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Speech of Albert P. Gould, of Thomaston, Delivered in the House of Representatives of Maine, March 6th and 7th, 1862

Albert P. Gould

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SPEECH

OF

ALBERT P. GOULD,

OF

THOMASTON,

DELIVERED IN THE HOUSE OF REPRESENTATIVES OF MAINE,

MARCH 6th and 7th, 1862.

"The Constitution and the Union! I place them together. If they stand, they must stand together; if they fall, they must fall together."—WEBSTER.

AUGUSTA:
PRINTED AT THE OFFICE OF THE AGE.
1862.

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RESOLVES RELATING TO NATIONAL AFFAIRS.

Resolved, That we cordially endorse the Administration of Abraham Lincoln, in the conduct of the war against the wicked and unnatural enemies of the Republic, and that in all its measures calculated to crush this rebellion speedily and finally, the Administration is entitled to and will receive the unwavering support of the loyal people of Maine.

Resolved, That it is the duty of Congress, by such means as will not jeopard the rights and safety of the loyal people of the South, to provide for the confiscation of estates, real and personal, of rebels, and for the forfeiture and liberation of every slave claimed by any person who shall continue in arms against the authority of the United States, or who shall in any manner aid and abet the present wicked and unjustifiable rebellion.

Resolved, That in this perilous crisis of the country it is the duty of Congress, in the exercise of its constitutional power, to "raise and support armies," to provide by law for accepting the services of able-bodied men of whatever status, and to employ them in such manner as military necessity and the safety of the Republic may demand.

The foregoing Resolutions having passed the Senate, came into the House some days previous to the delivery of the following speech, at which time Mr. GOULD, in a brief speech, deprecated their introduction into the Legislature, as they might very probably prove an apple of discord among the supporters of the government, and urged their reference to the Committee on Federal Relations, where the whole subject might be considered and discussed in a friendly and conversational way, and, if possible, Resolutions agreed upon which would command the support of the whole House; but the reference was negatived by the House, and the Resolutions laid upon the table. On the 6th of March they were called up by Mr. FRYE of Lewiston, when Mr. BARROWS of Fryeburg, moved their indefinite postponement. This motion was negatived, whereupon Mr. BRADBURY of Eastport, moved the following substitute:

AMENDMENT PROPOSED BY MR. BRADBURY.

Amend by striking out all after the word resolved, in the first resolution, and inserting as follows:

That the people of Maine repose an unwavering confidence in the ability, integrity and patriotism of Abraham Lincoln, President of the United States; and, while fully approving of the policy by which he has thus far been guided in the conduct of the existing war, they pledge themselves to rally around and sustain his Administration in the prompt and vigorous employment of all legitimate means and measures now demanded, or which may hereafter be demanded by the exigencies of the hour, for the speedy and thorough suppression of this Rebellion, and the complete vindication of the authority of the Constitution and Laws.

Resolved, That the Union "is to be defended and the Constitution preserved, not by Democrats, not by Republicans, but by men who love their country—and all men of whatever party, who are for the government and will stand by it and fight for it, are brethren;" that we "know no difference, and will know no difference," and "we will hold that man as wanting in the highest quality of patriotism, who will know any distinction between men, founded upon their former party relations."

Resolved, That, giving what we have to our country, "we will ask *only* that the war shall be prosecuted honestly and vigorously, and with the one, true, legitimate, constitutional purpose—that the government of Washington and his compatriots shall be sustained and perpetuated, and that the flag of beauty and empire so long 'known and honored throughout the world,' as the emblem of national strength and renown, shall speak everywhere in the future as it has spoken in the past, those words of lofty patriotism, 'LIBERTY AND UNION, NOW AND FOREVER, ONE AND INSEPARABLE,' the Union of the American States and the Liberty of the American people! And to this end we will expect and demand that all lawful, usual, efficient measures and policies shall be adopted which will tend to promote a speedy and successful termination of the war."

When the House resolved itself into a Committee of the Whole, Mr. FRYE of Lewiston in the Chair.

SPEECH.

Mr. GOULD addressed the House in opposition to the second and third original resolves, and in support of Mr. Bradbury's substitute, to the following effect :

MR. CHAIRMAN :—For my own sake, and the sake of the House, I regret that it has become necessary for me to take the initiative in the discussion which your action just now has rendered inevitable. If some member of the House would inform me precisely upon what ground the advocates of the second and third resolutions propose to sustain them, it would save me much labor, and you much valuable time. I have asked in vain that this might be done. When the subject was before the House the other day, I was informed by a member, that the friends of these resolves had no occasion to present their views here, as they rested upon the arguments which had been urged in their favor, and in favor of the principles upon which they rest, in the Senate of this State, and in the Senate and House of Representatives of the United States. It has become necessary therefore, for those who think with me that the second resolve rests upon principles which are utterly subversive of the Constitution of the United States, to either vote against it in silence, and thus subject ourselves to the liability of being misunderstood, or to present the reasons which influence our minds, and to examine the arguments made elsewhere, to which we have been referred. In the disposition of a question which, if the government should act upon the advice of this Legislature, involves such momentous consequences, we could justify ourselves, neither to ourselves or to the public, by any other course. We regard those arguments as fallacious, and think it our duty, as far as we may, in the limited time and with humble ability, to *exhibit* their fallacy. When these resolutions first came into the House, I made some remarks in reference to them, expressing regret that they were here, and asking that they might be disposed of by reference, or in some other way, without producing discussion, and perhaps antagonisms among the supporters of the administration, and thus disturbing the harmony which so happily pervades all classes of the community in their efforts to suppress the rebellion.

You will allow me, sir, to presume, and the presumption is founded upon an almost universal expression outside, that there is not a member of this House who does not regret that this subject has come before us. What shall be done with it, now that it is here, with many of you may be a very difficult question. I apprehend that the regret was almost universal, not only in the Legislature, but throughout the State, that it ever became necessary for either branch of the Legislature to act upon these propositions; but there seems nevertheless, to be a want of moral courage here to deal with them in such a manner as the judgments of gentlemen would incline them to. I regret that it is so. I declined all discussion until the motion of the gentleman from Fryeburg to indefinitely postpone, should be made and disposed of—that the action of no member should be affected by party attrition. The regrets which I expressed some days since in the House, have not in the slightest degree diminished; indeed, sir, I think the reasons for them have grown stronger, and have thickened upon us; and I must add, it is incomprehensible to me, that my friend from Augusta, our accomplished Speaker, who has taken his seat upon the floor of the House with the purpose of replying to my remarks, as is understood, should deem it wise to urge the party friends, over whom he has so much influence—just now, as the morning light is breaking—just now, as the glad sight cheers us, of the full dawned sun of victory for the cause of the Union and the Constitution sends its broad effulgence upon us—to pass a set of resolutions which imply a censure upon the policy and conduct which is producing these happy results. That there are uneasy spirits *outside* of this House, moved more by personal ambition than by any desire for the public good—who imagine they see a coming tide which may take them from their hopeless condition upon a deserted shore, and bear them upon its buoyant wave on to fortune, I am not disposed to ignore. By some of these persons public attention has been drawn to the anticipated discussion in the House, in such a manner as

to require notice. I propose to avoid all personal allusions, except so far as self-vindication requires that I should take notice of a newspaper correspondence relating to my position upon these resolutions, and my support of the government in the discharge of its duty, in the enforcement of the laws in every part of our unhappy country. I have conscientious convictions, Mr. Chairman, in respect to my duty upon this important question, and because it was supposed I should act upon them—because it was supposed I should act up to the spirit and the letter of the oath which I have taken—I have been assailed in a most extraordinary manner. From no word spoken, or act performed by me, here or elsewhere, can a doubt be raised, that I am in favor of the prosecution of this war for the suppression of the rebellion, and the restoration of obedience to the laws, in every part of the country—nor that I am in favor of the use of every constitutional means within the power of the government for the accomplishment of this purpose. And, sir, I may be allowed here to say, that it is a matter of indifference to me, what the necessary consequences shall be to those who are now resisting the government, or what local institutions, or *any portion* of what local institutions shall be necessarily swept away by the use of legitimate means in reducing the insurgents to obedience. If evil comes upon them, they will by and by reflect that it was drawn down upon their heads by their own rash hands.

