James W. Nye

ADDRESS TO THE COUNCIL AND HOUSE OF REPRESENTATIVES OF THE TERRITORY OF NEVADA

1861

James Warren Nye (1814–1876) is noteworthy for his active political career and for an impressive résumé, which included his positions as District Attorney, County Judge, Police Commission President, Republican presidential campaigner for Abraham Lincoln, governor of the Nevada territory in 1861, and the state’s first governor in 1864. Nye had earlier worked with the Northern Paiutes and Sarah Winnemucca in 1862 and in peace treaty negotiations with the Shoshones serving as Indian Affairs Superintendent. In 1864, Nye, along with William Stewart, was elected by the state legislature as U.S. Senator. He served for nearly a decade and acted as chairman of several congressional committees focused on post–Civil War Reconstruction.

Early in his career, Nye declared himself a “Free-Soil Democrat” opposing slavery in the territories. However, the Republican platform of 1860 was more compatible with his ideological views and Nye shifted his efforts toward the party’s goals, particularly as these involved establishing statehood. In Nevada, Nye commissioned the census, advocated for the forming of a legislative congress and elective districts including a House of Representatives, and organized regional judicial districts.

During his term as territorial governor, Nye stood in defense of civil rights and the native populations’ opposition to discriminatory laws. Radical in his liberal views, he firmly supported universal suffrage and women’s struggle for the elective franchise, which put him at odds with the state’s conservative leadership. Nye also condemned gambling and urged legislation prohibiting it in the territory.

In his Address to the newly-created House of Representatives of the Nevada Territory of 1861, Nye made clear the responsibilities conferred upon the body of lawmakers to adhere to the principles of just self-government, urging that actions affecting the inhabitants and generations thereafter “be marked by discretion, wisdom, and patriotism.” These virtues arose from the prevailing and powerful federal doctrine so named and revered as the “paramount law of the land.” The U.S. Constitution, Nye explained, could not be denied its due regard “as the great luminary around which the smaller planets of state constitutions should revolve; and all the legislation, both in States and Territories, should be in strict accordance with its provisions; and all the state constitutions were to pale their lesser lights in the presence of the commanding majesty.” Nye also railed against those who were threatening to secede from the Union, urged Nevada lawmakers to remain loyal to President Lincoln, and suggested a variety of measures that might be adopted for the benefit of the state and its people.
Gentlemen of the Council and House of Representatives

Your presence here in the capacity of Legislators, furnishes the highest and most satisfactory evidence of the kind parental regard and attention that our best of governments bestows upon her most distant people. Its care and protection leap over mountains, fly over seas, pass over deserts, in pursuit of its most erratic and wandering citizens, as the ever watchful mother, whatever her cares, troubles, and embarrassments at home, never fails to watch vigilantly for her absent children. A government so kind and considerate cannot fail, if properly appreciated, to attach all good and reflecting people to it. Its blessings are so apparent, that to enumerate them would impugn the intelligence of the chosen Representatives of a people engaged in an effort to form a system of laws for their guidance, in harmony with the benign example of the General Government from which they receive this authority.

It can be truly said that this Territorial organization came into existence in an hour of national embarrassment and trouble, just as the mutterings now ripened into rebellion began to be heard.

It is impossible if we would, to be less than anxious observers of these trials and tribulations of the Government from which we derive our power and existence. The natural instinct of the human heart is, to make grateful returns for favors gracefully bestowed, and if instinct teaches this ennobling and lofty principle, how much more should reason, the proud boast of man, teach us to revere and honor the power that has conferred upon you and your constituents the high prerogative to discharge the responsible duties you this day assume.

The power conferred, the responsibility of your positions, the consequences attendant upon your action, not only upon the present inhabitants, but upon the countless ones that shall come after them, should serve to admonish you that your joint and several action, should be marked by discretion, wisdom, and patriotism; remembering that it is a fearful thing to have only the present in view when making laws for unborn generations.

