

# HOUSE.....No. 22.

## Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, FEB. 4, 1841.

The Committee of one from each county, to whom was referred the petition of J. G. Whittier and others, in relation to the burning of the Ursuline Convent, respectfully

### REPORT:

That it is inexpedient to legislate upon the subject.

By order of the Committee,

ELISHA BARTLETT, *Chairman.*

**Commonwealth of Massachusetts.****MINORITY REPORT.**

HOUSE OF REPRESENTATIVES, Feb. 4TH, 1841.

A minority of the Committee, to whom was referred the petition of John G. Whittier and others, on the subject of the burning of the Ursuline Convent, present the following

**REPORT.**

They have not thought it necessary to institute any new inquiries in relation to the transaction to which the petitioners refer. So far as the circumstances attending this occurrence have any bearing upon the legal or equitable obligations of the State, they have been fully ascertained, and are not now either denied or doubted. They are briefly these:—On the night of the eleventh of August, 1834, the Ursuline Convent, so called, situated upon Mount Benedict, in the town of Charlestown, and devoted, principally, to the purposes of a school for young ladies, was attacked by a riotous assemblage, and was, together with the outbuildings belonging to it, and the furniture within it, destroyed by fire, kindled by the hands of the aggressors, all which occurred in presence of the constituted authorities, and of a large number of citizens; and for which wrong and outrage, there existed no ground whatever of provocation.

The fundamental principle of all civil society, whatever

may be the form of government, is the security to its members of the possession and enjoyment of their property, and the safety of their persons. This duty is one of the chief ends of civil society, the object for which it is formed, and the condition upon which its members owe it their allegiance. By virtue of this principle, government is bound to protect its subjects against foreign aggression; and if the property of a citizen be seized or confiscated, unjustly, by a foreign power, or by its subjects, government is bound to demand and procure indemnity. If the indemnity is refused, this refusal is regarded by the practice of nations, and by the general sense of mankind, just cause of war. In no other way, according to the established usages of nations, can the sovereign power discharge its duty towards its own subjects.

The same rule which places government in the attitude of the protector of its subjects against foreign spoliation, creates its duty to stand, also, as their protector against civil and internal tumult. If it does not rely, for the means of doing this, upon standing armies and a hired soldiery, but trusts rather to the force of wise and wholesome laws, it is bound to make and enforce laws which shall substantially accomplish this object. Whatever may be the means, the duty is the same.

At the time when the event referred to by the petitioners took place, there was no general provision for indemnity to sufferers in such cases. Since then, however, a law has been passed by the Legislature, making towns and cities liable to the extent of three-fourths of the property which may be destroyed under like circumstances. So far as the obligation, on the part of the State, to make indemnity or compensation is concerned, the Legislature has already recognized the doctrine and adopted the course of action, which it is the purpose of this Report to recommend. It has formally and solemnly asserted the duty of the State to make remuneration, in part at least, for property destroyed under circumstances analogous to those now under consideration.

The minority of your Committee cannot see any good rea-

son why the principles and operation of the general law, to which they have referred, should not be applied, by a special act of the Legislature, to the case in question. They do not consider that this would constitute a kind of *ex post facto* legislation, from which any danger whatever to the rights and interests of the citizens could be apprehended. On the other hand, they think that they see, in many of the circumstances attending this particular instance of suffering and loss, peculiar and cogent reasons why the law should make reparation. Among these may be mentioned the defenceless character and condition of the inmates of the building destroyed, the utter absence of all provocation to such an outrage, and the want of any considerable or effective effort, on the part of the legal guardians of the rights and property of the citizens, and on the part of the people themselves, present in large numbers, to prevent or arrest the work of destruction.

This last circumstance, furthermore, in the opinion of the minority of your committee, distinguishes this case, and that too, by a clearly marked line of separation, from those which are so constantly occurring, of private loss and injury, arising out of the unavoidable imperfections of human laws and of their administration. It is a fact under evidence on record, undisputed, and of common notoriety, that the means within the power of the officers of the law, were not applied as they might have been to the prevention of the outrage.

The minority of your Committee will not enter into any discussion as to the exact extent and degree to which the State, so far as her character, as a free Commonwealth, under a government of just laws, is concerned, is to be held responsible for this outrage. It is enough for them to say, that, to a certain extent, and in some degree at least, she is so; and this, for the simple and manifest reason, that her character is made up of the character and conduct of her citizens. In the final and moral estimate of the world she will be so regarded, and by no process of reasoning can she be held wholly guiltless of the shame of the act under consideration,

so long, at any rate, as with the means in her hands, she refuses to make atonement for the wrong which has been done.

The minority of your Committee, therefore, believe that humanity and right, the spirit of the Constitution, the majesty of the law, and the fair name of the Commonwealth, all demand that indemnity should be made to the sufferers by the destruction of the Ursuline Convent, in Charlestown, on the night of the 11th August, 1834, as prayed for by the petitioners, and they recommend the passage of the following resolves.

ELISHA BARTLETT,  
GEORGE BRADBURN,  
GEORGE T. CURTIS,  
RUFUS S. PAYNE,  
ASA T. NEWHALL.

**Commonwealth of Massachusetts.**

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**RESOLVES**

## Concerning Ursuline Convent.

*Resolved,* That the destruction of the Ursuline Convent, in Charlestown, on the night of the eleventh of August, A. D. 1834, by a riotous and lawless assemblage, in the presence of a vast concourse of spectators, and of the civil authorities, was a wanton outrage upon private right; exhibiting, in a striking manner, the inefficiency of the then existing laws, to effect the great purposes of society, in the protection and security of property, and the rights of domicil.

*Resolved,* That the passage of an act, entitled an Act concerning Riots, in the year 1839, has remedied the defect in our legislation, existing at the time of this occurrence, and afforded a security to the rights of the citizen, and a means of indemnity for their violation, which it was, at all times, the duty of this Government to have provided.

*Resolved,* That if the proprietor or proprietors of the property upon Mount Benedict should hereafter desire to cede the same to this Commonwealth, upon payment of the value thereof before the destruction of the buildings, or should seek indemnity from the justice of the State, in any other form, it would be the duty of the Commonwealth to provide such indemnity.







