

the good opinion of those who have bestowed it in advance, to conciliate that of others by doing them all the good in my power, and to be instrumental to the happiness and freedom of all.

Relying, then, on the patronage of your goodwill, I advance with obedience to the work, ready to retire from it whenever you become sensible how much better choices it is in your power to make. And may that Infinite Power which rules the destinies of the universe lead our councils to what is best, and give them a favorable issue for your peace and prosperity.

JOSIAH QUINCY, JR.



JOSIAH QUINCY, JR., American lawyer and patriot, son of a Boston merchant, and grandson of Edmund Quincy (1681-1738), was born at Boston, Mass., Feb. 23, 1744, and died at sea, April 26, 1775. Educated at Harvard he soon afterwards attained distinction as a lawyer and took an active interest in the political occurrences of his time. After the Boston Massacre, he, with John Adams, defended the British soldiers at their trial for murder, a course which for a time injured his popularity, although his conduct was generally approved after the first excitement over the affair had subsided. This speech is here appended. In 1774, he published "Observations on the Act of Parliament commonly called the Boston Port Bill, with Thoughts on Civil Government and Standing Armies." This work shows much thought in its preparation, and its author manifested considerable courage in then issuing a publication which might have brought him condign punishment. In September of that year, he proceeded to England on a confidential mission on behalf of the patriotic party; and died of consumption on the return voyage, off Gloucester, Mass. He left one son, who achieved distinction as statesman, historian, and educator. Quincy earned a well-deserved reputation as an orator.

SPEECH IN DEFENCE OF THE SOLDIERS

[Delivered at the trial of William Weems, James Hartigan, and others, soldiers in his Majesty's Twenty-Ninth Regiment, for the murder of Crispus Attucks, Samuel Gray, and others, on Monday evening, the 5th of March, 1770.]

MAY IT PLEASE YOUR HONORS, AND YOU GENTLEMEN OF THE JURY,—We have at length gone through the evidence in behalf of the prisoners. The witnesses have now placed before you that state of facts from which results our defence. The examination has been so lengthy that I am afraid some painful sensations arise when you find that you are now to sit and hear the remarks of counsel. But you should reflect that no more indulgence is shown to the prisoners now on trial than has

ever been shown in all capital causes: the trial of one man has often taken up several days; when you consider, therefore, that there are eight lives in issue, the importance of the trial will show the necessity of its length. To each of the prisoners different evidence applies, and each of them draw their defence from different quarters.

I stated to you, gentlemen, your duty in opening this cause — do not forget the discharge of it. You are paying a debt you owe the community for your own protection and safety: by the same mode of trial are your own rights to receive a determination; and in your turn a time may come when you will expect and claim a similar return from some other jury of your fellow subjects.

In opening I pointed out the dangers to which you were exposed; I trust your own recollection will now preclude a recapitulation of them. The reasons of what I then said, I trust have in some measure appeared; the propriety of some of those observations has been corroborated by succeeding evidence; and you must have traced yourselves some of those consequences, turning out in evidence, which have had intimate relation, if not their origin, with some or all of those opinions, notions, sentiments, or passions (call them what you will) which I took occasion to observe as clues, aids, and leading-strings in our intended examination and decision.

How much need was there for my desire that you should suspend your judgment till the witnesses were all examined? How different is the complexion of the cause? Will not all this serve to show every honest man the little truth to be attained in partial hearings? We have often seen communities complain of *ex parte* testimonies; individuals as well as societies of men are equally susceptible of injuries of this kind. This trial ought to have another effect; it should serve to con-

vince us all of the impropriety, nay, injustice, of giving a latitude in conversation upon topics likely to come under a judicial decision; the criminality of this conduct is certainly enhanced when such loose sallies and discourses are so prevalent as to be likely to touch the life of a citizen; moreover, there is so little certainty to be obtained by such kind of methods, I wonder we so often find them practised. In the present case, how great was the prepossession against us? And I appeal to you, gentlemen, what cause there now is to alter our sentiments? Will any sober, prudent man countenance the proceedings of the people in King Street,— can any one justify their conduct,— is there any one man or any body of men who are interested to espouse and support their conduct?

Surely, no! But our inquiry must be confined to the legality of their conduct, and here can be no difficulty. It was certainly illegal, unless many witnesses are directly perjured: witnesses, who have no apparent interest to falsify,— witnesses who have given their testimony with candor and accuracy,— witness whose credibility stands untouched,— whose credibility the counsel for the king do not pretend to impeach or hint a suggestion to their disadvantage.