The magnanimity of the General Government, in placing in the Organic Act speaking this Territory into existence, no restraints, shows the confidence it reposes in even its minor children. It gives free scope to our youthful energies, and relies upon our judgment to direct them aright. Fully imbued with the belief that self-government is man’s Heaven-horn heritage, and that he is fully possessed of sufficient capacity to husband well so rich a patrimony, it hands it over to our keeping with all the confidence of a doting parent. There is but one single restraint, if indeed that can be called a restraint, and that is, that all of our legislation, and public and private acts, shall be in accordance with the Constitution of the United States, an instrument combining more excellencies, more safeguards, more protection, than any other constitution under which any people were ever permitted to live.

The wisdom displayed by its authors in so directing the powers of the government as to make it certain that no oppression can exist under it, in making each of the three powers occupy so important a position as to operate as a check upon the others, challenges the admiration of the world. The true test of all things, is the result produced. Under the benign influence of the constitution, a weak and tottering government, existing under a simple confederacy, has become strong and irresistible; its infantile limbs are robust as the giant’s; its feeble steps firm with strength; its weakness has been changed into power; its expansion is unparalleled;
its glory unequalled; its wide-spread Territories have been as by magic transformed into States. Civilization has kept pace with the pioneer, and enterprise, education and religion have grown up and flourished in the most distant settlements. Under it commerce has spread her whitened wings upon the bosom of every ocean, sea, lake and navigable river in the known world. It leaves untrammeled the boundless energies of all who live under it. It adopts no form of religion, but kindly fosters and protects all. It leaves the conscience of each, aided by revelation, the monitor to point the way to a brighter and better state of existence. Here no streams of blood wash the shrines of religious bigotry. Here no restraint is placed upon the freedom of political thought or action. The sacred ballot is the chosen arbiter of an intelligent people, for the reason that it is the recorded judgment of the community, territory, state or nation, upon every question of a political character. To, and before that arbitration, all must bow with that becoming deference which is due to the constitution that created it. An instrument so pregnant with good; and so barren of-wrong; is properly regarded by all loyal citizens as the paramount law of the land. Its framers so regarded it; the compeers of its framers so regarded it; the nation so regarded it; the enlightened world so regarded it. Indeed, at the time of its adoption, it was regarded as the great luminary around which the smaller planets of state constitutions should revolve; and all the legislation, both in States and Territories, should be in strict accordance with its provisions; and all the state constitutions were to pale their lesser lights in the presence of the commanding majesty of the Constitution of the United States. So long as we all so regarded it, and walked in its paths; and were guided by its light and its councils, we glided swiftly upon the waves of prosperity and peace, to a national-importance second to no power on the earth. In the midst of this unparalleled prosperity; we slept soundly in fancied security. Alas! while we slept the tares were sown; the seeds of discord, strife, and disunion, were scattered broadcast on the very face of the constitution, and those who scattered them were in possession of the fruitful field, and the weeders are now attempting to pull up the wheat, and leave the tares, alone to occupy the ground made so rich and productive of good by the hands of the founders of the government. The tares to which I alluded, is the heresy that the state constitutions are paramount to, and independent of, that of the United States. A doctrine so absurd, so unnatural, and so unwise, was regarded when first broached, as a dogma of a diseased brain, unworthy even of refutation; yet this subtle poison has been so insidiously infused by the wicked, designing, and, in many instances, disappointed politicians of our nation, that we now behold the startling spectacle of its adoption as a basis of a separate political and national existence, by eleven States of this Union, and so far have they been carried in their madness, as to call it invasion of a State, if the national government attempts to march troops, through or across its territory, to put down rebellion or treason in another State, or to protect the citizens or the property of the nation. A doctrine so fraught with evil can never obtain, a theory so repugnant to the existence of our government will never become the judgment of an enlightened people. The innumerable blessings that have flowed in the wake of the opposite theory and doctrine, will never be exchanged for the certain discomfiture and destruction attendant upon such a wild and delusive theory. As well might you look for -an orderly and well conducted family where all parental restraint and authority were repudiated and disregarded by the offspring, as for a happy, prosperous, well-ordered government containing
within it thirty-four independencies, each claiming superiority over the parent government.

