contract with him for the use of the patent in consideration of the payment of a royalty by the United States.

This case, unlike that of Lieut. Dunn (19 Opin., 407), to which you call my attention, does not fall within section 3718 (Rev. Stat.), requiring that provisions, etc., for the use of the Navy shall be furnished, when time will permit, by contract by the lowest bidder, but falls within section 3721, Revised Statutes, which expressly exempts from the operation of section 3718, purchases of "ordnance, gunpowder, or medicines." Your power of contracting for supplies of the excepted classes being uncontrolled by legislative regulation, I see no reason why you may not lawfully contract with Ensign Dashiell for the purchase or the use of his patent rights.

In 1858 the Secretary of War made a contract with Maj. Henry B. Sibley, of the U. S. Army, to pay him a royalty for the use of his patent conical tent, which, together with the fact that section 1673 (Rev. Stat.) prohibits the paying of a royalty to any officer or employé of the United States for the use of any patent for "the Springfield breechloading system" or any part thereof, or for any such patent in which such officers or employés may be directly or indirectly interested, shows that to make contracts of that character, in proper cases, has not been foreign to the practice of the Government.

Very respectfully, yours,

W. H. H. MILLER.

THE SECRETARY OF THE NAVY.

AMNESTY.—POWER OF THE PRESIDENT.

The President has the constitutional power, without Congressional authority, to issue a general pardon or amnesty to classes of foreigners.

The question of the President's pardoning power reviewed and the authorities collated. Various proclamations of general amnesty appended.

DEPARTMENT OF JUSTICE,
March 9, 1892.

SIR: A petition has been presented to you, praying you to issue a pardon or amnesty to all persons residing in Utah Territory, who have been guilty of polygamy, unlawful
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cohabitation or adultery as denounced by the acts of March 22, 1882 (22 Stat., 30), and March 3, 1887 (24 Stat., 635).

You have asked the opinion of the Attorney-General upon the question whether you have the constitutional power, without Congressional authority, to issue such a general pardon or amnesty. Upon this question the following is respectfully submitted:

Section 2 of Article II of the Constitution, in defining the powers of the President, provides that "he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."

It has been decided by the Supreme Court that the power herein conferred upon the President is unlimited (ex parte Garland, 4 Wall., 333). The pardon may be granted before or after conviction, and absolutely or upon conditions. The ground for the exercise of the power is wholly within the discretion of the Executive. He may, therefore, if he thinks fit, pardon an offender because his offense is one of many like offenses, arising from a widespread, popular feeling and without regard to the character or the particular circumstances of the individual. He may, for the same reason, grant, by separate acts of pardon, immunity from punishment to each of a thousand such offenders. If he may do so, it is difficult to see why he does not exercise the same power, when by public proclamation he extends a pardon to ten thousand offenders, without naming them, but describing them as persons committing, or participating in, the same kind of offenses.

It is said that the power to grant pardons is a power to examine the circumstances of each case and then confer immunity on the offender. If the right to pardon were dependent on the existence of any particular grounds in the case of each offender, the argument, it seems to me, would be of more force. There is, however, no such restriction on its exercise. The ground may be as properly one which has equally and the same application to ten thousand or a hundred thousand cases, as one which is peculiar to the case under consideration. If so, does not the contention in favor of the narrower view become an argument in favor of a formality rather than a substantial and logical distinction? No one will deny that the President, without Congressional
authority, may issue separate pardons to every individual of the thousands of Mormons who have lived in polygamy in Utah. Only those would have to be omitted whose position is so obscure, or humble, that the President can not learn their names. Does not the power of amnesty, therefore, depend only on the question whether pardons can be made sufficiently definite in respect to the beneficiaries by a description other than by name? If the grantor is certain, the extent of the grant is certain, and the grantees are so described that they can be made certain, what is the inherent difference between the power involved in the grant of an individual pardon, and that in an amnesty to a class of persons to each one of whom the power to grant separate pardon, for a reason applicable to all, is conceded?

