higher Law;" and we would fain believe that, on that account, we are not out of sympathy with any considerable portion of our beloved Southern Church. It is for this reason that we feel unable to accept several of the main conclusions which the respected author of the article entitled "*General Assembly* versus *Government*" seems to have reached in his own mind.

The first point upon which we feel constrained to take issue is the declaration that the General Assembly "has really committed itself to the principle, that *obligation* to obey any lawful regulation under any government, is or may be inconsistent with Christian liberty" (p. 461). The main argument by which he endeavors to establish this proposition is briefly this: The As-

sembly, in granting what the students desired, viz., that attendance upon the chapel service on Sabbath be made optional, admitted the force of their plea, and endorsed it as a good one. That plea we have already quoted, to condemn it, but it may be repeated here, and was this: "The OBLIGATION to obey this Seminary regulation, which was neither *unscriptural* nor *unconstitutional*, was incompatible with their Christian liberty."

Now it cannot be denied that, had the students formally petitioned the Assembly to interfere, and *upon this ground;* and had the Assembly done so without stating that it interfered on *other* grounds, and not on this, it would be a proper inference that it intended to endorse the plea. But no such formal overture was presented. This matter did not come up as an appeal from the students, but was brought before the Assembly by the minority report of the Committee on Theological Seminaries. This particular "plea," we are informed, was brought forward in debate by one of the speakers, and was urged as a reason, *which he regarded as valid,* why the students should not be obliged to attend the chapel service. Of course, it is not denied that the students also justified their course by this plea. Whether they did or did not, however, is of no importance, so far as the point under discussion is concerned.

It may be urged that the author of this plea was the confidential friend of the students in this entire matter, and that he was therefore their representative. All we need to affirm in reply is, that he was not acknowledged by the Assembly as their representative in any sense different from that in which all who advocated the views which finally prevailed were their representatives. Every member of the Assembly who advocated the minority report, and afterwards Mr. Collier's resolutions, stood upon precisely the same plane. The utterances of no one more than another can, in any fairness, be taken as an indication of the real significance of the Assembly's action.

This is a principle so plain that we should not have thought one word necessary to insure its universal adoption, had not so much stress been laid upon the utterance which is transformed into this plea, as really determining the meaning of the resolution

passed by the Assembly. Nor would we regard the recurrence of the argument under discussion as so very strange indeed, had the Assembly not said in reply to this very interpretation of its action, as well as other statements, that "many, perhaps most, of the statements made by the protestants seem, in the judgment of the Assembly, to concern utterances of members in debate rather than the utterance of the Assembly in the resolution adopted." (Minutes, p. 526.) Nothing can be clearer than that the Assembly intended to draw a broad distinction between "the utterances of members in debate" and its own utterance in the resolution complained of. Will any one undertake to say that the utterances of some members are here referred to, and not the utterances of all who spoke to the points complained of by the protestants? Surely this particular utterance was most strongly condemned by the protestants; and did the Assembly mean to draw a distinction between its own utterance and those of speakers less complained of, and not this one?

But again, the author of the article on "*General Assembly versus Government*," cannot consistently claim that the Assembly is responsible for the utterances of members in debate, inasmuch as he very earnestly and very cogently argues, that the Assembly could not have intended to declare the action of the Faculty in appointing the service unconstitutional, notwithstanding the fact that one of the ablest men in the body laid out his strength to prove that it was unconstitutional. The truth is, that for the argument of the article, it was very important to show that the Assembly regarded the appointment of the chapel service as neither unscriptural nor unconstitutional. The author seems to have felt that were it left uncertain whether the Assembly regarded that action as unconstitutional or not, it could be affirmed with little show of reason that it had "really committed itself to the principle that obligation to obey any LAWFUL regulation under any government, is or may be inconsistent with Christian liberty." No regulation can be "*lawful*" which is unconstitutional. The Assembly might, then, have freed the students from obligation to attend, and have left it doubtful whether they did not release them on the ground of the unconstitutionality of the