I say, gentlemen, by the standard of the law are we to judge the actions of the people who were the assailants and those who were the assailed and then on duty. And here, gentlemen, the rule we formerly laid down takes place. To the facts, gentlemen, apply yourselves. Consider them as testified; weigh the credibility of the witnesses — balance their testimony — compare the several parts of it — see the amount of it; and then, according to your oath, “make true deliverance according to your evidence.” That is, gentlemen, having settled the facts, bring them truly to the standard

of the law; the king's judges, who are acquainted with it, who are presumed best to know it, will then inspect this great standard of right and wrong, truth and justice; and they are to determine the degree of guilt to which the fact rises.

But before we come to those divisions of inquiry under which I intend to consider the evidence, let me once more carefully distinguish between the transactions in Cornhill and those by the custom-house.

The conduct of the soldiers in Cornhill may well be supposed to have exasperated the minds of all who beheld their behavior. Their actions accumulated guilt as it flew—at least, we may well suppose, the incensed people who related them added new colors to the scene. The flame of resentment imperceptibly enkindles, and a common acquaintance with human nature will show that it is no extravagant supposition to imagine many a moderate man might at such a season, with such sentiments, which I have more than once noticed,—hearing such relations and complaints; I say, do I injure any one, in supposing that under all these circumstances a very moderate person who in ordinary matters acted with singular discretion should now be drawn imperceptibly away, or rather transported into measures which in a future moment he would condemn and lament? What more natural supposition than to suppose many an honest mind might at this time fluctuate thus?

The soldiers are here—we wish them away; we did not send for them; they have cut and wounded the peaceable inhabitants, and it may be my turn next. At this instant of time he has a fresh detail of injuries: resentment redoubles every successive moment—huzza! for the main guard! we are in a moment before the custom-house. No time is given for reflection.

We find from the king's evidence and from our own the cry was, "Here is a soldier!"—not, "Here is the soldier who has injured us"; "Here is the fellow who wounded the man in Cornhill." No, the reasoning, or rather ferment, seems to be, "The soldiers have committed an outrage"—"We have an equal right to inflict punishment—or rather revenge—which they had to make an assault." They said "right," but never considered that those soldiers had no right at all. These are sentiments natural enough to persons in this state of mind: we can easily suppose even good men thinking and acting thus. Very similar to this is the force of Dr. Hiron's testimony and some others. But our inquiry is, What says the law? We must calmly inquire whether this, or anything like it, is countenanced by the law. What is natural to the man—what are his feelings are one thing: what is the duty of the citizen is quite another. Reason must resume her seat, and then we shall hear and obey the voice of the law.

The law indulges no man in being his own avenger. Early in the history of jurisprudence we find the sword taken from the party injured and put into the hands of the magistrate. Were not this the case, punishment would know no bounds in extent or duration. Besides, it saps the very root of distributive justice when any individual invades the prerogative of law and snatches from the civil magistrate the balance and the rod. How much more are the pillars of security shaken, when a mixed body, assembled as those in King Street, assume the province of justice and invade the rights of the citizen? For it must not be forgot that the soldier is a citizen, equally entitled with us all to protection and security. Hence all are alike obliged to pay obedience to the law; for the price of this protection is that of obedience.

Let it not be apprehended that I am advancing a doctrine that a soldier may attack an inhabitant and he not allowed to defend himself. No, gentlemen, if a soldier rush violently through the street and presents a weapon of death in a striking posture, no doubt the person assailed may defend himself even to taking the life of the assailant. Revenge and a sense of self-preservation instantly take possession of the person thus attacked; and the law goes not upon the absurd supposition that a person can in these circumstances unman himself. Hence we find a husband, taking his wife in the act of adultery, instantly seizes a deadly weapon and slays the adulterer. It is not murder. Nay, a fillip upon the nose or forehead, in anger, is supposed by the law to be sufficient provocation to reduce killing to manslaughter. It is therefore upon principles like these — principles upon which those who now bear the hardest against us at other times so much depend; it is, I say, upon the right of self-defence and self-preservation we rely for our acquittal.

