

## SAMUEL DEXTER



SAMUEL DEXTER, LL. D., an American jurist and politician, was born at Boston, Mass., May 14, 1761, and died at Athens, N. Y., May 4, 1816. He was the son of a wealthy merchant, prominent as a patriot during the American Revolution, and was educated at Harvard University. He studied law at Worcester, Mass., and after practicing there with success removed to Boston, which continued to be his home henceforward. In his political views he was a Federalist and sided with that party on his entrance into the United States Senate in 1798. In 1800, he was for a short time secretary of war and in the following year filled the post of secretary of the treasury. His professional duties called him to Washington yearly in the conduct of important cases before the Supreme Court, where as an able reasoner and advocate he was surpassed by few of his contemporaries. He separated from the Federalists in 1812, at which time he supported the war policy of the government against England. His chief published works are his "Speeches and Political Papers."

### ARGUMENT IN SELFRIDGE'S TRIAL

[Delivered in the Supreme Judicial Court of Massachusetts, at the trial of Thomas O. Selfridge, attorney-at-law, for killing Charles Austin, on the public Exchange, in Boston, on the 4th of August, 1806.]

**M**AY IT PLEASE YOUR HONOR, AND YOU, GENTLEMEN OF THE JURY,—It is my duty to submit to your consideration some observations in the close of the defence of this important and interesting cause. In doing it, though I feel perfectly satisfied that you are men of pure minds, yet I reflect with anxiety that no exertion or zeal on the part of the defendant's counsel can possibly insure justice unless you likewise perform your duty. Do not suppose that I mean to suggest the least suspicion with respect to your principles or motives. I know you to have been selected in a manner most likely to obtain impartial justice; and doubtless you have honestly resolved and endeavored to lay aside all opinions which you may have entertained

(154)

previous to this trial. But the difficulty of doing this is perhaps not fully estimated; a man deceives himself oftener than he misleads others; and he does injustice from his errors when his principles are all on the side of rectitude. To exhort him to overcome his prejudices is like telling a blind man to see. He may be disposed to overcome them and yet be unable, because they are unknown to himself. When prejudice is once known it is no longer prejudice, it becomes corruption; but so long as it is not known the possessor cherishes it without guilt: he feels indignation for vice and pays homage to virtue; and yet does injustice. It is the apprehension that you may thus mistake, that you may call your prejudices principles, and believe them such, and that their effects may appear to you the fruits of virtue, which leads us so anxiously to repeat the request that you would examine your hearts and ascertain that you do not come here with partial minds. In ordinary cases there is no reason for this precaution. Jurors are so appointed by the institutions of our country as to place them out of the reach of improper influence on common occasions,—at least as much so as frail humanity will permit.

But when a cause has been a long time the subject of party discussion; when every man among us belongs to one party or the other, or at least is so considered; when the Democratic presses throughout the country have teemed with publications fraught with appeals to the passions and bitter invective against the defendant, when on one side everything has been done that party rage could do to prejudice this cause, and on the other little has been said in vindication of the supposed offender (though on one occasion I admit that too much has been said); when silence has been opposed to clamor, and patient waiting for a trial to systematic labor to prevent jus-

tice; when the friends of the accused, restrained by respect for the laws, have kept silence because it was the exclusive right of a court of justice to speak; when no voice has been heard from the walls of the defendant's prison but a request that he may not be condemned without a trial,—the necessary consequence must be that opinion will progress one way; that the stream of incessant exertion will wear a channel in the public mind, and the current may be strong enough to carry away those who may be jurors, though they know not how or when they received the impulse that hurries them forward.