requirement. Of course there would have been no "Higher Law" in that. Our brother would get the Assembly into the clutches of one of those seemingly inexorable disjunctive syllogisms, and hence he must remove the possibility of its pleading ever afterwards that it regarded the action of theFaculty as unconstitutional. The alternatives, however, seem to be these: Either admit that the Assembly intended to declare the action of the Faculty unconstitutional, or that its deliverance is not to be interpreted as endorsing the pleas of those who spoke in favor of the action finally adopted. If the first be admitted, then the Assembly is not committed to "Higher Law." If the second be admitted, then the plea which winks at "Higher Law" is not to be taken as indicating the meaning of the Assembly. In either case the Assembly is not committed to the doctrine of the "Higher Law." This, of course, is an *argumentum ad hominem;* yet we feel confident that no other argument than that so well put by our brother, can be framed to prove that the Assembly is committed to the doctrine that conscience can free a man from obligation to obey a lawful regulation of a "*de facto*" government. There is no shadow of evidence, except that which has been drawn from the utterances of members in debate, which, before it is sufficient for the purpose, must have the help of an argument which proceeds upon the principle that utterances of members in debate do not commit the Assembly.

In concluding our remarks upon this head, we would refer to the declaration of a judicious writer in the July No. of this periodical, who, in reviewing the action of the Assembly, and the debate which preceded it, says: "But the public discussion did not turn upon the propriety of the appointment, but on the obligation of the students to attend. One would naturally think these to be correlative—and surely, if the pledge of the students to observe all the lawful regulations of the Faculty, and attend all the exercises they appoint, and the current language of the articles of the constitution, mean anything, they mean that a solemn obligation binds them to attend all these exercises while they reman in the Semiinary—that to refuse is rebellion against lawful authority, and that if they cannot

conscientiously obey, they should not have entered; and if they had done so in ignorance, they should at once retire. *So apparent were these views made in the discussion, that the effort to justify the students gradually lost ground, and the question became, not what is the law, but what the law* OUGHT *to be*, and forthwith the majority voted to change the law." (Italics ours.) SOUTHERN PRESBYTERIAN REVIEW, Vol. XXV., pp. 394–5.

The writer of this article was, as we understand, present during the discussion. He was, therefore, acquainted with the facts. He was also very far from sympathising with the action of the Assembly. He here explicity declares that the effort to justify the students so lost ground before the vote was taken, that the vote was upon an entirely different issue. This seems to us an explicit declaration that whatever might have been the sympathies of individual members, no plea of the students was endorsed. The doctrine of "Higher Law" must also have lost ground, if it at any time received favor. It seems to us, therefore, that the proposition that the Assembly "really committed itself to the principle that *obligation* to obey any lawful regulation under any government, is or may be inconsistent with Christian liberty," has not been proved. The Assembly yielded to no "demand of conscience," and cannot by any fair inference be condemned as going over to the doctrine of "Higher Law."

The second proposition to which we find ourselves unable to assent, is, that the Assembly's "decision is a palpable contradiction of the essential and primary idea of *Government* itself," in that it "grants to the students the liberty of optional obedience to a constitutional regulation [or law.]" (SOUTHERN PRESBYTERIAN REVIEW, Vol. XXV., pp. 462 and 464.) We fully agree that "*optional obedience*" to a law is an absurdity. So far as there is option to do or not do, there can, from the very nature of the case, be no law. Therefore, to declare that a man is not under obligation to do any particular thing; or, what is the same thing, that he may do it or not as he chooses, is equivalent to declaring that there is no law which commands him to do that thing. Had the General Assembly undertaken to grant to the students the liberty to obey or not, as they chose, a *law*, it would have been

guilty, not so much of the wickedness of overturning government, as of the folly of talking absolute nonsense. Law and obligation to obey are correlatives. They cannot be separated.