But, sir, not only myself, but other gentlemen, both in the House and Senate, with whom it is but an honor to agree in sentiment and action—such is their deservedly high character with the public—have been ruthlessly assailed in the columns of a newspaper in my vicinity called the “Democrat and Free Press,” by a certain ambitious gentleman, not a member of this House, as sympathizers with secession, because we have faith in the constitutional power of the government to defend and sustain itself, and do not therefore go with him in his advocacy of the abrogation of the Constitution, and the disregard of a principle which for a long time he has most earnestly professed, viz: the want of Constitutional power in Congress to interfere with slavery in the States. We cannot follow him in his devious course, but will note a monument or two, which he has set up by the way, to illustrate the improbability of his adherence for any considerable length of time, to his present position. That gentleman established the “Free Press” in 1854, or thereabouts, and devoted its columns to the advocacy of the repeal of the Missouri compromise, in subversion to the Pierce administration, under which he held an important and lucrative office; though this course was thought at the time to be somewhat inconsistent with his former professions of ardent *free soil* principles. The paper was kept by him upon the track of the Pierce administration until a new dynasty came into power, when new light dawned upon his fertile imagination. His action then said:

“Get place, and wealth, if possible with grace,
If not, by *any means*, get wealth and *place*.”

When “*Lecomptonism*” was decreed by the powers which held the axe suspended over his official head, that gentleman became, with his paper, the most valiant defender of the new faith, and so continued, as long as he had a master to serve; so long as he had a master who would *permit* him to

“Crook the pregnant hinges of the knee
That *thrift* might follow *fawning*.”

In respect to that gentleman's assertion that I misrepresent my constituency in opposing his emancipation schemes, I advise him to take heed of his own steps lest he fall with that constituency. They, without distinction of party, are opposed to his scheme, and to all attempts to break down the Constitution. They are for the prosecution of the war, as *I am*, for the sole purpose of *preserving the Constitution and the Union*. I have the most satisfactory assurance that they, with great unanimity, support me in my opposition to these resolutions.

Now, sir, it is well known that there was a time when I could not affiliate with the Republican party, nor have I at any time associated myself with it *as such*. Nor do I propose to do so. But I had supposed that *party* was abandoned—that the *people* had united as one man in the great party of the *Union for the sake of the Union and the Constitution*; resolved to go hand in hand, and stand shoulder to shoulder, to uphold the flag of the country, and support the President and the administration, until that flag should *wave in triumph*, over every inch of our soil; until the authority of the government should be vindicated and established upon a basis that no ruthless hand would ever again attempt to disturb.

And perhaps, sir, I may be permitted to allude to my own record in this respect,

inasmuch as I have been assailed, and to say that I had supposed we were one to-day, as we were but ten months ago, when we met in extra session, shortly after the hand of violence had been lifted against the government, to provide for its defence. I have known no difference—my mind, my *purposes* have not changed. I have seen no occasion of alienation from my friend from Augusta, or from any other person in this House, or out of it, in respect to our duty in the support of the government. I am happy to say that up to this time I have concurred with that gentleman, in every measure which has been brought before the Legislature of Maine during the last and present years, in respect to national affairs, as I have understood him. I had the pleasure at the last session of concurring with him in respect to the duty of sending Commissioners to the Peace Convention, so called, and the repeal of the personal liberty laws, the only matters relating to national affairs, upon which the House had occasion to differ. I watched his course with no indifferent eye, and, sir, let me assure my friend that it was with no small satisfaction, that I read his vigorous and triumphant vindication of the Crittenden resolve, and the principles upon which, and the purposes for which I had supposed we agreed the war should be carried on, at the last great council of the Republican party in the State. But, sir, if he now supports the second and third resolutions under consideration, *how sadly changed!* No greater antagonism of ideas could possibly be created; I will not believe it until I hear his voice. With me there has been no change, or shadow of turning. At the extra session the last of April, our Governor, from the place where you, sir, now sit, gave utterance to the following noble and patriotic sentiments:

“And so it is and so it shall be—and this Union is to be defended and the Constitution preserved, not by Democrats, not by Republicans,—but by men who love their country; and all men, of whatever party, who are for the government, and will stand by it and fight for it, are brethren. For one, I know no difference, and I will know no difference, and will hold that man as wanting in the highest quality of patriotism, who will know any distinction between men, founded upon their former party relations.”

These words were addressed to a joint Convention of the the two Houses. They were eloquent words, and in my heart I thanked God, that he who had hitherto been a very strong party man, had upon a great occasion lifted himself up to their utterance. Having been recognized as an opponent of the Republican party, and thinking I might do something to promote the abnegation of party, and the union of all good men, which I so much desired, for the preservation of the Union, I offered the following resolve. I read from the record:

“Mr. GOULD of Thomaston, asked and obtained unanimous consent to introduce the following resolution:

“*Resolved*, That it is the duty of every citizen of Maine to give his earnest and undivided support to the General Government of the American Union as the representative and only hope of *constitutional liberty*, now imperilled by an alarming rebellion pervading a large section of the country—that all former differences ought to be forgotten in the presence of the imminent peril of that country, to preserve which, we are resolved to strive with one another in generous emulation,—that in imitation of our fathers ‘we pledge our lives, our fortunes and our sacred honor’ to the preservation of the government which they committed to us, that we may transmit it unbroken to our children.”

“The resolution was received with loud and repeated applause, and was passed unanimously by rising, after which the Convention was dissolved.”

He who doubts the unanimity of feeling which then pervaded all classes of our fellow citizens, without distinction of party, who filled this Hall, its galleries and areas, from all quarters of the State, should have been here to witness the cordial endorsement of the spirit of that resolve.

These were not only my words *then*, sir, but they are my words and my sentiments *to-day!* No newspaper correspondent—no attempted *aspersions*, whether prompted by powers on earth, or powers from below, can drive me from them!

I trust I shall be pardoned for occupying thus much time in vindication of myself. An apparent necessity had been created. Since the extra session I have refused to act with any party but the party of the Union. I do not occupy my seat as the representative of any party, having received the unanimous support of the district which I have the honor to represent, with the exception of some seventy votes, cast by the anti-war party. I can hardly conceive of circumstances in which a man would feel

more free from party trammels, than I do to-day, but for the recollection that the gentleman from Oldtown, one of the *sachems* of the Republican party, remarked to the House when this subject was before it the other day, that by reason of a certain position which was assigned to me at the commencement of the session, I had become the recognized leader of the State administration in the House. I took it at the time in a *pickwickian* sense. But upon sober reflection, and review of the known character of my friend for seriousness in all he says and does, the circumstance to which he refers, and the fact that I hold my seat by the favor of about as many Republican as Democratic votes, I am forced to the conclusion that it may be difficult for me to escape the responsibility of the position in which he places me.

But, Mr. Chairman, the burdens of political leadership are so unfamiliar to me, that I shall be very likely to make mistakes in matters of policy viewed from the ordinary standpoint of partizanship; because I have not familiarized myself with the philosophy and maxims of the present generation of politicians. I shall be under the necessity therefore, for the present, sir, and until I can learn a more politic course perhaps from my friend from Augusta, of proceeding upon the obsolete maxim, that "honesty is the best policy," even in politics.

Now, sir, assuming for the moment the office assigned me, I think I may as well tell the House right out plainly, (if I am to speak for the leaders, and as one of them) about these resolutions. We *leaders* of the Republican party have got an *elephant* on our hands. The Senator from Knox thrust him into our camp, to our great disgust, but we hardly know what to do with him. We have turned ourselves about upon every side but do not get rid of the embarrassment. We are afraid the animal will spread terror in our ranks and that they may become so scattered that we shall never get them together again. The disposition which we shall make of him therefore, is as yet undetermined.

But whatever we may do with the *elephant*, as to the Colonel, we early determined that we would not have him in our ranks. And we had no difficulty as to the mode of disposing of him, he having furnished us, in his opening speech, a most happy suggestion, by his reference to Falstaff being carried to the Thames in a basket under filthy clothes. The likeness of surrounding circumstances, and the similar obesity of person struck us with peculiar force. We remembered that the doughty knight said to his lackey, Pistol :

"Indeed, I am two yards in the waist about; but I am now about no waste; I am 'about thrift. Briefly, I do mean to make love to Ford's wife."

And we imagined that *our* valiant knight might have been heard, not long before the commencement of the session, in discourse with a lackey, whom we will not mention, exulting over the love he was about to make to the Republican party, for the sake of thrift. We thought we heard him say as plainly as though it were in words, "Though I'm two yards in the waist about, I am now about no waste."

We tolerated his humor for a time, for the amusement of the family, that we might see him disposed of in the manner which he so felicitously suggested, by "Merry Wives;" though not carried to the Thames, but to the political river Styx, from across whose turbid waters no voyager ever returns.