That a state constitution should be the power behind the throne greater than the throne itself, is a theory so startling, so entirely destructive in its operations and results, that I entertain no apprehensions that it will ever be adopted by the people of this Territory, that has so much garnered up in the rich treasure house of a nation’s benevolence, and so much in the future, if we remain contented under the protecting and sheltering wings of our national constitution.

In the conflict now waging between the seceding states and those that remain loyal to the Union, there is no such thing as neutrality. All must, and will participate, to a greater or less extent, and the infantile voice of this Territory will be heard on one side or the other; and in order that we may determine correctly, let us look impartially at the position of both, and make up our minds from admitted facts.

The former are striving to overthrow the constitution; they have openly repudiated, and set at naught its councils; they defy its mandates and authority, and scorn its protection. They fired upon the flag of our common country when floating over the deck of a ship freighted with provisions for starving and famishing soldiers, placed in a garrison for the protection of our commerce, and to stay the feet of foreign invaders if they should attempt to land upon our soil, inhaling with every breath the poisonous malaria that rears its hecatombs of victims yearly in the port where they were stationed, and finally, to complete their work of desecration, and destruction, they fired upon the soldiers thus situated. They have armed eleven states and arrayed their marshaled forces to overthrow the government; they have spilled the blood of the patriotic, liberty-loving, constitution-revering citizens, who were armed to protect that government, that constitution, that has so long protected them, under which they have been permitted to enjoy the fullness of personal and political freedom. They are marching upon the capitol of the nation for its destruction, even where the footsteps of the immortal Washington are yet visible. They have plundered our arsenals, robbed our treasury, violated solemn oaths to support the constitution and protect the property of the nation, and have ruthlessly torn the flag of our country from the staff from which it so proudly floated, and trailed it in the dust of dishonor. They have fired upon and killed in the public streets of a city, soldiers that were marching to the capitol for its protection, under the orders of the Government of the United States. They have covered the sea with piratical craft, with orders to seize all shipping bearing the flag of the United States, and offering a bounty for each sailor taken under it, and when taken, he is held as a prisoner to await the mercy and judgment of an exasperated and rebellious people.