Here again it should be kept in view that whenever a party injuring has escaped by flight, and time sufficient for the passions to cool, in judgment of law, hath elapsed, however great the injury, the injured party must have recourse to law for his redress. Such is the wisdom of the law; of that law, than which we are none of us to presume ourselves wiser; of that law which is found in the experience of ages, and which in condescension to the infirmities of flesh and blood (but to nothing else) extenuates the offence.

For "no man," says the learned Judge Foster, "under the protection of the law is to be the avenger of his own wrongs. If they are of such a nature for which the laws of society will give him an adequate remedy, thither he ought to resort. But be they of what nature soever, he ought to bear his lot with

patience and remember that vengeance belongeth to the Most High."

Now, gentlemen, those, whoever they were, who committed the outrage in Cornhill, had absconded; the soldiers, who are supposed to have done them, were confined in their barracks. People were repeatedly told this and assured by the military officers that they should not go unpunished. But what followed? Are all present appeased? We are constrained by the force of the evidence to affirm they were not. But to get regular and right ideas we must consider all the commotions of the season and endeavor to come at truth by analyzing the evidence and arranging it under distinct heads of inquiry.

[After a further consideration of the evidence in the case Mr. Quincy remarked:]

May it please your honors and you gentlemen of the jury: After having thus gone through the evidence and considered it as applicatory to all and every of the prisoners, the next matter in order seems to be the consideration of the law pertinent upon this evidence.

And here, gentlemen, let me again inform you that the law which is to pass upon these prisoners is a law adapting itself to the human species with all their feelings, passions, and infirmities: a law which does not go upon the absurd supposition that men are stocks and stones, or that in the fervor of the blood a man can act with the deliberation and judgment of a philosopher. No, gentlemen; the law supposes that a principle of resentment, for wise and obvious reasons, is deeply implanted in the human heart, and not to be eradicated by the efforts of State policy. It therefore in some degree conforms itself to all the workings of the passions, to which it pays a great indulgence, so far as not to be wholly

incompatible with the wisdom, good order, and the very being of government.

Keeping, therefore, this full in view, let us take once more a very brief and cursory survey of matters supported by the evidence. And here let me ask sober reason, What language more opprobrious, what actions more exasperating, than those used on this occasion? Words, I am sensible, are no justification of blows, but they serve as the grand clues to discover the temper and the designs of the agents; they serve also to give us light in discerning the apprehensions and thoughts of those who are the objects of abuse.

"You lobster!"—"You bloody-back!"—"You coward!" "You dastard!"—are but some of the expressions proved. What words more galling? What more cutting and provoking to a soldier? To be reminded of the color of his garb, by which he was distinguished from the rest of his fellow citizens; to be compared to the most despicable animal that crawls upon the earth, was touching indeed a tender point. To be stigmatized with having smarted under the lash at the halbert, to be twitted with so infamous an ignominy, which was either wholly undeserved or a grievance which should never have been repeated,—I say to call up and awaken sensations of this kind must sting even to madness. But accouple these words with the succeeding actions,—“You dastard!” “You coward!” A soldier and a coward!

This was touching (with a witness) “the point of honor and the pride of virtue.” But while these are as yet fomenting the passions and swelling the bosom, the attack is made; and probably the latter words were reiterated at the onset; at least, were yet sounding in the ear. Gentlemen of the jury, for heaven’s sake let us put ourselves in the same situation! Would you not spurn at that spiritless institution of society

which tells you to be a subject at the expense of your manhood?

But does the soldier step out of his ranks to seek his revenge? Not a witness pretends it. Did not the people repeatedly come within the points of their bayonets and strike on the muzzles of the guns? You have heard the witnesses.

Does the law allow one member of the community to behave in this manner towards his fellow citizen, and then bid the injured party be calm and moderate? The expressions from one party were—“Stand off, stand off!” “I am upon my station,”—“if they molest me upon my post, I will fire.” “By God, I will fire!” “Keep off!”

These words were likely to produce reflection and procure peace. But had the words on the other hand a similar tendency? Consider the temper prevalent among all parties at this time. Consider the then situation of the soldiery; and come to the heat and pressure of the action. The materials are laid, the spark is raised, the fire enkindles, the flame rages, the understanding is in wild disorder, all prudence and true wisdom are utterly consumed. Does common sense, does the law expect impossibilities?

Here, to expect equanimity of temper, would be as irrational as to expect discretion in a madman. But was anything done on the part of the assailants similar to the conduct, warnings, and declarations of the prisoners? Answer for yourselves, gentlemen! The words reiterated all around stabbed to the heart; the actions of the assailants tended to a worse end,—to awaken every passion of which the human breast is susceptible; fear, anger, pride, resentment, revenge, alternately take possession of the whole man.