Now admitting, for the sake of argument, that the Assembly intended to grant to the students the liberty of attending or not attending, as they chose, the chapel service, we are bound, upon the hypothesis that these brethren had the most elementary notions of what a law is, to conclude that the meaning was that there should be *no* LAW *as to chapel service.* It is a *necessary* inference, that in making attendance optional, they intended to abolish the law. This interpretation, we beg to submit, is no new thing. The reviewer of the Assembly's action, to whose article in the July No. we have before referred, says explicitly that "the question became, not what is law, but what *ought* the law to be? and forthwith *the majority voted to change the law.*" (Italics ours.) (SOUTHERN PRESBYTERIAN REVIEW, Vol. XXV., p. 395.)

If the question be asked, whether, upon the supposition that the Assembly intended to change the law, its action was constitutional, we do not hesitate to answer that it was not. For, first of all, we lay it down as a fundamental principle, that no government, which has under it a subordinate government with a duly appointed Constitution, has any right to annul directly laws which are made by the subordinate government in accordance with its Constitution. It may have the right to amend the Constitution. Then the only legitimate way to get rid of enactments of the inferior government is to annul the provision or provisions of the Constitution which give the right to make them. This virtually annuls the law; and only thus can the superior annul it, without striking at the very roots of constitutional government. The General Assembly can, by a two-thirds vote, amend the Constitution of the Seminary. Did it undertake, in any other way, to annul any law made by the Faculty in accordance with the Constitution, it would transcend its sphere, and we might write with perfect fairness, "*General Assembly* VERSUS *Government.*"

It may be said that to restrict the General Assembly thus, is

equivalent to hindering it, in great measure, in its supervision of the Seminary. We answer, that it hinders it from acting with undue haste, inasmuch as it requires that two-thirds of the body regard the law as oppressive, or upon some other account inexpedient. Moreover, it still has the right of advising those intrusted with authority, and may thus be able to accomplish what is sought for, without going to the length of making amendments.

But it has been urged that the Assembly, in changing the law, did really change the Constitution. The method taken was of course not the usual one. Yet it amounts to this: It was only a blundering way of removing that provision which says that the Faculty shall, when it is deemed desirable, supply the students with preaching.

But there was no two-thirds vote. The Assembly, therefore, *only made an effort to change* the Constitution. For our part, we cannot see why there should have been so much said about the Assembly's changing the Constitution, simply because a majority of that body *tried* to change it and failed. This effort may foretoken another effort, which should arouse those who are anxious that the Constitution should not be amended. But for the present, nothing is plainer than that the Constitution remains as it was before the meeting of the Assembly. The Assembly, therefore, has violated no laws nor constitutions. The only thing is that it has done absolutely nothing in relation to the chapel service. Now this is the very thing, as it has been time and again asserted, that the Assembly ought to have done. We do not see the occasion for so much excitement.

Passing on from this, however, we desire now to recall the admission which was made merely for the sake of argument, to wit, that the Assembly's action could be fairly construed as granting to the students the liberty to attend or not attend the chapel service. We are utterly unable to see that the Assembly granted anything whatever to the students. We have already noted its implied approval of the discipline which the Faculty saw fit to visit upon those who did not obey the law. It thus showed clearly that it did not regard the students as justified in their course. But in relation to the law which these students had dis-

obeyed, they *recommended to the Faculty* that, for prudential reasons, *they change the law.* It seemed clear to the majority that this law, under the circumstances, was inexpedient, and in consequence they *advised* the Faculty to so modify their action as to the Sabbath service in the chapel, that there should no longer be a law obliging the students to attend. This, we think, is the only proper interpretation of the Assembly's recommendation that attendance be not obligatory. We are aware that it has not been affirmed that this action of the Assembly was *formally* a command. But it has been earnestly maintained that it was *virtually* more than advice: that though couched in "soft words," it meant you *shall* release the students from this obligation.