The last we heard of him or his bantling, was in the "Tomb of the Capulets," as it has been called, the Committee on Federal Relations. But his temporary presence among us seems to have left some taint, which, as faithful watchmen upon the walls of our Zion, it is our duty to purge from the household. It is always a dangerous thing to entertain vice or error. I doubt, indeed, if the Merry Wives of Windsor were not to some extent contaminated by entertaining Falstaff, though it was intended as amusement.

It is said by a great poet that

"Vice is a monster of so frightful mien,
As to be hated, needs but to be seen;
But seen too oft, familiar with her face,
We first endure, then pity, then embrace."

And there is a maxim of higher authority which rests upon equally sound philosophy, and is worthy of all acceptance :

"Evil communications corrupt good manners."

Let us attempt to shake off the effect of every evil communication, and lift ourselves up to the heights of a comprehensive patriotism, which shall embrace our

whole country, and the best interests of mankind ! I would have the House possess itself in patience, and await the inevitable logic of swift coming events. But we are an impatient race of men, and this is pre-eminently an impatient generation. We cannot wait for the results of legitimate means. Our cry is "*forward*, FORWARD, FORWARD!" without stopping to see what is before us. Because the most stupendous undertaking which ever fell to a nation's hands, has not been fully accomplished in eight short months, we demand of the Government a "new policy."

We declare to the world, in effect, that the efforts of the administration to enforce the laws, to preserve, protect and defend the Constitution of the United States, by the means found within it, have ignominiously failed—that the Republic has no saving power in itself—that to preserve our nationality, revolution is indispensable. It is all in vain, that there come to us almost daily upon the wings of the morning, news of victorious progress. The thrilling words of the gallant Halleck, "Fort Henry is ours!—the flag of the Union is re-established upon the soil of Tennessee, it shall never be removed!" followed by the glad news from the land of the fallen, that thousands hail with joyous acclamation, the Stripes and the Stars wherever they go, produce no effect upon the minds of those gentlemen who seem to be resolved that in spite of the efforts of our excellent Chief Magistrate, this war shall "degenerate into a remorseless revolutionary struggle;" who demand of the Government, that it shall turn its back upon christianity and civilization, and return to barbarisms which thirty generations have swept from the memory of men!

We hear the key note from afar, sounded by men in high places in the American Senate, who have covered themselves with a halo of brilliant degeneracy, that this war is not to be prosecuted for the preservation of the Union as it is, for the Union as our fathers made it, but that it is to become, not only a war of conquest, but a war of subjugation and extermination; that the very soil is to be violently wrested from the children of the founders of the Republic, and given to a new generation, if not a new race of men.

Why, sir, it was demonstrated to us, but a little time ago, that until it was recommended by the Chief Magistrate of the nation, not even the farewell address of our great and good Washington could be read in one of the Halls of Congress, upon his own birthday, without being accompanied by a war bulletin, from which these turbulent spirits, by a forced and false interpretation, think they derive a little miserable comfort.

We are asked by the spirit of these resolutions, to desert the standard of our country, to desert the honest and faithful chief of the nation, and to join these red republican revolutionists in their work of destruction, if I apprehend them aright.

The question for you to settle to-day is, whether you will, so far as your action can do it, pledge the support of the State of Maine to the revolutionary principles announced in these resolves, as explained and illustrated by the advocacy to which we have been referred; or whether you will support the policy of the President as evinced in his official communications to the country, and enforced by his acts, to make the preservation of the Union and the restoration of the laws, the primary object of the war.

The people have demanded no such action at our hands—the advocacy of no such principles as these resolutions contain. From no quarter of the State has a single petitioner asked for their passage; but on the contrary, we hear upon every side, an almost universal sentiment of condemnation. Some have taken the trouble to express their opposition by remonstrances, and others by a less public expression of their disgust at the efforts of party politicians, in this hour of happy harmony among the people of the State, to divide them, for fear that the party in support of the administration may become so inconveniently large, that their chance for spoils may be lessened.

I hold in my hand remonstrances, numerous signed by citizens of nearly all the towns in my own county, against the passage of these resolves, and asking that the policy of the President may be cordially endorsed.

I will show by the record, by and by, if time shall permit, that these resolutions are diametrically opposed to that policy; and if passed, will be a judgment of condemnation upon the President. Such a judgment the people of this State will never endorse. It seems most extraordinary that it should be attempted just now, when we can almost feel as though the authority of the Government is already restored; and that to-day, the President in his character of *pater-familias*, might almost

extend his arms around every State in the Union, and exclaim, "You are all restored to the paternal care, and all subjected to the paternal authority."

I know, Mr. Chairman, there are disunionists among us, but supposed their number was small, as it always has been; and am not ready to believe that they are represented on this floor. My purpose shall be to show the true character of these resolutions; that they represent the sentiments of disunionists. Secession is not the only form of disunion; and secessionists are not the only disunionists in this country. Whoever proposes to strike down or destroy the Constitution upon which the Union stands, is a disunionist! Every party that ever existed in the country, and every administration from Washington's to Lincoln's, has been pledged to the doctrine that the Constitution confers no power upon the General Government to interfere with slavery in the States. The last Congress, with a large Republican majority, after seven States had attempted to secede, and set up a revolutionary government, with great unanimity declared, that "those persons in the North, who do not subscribe to this doctrine, are too insignificant in numbers and influence, to excite the serious attention or alarm in any portion of the Republic."

But, sir, they do exist, in numbers large or small, and they are here urging the passage of this declaration of their principles—this declaration that it is the duty of Congress to provide by the force of arms, for emancipation. Here, extremes meet; secessionists upon the one side, and abolitionists upon the other, disunionists alike, strike hands together in the direful work of destruction! Their work was not begun to-day, nor yesterday. Disunionism, the fell disease which turns the blood of the heart into gall, and makes of the man a demon! Disunionism, North and South—secessionism and abolitionism—have always alike, been the enemies of the Republic; for these thirty years, twin sisters of evil omen, harpies, dancing in the gray light, but a little distant from the great family fireside of our once happy country, seeking if it might hap the good master should slumber, they could put their sacrilegious hands upon the family gods! Those hands, though in apparent antagonism, are to-day toiling in fraternal harmony, to undermine the foundations of the Government. Ours shall be the grateful effort to restrain them both. Whatever obloquy shall be incurred, through the misrepresentations of designing men, whatever of personal sacrifice shall be necessary with the hope that the contribution of our mite may be of some service in arousing our fellow citizens to a sense of their danger, with humble trust in that Providence which has ruled over our destinies hitherto, shall be presented as a thank-offering upon the altar of our common country.

Now, Mr. Chairman, in respect to these resolves, the first, I do not oppose, though I prefer the substitute of my accomplished friend from Eastport, because it is not only more comprehensive, but is drawn with an artistic skill which better suits my taste, and because I think it would be more satisfactory to the President. The purpose of both as I understand it, is to give assurance to the President, that the State of Maine will stand by him in the employment of every legitimate and constitutional means to suppress the rebellion; to endorse his policy, of keeping ever uppermost as the object of the war, the preservation of the Union and the restoration of the authority of the laws to every portion of the country. There is no man who more cordially endorses this policy of the President than I do. I believe him an honest, conscientious man, and if not possessing the highest qualities of statesmanship, he certainly has a large share of that which is so essential in the administration of affairs, common sense. Though I did not vote for him, he has my hearty and cordial support, and would have, if he were candidate to-morrow.

But in respect to the second resolve, I beg the indulgence and patience of the House, while I proceed in a very uninteresting way, in what must necessarily be a dull, dry argument of questions of constitutional law. I shall address myself solely to the reason, and ask that all passion and party prejudice may be put away, that reason may have its full sway. I take my stand upon the Constitution of the United States; as I know no other anchoring ground near the shores of popular disorder. I dare not step my foot from it, upon the wide and fathomless waste of revolutionary waters, for I see no safety for civil liberty beyond it. In this discussion I shall assume that no member of the House,—no loyal man,—no man who desires to preserve the Union as it is, upon due reflection, proposes to abrogate or overthrow any part of that Constitution. Now in the hour of its peril, every patriot heart clings closer to it than ever, as our only hope! The Union rests upon it—the Republic cannot survive it, it is the last hope of constitutional freedom in this country—

of liberty under law—of liberty without license. Each member of this House is under a solemn oath to support it, and I cannot believe that the oath will be understandingly disregarded. This is the second resolution :

“ *Resolved*, That it is the duty of Congress by such means as will not jeopard the rights and safety of the loyal people of the South, to provide for the confiscation of estates real and personal, and for the forfeiture and liberation of every slave claimed by any person who shall continue in arms against the authority of the United States or who shall in any manner aid and abet the present wicked and unjustifiable rebellion.”