To expect, under these circumstances, that such words would assuage the tempest, that such actions would allay the flames;

—you might as rationally expect the inundations of a torrent would suppress a deluge; or rather that the flames of *Ætna* would extinguish a conflagration!

Prepare, gentlemen of the jury, now to attend to that species of law which will adapt itself to this trial with all its singular and aggravating circumstances. A law full of benignity, full of compassion, replete with mercy.

And here, gentlemen, I must, agreeable to the method we formerly adopted, first tell you by what law the prisoners are not to be tried or condemned. And they most certainly are not to be tried by the Mosaic law: a law, we take it, peculiarly designed for the government of a peculiar nation, who being in a great measure under a theocratical form of government, its institutions cannot, with any propriety, be adduced for our regulation in these days.

It is with pain, therefore, I have observed any endeavor to mislead our judgment on this occasion; by drawing our attention to the precepts delivered in the days of Moses, and by disconnected passages of Scriptures applied in a manner foreign to their original design or import, there seems to have been an attempt to touch some peculiar sentiments which we know are thought to be prevalent: and in this way, we take it, an injury is likely to be done, by giving the mind a bias, it ought never to have received; because it is not warranted by our laws.

We have heard it publicly said of late, oftener than formerly, "Whosoever sheddeth man's blood, by man shall his blood be shed." This is plainly, gentlemen, a general rule which, like all others of the kind, must have its exceptions,—a rule which if taken in its strict literal latitude would imply that a man killing another in self-defence would incur the pains of death; a doctrine which no man in his senses would

ever embrace; a doctrine that certainly never prevailed under the Mosaic institution. For we find the Jews had their six cities of refuge to which the manslayer might flee from the avenger of blood; and something analogous to this (if it did not originate from it) is our benefit of clergy.

And so, that "the murderer shall flee to the pit," comes under the same consideration. And when we hear it asked, as it very lately has been, "Who dare stay him?" I answer, if the laws of our country stay him, you ought to do likewise; and every good subject dares to do what the law allows. But the very position is begging the question; for the question now in issue is, whether either of the prisoners is a murderer in the sense of our laws? for you recollect that what is murder and what not is a question of law arising upon facts stated and allowed.

But to go on: "You shall take no satisfaction for the life of a murderer which is guilty of death." Here again is a begging of the question; and moreover the words "guilty of death," if rightly rendered from the original, must be one of those general rules I just now mentioned, which always have their exceptions. But these words seem to be wrongly translated; for in the margin of our great Bible we find them rendered "faulty to die." Against a position of this kind we have no objection. If we have committed a fault on which our laws inflict punishment of death we must suffer. But what fault we have committed you are to inquire: or rather you, gentlemen, are to find the facts proved in court against us, and the judges are to see and consider what the law pronounces touching our offence and what punishment is thereby inflicted as a penalty.

In order to come at the whole law resulting from the facts which have been proved we must inquire into the legality of

the assemblies. For such is the wisdom and policy of the law that if any assembly be lawful each individual of that assembly is answerable only for his own act and not for any other. On the contrary, if an assembly be unlawful, the act of any one of the company to the particular purpose of assembling is chargeable on all. This is law which no lawyer will dispute: it is a law founded in the security of the peace of society, and, however little considered by people in general, it ought now steadily to be kept in mind.

Was the assembly of the soldiers lawful?

For what did the soldiers assemble?

Was the sentinel insulted and attacked?

Did he call for assistance, and did the party go to assist him?

Was it lawful for them so to do?

Were the soldiers, when thus lawfully assembled, assaulted, etc., by a great number of people assembled, etc.?

Was this last assembly lawful?

Was anything done by this unlawful assembly that will in law justify, excuse, or extenuate the offence of killing, so as to reduce it to manslaughter?

Was the killing justifiable; or rather was it justifiable self-defence?

Was the killing excusable; or rather was it self-defence, culpable, but, through the benignity of the law, excusable?

Was the killing felonious: if felonious, was it with or without malice?