I am fortunate enough not to know with respect to most of you to what political party you belong. Are you Republican Federalists? I ask you to forget it: leave all your political opinions behind you; for it would be more mischievous that you should acquit the defendant from the influence of these than that an innocent man, by mistake, should be convicted. In the latter case his would be the misfortune and to him it would be confined; but in the other you violate a principle, and the consequence may be ruin. Consider what would be the effect of an impression on the public mind that in consequence of party opinion and feelings the defendant was acquitted. Would there still be recourse to the laws and to the justice of the country? Would the passions of the citizen in a moment of frenzy be calmed by looking forward to the decision of courts of law for justice? Rather every individual would become the avenger of imaginary transgression. Violence would be repaid with violence; havoc would produce havoc; and instead of a peaceable recurrence to the tribunals of justice the spectre of civil discord would be seen stalking through our streets scattering desolation, misery, and crimes.

Such may be the consequences of indulging political

prejudice on this day; and if so, you are amenable to your country and your God. This I say to you who are Federalists; and have I not as much right to speak thus to those who are Democratic Republicans? That liberty which you cherish with so much ardor depends on your preserving yourselves impartial in a court of justice. It is proved by the history of man, at least of civil society, that the moment the judicial power becomes corrupt liberty expires. What is liberty but the enjoyment of your rights free from outrage or danger? And what security have you for these but an impartial administration of justice? Life, liberty, reputation, property, and domestic happiness are all under its peculiar protection. It is the judicial power uncorrupted that brings to the dwelling of every citizen all the blessings of civil society and makes it dear to man. Little has the private citizen to do with the other branches of government. What to him are the great and splendid events that aggrandize a few eminent men and make a figure in history? His domestic happiness is not less real because it will not be recorded for posterity; but this happiness is his no longer than courts of justice protect it.

It is true injuries cannot always be prevented; but while the fountains of justice are pure the sufferer is sure of a recompense.

Contemplate the intermediate horrors and final despotism that must result from mutual deeds of vengeance when there is no longer an impartial judiciary to which contending parties may appeal with full confidence that principles will be respected. Fearful must be the interval of anarchy; fierce the alternate pangs of rage and terror, till one party shall destroy the other and a gloomy despotism terminate the struggles of conflicting factions. Again I beseech you to abjure your prejudices. In the language once addressed from

heaven to the Hebrew prophet, "Put off your shoes, for the ground on which you stand is holy." You are the professed friends, the devoted worshippers of civil liberty; will you violate her sanctuary? Will you profane her temple of justice? Will you commit sacrilege while you kneel at her altar?

## BARNAVE



ANTOINE PIERRE JOSEPH MARIE BARNAVE, French revolutionist, lawyer, and orator, and president, in 1790, of the National Assembly, was born at Grenoble, France, Oct. 22, 1761, and was guillotined at Paris, Nov. 29, 1793. He studied law, and, at the age of twenty-two, made himself favorably known by a discourse pronounced before the local Parliament on the Division of Political Powers. On May 5, 1789, the States-General were convoked at Versailles, and Barnave was chosen deputy of the Third Estate for his native province. Next to Mirabeau, to whom, on several occasions, he was opposed, Barnave was the most powerful orator of the National Assembly. After the fall of the Bastille, he advocated the suspensive veto, the system of two Chambers, and the establishment of trial by jury in civil causes, after which he became President of the Assembly. On the arrest of the King and the royal family, Barnave was one of the three appointed to conduct them back to Paris. It is said that on the occasion he gained the favor of the Queen by his gallantry to her on her return to the capital after her flight with the King to Varennes. His public career came to an end in 1792 with the close of the Constituent Assembly. Shortly afterward he was arrested and imprisoned, on suspicion of being in sympathy with the royal family and of conspiring with the court against the nation. For this, in 1793, he died by the guillotine.

### REPRESENTATIVE DEMOCRACY AGAINST MAJORITY ABSOLUTISM

DELIVERED IN THE NATIONAL ASSEMBLY, AUGUST 11, 1791

IT IS not enough to desire to be free—one must know how to be free. I shall speak briefly on this subject, for after the success of our deliberations, I await with confidence the spirit and action of this Assembly. I only wish to announce my opinions on a question, the rejection of which would sooner or later mean the loss of our liberties. This question leaves no doubt in the minds of those who reflect on governments and are guided by impartial

(159)