We stop the catalogue of wrongs, and inquire with amazement what reason can exist for all these things? Have any of their rights been abridged? Has their commerce been crippled? Have there been any hostile demonstrations by the Government upon any citizens in any of the rebellious states? Have their judicial tribunals in either of these states been in any way interfered with, up to the time of this unholy rebellion? Has the sacred writ of Habeas Corpus been stripped of its power? Had not the nation been still while they by armed force possessed themselves of millions of the nation’s property, and placed within range of the guns of the nation’s fortifications fearful batteries, with the avowed purpose of their destruction? And were not our guns condemned to silence while these engines of destruction were brought to the very feet of our soldiers? Had the
nation called a soldier to the field at the time when rebels in large numbers had conspired to assassinate the President elect, on his way to Washington, to avoid the assassin’s hand raised to strike at the liberties of the nation through him? Was it until they threatened publicly to possess themselves of the sacred capitol, that the nation was called on to avert the impending danger? When treason daily was uttered in both Houses of Congress, was the merited punishment meted out to the traitors? No!—they kindly forebore, and the President of the United States in his inaugural literally wooed them back to their allegiance, which entreaty was answered by a call for more soldiers, strengthening the power of resistance to the laws and constitution, growing bolder in view of the kindness manifested. Such is a brief summary of the condition of our national difficulties up to the time that the Federal forces were called into the field, since which time the history of both has been daily written, and from which I am unable to discover on the part of the rebels any disposition to relax in their efforts to put down, by the force of arms, the existing government of the country. There is no difficulty in ascertaining the true position of those that take the sword, or of those who sustain them that have taken it. There is, however, a class of our fellow-citizens that declare themselves in favor of the Union, and still are opposed to the use of coercive measures to bring this rebellious people back to their allegiance. They inquire with emphasis, “do you expect to make this revolting people love the Union by meeting them upon the field of bloody strife?—and do you expect to make them loyal by punishment?” I answer, I do not! What then is the advantage? I answer, if they do not love, they shall respect the regularly constituted authorities of the nation to which they owe allegiance, and seek a gratification of their political ambition within, and under the constitution. And further, that they shall let the loyal citizens within those States that love the Union, speak out in its favor in a constitutional way, and by their ballots, and they shall cease to persecute loyal citizens within their borders, and suffer them to stand erect in their manhood and express their honest sentiments without the penalty of expulsion or fear of punishment; and that they shall cease to impress liberty-loving citizens who prefer order to confusion, and well-regulated government to anarchy, into their armies, and compel them to fight for the overthrow of institutions they cherish and revere. In a word, I would compel them to lay down their arms and appeal to the constitutional mode of settling their grievances, and thus discountenance forever an attempt by those who shall come after them to do so dangerous and wicked a thing. When this point is reached, and the power of the Federal Government is vindicated, both in the minds of traitors at home, and before the nations of the earth; when it has demonstrated that it has the power and the determination to put down rebellion at home and protect itself from invasion from abroad; then, and not till then, will the cry of peace be heard by a loyal people. Whenever the moment arrives that the rebels shall lay down their arms, and cease their efforts for evil, and turn their minds from the destruction of, to the completion and perfecting of the holy work commenced by their fathers, of making permanent our institutions, laying deeper and more solid the foundation of national freedom; then has the happy hour arrived when peace will be hailed by all with joy, and such a peace will be permanent and abiding. Opposed to coercion! and why? Are not all rational men in favor of restraining those who are in the wrong, even by force, if necessary? This is all the word means; to compel an individual or individuals to cease from wrong, and if possible to coerce or compel them to right. The punishment for crime rests upon this basis: first, admonition, and if that is not
heeded, coercion follows. Restraint over those that do wrong is the inherent safeguard thrown around human society. Take it away, and the bulwark of society is battered down; abolish restraint, or coercion, and all human laws are powerless and useless. The Constitution and laws determine what crime is, its grade and character, and humanely apportions punishment to its enormity, and by its punishment endeavors to restrain or coerce the guilty one to observe and regard its precepts. The law denounces the crime of which the leaders in this FOUL CONSPIRACY are guilty to be TREASON. Says in most emphatic terms, the penalty is DEATH. Why do well informed, and as they say, Union-loving citizens, reason differently upon this crime from any other? Why object, that those who are guilty, should suffer the penalty of the offended law? How loudly do the same individuals ask of the officers of justice to do their full duty, to punish the man or men that steal their property, while they demand that the sword of justice should be stayed from those who are endeavoring to steal a nation’s liberties. Is not such reasoning specious and dangerous? Is it treating the subject with that fairness and manly frankness with which they treat all others? Do they not by this special pleading intentionally or unintentionally exhibit to others their real feelings, viz.: a sympathy with the offenders and a want of loyalty to the Government? I have dwelt perhaps too long on this absorbing topic. If so, my apology will be found in my anxiety that the expression of the first representatives of this Territory shall be of such character as to leave no doubt in the minds of the present or coming generations of their fearless loyalty; remembering “That as the twig is bent the tree’s inclined.” If you so speak, the youngest of the heirs to this richest of inheritances, it will cause a thrill of joy throughout this now agitated country. Say by your action, that young and feeble as you are, you will stretch out your arm and shield your Government from the parricidal blow now aimed at it. Speak so unequivocally as to encourage the hearts now battling to sustain intact our glorious Union. At the same time say to those who would break and destroy it, expect no sympathy or encouragement in your effort from this new-born Territory. Speaking thus, you will but reflect the true sentiment of those who commissioned you to speak for them, and the day is not far distant when those who now differ with you in sentiment will bless you for so speaking. For as sure as time rolls on, the wave that now threatens to engulf us will roll back with redoubled force and power, to the utter destruction of those who evoked it. . . .

If you agree with me in the above suggestion, then an entire and complete code of laws for our government, more congenial to our habits and tastes, and better adapted to our wants, will have to be prepared and passed by you this session; and in performing this important duty you will keep constantly before you the fact, that the laws you make should be of such character as to protect both labor and property, and create that mutual dependence which insures to each its proper importance. . . .