[Under each of these heads of inquiry, in their order, Mr. Quincy arranged his arguments: and as he separated and compared and settled the facts, he applied the law with explanatory comments. After which, he concluded his argument as follows:]

May it please your honors, and you, gentlemen of the jury: I have now gone through those authorities in law which I

thought pertinent to this trial. I have been thus lengthy, not for the information of the court, but to satisfy you gentlemen, and all who may chance to hear me, of that law which is well known to those of us who are conversant in courts, but not so generally known or attended to by many as it ought to be—a law which extends to each of us as well as to any of the prisoners; for it knows no distinction of persons.

And the doctrines which have been thus laid down are for the safeguard of us all,—doctrines which are founded in the wisdom and policy of ages; which the greatest men who ever lived have adopted and contended for. Nay, the matter has been carried by very wise men much further than we have contested for. And that you may not think the purport of the authorities read are the rigid notions of a dry system and the contracted decisions of municipal law, I beg leave to read to you a passage from a very great theoretic writer—a man whose praises have resounded through all the known world, and probably will through all ages—whose sentiments are as free air, and who has done as much for learning, liberty, and mankind as any of the sons of Adam—I mean the sagacious Mr. Locke. He will tell you gentlemen, in his Essay on Government, “that all manner of force without right puts man in a state of war with the aggressor; and of consequence, that being in such a state of war, he may lawfully kill him who put him under this unnatural restraint.” According to this doctrine we should have nothing to do but inquire whether here was “force without right;” if so, we were in such a state as rendered it lawful to kill the aggressor who put us under so unnatural a restraint.

Few, I believe, will say, after hearing all this evidence, that we were under no “unnatural restraint.” But we don’t want to extend matters so far. We cite this author to show the

world that the greatest friends to their country, to universal liberty, and the immutable rights of all men, have held tenets and advanced maxims more favorable to the prisoners at the bar. And although we should not adopt the sentiments of Mr. Locke in their most extensive latitude, yet there seems to be something very analogous to his opinion which is countenanced in our laws.

There is a spirit which pervades the whole system of English jurisprudence, which inspires a freedom of thought, speech, and behavior. Under a form of government like ours, it would be in vain to expect that pacific, timid, obsequious, and servile temper, so predominant in more despotic governments. From our happy constitution there results its very natural effects — an impatience of injuries and a strong resentment of insults (and a very wise man has said, “He who tamely beareth insults inviteth injuries”). Hence, I take it, that attention to the “feelings of humanity,” to “humanity and imperfection,” “the infirmities of flesh and blood;” that attention to “the indelible rights of mankind;” that lenity to “the passions of men;” that “benignity and condescension of the law,” so often repeated in our books.

And, indeed, if this were not the case, the genius of our civil constitution and the spirit of our municipal law would be repugnant: that prime defect in any political system — that grand solecism in State policy.

Gentlemen of the jury: This case has taken up much of your time, and is likely to take up so much more that I must hasten to a close. Indeed, I should not have troubled you, by being thus lengthy, but from a sense of duty to the prisoners; they who in some sense may be said to have put their lives in my hands; they whose situation was so peculiar that we have necessarily taken up more time than ordinary cases

require. They, under all these circumstances, placed a confidence it was my duty not to disappoint, and which I have aimed at discharging with fidelity. I trust you, gentlemen, will do the like; that you will examine and judge with a becoming temper of mind; remembering that they who are under oath to declare the whole truth think and act very differently from bystanders, who, being under no ties of this kind, take a latitude which is by no means admissible in a court of law.

I cannot close this cause better than by desiring you to consider well the genius and spirit of the law which will be laid down, and to govern yourselves by this great standard of truth. To some purposes, you may be said, gentlemen, to be ministers of justice; and “ministers,” says a learned judge, “appointed for the ends of public justice, should have written on their hearts the solemn engagements of his Majesty, at his coronation, to cause law and justice in mercy to be executed in all his judgments.”

“The quality of mercy is not strained;
It droppeth like the gentle rain from heaven.
It is twice blessed;
It blesses him that gives, and him that takes.”

I leave you, gentlemen, hoping you will be directed in your inquiry and judgment to a right discharge of your duty. We shall all of us, gentlemen, have an hour of cool reflection when the feelings and agitations of the day shall have subsided; when we shall view things through a different and a much juster medium. It is then we all wish an absolving conscience. May you, gentlemen, now act such a part as will hereafter ensure it; such a part as may occasion the prisoners to rejoice. May the blessing of those who were in jeopardy of life come upon you — may the blessing of Him who is “not faulty to die” descend and rest upon you and your posterity.