I also hold in my hand the set of resolutions offered by the Senator from Knox, which has been repudiated not only here, but by the almost unanimous voice of the public, and so far as the confiscation and the liberation of slaves is concerned, I should like to have my friend from Augusta, show me the difference between them. And if he cannot show me that a substantial difference exists, I should like to have him tell me why the one should be unceremoniously consigned to oblivion and the other adopted! I should like to have him tell me, upon what principle this action rests. I know there is a difference in the men who offered them, but wherein does the difference of principle consist? Are we for men and not measures? I here present you with the resolve offered by the Senator from Knox, that my question may be answered :

“ *Resolved*, That it is the duty of Congress, by such means as will not jeopard the rights and safety of the loyal people of the South, to provide for the confiscation and liberation of every slave, belonging to any person who shall continue in arms against the authority of the United States, or who shall, in any manner, aid and abet in the present wicked and unjustifiable rebellion.”

They are alike to me mischievous words; introduced for purposes of ambition, and the author well deserves the anathema of Tacitus in his description of the efforts of another demagogue, in another Republic: “ *In nullum reipublicæ usum, ambitiosa loquela inclaruit.*”

THE RESOLVE DEMANDS THE PASSAGE OF A BILL OF ATTAINDER.

What then, sir, does this resolve propose? It proposes that Congress shall provide for the confiscation of estates, real and personal, and for the forfeiture and liberation of every slave of any person engaged in, or in any way aiding the rebellion. True, the rights of loyal subjects are not to be put in jeopardy; but this cannot be, if the slaves of the disloyal are liberated; for one-half of the slaves in a given district could not be set at liberty without destroying or seriously impairing the value of the other half. This proposition need not be argued to those at all familiar with southern society. But suppose it could be done; what is the proposition? It will not be denied that the intent and fair construction of it is that provision shall be made for the immediate and perpetual forfeiture and confiscation of rebel property, real and personal—not the forfeiture or confiscation of a life estate merely.

The *modus operandi* is not declared in the resolve; but I appeal to members of the House, and especially to my friend from Augusta, to say whether the purpose of it is not to forward the bills pending before committees of Congress, and the bill already introduced into the Senate of the United States by Mr. Trumbull of Illinois, which, as it is understood, and may fairly be inferred from their speeches, have the support of a majority of our delegation in Congress? I refer to that series of legislative acts now under consideration, by which *all* the property of rebels, lands and chattels, is to be instantly vested in the government, by the act of engaging in the rebellion; without legal process, trial and condemnation; the perpetual title to which is to be disposed of at the pleasure of the government. If this is not the meaning of the resolve, I should like to be answered now and here; as if it is not, and the language can be so modified as to bring it within the constitutional power of Congress, we have no occasion of difference, for I will then not only not oppose it, but will vote for it.

Is it proposed, sir, that Congress shall make a law providing for the forfeiture of a life estate only in rebel property, and that it shall append to that law the mode of procedure that is described by the constitution as “due process of law?” And that no slave in the Southern States, and the title to no piece of property, real or personal, is to be taken from the rebel under that law, until he is convicted as a felon by a jury of the vicinage, and his property condemned under legal process by some

court of the United States? Is such the proposition of this resolve? Will my friend from Augusta say so? Because if it is, we shall have no occasion to differ upon this point; though I will by and by show him, that if his desire is to get rid of slavery as far as possible, that there is power in another department of the government to do much more than can be accomplished in this mode. And if such is the purpose, I would ask that the resolution be so modified as to conform to this idea. As it now stands, no fair-minded person will say that such is its purport. It contemplates immediate confiscation of the estates of rebels, and emancipation of their slaves.

And as you are silent, and as the resolve is otherwise meaningless, I shall assume that its purpose is, as has been openly declared here, to forward the confiscation bill of Senator Trumbull, and the other measures pending in Congress which are in consonance with it, called the territorial bills, providing for the organization of the whole southern country into territories, with territorial governments, upon the idea that the State governments have become extinct—that the citizens of those States have by the act of rebellion forfeited all their rights under the State governments. And as a Washington correspondent of a Republican newspaper recently expressed it, they are not to be permitted to come back into the Union, or to have the rights of citizenship, until they have passed through a state of tutelage—until we, in our wisdom, and in our own good time, shall determine that they are fit for self-government. Then they are to be permitted to come back, though not to bring their property with them; for the slaves are to be liberated, and the plantations given, either to the liberated negroes, or sold to new settlers.

"Whom the Gods would destroy, they first make mad," was a maxim of the ancients. If the authors of these mad schemes, by our advice, or against our advice, are to give law to the country, her days are already numbered! And our duty, presently, will be to perform, not offices for the living, but the requiem for the dead! Will anybody?—will my friend from Augusta, stand up here and say that it is competent for a Republican government to hold colonies, and govern a people as military dependencies, who do not participate in that government? Such is the effect of these propositions.

The resolution in question, then, proposes, in effect, to have Congress pass—

(1) A bill of attainder against all rebels; and (2,) to fix as a penalty for the crime of which they are thus attainted, the perpetual forfeiture of all property, or the forfeiture of the *perpetual title* to their property, not a life estate merely.

The constitution expressly prohibits both. Art. 1, sect. IX, § 3, declares that "Congress shall pass no bill of attainder." Which means that by legislative act, no person can be either convicted or punished for crime in person or property. In another article, it provides that "no person shall be held to answer for a capital or otherwise infamous crime, unless presented by a grand jury;" * * "nor shall he be deprived of life, liberty or property, without due process of law;" which has always been held to mean the process of the common law. Still another provision declares, that "the trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the State where said crimes shall have been committed." If Congress could pass a bill of attainder, or visit upon the rebels as a consequence, or punishment of their crime, the forfeiture of property without the intervention of the courts, as is proposed by the Trumbull bill, (which is the only practical embodiment of the idea of this resolution now before Congress,) the rebels would be deprived of the benefit of these provisions of the constitution.

Mr. Madison, who has been called the Father of the Constitution, in the forty-fourth number of the *Federalist*, says of "Bills of Attainder," that they "are contrary to the first principles of the social compact, and to every principle of sound legislation"—that they "are expressly prohibited by declarations prefixed to some of the State constitutions," and "are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights."

Judge Story, the commentator upon the Constitution of the United States, in vol. 2d of his commentaries, § 1344, says: "Bills of attainder, as they are technically called, are such special acts of the legislature, as inflict capital punishments upon persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a

milder degree of punishment than death it is called a bill of pains and penalties. But in the sense of the constitution, it seems, that bills of attainder include bills of pains and penalties; for the Supreme Court have said, 'A bill of attainder may affect the life of an individual, or may confiscate his property, or both.' In such cases, the legislature assumes judicial magistracy, pronouncing upon the guilt of the party without any of the common forms and guards of trial, and satisfying itself with proofs, when such proofs are within its reach, whether they are conformable to the rules of evidence, or not. In short, in all such cases, the legislature exercises the highest power of sovereignty, and what may properly be deemed an irresponsible despotic discretion, being governed solely by what it deems political necessity or expediency, and too often under the influence of unreasonable fears or unfounded suspicions. Such acts have been often resorted to in foreign governments as a common engine of state; and even in England they have been pushed to the most extravagant extent in bad times, reaching, as well to the absent and the dead, as to the living. The punishment has often been inflicted without calling upon the party accused to answer, or without even the formality of proof; and sometimes, because the law, in its ordinary course of proceedings, would acquit the offender. The injustice and iniquity of such acts, in general, constitute an irresistible argument against the existence of the power. In a free government it would be intolerable; and in the hands of a reigning faction, it might be, and probably would be, abused, to the ruin and death of the most virtuous citizens. Bills of this sort have been most usually passed in England in times of rebellion, or of gross subserviency to the crown, or of violent political excitements; periods in which all nations are most liable (as well the free as the enslaved) to forget their duties, and to trample upon the rights and liberties of others."

This leaves nothing to be said on the subject, and I ask for it the careful consideration of the House. It covers the whole ground. It will be noticed that he condemns the passage of such bills, even in times of rebellion, which he declares to be periods in which all nations are most liable to forget their duties, and trample upon the rights and liberties of the subject.

That the Trumbull bill, or any other bill, which would accomplish the purpose of this resolve, tried by the definition and description of Judge Story, is, and must be, a bill of attainder, cannot be doubted. Will any member of the House deny that the purpose is to accomplish the immediate forfeiture of the property of the rebels, and forfeiture and liberation of their slaves, without waiting for the slow machinery of the courts of law to adjudicate upon the case of every individual rebel, and every piece of property, and every negro? All will perceive that this could not be done until peace returned, the courts were restored, and the civil authorities resumed their sway in the southern States. And then it would require a whole generation to accomplish the object.