The only arguments for this interpretation, which we have been able to find, either expressly put or hinted at, are the following:

1. It has been intimated that the Assembly, in undertaking to *advise*, would depart from the proper character of a Presbyterian Church court, and would really take the position of Congregationalism. But since we ought to assume that it intended to act upon the principles of Presbyterianism, and not on those of Congregationalism, we may fairly infer that in all cases of "*recommendation*," the language is only euphemistic, the real intention being to *enjoin* or *command.* We do not present this confidently as the argument of the article in the last number of the REVIEW. We are not certain whether the brother intended by his remarks concerning the impropriety of Presbyterian courts' recommending, to intimate that the General Assembly, in the particular instance under discussion, went over to the principles of Congregationalism, in that it became an *advisory* body, or that it used "soft words" to express what would have been more appropriately expressed in "governmental phraseology." When we take his remarks upon this point out of their connexion, they seem to mean the first, viz., that the Assembly has allied itself with Congregationalism. But inasmuch as, in the immediate context, he is laboring to prove that the distinction between a "*decision*" and a "*recommendation*" can avail nothing towards freeing the Assem-

bly from the charge of *enacting a law* that attendance upon chapel service shall be voluntary, we feel compelled, in justice to him, to conclude that he intended to strengthen his main argument by these remarks.

Whatever may have been the use which our brother intended to make of it, he clearly intimates his opinion that no Presbyterian Church court can properly *advise.* "We think," says he, "recommendation belongs to an *advisory* rather than a governmental polity—to Congregationalism rather than Presbyterianism—and so, when we hear of any of our Church courts recommending, we always think that it is for one of two reasons: either the court is not sure of its *power* to enjoin, which is fatal to real government; or else of its *rights* in the premises; in which case the accused is justly entitled to the benefit of the doubt." (P. 472.) In our humble opinion, it is a great mistake to infer that because it is distinctive of Congregationalism, that its Conventions or Associations *can do no more than advise*, that therefore Presbyterian courts can *never* advise without surrendering what is distinctive of Presbyterianism. The specific difference of Congregationalism, defined from this point of view, is not that it *advises*, but that it *can only advise.* Presbyterianism differs from it in that it can also command. To argue, then, that when any organisation recommends, in the proper sense of that term, it thereby ceases to be a real government, and is to be classed with those whose polity is advisory rather than governmental, seems to us altogether unwarranted. Let us take the case of the State Governments which levy a tax and establish public schools, and then simply recommend to parents to send their children to these schools. Do those States which pursue this course cease to be governments? No more does a Presbyterian court abdicate the "governmental polity" when it recommends. It may simply recommend, not because it is not sure of its *power* to enjoin, or of its *rights* in the premises, but because it regards the action recommended as *expedient* merely. It does not deem that it is a case where there ought to be an obligation. It may be *lawful* not to do it, but in the judgment of the court it is more or less inexpedient not to do it. There is not a gov-

ernment upon the face of the earth, from that of the family up to the Empire, which does not sometimes refrain from commanding and merely advise. And we feel sure that very few will claim that Presbyterian courts cannot properly advise as well as command.

There is no presumption, therefore, against regarding the deliverance of the Assembly as a *bona fide* recommendation, inasmuch as it clearly has that form, and the court could properly give advice.

2. But again: It has been definitely argued that the Assembly must have intended to command, notwithstanding the fact that it used the "soft words," "*respectfully recommend*," because, in the reply to the protestants, the following language occurs: "We beg to remind all concerned that the action complained of is the action of this Assembly, to be respected and observed as such." (Minutes, p. 526.) We presume that the stress is to be laid upon the fact that the Assembly says that its action is to be "*observed*." The other word, "*respected*," can in no way be made to imply a command. But on the other hand, *to observe* does mean *to obey*. And if it can be proved that the Assembly must have intended to remind all concerned that they must *obey*, the necessary implication is that the original action was regarded as a command. But no one will maintain that *observe* always means *obey*—nor that its connexion here is such that it must signify as much. The truth is that it is a very vague word, and we may confidently affirm that far less violence would be done by making it mean less than *obey*, than by making the phrase, "*respectfully recommend*," signify more than *advise*.