It is suggested that offenders can not be pardoned as a class any more than they can be tried and convicted as a class. This argument is not of force unless there is an analogy between a sentence of conviction and a pardon. The sentence is a judgment supported by a verdict rendered by a jury, on lawful evidence and full hearing, with the issue of the accused's guilt or innocence clearly defined. A pardon is a gracious act of mercy resting on any ground which the Executive may regard as sufficient to call for its exercise. There is no hearing of evidence; there is no issue made. The recital in the act of pardon may show a ground which in law and logic would be wholly irrelevant to the guilt or character of the offender, and not in the slightest degree affect the validity of the pardon. State policy may require the Executive to grant it. Such considerations show the absence of any parallel between the trial of an offender and the exercise of Executive clemency in his case, and wholly destroys an analogy which would require the same procedure in both.

But it is urged against this view that it intrusts too great a power to the Executive. In what way? It only enables him to do that in one act which he might do by a thousand. The power which the Executive exercises is still the pardoning power, and that the Constitution gives him. It is no argument against its exercise that it may be abused. That is true of every power intrusted to the Executive.

On principle, it seems to me, therefore, the unlimited
power to grant pardons for all offenses against the United States, except in cases of impeachment, includes power to issue a general pardon or amnesty to any class of offenders.

Practice and authority confirm this view. Alexander Hamilton, in the seventy-third number of the Federalist, referring to this clause of the Constitution, said:

"But the principal argument for reposing the power of pardoning in this case in the Chief Magistrate is this: In seasons of insurrection or rebellion there are often critical moments when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth and which, if suffered to pass unimproved, it may never be possible afterwards to recall. The dilatory process of convening the Legislature or one of its branches, for the purpose of obtaining its sanction to the measure, would frequently be the occasion of letting slip the golden opportunity."

Such language leaves no doubt that in the mind of this, one of the greatest of the framers and expounders of the Constitution, the pardoning power included the authority to offer and grant pardon and amnesty to a whole body of insurgents or rebels, i.e., to a class of offenders. This language was quoted and used by Mr. Justice Story in his work on the Constitution. (Sec. 1500 et seq.)

The practice, contemporaneous with the adoption of the Constitution, supports the existence of the power of the President to grant amnesty without legislative sanction. In 1794 President Washington issued a proclamation extending pardon to the whisky insurrectionists, and Gen. Lee, as Commander-in-Chief of the United States forces, issued a similar proclamation in the name of the President, and by his authority. Copies of these proclamations are appended. Governor Mifflin, of Pennsylvania, acting under a constitutional authority conferred in the same words as that of the President, issued a similar proclamation of pardon (also appended) to the insurgents for their offenses against the State of Pennsylvania. President Adams issued a proclamation of pardon to the same insurgents in 1800, a copy of which is appended. President Madison granted pardon by proclamation to a class of offenders known as the "Barataria" pirates, who were a large band of men engaged in smug-
gling and violations of the revenue and navigation laws of the United States. I have appended a copy of this proclamation. By the thirteenth section of the act of July 17, 1862 (12 Stat., 592), the President was authorized, at any time thereafter, by proclamation, to extend to persons participating in the then existing rebellion pardon and amnesty, with such exceptions and conditions as he should deem expedient. On December 8, 1863 (12 Stat., 737), President Lincoln issued a proclamation offering pardon and amnesty to the rebels. The recitals of this proclamation show that he did not admit that he had not the power to issue such a proclamation, without Congressional authority, but that he distinctly asserted the contrary. The two recitals on this subject are as follows: "Whereas, in and by the Constitution of the United States, it is provided that the President shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment and * * * "Whereas * * * laws have been enacted by Congress * * declaring that the President was thereby authorized at any time thereafter, by proclamation, to extend to persons who may have participated in the existing rebellion in any State or part thereof, pardon and amnesty, with such exceptions, and at such times and on such conditions as he may deem expedient for the public welfare, and whereas the Congressional declarations for limited and conditional pardon accords with well-established judicial exposition of the pardoning power," etc.

President Johnson issued several limited pardon proclamations of this character, and then in January, 1867 (14 Stat., 377), Congress repealed the amnesty section of the act of 1862. Thereafter, on September 7, 1867 (15 Stat., 699), he issued another limited and conditional pardon proclamation. On July 4, 1868 (15 Stat., 702), he issued a full and absolute pardon by proclamation to all rebels, except those who were under an indictment for treason, and by a proclamation of December 25, 1868 (15 Stat., 711), he extended full, absolute, and unconditional pardon to all who had taken part in the rebellion. President Johnson on July 3, 1869, issued a proclamation extending pardon to all deserters who should return to their colors. A copy of this order is appended. Again, on October 10, 1873, President Grant
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issued a proclamation pardoning all deserters who should return to the Army, which is also in the appendix.