But if it is not proposed to await the process of law, then the only mode in which Congress "can provide for" the accomplishment of the purpose, is by passing a bill which shall punish the rebels without trial; by declaring them outlaws; and then proceed to confiscate their property, as the Trumbull bill does. That bill, as any such act necessarily must, convicts and punishes without trial. I read the first two sections of the bill:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the property, real and personal, of every kind whatsoever, and wheresoever situated, within the limits of the United States, belonging to any person or persons beyond the jurisdiction of the same, or to any person or persons in any State or district within the United States, now in a state of insurrection and rebellion against the authority thereof, so that in either case the ordinary process of law cannot be served upon them, who shall, during the present rebellion, be found in arms against the United States, or giving aid and comfort to said rebellion, shall be forfeited and confiscated to the United States; and such forfeiture shall take immediate effect upon the commission of the act of forfeiture, and all right, title and claim of the person committing such act, together with the right or power to dispose of or alienate his property of any and every description, shall instantly cease and determine, and the same shall at once vest in the United States.

"SEC. 2. And be it further enacted, That every person having claim to the service or labor of any other person in any State under the laws thereof, who during the present rebellion shall take up arms against the United States, or in any manner give aid and comfort to said rebellion, shall thereby forthwith forfeit all claim to

'such service or labor, and the persons from whom it is claimed to be due, commonly called slaves, shall, *ipso facto*, on the commission of the act of forfeiture by the party having claim to the services or labor as aforesaid, be discharged therefrom, and become forever thereafter free persons, any law of any State or of the United States to the contrary notwithstanding; whenever any person claiming to be entitled to the service or labor of any other person declared to be discharged from such labor or service under the provisions of this act, shall seek to enforce such claim, he shall, in the first instance, and before any order for surrender of the person whose service is claimed, establish not only his title to such service, as now provided by law, but also that he is and has been, during the existing rebellion, loyal to the Government of the United States, and no person engaged in the military or naval service of the United States shall, under any pretence whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person, or to surrender up any such person to the claimant."

The first section provides, that all property, personal and real, shall, by the very act of rebellion, "be forfeited and confiscated;" and at once be vested in the United States, without the intervention of legal process. It is to be confiscated—i. e., to be "adjudged to be forfeited to the public treasury" by legislative act! Could any act of Congress be more clearly a bill of attainder? Does the act not by its terms "confiscate a person's property," in respect to which, the Supreme Court of the United States declare that "the power of the legislature over the lives and fortunes of individuals is expressly restrained?"

What is the proposition of the second section of this bill? It is, that the moment this bill passes, the slaves of every person engaged in the rebellion, or who in any manner gives aid or comfort to it, whether forced into it or not, shall, *ipso facto*, and at once, be set free, "and shall become forever thereafter free persons, any law of any State, or of the United States, to the contrary notwithstanding." The constitution of the United States ought also to have been included to preserve the harmony of ideas. No legal process is here contemplated. But the slaves being liberated by the act of Congress, are to be forever free.

But the gentleman who drew this bill seems to have had some idea of its legal character, and that the master's right to the negroes liberated by its terms, might be successfully asserted, as soon as peace returns, and the civil authorities resume their sway in the country. No court of the United States ever sat or ever will set under the constitution, which would not declare such an act as this absolutely null and void. The bill proceeds to impose disabilities in the way of recovering the property which are equally obnoxious to the constitution. It provides that, "whenever any person claiming to be entitled to the service or labor of any other person, declared to be discharged from such service or labor under the provisions of this act, shall seek to enforce such claim, he shall in the first instance, and before any order for the surrender of the person whose service is claimed, establish not only his title to such service, as now provided by law, but also that he is and has been during the existing rebellion, loyal to the government of the United States."

Every loyal person who loses slave property is, by the terms of this section, presumed to be a rebel, and to be so treated, until he affirmatively establishes the fact of his loyalty before some court of the United States; and that his loyalty has continued every moment of time from the commencement of the rebellion until its close. It is to be, not enough for him to show that service is due to him, and that it has never been forfeited in any mode known to the constitution of the United States; but he must go further, and prove a negative, that he not only has not been convicted, but that there never was any ground upon which he might have been convicted of crime. Would it not be an impossibility, in a very large number of instances, for those who have been loyal in spirit, and perhaps in act, to prove their innocence? Every day's progress of our forces reveals to us new evidence of the fact that large numbers, if not a majority of the people in the States in rebellion, have yielded but an apparent obedience to the rebel government, under a reign of terror, to escape the loss of life and property, and the grossest indignities to their families. And we have the evidence that large numbers have been forced to take up arms against the government which they would most cheerfully have obeyed. I believe it will yet be demonstrated, that these two classes embrace more than half the population of every insurgent State; and in this belief, consists the highest hope of the future of the country, that this effort of the government is to be successful, not only in overcoming opposition to the laws, but in winning the people of every section of the Union

back to a participation with us in the government of the country. There can be no such thing as a permanent Republican government over any people, *without the consent of the governed*. It is not consistent with the genius of our institutions to hold for any considerable time a large section of the country in military subjection. Our great duty now is, to so conduct the war, that while we convince them that there is power in the government to sustain itself, we shall so carefully preserve every constitutional guaranty of personal rights and liberties, as to persuade the deluded or misguided subject, that his highest hope for prosperity and happiness for himself and his posterity, is to return to his allegiance. In times of civil war, or armed conflict of any kind, among the people of a nation, the passions are inflamed,—the mind is excited, and reason loses its sway. It is difficult to look beyond the conflict and discern the permanent good of the country. When the storm cloud is upon us we can hardly persuade ourselves that there is clear sky and bright sunshine in the future. In such times, if ever—"He that ruleth his spirit, is better than he that taketh a city."

We have great occasion for congratulation that, whatever may be the mental or moral status of many members of Congress, the Chief of the nation gives us large evidence that he is able to "rule his spirit," and that the whole army, as well as the various departments of it, is under the command of Generals of the most catholic faith in the Constitution, and the constitutional power of the Government to sustain itself, and to restore to every section of the country our once happy agreement in the execution of the laws. They carry the sword in one hand and the olive branch in the other. While they threaten sure destruction to those who persist in resisting the Government, they proclaim the purpose of that Government to be, not to "*tax, fight and emancipate*," but to see that the constitutional rights of all shall be most amply secured. In this way peace and harmony are to be restored, if peace and harmony ever again come to us.

But to return to the question. Mr. Trumbull contends that his bill does not violate the Constitution. Here is his explanation of the bill and his argument to support it, taken from the Boston Journal of the 27th February :

"*Senator Trumbull on Confiscation.* The great importance of this subject leads us to copy what appears to be a carefully condensed report of Senator Trumbull's explanation of his bill, made in the Senate on Tuesday, as follows :

"Mr. Trumbull referred to and read at some length from the decision of Judge Sprague of Massachusetts, made last month on the condemnation of the Warwick, and then proceeded as follows : But what seems to embarrass some minds is the difficulty of treating these men both as citizens and traitors. These rebels in the Southern States occupy just exactly that position."

Whose mind has been troubled by that proposition ? None but a "citizen" can be a "rebel." Rebellion consists in levying war against the United States, not by foreigners or aliens, but by citizens of the United States. No person can commit treason against a Government to which he does not owe allegiance. We have here at the threshold of the Senator's speech, a failure to distinguish the legal status of a rebel, which leads him into many errors. He holds, as will appear in subsequent parts of his speech, that though they are citizens, they are not entitled to the rights of citizens, because they are rebels, because they are guilty of crime, their rights of citizenship are forfeited. It is a grave error. He says :

"Whenever a rebellion becomes of such magnitude as to be entitled to be called a civil war, the parties are to be governed by the ordinary rules of war, while it lasts, and in the prosecution of such a war the Government is bound to observe the same rules as it would observe if in a war with an independent nation. But that does not prevent the Government, after the war is over, from trying as a traitor any person that may be in its hands, and that is the way, I take it, which this rebellion is finally to be put down. Nobody expects to try all the 300,000 men now in arms against the Government, and hang them, though they are undoubtedly traitors. But we will give them the rights of belligerents, and take them as prisoners of war, and when they return to their loyalty again, those who have been seduced from it, we will release them ; but the ringleaders of this rebellion, the instigators of it, the conspirators who have set it on foot, will, I trust, be brought to the halter, and never be discharged unless they are discharged by Petit Jury, who shall say they are not guilty of treason."