Let us notice that, even though this argument failed us, it is plain that the reply to the protest, not being intended as an interpretation of the action of the Assembly, ought to be considered as of less value to that end than the resolution adopted by the Assembly for the express purpose of interpreting its action. That resolution is in these words:

"*Resolved*, That the resolution touching the attendance on services that may be held in the chapel of the Seminary at Columbia, on the Sabbath day, is not intended to reflect on the Faculty or Board of Trustees

of the Seminary, in any way, but simply to express the judgment of this Assembly as to the expediency of the compulsory feature of such services."—(Minutes, p. 494.)

A "*judgment as to expediency*" is not *usually* expressed by a command. And therefore, were there no qualifying word, we should be straining language very much to make this interpretation consistent with the hypothesis that the Assembly meant to do more than advise. But notice that it is declared that the Assembly intended "*simply* to express a judgment." It meant to *do no more than* express a judgment. We cannot see how the Assembly could possibly have done more to render it plain that its action was to be regarded as no more than advice. The majority seem to have been clear as to the inexpediency of a law obliging the students to attend preaching in the chapel. They, however, did not feel called upon to lay an injunction upon the Faculty, and therefore simply expressed their judgment in the form of advice.

But it may be said that even upon this ground the Assembly, by its advice, encouraged an unlawful action; and so its action tends, notwithstanding all these admissions, to undermine government. The ground upon which this claim has been made, is that the Faculty had no authority to annul this law. It is indeed a serious charge that the Assembly has advised the Faculty of the Seminary to act unconstitutionally. If it can be substantiated, we feel bound to say that we have not one word more to utter in defence of its action. He who advises another to do wrong is *particeps criminis* if the advice be taken, and is just as guilty if the advice be rejected.

In proof of the proposition that the Faculty could not lawfully take the advice to annul the law as to chapel service, it may be urged—

1. That the Faculty is a purely executive body. Their only duty is to cause the laws to be executed. According to this view of the matter, the laws are made by the Assembly in giving the Seminary a Constitution. Hence the particular law as to attendance upon chapel service was created by the Assembly, in

making it a provision of the Consiitution, that "when desirable, the Faculty shall furnish the students with preaching."

We think that it cannot be claimed that the Assembly made the laws in any other sense than virtually. Let us take the particular law just referred to. If the Assembly may be said to have made that law at all, it did not make it an *actual* law. It expressly provided that it should become such upon a certain condition. And of the fulfilment of that condition the Faculty claimed to be the judges. The interpretation of the provision of the Constitution, which certainly will not be objected to by those with whom we are now at issue, is that the Faculty is the sole judge as to whether this law should go into effect, *i. e.*, become actual. It was left to their judgment to determine when it should become an actual law, just as really and truly as if they had been a purely legislative body. The only proper sense in which any man or body of men can have discretion, is to have matters left to his or their judgment. And we maintain that, according to the supposition that the Faculty alone were to judge of the desirableness of having preaching, that it was entirely discretionary with them as to when the law should be made actual and when it should be annulled as an actual law. It is to no purpose to say that they had no option when it became desirable to have preaching. They were the judges of the desirableness. They had the same discretion that any legislature has when the question comes up whether a certain enactment is not necessary for the welfare of the people for whom they legislate. They judge of the necessity of this law just as the Faculty judged of the desirableness of the preaching. And when once they see that it is necessary to conserve the interests of those whose interests they have sworn to conserve, they would violate their oath of office in not making the law, just as truly as the Faculty would violate their solemn engagements, did they not make the law actual when they judged it desirable that there should be preaching. We contend, therefore, that the Faculty had as much discretion as to whether the law should go into effect, as if they were legislative. We do not care to contend about words. If the Faculty had no discretionary power, they cer-

tainly should never have undertaken to judge whether or not the time had come to declare a potential law an actual one. We do not deny them this right, and therefore cannot but regard them as possessed of discretion.

