

it may unconsciously have swerved to the other extreme. Certain it is that the reports which have been published of the charge, go against the prisoner with an ingenuity and force of argument which a prosecuting officer well might emulate, but seldom hope to equal.

But the gravest objection to the trial is the law, the *judge-made law*, under which the conviction must have been obtained; the law, as we understand, of the younger members of the bench, and not of that model judge, the learned, venerable, and excellent WILDE; a law which we could never have regarded as of any validity had we been upon the panel, had it come to us with the recommendation of a score of judges; bound, as we should have been by the responsibility of an oath to render a verdict upon the law as well as upon the facts.

The court, as we read it, laid down the doctrine, novel of late years in criminal jurisprudence, that when the killing has been proved upon the defendant, the government has the right to *presume* that it was done in malice; and that it is incumbent upon the prisoner to show it otherwise. There can be no limit to the extent to which *presumption* may be carried, when it is once admitted into the case. Besides, we venture the assertion that *the government is bound to prove everything which it charges in its indictment*. Human calculation can not comprehend the mass of woe which may flow out of this judicial construction if it is to be allowed to rule as the law in cases of this character. Under this construction of the law by the majority of the court, the defendant must have been found guilty of murder; and if executed, his will be a *judicial execution*; ominous in its bearings upon the personal safety of every citizen.

But our remarks upon this subject have been already too much extended. That they will conflict with the views held by some gentlemen, for whom we entertain a high respect, we do not doubt; nor shall we hesitate to believe that they will remember that if we differ from them, they also differ from us to a like extent. Our only purpose is to contribute our mite to uphold the supremacy of law, and sustain the impartiality of justice. In this case we have no friendships to indulge, no resentments to gratify. The parties to us were alike unknown. It matters not to us, that Parkman, in the language of his eulogist, the attorney general, was "a man universally known and respected, of immense property, and large transactions!" It matters not also, if that other representation of him be true, that he was a very Shylock, pursuing his debtors even to the wrenching of the "pound of flesh" from nearest the heart, for the means of exhibiting an ostentatious or capricious charity. Whatever his character, whatever his class in life, whatever his accidents of birth, of wealth, of social position, they legitimately make no part of the case, *no part of the case*. He was entitled to the law's utmost protection; to nothing more; to nothing less. In the murder of such an individual there is no more of turpitude than in the murder of the humblest citizen that confides himself to the care of the commonwealth.

Nor have we occasion for the indulgence of any feeling of leniency towards him whom the verdict of the jury has placed upon the highest pinnacle of infamy. In his sentiments, opinions, associations, and habits of life, we should probably have but little sympathy. Nor do we participate in the prevalent squeamishness upon the matter of CAPITAL PUNISHMENT; *our first paragraph in favor of its abolition being as yet unwritten*. If Professor Webster murdered Parkman, let the extreme penalty of the law overtake him. But let us not be told that the "country" condemned him before the trial; and that the verdict of the jury does but "conform" to that condemnation. If he be guilty, he has as little claim to commiseration as any man who ever found himself overwhelmed with a like calamity. But if his case has not been freed from that amount of doubt to which he was legally entitled—and especially if he has been condemned upon a false and unsound construction of law—then the executive clemency could never find a more fitting occasion for its exercise.