The qualification of the rule applying the laws of war to a rebellion, I will hereafter state. But the Senator recognizes the right to try, convict and punish the persons engaged in this war, as for treason against the United States, after the conquest is complete. This is sound doctrine and he is bound by its consequences. They will be found fatal to the purposes of his bill. If they are citizens of the United States, if they are subjects of the Government, are they not entitled to its benefits? If they have not forfeited their character as members of the State, are they not entitled to its protection? Can they be punished by the laws, and at the same be deprived of their protection? Is not their punishment to be measured by the laws? You would say, that one who did not admit these propositions, was laboring under a strange delusion. But Senator Trumbull does not, and strange as it may seem, while in declaring the rights of the Government against the rebel, he appeals to the Constitution and the laws of the country; when he declares the rights and immunities of the rebel he refers him to the law of nations, and denies him the benefit of the laws of his own country. Referring to what I have just quoted, he says:

"These are our rights as against these people, but our right as against an enemy is a right of confiscation. We have now the right to take the person and property of the enemy and destroy it wholly, if necessary. I know that according to the modern usage of civilized nations, total destruction does not follow. I know that in our modern times prisoners who are captured are not put to death or reduced to slavery, and property has not generally been confiscated; but the right to confiscate property, real or personal, for there is no distinction, is undoubted. Look at the condition of things at Port Royal, where all the inhabitants have fled and left the country desolate. Is it to remain unoccupied, and a wilderness, or shall we treat it as the European nations did the places on this continent, when the savages fled and left the territory unoccupied? How does the conduct of the people at Port Royal differ from that of the Aborigines? They leave everything to waste, abandoning the country, and we may take possession of that country and apportion it out among the loyal citizens of the Union."

We have no authority to take "the property of the enemy and destroy it wholly," for the Constitution, which gives us all the rights we possess in respect to that property, forbids it, as I will presently show. I will also show that even if we were to be governed by the law of nations, regardless of the law of our own country, we have no such right. Mr. Trumbull appeals to the Constitution for authority to punish the owners of this territory for treason. He that appeals to the law must abide by the law. If it is the law of the country for one party, it is the law for both.

The abandonment of property at Port Royal is but temporary, and there is no analogy between it and the case of the "Aborigines" which he puts. When I come to consider the rights of conquest, I will show that an important distinction is made between the rights of the conqueror of a civilized, and the conqueror of a savage nation. But so far as the territory of this country came to us by the abandonment of the native race, the circumstances essentially differ from those stated by the Senator.

The rebels have fled before an invading force, leaving their property generally under the charge of overseers or servants; and whether in charge or not, with the purpose and expectation of returning to enjoy it when peace returns. Their flight does not differ from that which often takes place in the warfare of civilized nations. The flight of the savage was from the haunts of civilized men. He did not intend to return and possess the soil. He fled from the face of civilization, because the forest was more congenial to his mode of life, and to that nature which no education, no familiarity with the arts and sciences has ever changed. The son of the North American Indian, within our college walls, sighs for his forest home. The savage as he saw his hunting grounds fall before the white man's axe, voluntarily took up his march for the setting sun. The rebel is driven back from his plantation but for a day before the invading hosts of the Union. He knows the war is not to be perpetual. Either the government will be successful in re-establishing its authority, or the insurgents will accomplish their independence. In either case, and whether the result is to be governed by the laws of his own country, or by the law of nations—by any law the authority of which is recognized by civilized men, he knows that his property is to return to him. That though the right of eminent domain may change—though the government may change, the right to private property will not—that according to all laws, national or international, if his property is taken from him—that property which he has not employed in resisting the government,—

it is but temporary sequestration, and when peace returns, his property will return with it. And, Mr. Chairman, herein does the "conduct of the people of Port Royal differ from that of the Aborigines."

But strangely intermingling the law of the country and the law of nations, the Senator next proceeds to deny that his bill is a bill of attainder. He says :

"And this act of confiscation by which we do this is not a bill of attainder. Some have objected to the constitutional power to pass this bill, because they say it is a bill of attainder. It is not a bill of attainder at all. It does not corrupt the blood of a person; it operates upon his property. The Supreme Court has expressly decided in the case of *Brown against the United States*, that Congress had authority to pass a confiscation bill. And if Congress has the power to confiscate the property of an enemy, then an act of confiscation must be something different from a bill of attainder, for the Constitution expressly declares that no bill of attainder shall be passed."

He declares that it is not a bill of attainder, but in effect admits that if it was it would not be competent for Congress to pass it. Let us try his bill by his own admissions. What is the test? He says "it is not a bill of attainder at all, it does not corrupt the blood of a person, it operates upon his property," and cannot therefore be a "bill of attainder." He appeals to the Supreme Court, let him abide its judgment. That court, speaking by the great and good Chief Justice Marshall in the case of *Fletcher vs. Peck* (6 Cranch, 138) says: "A bill of attainder may affect the life of a person, or may confiscate his property, or may do both. In this form the power of the Legislature over the lives and fortunes of individuals, is expressly restrained." Mr. Trumbull's test therefore, that a bill of attainder must corrupt the blood, fails.

The case of *Brown vs. the United States*, 8 Cranch, 110, referred to by several advocates of this confiscation and emancipation bill, has no reference to this provision of the Constitution; and it can have no possible bearing upon the right of the Government to confiscate the property of one of its own subjects for the crime of treason. It relates wholly to the law of prize in case of a foreign war, in which case the Constitution makes it the duty of Congress to provide for confiscation of property which by the usages of nations is lawful prize of war.

This is the language: "Congress shall have power to grant letters of marque and reprisal, and make rules concerning captures on sea and land." This provision has been understood by every generation of statesmen and publicists in this country, to refer to foreign war, and not to domestic war, or the collision of arms, which results from the performance of the duty by the Government, to "suppress insurrection."

Brown's case was one of prize property found in this country after a declaration of war against England, belonging to British subjects. There can be no confiscation of such property without an act of Congress providing the mode of condemnation.

The Senator does not seem to understand the character of a bill of attainder when he says that "if Congress has the power to confiscate the property of an enemy, an act of confiscation must be something different from a bill of attainder." An act may be both an act of confiscation and a bill of attainder, as his bill is. Or it may provide for confiscation, by due process of law, and not be a bill of attainder, which his bill does not. The essence of a bill of attainder is, that it is a *legislative judgment of conviction*.

In his first explanation of his bill, Mr. Trumbull is reported in the *National Intelligencer* to have said :

"The distinction which he made and the basis of the bill which has been introduced to confiscate the property of rebels went upon the idea that the Constitution of the United States, which guarantees a jury trial, and which declares that no man shall be deprived of life, liberty, or property without due process of law, has no application whatever to a district of country where the judicial tribunals are utterly overthrown, and where the military power is called on to put down an insurrection. Where the judicial authority cannot be enforced, the military power governs."

To which a distinguished writer upon constitutional law thus replies :

"This corresponds with what the writer had supposed to be Mr. Trumbull's views. The military power, he says, governs, where the judicial power, from temporary obstructions, cannot be executed. But does not this gentleman, exercising the re-

‘sponsible function of a Senator of the United States, see that the whole question is ‘in relation to the extent to which the military power governs in such circumstances, ‘and what it may do? Is he not aware that the limitations of manner and extent ‘of punishment imposed upon the power of the Federal Government in respect to ‘life, liberty and property, bind its military as well as its civil power? Does the ‘Constitution say, you may take property for offences without due process of law, ‘provided you take it by military power? Does it say, that because there is a mob ‘around the Court House, and the Judge and Marshal are driven away, that you ‘may use military force to confiscate the property of the mob? It says, undoubtedly, ‘that you may use military means to suppress the insurrection, and to remove the ‘obstructions to the exercise of the judicial function. But it not only does *not* say ‘that your military power shall usurp the place of the judicial machinery in inflicting punishment, but it expressly declares that the offence of treason, or combined ‘resistance to the authority of the Government, shall be punished *only* by judicial ‘machinery. Forfeiture is punishment. It is not a military proceeding; it is not the ‘exercise of military power. If it is to be used at all, it cannot be used until the ‘military power has removed the obstructions to the use of the civil power.

‘It is a monstrous announcement, coming from the Senate of the United States, ‘that the Constitution ‘has no application whatever’ to the States where the rebellion exists. One is tempted to wish that the author of such a doctrine would examine the history of the insurrection with which Washington’s administration had to ‘deal, and the constitutional powers with which such men as Washington and Hamilton and Jefferson and Knox and Randolph held themselves to be clothed. There ‘is excellent instruction in that piece of history.”

In the published debates upon these resolutions, their advocates have declared that the purpose is to promote the passage of the Trumbull bill.