2. But it will be said that the Assembly advised the Faculty not to make the law, even though they did deem it desirable to have preaching. The Constitution says, " *When desirable*, the Faculty *shall* furnish the students with preaching." The Assembly says, "*in the event services in the chapel be deemed desirable*," we recommend that attendance be voluntary. In other words, when you deem that the contingency has arisen upon which the Constitution commands you to make the law, do not make the law; *i. e.*, disobey the Constitution.

It will be noticed that two things are assumed here. The first is, that wherever the Constitution commands the Faculty to supply any species of instruction to the students, they have no option as to requiring the students to attend. It is urged that the Constitution itself, in providing that the students shall take a pledge to obey all the laws and regulations of the Seminary, implies that the students shall be required to attend all lawful exercises whatever, instituted by the Faculty. This question, it will be observed, is very different from the question whether the Faculty have a right to require attendance. The question is, whether the Faculty have a right *not to require*—to refrain from requiring—attendance. Of course we would not deny that the Faculty have a right to require attendance upon any exercise they may appoint, which exercise the Constitution allows them to appoint. But it has never been proved that it would be a violation of the Constitution of the Seminary for the Faculty to leave it to the option of the students whether or not they should attend some of these services. It might be highly inexpedient to allow such liberty to the students. That is another question. But to say that the Faculty has no discretion whatever in such a matter, is a statement we are not prepared to accept until it is proved. We cannot believe that those who framed the Constitution had so little confidence in these venerable brethren as to tie them down by such a prohibition. The point, then, which we make is, that

it has not been proved that the Faculty has no discretion as to whether attendance upon certain exercises shall or shall not be voluntary. To say, in reply, that the students are under obligation to obey all laws and regulations, is to beg the question; for the point at issue is whether the Faculty cannot abstain from making a law or regulation as to attendance in any given case, even when the Constitution instructs them to institute the exercise. We trust we shall not be understood as advocating the expediency of making attendance upon all exercises of College or Seminary optional. But we do believe that circumstances may arise when it would be inexpedient to make attendance obligatory, and that the Faculty ought to be the judges of this; and therefore we do not feel ready to believe that the Faculty of the Seminary have less discretion than a Faculty ought to have, and that other Faculties really do have, in relation to this matter. We wait for *proof* that they have not.

The second thing assumed by the argument under consideration is that the phrase, "in the event services in the chapel be deemed desirable," occurring in the Assembly's deliverance, is to be taken as perfectly synonymous with the phrase in the Constitution, "when desirable." A thing may be desirable in so many degrees, and for so many reasons, that we do not suppose any one ever thought of claiming that it was the duty of the Faculty to institute chapel service when it became desirable in any, the lowest, degree, or for any, the most unimportant, reason. And yet the language used by the Assembly might very properly apply to this lowest degree of desirableness, or desirableness for reasons evidently not contemplated in the Constitution; *e. g.*, the very noble desire of members of the Faculty to be preachers of the Word from the pulpit of the chapel, as well as from the chair of the lecture-room.

It may be urged that the use of the word "*desirable*," on the part of the Assembly, makes it very probable that they intended to refer to the same word in the Constitution. We reply that this is far from a necessary inference, and we ought to be ready to presume that the General Assembly did not stultify itself. When a prisoner is at the bar, accused of any crime on circum-

stantial evidence, it is only necessary for his counsel to show how all the facts may be explained upon some other hypothesis than that the accused committed the crime. Even stern and rigorous law is thus generous to the man whose character may be known to be very bad; and shall the *charity* of God's people be so narrow towards a venerable court of the Lord Jesus Christ, as to refuse to give her the benefit of the doubt! She is accused: ought she not to have the benefit of the doubt? Even if she were reduced to the position of the veriest vagabond in court, it need not be said that she has ever advised any one to violate law and order.