We thus see that the contemporaneous exposition of the Constitution and the contemporaneous practice under it by the early Presidents, continued down to the period after the war, support the view that the power to grant pardons includes the power to grant pardons to a class by proclamations describing the class by the offense committed. The practice has been fully sustained by the Supreme Court of the United States.

In *ex parte* William Wells (18 How., 307) the question was whether the Constitution gave the President the power to commute a sentence of death to imprisonment for life. This is held to be a conditional pardon and within the power of the Executive. Referring to the significance of the word "pardon," Justice Wayne says, on page 310:

"In the law it has different meanings, which were as well understood when the Constitution was made as any other legal word in the Constitution now is. Such a thing as a pardon without a designation of its kind is not known in the law. Time out of mind, in the earliest books of the English law, every pardon has its particular denomination. They are *general*, special, or particular, conditional or absolute, not necessary in some cases, and in some grantable, of course."

And, again, referring to the power under the Constitution, the same justice says:

"The real language of the Constitution is general, that is, common to the class of pardons, or extending the power to pardon to all kinds of pardons known to the law as such, whatever may be their denomination."

The necessary effect of this language would seem to be that the power to pardon given the President includes the authority to issue general pardons.

In *ex parte* Garland (4 Wall., 333) the question was whether a statute which excluded from practice in the courts attorneys who had participated in the rebellion would operate to exclude one who had received full pardon for his offenses before trial. It was held that it could not. Mr. Justice Field delivered the opinion of the court and said, referring to the pardon clause of the Constitution:

"The power thus conferred is unlimited, with the exception
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stated—i.e., in cases of impeachment. It extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken or during their pendency, or after conviction or judgment. This power of the President is not subject to legislative control; Congress can neither limit the effect of his pardon nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him can not be fettered by any legislative restrictions.

In United States v. Padelford (9 Wall., 531) the effect of President Lincoln’s proclamation of December 8, 1863, was under consideration, with respect to which the court say:

“This proclamation, if it needed legislative sanction, was fully warranted by the act of July 17, 1862, which authorized the President at any time thereafter to extend pardon and amnesty to persons who had participated in the rebellion, with such exceptions as he might see fit to make. That the President had power, if not otherwise, yet with the sanction of Congress, to grant a general conditional pardon has not been seriously questioned. And this pardon, by its terms, included restoration of all rights of property, except as to slaves and as against the intervening rights of third persons.”

Here is an intimation that in the mind of the court there was good ground for the contention that no legislative sanction was needed for the issuance by the Executive of a general conditional pardon.

In the case of the United States v. Klein (13 Wall., 128) the Chief Justice referred to the amnesty clause of the act of July 17, 1862, as follows:

“The suggestion of pardon by Congress, for such it was, rather than authority, remained unacted on for more than a year.”

Again, after referring to the proclamation of general conditional pardon issued while the amnesty clause of the act of July 17, 1862, was in force, the Chief Justice described the three proclamations issued by President Johnson after its repeal, the last one of which, as we have seen, conferred full pardon, unconditionally, on all participating in the rebellion, and then said:

“It is true that the section of the act of Congress which purported to authorize the proclamation of pardon and
amnesty by the President was repealed on January 21, 1867; but this was after the close of the war, when the act had ceased to be important as an expression of the legislative disposition to carry into effect the clemency of the Executive, and after the decision of this court that the President’s power of pardon ‘is not subject to legislation'; that Congress can neither limit the effect of his pardon nor exclude from its exercise any class of offenders.”

Again, on page 147:

“It is the intention of the Constitution that each of the great coordinate departments of the Government—the legislative, executive and the judicial—shall be, in its sphere, independent of the others. To the Executive alone is intrusted the power of pardon, and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned, and removes all its penal consequences.”

It is perfectly clear from these extracts that in the opinion of the court the proclamation of absolute pardon, December 25, 1868, was entirely within the constitutional power of the President, though it may be admitted that it was not necessary to the conclusion in the Klein case, that it should be so decided.

In the case of Armstrong v. The United States (13 Wall., 154), however, the rights of the claimant against the United States rested solely on the proclamation of December 25, 1868, and the absolute and unconditional pardon thereby conferred and those rights were sustained.