Senator Vinton in his elaborate argument upon them, says :

“The confiscation bill of the Judiciary Committee in Congress by Senator Trumbull of Illinois, embodies precisely the spirit of these resolves.”

And he declares that the object is, not that Congress shall provide a mode of confiscation, to be carried into effect by the proper officers. But Congress is to pass a judgment of confiscation, and the army is to execute it. Here is what he says :

“We have no civil power to carry into execution an act of confiscation in the rebel States, for there are no United States Courts there. Therefore Congress will, after ‘enunciating the great principle, have to bid the army to go forth to the execution ‘of this law.”

This is what is characterized in the forcible language of Judge Story, as “trampling upon the rights and liberties of the people.” And every person, so long as he remains a subject of this Government, has rights and liberties, however dark his crimes.

This great principle of civil liberty, that “no person shall be deprived of life, liberty or property, without due process of law,” did not originate in our constitution. Our ancestors brought it with them in the Mayflower, and first planted it upon Plymouth rock. Blackstone tells us that “it is a part of the liberties of England, and greatly for the safety of the subject, that the king may not enter upon, or seize any man’s possessions, upon bare surmise, and without the intervention of a jury.” * * * “And by the bill of rights at the Revolution, it is declared, that all grants and promises, of fines and forfeitures of particular persons, before conviction, are illegal and void, which indeed was the law of the land in the time of Edward the Third.” The bill of rights to which he refers, was established upon the accession of William of Orange in 1689, after the revolution under James the Second. Edward the Third came to the throne in 1327.

So it appears that, what we now ask Congress to do, is in plain violation of a principle held sacred by our race, “as a part of the liberties of England,” as early as the fore part of the fourteenth century; violated at times, but when violated, producing revolution, until finally established upon the accession of William and Mary by the new bill of rights, since which it has never been disturbed. Our fathers put it into the constitution of the United States, as a great and perpetual principle of American liberty.

NO CONSTITUTIONAL POWER OF CONFISCATION AND LIBERATION.

My *second* proposition is this: Even if the attainer or conviction, in the manner contemplated by this resolution, was permitted by the constitution, the punishment proposed is equally violative of it.

What is the crime of which the rebels are guilty? What is the *act*? Is it not that of "levying war against the United States?" This is declared to be *treason*; and it is *nothing but treason*; and can only be dealt with by Congress as *treason*.

The constitution, art. 3d, sect. 3, declares that

"1. Treason against the United States shall consist only in levying war against them, or adhering to their enemies and giving aid and comfort to them. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court."

"2. The Congress shall have power to declare the punishment of treason; but no attainer of treason shall work corruption of blood, or *forfeiture*, except during the life of the person attainted."

Congress has the "power to *declare* the punishment of treason," not to *inflict* it.

But what does the declaration that attainer of treason shall not work forfeiture, except during the life of the person attainted, mean? Attempts have been made in this discussion to get rid of the idea that it restrains Congress from making a law to confiscate the property of rebels—to vest the permanent title to it in the government. Some have attempted to distinguish between the terms forfeiture and confiscation, though both terms are used in the resolution under consideration. "*Confiscation* of estates, real and personal, and *forfeiture* of every slave," &c. Others contend that it simply means that the act of forfeiture must take place during the life of the person. I believe that until this war commenced there was never any difference of opinion about its meaning. The design was to prohibit the government from taking the property of its subjects from their children as a punishment for the crime of treason. We learn from contemporaneous history the purpose and the reason of it. Mr. Madison, in the 43d number of the *Federalist*, discussing this provision, says:

"As treason may be committed against the United States, the authority of the United States ought to be able to punish it. But as new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free governments, have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for the conviction of it; and restraining the Congress even in punishing it, from extending the consequences of guilt beyond the person of its author."

Judge Story in commenting upon the severity of the punishment of treason by the English Common Law, says:

"The reason commonly assigned for these severe punishments, beyond the mere forfeiture of the life of the party attainted, are these: By committing treason the party has broken his original bond of allegiance, and forfeited his social rights. Among these social rights, that of transmitting property to others is deemed one of the chief and most valuable. Moreover, such forfeitures, whereby the posterity of the offender must suffer, as well as himself, will help to restrain a man, not only by the sense of his duty, and dread of personal punishment, but also by his passions and natural affections, and will interest every dependent and relation he has, to keep him from offending. But this view of the subject is wholly unsatisfactory. It looks only to the offender himself, and is regardless of his innocent posterity. It really operates as a posthumous punishment upon them, and compels them to bear, not only the disgrace naturally attendant upon such flagitious crimes, but takes from them the common rights and privileges enjoyed by all other citizens, where they are wholly innocent, and however remote they may be in the lineage from the first offender. It surely is enough for society to take the life of the offender as a just punishment of his crime, without taking from his offspring and relatives that property which may be the only means of saving them from poverty and ruin. It is bad policy too, for it cuts off all the attachments which these unfortunate victims might otherwise feel for their own government, and prepares them to engage in any other service, by which their supposed injuries may be redressed, or their hereditary hatreds gratified. Upon these and similar grounds, it may be presumed that the

'clause was first introduced into the original draft of the Constitution, and, after 'some amendments, it was adopted without any apparent resistance.' 2 Story's 'Com. on the Constitution, p. 177.

Judge Story refers to Mr. Madison, who was then living, and who, with Mr. Hamilton and Mr. Jay, were the authors of that series of articles called "The Federalist," written pending the adoption of the Constitution, to instruct the people in its provisions. No more distinct announcement of the principle could be made, that even in time of rebellion, Congress should have no power for the treason of the parent, to take the property from the child.

The provision was deliberately adopted, and is based upon this great principle of Republican government, that every inducement shall be held out to retain the consent of the governed, which is consistent with the safety of the State.

In discussing this provision, Chancellor Kent says: "The tendency of public opinion (in this country) has been to condemn forfeiture of property for crime, as being a hard punishment for the felon's posterity. 2 Com. 385. And again, "Forfeiture of estate and corruption of blood under the laws of the United States, including cases of treason, are abolished." Id. 386.

2 Bouvier's Institutes, p. 376, it is said "By the Constitution of the United States it is declared that no attainder of treason shall work corruption of blood or forfeiture (of estate) except for the life of the person attainted. And by a statute of the national legislature, it is enacted that no conviction or judgment for the offences mentioned in the act, shall work corruption of blood, or forfeiture of estate. As the offences punished by this act are of the blackest die, including cases of treason, the punishment of forfeiture for crime, may be considered as abolished by the General Government."

The founders of the Republic so cherished this principle, and were so well satisfied with the reason in which it is founded, that the first Congress assembled under the Constitution, went even beyond the inhibition of that instrument, and abolished all forfeiture of property for the crime of treason; and although a serious rebellion broke out three years after, to suppress which the militia of four States was required, that statute was suffered to remain, and to this day, is the law of the land.

Our own State Constitution adopts the same principle, and all forfeiture for crime is forbidden. Art. 1 Sect. 2. So it is in most other States of the Union.

Thus it is established by the most indubitable authority, that Congress has no legislative power "to provide for the confiscation of estates, real and personal, and for the forfeiture and liberation of slaves" of rebels. And they have no other than legislative power. This is indeed admitted in effect by the two chief advocates of the resolutions in the Senate, Senators Smart and Vinton, when their arguments are considered together. Mr. Smart in his second speech, says:

"By the Constitution of the United States, Art. 3, Sec. 3, it is declared that 'no attainder of treason shall work corruption of the blood or forfeiture except during 'the life of the person attainted.' If rebel slave property is simply 'forfeited,' does 'not that property revert to the heir after the death of the rebel holder? You take 'a slave under this act and decree him 'forfeited' to-day. The holder dies to-morrow. Might not the son of the rebel come in the next day and claim the slave? 'Does not the act which the Senator approves make the government a slaveholder 'for a term of years, with the right of reversion to the heir of the person whose estate 'had been decreed forfeited? It is held by some that no title to a slave can vest in 'the government. If so, still the title being only taken from the traitor and there 'being no authority in the act to declare the slave emancipated as a war necessity, 'would not the title to him simply remain in abeyance till the death of the rebel 'holder, and might not the heir then claim the slave?"

That Mr. Holt takes this view of the act of the last Congress is apparent from his letter of September 12th, 1861, to the Post. He says:

"The act of Congress providing for the confiscation of estates of persons in open 'rebellion against the government, was a necessary war measure, accepted and fully 'approved by the loyal men of the country. It limited the penalty of confiscation '[forfeiture is the word used in the act] to property actually employed in the service of the rebellion with the knowledge and consent of its owners, and instead of 'emancipating slaves thus employed, left their status to be determined either by the 'courts of the United States or subsequent legislation."