In conclusion, we would say that we are not prepared to agree with our brother when he claims that members of the Faculty of the Seminary have been wronged by the Assembly. He asserts that they have been *condemned*. We cannot see wherein they have been condemned. The Assembly expressed its entire confidence in the Seminary. It impliedly approved their course towards the students. It "*respectfully recommended*" a change, it is true, in one of the laws made by the Faculty. But the language used could not possibly have been more courteous. And when it was seen that some felt hurt, a resolution was passed, expressly declaring, that in the action taken, there was no intention to reflect on the Faculty or Board of Directors. We are aware that it has been said, with reference to this interpretation, that it cannot avail to wipe out the stigma affixed by the Assembly's action. This is the language used: "But some will say, Shall not the Assembly interpret its own action, and say what it intended to declare? Certainly. But, if not impertinent, we would like to know what would be thought of us, should we say of our neighbor, he is a thief, and when confronted with the charge, reply, we did say you were a thief, but we did not mean by this that you had stolen." (SOUTHERN PRESBYTERIAN REVIEW, Vol. XXV., p. 470.) This is certainly strong language. But we are utterly unable to see the parallel. We cannot find anything in the Assembly's deliverance which is parallel with saying of our neighbor, *he is a thief*. Here is the Assembly's action in full, as far as the Faculty is concerned:

(5). That the General Assembly hereby expresses its entire confidence in the Faculty of Columbia Seminary.

(6). That the General Assembly respectfully recommends to the Faculty, that in the event services in the chapel be deemed desirable, the attendance on said services, on the part of Faculty and students, be voluntary.—(Minutes, p. 677.)

Had the Assembly used harsh language and then undertaken to explain it away, without expunging it from its records, there would be some appositeness in the illustration; though still we think the taste would be bad. But as it is, the illustration does not apply at all. While we are upon this point we trust we shall be pardoned if we say that the persistent effort to fix upon the Assembly's action a meaning which the words, in the first place, do not naturally suggest, and which meaning has been expressly repudiated by the Assembly, seems very much indeed like charging upon that body equivocation and falsehood. We will not say that this is the intention, but it is most assuredly the appearance. And now, while revering and honoring the Faculty of the Seminary as much as our brother does, we beg leave to say that we think the General Assembly is worthy of equal respect.

But to return to the point. The Assembly's action cannot be construed by any legitimate interpretation as condemning, in any degree, any members of the Faculty. The most that can be said is, that it implies a difference from them in judgment as to a matter of expediency. This, of course, could not of itself, be construed into unkindness. Believing as we do, that the deliverance of the Assembly was intended to be perfectly courteous, as its form certainly indicates, we deeply deplore the fact that any should have felt that they were injured. We feel, in common with many others, that the Seminary has already received a serious blow in the resignation of two of its professors; and it would be a sad day indeed for us which brought intelligence that the others, who are said to have been condemned, had also left her. Their services have been invaluable to the Church, and they are appreciated by full many of her sons. We would appeal to them, therefore, in the name of many who have enjoyed

their instructions, and beg them to stand by this school of the prophets in this her time of need. Even had the General Assembly condemned them, we would not hesitate to say that the *Church* does not condemn them. On the other hand she honors them, and is ready to-day to frown upon every one who would impeach them.

We beg leave to say once more that nothing has been written in unkindness. We have tried to divest ourselves of all partisanship. We have written in the interests of peace. We seek to glorify God, by healing the breaches which have been made. Asking of all a patient hearing, we submit these views to the consideration of God's people.

The author of the preceding article has written, he tells us, in the interests of peace. Of his sincerity, of his ability, and of his regard for the Seminary, there can be no reasonable doubt. The suggestions we have to make in dissent are few in number. "Nothing is clearer," he says, "than that the Faculty of the Seminary had a right, under the Constitution, to appoint a Sabbath service in the chapel, and make the attendance upon that service obligatory." On this we remark, that if the Faculty should appoint such a service, attendance upon it *would be* obligatory, both by the Constitution of the Seminary and the young men's signature to that document. The *Faculty* do not make it so. It is so *per se*.