Said the Chief Justice:

“The proclamation of the 25th of December granted pardon unconditionally and without reservation. This was a public act of which all courts of the United States are bound to take notice and to which all courts are bound to give effect. The claim of the petitioner was preferred within two years. The Court of Claims, therefore, erred in not giving the petitioner the benefit of the proclamation.”

This is an express holding that the proclamation of absolute and general pardon and amnesty is within the power of the President without legislative authority or sanction. This ruling has been followed in Pargoud v. The United States (13 Wall., 156); Carlisle v. The United States (16 Wall., 147); Knote v. The United States (95 U. S., 149).

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The only authority which can be cited against this view is the report of the Judiciary Committee of the Senate on the right of the President to issue the proclamation of December 25, 1868. This will be found in the bound volume of Senate Reports of the Fortieth Congress, third session, No. 239. They reported for adoption by the Senate the following resolution:

"Resolved, That in the opinion of the Senate the proclamation of the President of the United States of the 25th of December, 1868, purporting to grant general pardon and amnesty to all persons guilty of treason and acts of hostility to the United States during the late rebellion, with restoration of rights, etc., was not authorized by the Constitution or laws."

And accompanied their recommendation with an argument in support thereof. Arguments on the subject by Senator Ferry and Senator Conkling will be found in Congressional Globe, third session Fortieth Congress, Part 1, pp. 168, 438. I can not find that the resolution which was reported February 17, 1869 (Cong. Globe, 3d session 40th Cong., 1381), was ever adopted by the Senate. As the validity of the proclamation here condemned has been since four times sustained by the Supreme Court, the committee report can not now be considered an authority of weight.

A very full discussion of the power of the President to grant a general pardon or amnesty to a class of offenders will be found in the American Cyclopædia, 1873, under the head of "Amnesty." There will be found a reference to the prerogative of the English Crown in granting pardons and an explanation of the statutes of amnesty passed by Parliament which clearly shows that the power existing in the Crown included power to issue general pardons. I have already taken too much space, and I forbear to discuss this aspect of the subject.

The same view has been taken in some of the State courts where acts of general amnesty passed by the State legislatures have been held invalid on the ground that such acts are an invasion of the pardoning power, which is exclusively vested in the Executive, by language in the State constitution similar to that of the Federal Constitution. See State v. Sloss (25 Mo., 291); The State v. Fleming (7 Humphreys,
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Tenn., 152); Haley v. Clark (26 Ala., 439); see also People v. Moore, (62 Mich., 496).

It is submitted that reason, practice, and authority established the constitutional power of the Executive, without legislative sanction, to issue proclamations extending pardon or amnesty to classes of offenders.

There are appended copies of the proclamations of general pardon and amnesty to which reference has been made in the foregoing opinion, for the reason that they are not found in the regular publications of the Statutes at Large, and some of them are not recorded in the State Department.

Very respectfully,

WM. H. TAFT,
Solicitor-General.

The PRESIDENT.

I concur in this opinion.

W. H. H. MILLER.

PROCLAMATION GRANTING PARDON TO THE WESTERN INSURGENTS.

[Sparks' Life of Washington, vol. 12, p. 134, 135.]

Whereas the commissioners, appointed by the President of the United States to confer with the citizens in the western counties of Pennsylvania, during the late insurrection which prevailed therein, by their act and agreement, bearing date the 2d day of September last, in pursuance of the powers in them vested, did promise and engage, that, if assurances of submission to the laws of the United States should be bona fide given by the citizens resident in the fourth survey of Pennsylvania, in the manner and within the time in the said act and agreement specified, a general pardon should be granted, on the 10th day of July then next ensuing, of all treasons and other indictable offences against the United States, committed within the said survey before the 22d day of August last, excluding therefrom, nevertheless, every person who should refuse or neglect to subscribe such assurance and engagement in manner aforesaid, or who should after such subscription violate the same, or wilfully obstruct, or attempt to obstruct, the execution of the acts for raising a revenue on distilled spirits and stills, or be aiding or abetting therein;

And whereas, I have since thought proper to extend the said pardon to all persons guilty of the said treasons, misprisions of treason, or otherwise concerned in the late insurrection within the survey aforesaid, who have not since been indicted or convicted thereof, or of any other offense against the United States;