As the mines and their appurtenances constitute the principal wealth of the Territory, and as the revenue necessary to carry on the Territorial government and its internal municipal affairs will have to be raised by taxation, the question, what standard of valuation will be fixed, is of the utmost importance. Viewed in the present and future, to assess them at the value which some of them have in market, would seem to be somewhat dangerous, as that value fluctuates daily, depending upon the speculative ideas of men who make the buying and selling of interests in mines a business, and who raise or depreciate the price as best subserves their immediate interests. Besides, some that are estimated by the
known value of those in proximity to them, when opened and developed, have proved almost valueless. For these, and other reasons not enumerated, I suggest for your consideration the taxing of the gross proceeds of the several mines. I make the above suggestion for the reason that the Organic Act provides “that no discrimination shall be made in taxing different kinds of property, but all property subject to taxation shall be in proportion to the value of the property taxed.” In speaking of the taxation of mines and their appurtenances, I do not mean that any other taxable property in the Territory shall not be taxed at its value.

One of the most important duties that will devolve upon you is the establishment of a system of Common Schools. A government like ours, that rests upon the basis of universal intelligence, cannot exercise too much care, or vigilance, in providing for the mental and moral culture of its youth. They so soon will be called upon to fill the places now occupied by us, that common prudence admonishes us that no time should be lost in furnishing ample means to qualify them for the successful discharge of those important duties.

The common school is the foundation of knowledge, at which a vast majority of our children must take their first and final lessons in education—the place where they must fit themselves and be prepared for the varied struggles of human life. There, under the guidance of competent teachers, the youthful mind drinks in a relish for learning. There the first aspirations to climb the hill of science to its summit, are felt and experienced. There the eye of the scholar is first made to glisten with unwonted brilliancy, and his heart to befit with unusual velocity, as he achieves a triumph over the first obstacle that presents itself in his rugged pathway. Experience has shown that the best system thus far tried is to make the common school free. The public have an interest in the instruction, of every child within our borders, and as a matter of economy, I entertain no doubt that it is much cheaper to furnish school-houses and teachers than prisons and keepers. The Organic Act contemplates the establishment of such a system, by providing that Sections 16 and 36 of the lands in each township shall be reserved and dedicated to the use of common schools. I recommend that you give this subject your early and earnest attention, and I doubt not that you will be able to devise a plan that will bring the blessings of a common school education to the children of the poorest inhabitant in the Territory.

The consequences attendant upon the almost universal habit or practice of carrying concealed or deadly weapons, by the citizens of this Territory, lead me to recommend that some law be passed making it a penal offense to carry them, fully believing that human life will be much safer by prohibiting the use than by tolerating it.

I also recommend that such laws be passed for the regulation of the sale of intoxicating liquors, as shall protect the public from the devastating influence of an unrestrained traffic, prohibiting its sale to persons under certain ages, and to persons of known intemperate habits, fully believing that the temporary gain to the vendor, is a poor remuneration for the blasted hopes and crushed spirits of loving families.

It seems to me that a proper regard for the well-being of society, demands, that the sale on Sunday or the Sabbath, of all intoxicating liquors (except for medicinal purposes), should be prohibited, so that the day may be observed as one of rest and quiet, and be enjoyed by those who desire it, by such religious observances as the habits of more than eighteen centuries have sanctioned.
I particularly recommend that you pass stringent laws to prevent gambling. Of all the seductive vices extant, I regard that of gambling as the worst. It holds out allurements hard to be resisted. It captivates and ensnares the young, blunts all the moral sensibilities and ends in utter ruin. The thousand monuments that are reared along this pathway of ruin, demand at your hands all the protection the law can give. . . .

Relying upon that Divine power that “doeth all things well,” I humbly trust and believe that you will give to the people of this Territory, a system of laws that will afford them ample protection in all their varied interests, and enable them to reach the desired goal of a well-governed and happy people.

Headnote: Diana Jonmarie