Again, he admits that "these young brethren, without seeing the bearings of their conduct, were really acting upon a principle at war with all sound ethics." Yes. We have hesitated to use the language, only because we have wished well to them, and have hoped that they would live to see their error.

The main point on which we are disposed to differ with him, is in reference to "the question whether the Faculty have a right *not to require*, *i. e.*, to *refrain from requiring*, attendance upon any exercise they may appoint." "It has never been proved that it would be a violation of the Constitution of the Seminary for the Faculty to leave it to the option of the students whether or not they should attend some of these services."

There were circumstances in the case of individual students, in which, when they existed, attendance on the Sabbath morning service in the chapel was not required. If any one was occupied in any Sabbath-

school or missionary work at that hour, he had full permission to be absent. Occasional absences, too, were overlooked, because special reasons for them might occur. It was the persistent, and defiant, and total absence, which constituted the gravamen of the offence. The Constitution makes no difference between the obligation to attend the religious exercises of the seminary and the obligation to attend classical exercises. The attendance upon morning and evening prayers, "and such other religious services as the Faculty may appoint," is as binding, under the Constitution, as attendance upon lectures and recitations. There is *need that it should be so.* In the year 1849, morning prayers lapsed for a season, through the inattention of the Senior Class, who were depended upon to conduct them, unknown to the Professors, until news was brought to us of the same from friends in a neighboring city, where the fact was repeated as evidence of a low state of piety, and to the great injury of the institution.

The Constitution of this Seminary was not lightly adopted. That of 1829, under which the Seminary first opened, was some time in maturing. It received a thorough revision in 1832—1833, in view of the defects found in it, and in the prospect of having the Board incorporated, which took place in 1833. The Committee of Revision were the Rev. Elipha White, the Rev. Benjamin Gildersleeve, and the Rev. Dr. William McDowell; the first a graduate of Andover Seminary, and the last two of Princeton. According to the testimony of the only survivor, the Rev. Dr. Gildersleeve, there were only the Constitutions of two Seminaries before them, that of Andover and the less elaborate one of Princeton. The Constitution of 1829, of seven 18mo. pages, grew to sixteen pages in that which was adopted by the Synod in 1833. This Constitution of 1833, like the original, contemplated Sabbath services: "The Professors, agreeably to the directions of the Board, shall supply the students with the preaching of the gospel, and the administration of its ordinances." And it is reasonable to suppose, from the numerous additions made from that source, that the spirit of the Andover Constitution, which says, "Every student shall constantly attend morning prayers and public worship in the chapel on the Sabbath; and on all conferences and seasons of special devotion, as required by the Faculty," was infused into ours. The Constitution has been subject to various revisions since, under the eye of Dr Thornwell and others.

We do not see, after the students themselves have assented to the Constitution *voluntarily*, that they can claim exemption from its provisions. They have made their vow, they have given their word of promise, from which only extraordinary and providential circumstances of disability can absolve them. If the optional principle were introduced, there are *studies*—such as the word of God in the original tongues which God selected as the medium of his revelation, the voca-

bles of which are the only ones now on the earth indited by the Holy Spirit—which would be avoided by many, though a knowledge of these tongues is required for licensure and ordination in our Church, and our Confession declares that "in all controversies of religion, the Church is finally to appeal unto them."

The Columbia church was itself organised in the College chapel, and under Dr. Brown occupied its galleries as their place of worship. When, in 1815–1818, they had a house of their own and established an independent place of worship, seats were assigned to the College students in the galleries or elsewhere. The time came when, under the press of circumstances, an independent worship was established at the College, under Professor, afterwards Bishop, Elliott, and the body of the students, who had hitherto worshipped where they pleased, were withdrawn from attendance elsewhere to attend a Sabbath morning worship at the chapel.

The optional attendance claimed would put it in the power of the students to break up all attempted worship on Sabbath in the Seminary chapel, however desirable it might otherwise be, and however sanctioned, according to the provisions of the earlier Constitution, by the Board of Directors.—[EDITORS SOUTHERN PRESBYTERIAN REVIEW.