But the Senator seeks to escape the inevitable consequences of his own logic, by an

assumption somewhat amusing in a gentleman of "statesmanlike" attainments. He says :

"It will be observed that this act provides that a slave shall be '*forfeited*,' not '*confiscated*.' It does not provide that he shall be emancipated or '*liberated*' agreeably to the resolves before us. I have no doubt of our right to emancipate or '*liberate*' under the war power; but if we only provide for '*forfeiture*,' we are bound by the precise legal meaning of that word as defined in our Constitution, and regular adjudications.

"And again, our Constitution has made the distinction certain and fixed. '*To confiscate*' is a war power and cuts off property from the holder *and his heirs*. '*To forfeit*' does not."

That is, Congress has no power under the Constitution to provide for the forfeiture of rebel property, but they may confiscate it, which is the act of adjudging property to be forfeited. Let us see how, according to this theory, the framers of the Constitution did their work. Their object was, as Mr. Madison tells us, "*To restrain Congress in the punishment of treason, from extending the consequences of guilt, beyond the person of the author.*" And Judge Story, commenting upon the purpose and policy of this clause in the Constitution, says : "*It is surely enough for society to take the life of the offender as a just punishment of his crime, without taking from his offspring and relatives, that property which may be the only means of saving them from poverty and ruin.*" * * * Upon these and similar grounds, the clause was introduced into the Constitution."

The purpose then, was to deprive the government of the power of taking the property of rebels "*from their offspring or relatives.*" To accomplish this purpose, they declare that there shall be no forfeiture. But according to the views of the Senator from Knox, they omit to provide that the same thing shall not be done by confiscation. They had not the wisdom to distinguish betwixt "*tweedledum and tweedledee*," and so their work is all in vain. Now what is the difference in the meaning of the terms? Let the Senator's friend from Cumberland answer him. He says the word confiscation, according to Webster, means :

"To adjudge to be forfeited to the public treasury, as the goods or estate of a traitor or other criminal by way of penalty; or to condemn private forfeited property to public use.

"The estate of the rebels was seized and *confiscated*."—Anon.

According to Worcester :

"To transfer private property to the government, or State, by way of penalty for an offence; to cause to be forfeited.

"It was judged that he should be banished and his whole estate *confiscated*."—Bacon.

"Transferred to the public as forfeit; forfeited; confiscated.

"Thy lands and goods
Are, by the laws of Venice, *confiscate*
Unto the State of Venice."

[Shak.]

"The term is used and well understood in the law. It means an act by which the estate, goods, or chattels of a person who has been guilty of some crime, or who is a public enemy, is declared to be appropriated for the benefit of the public treasury."

The term confiscation cannot be applied to the power of the government over the property of the rebels, except in the sense of forfeiture, as it but carries forfeiture into effect, and it probably never before occurred to the most visionary speculator upon the constitutional powers of the government, that any such distinction could be made. The words, though not with strict accuracy, are constantly used as synonyms in connection with this provision of the constitution. An instance occurs in the letter of Mr. Holt, just quoted. They are so used in these resolutions, by which their advocates should be precluded. Congress is asked "*to provide for the confiscation of estates, real and personal, and for the forfeiture and liberation of every slave, &c.*"

We have then, for what it is worth, the admission of the originator of these resolves, that the purpose proposed cannot be accomplished without violating the constitution. He says : (after reciting the provision of the constitution) "*If rebel slave property is simply forfeited, does not that property revert to the heir after the death of the rebel holder?*" If he means "*rebel slave property*" not employed as an instru-

ment of resistance to the government, the answer is obvious, as the question indicates. We have learned that "simply forfeited" and confiscated, as applied to the powers of government over rebel property, mean one and the same thing. If then, it is not in the power of Congress to provide for the forfeiture of more than the life estate of the rebel in his slave, how can the slave be liberated?

The Senator's argument, thus as Mr. Sumner would say, would seem to have become "*felo de se*." Failing to sustain his distinction between forfeiture and confiscation, he admits his case all away. There is another difficulty worthy of observation. The Senator from Cumberland says:

"To confiscate property then is to discharge the ownership of it from the rebel or enemy and transfer that same ownership to the government. In applying this term 'to slaves there is a difficulty. They are a very peculiar species of property. They are property held under the laws of slave States—are recognized by the constitution as property. If the slaves of rebels are confiscated then the ownership of them will be transferred to the government of the United States. This government cannot hold slaves; that is settled."

Adopt all this Senator's premises and what is the result? His premises are, (1.) That "to confiscate property is to discharge the ownership of it from the rebel, and to transfer the same ownership to the government." (2.) "This government cannot hold slaves; that is settled." What other conclusion can be drawn from these premises, than that slaves are a species of property which cannot be confiscated? The purpose of forfeiture or confiscation, viz: to enrich the treasury of the country, cannot, according to this theory, be accomplished. These resolutions propose, (1,) forfeiture of slaves to the government, and (2,) liberation. If government cannot hold slaves, how can it liberate them? Could a man give away that which he did not possess?

I leave these questions to be settled by the advocates of the resolutions among themselves. I will not undertake to settle them for them. But as Congress has power to provide for the taking of a life estate only in the slaves of rebels, it cannot of course "provide for their liberation." They could only be set free during the life of the owner.

THE WAR POWER.

We hear a great deal about the "War power" of the government, and singularly novel theories have been started in respect to it; which, to a surprising extent, have gained credence and support in the other branch of the Legislature. The government has an ample war power to meet every emergency. The constitution contemplates and provides for two kinds of war, (if rebellion is to be called war, as in a certain sense it is;) *public*, or foreign war; and *domestic* war, or war levied by *subjects* of the government. This distinction appears in the preamble, which declares that the constitution is ordained and established "to insure domestic tranquility," and to "provide for the common defence," and is carried through every branch of the constitution. For illustration: the eleventh paragraph of the eighth section of the first article, provides, that Congress shall have power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and sea." This is *foreign* war. The "levying war against the United States," in which treason consists, referred to in section three, article one, is *domestic* war. And the manner of dealing with each is clearly provided for.

The constitution has amply provided the means of reducing rebellious subjects to obedience; and it treats them as *subjects*, not as a foreign power. It declares that Congress shall have power to provide for calling forth the militia "to execute the laws of the Union," and "suppress insurrections." Congress is also to provide for the raising and support of an army and navy; for organizing, arming, disciplining and governing the militia; and to make rules for the government of the land and naval forces. The President is made the commander-in-chief of the army, navy and militia; and it is his duty to "take care that the laws be faithfully executed;" and "to preserve, protect and defend the constitution of the United States," with this physical force which is submitted to his control.

This is all the "war power" with which the founders of the Republic thought it necessary to invest the government in respect to its own subjects. And this is ample, embracing the entire physical force of the country, if occasion shall demand. But this power is to be exercised, not at the will of the Executive, or of any depart-

ment of the government, under the dangerous maxim, "*salus populi suprema lex*," the force of which is so much misapprehended by the advocates of these resolves; but always in *subordination to the constitution*, which is the "supreme law," providing within itself, as was the belief of its framers, the best means of promoting "the safety of the people." And a still more dangerous maxim is in many mouths, "*Inter arma leges silent*." This is a government of laws, and they are never silent, in peace or war! They continually utter their voice, though for the time they may not be heeded. If they were silent, who could be called in question for not obeying them?

The peculiar character of our government should be constantly borne in mind. We have no authority over either the persons or the property of rebels that is not derived from the constitution; and if the government undertakes the exercise of any other powers, it becomes an instrument of self-destruction. Mr. Webster, in his last great address to the American people, discoursing upon the principles of our system of government, says: "And, finally, another most important part of the great fabric of American liberty is, that there shall be written constitutions founded on the immediate authority of the people themselves, regulating and restraining all the powers conferred upon government, whether legislative, executive or judicial."

The federal constitution was ordained and established by the people of the United States, who possess the sovereign power. By it certain powers were delegated to the federal government, but all others are still retained by the people. That instrument expressly declares that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people."

It is a most dangerous heresy, and subversive of all liberty, to claim that in time of war the laws are silent, and that the sceptre of government is to be wielded according to the sense of the necessity of the occasion, which may be entertained by Congress, or the incumbent of the executive office, however wise or conscientious he may be. In the execution of the laws, he is invested with a large discretion, but that discretion is never to be exercised independently of the laws or against them.

The argument that Congress may do whatever is judged necessary under the circumstances, rests upon a most dangerous heresy in respect to the character of our government. It is that the sovereignty rests in Congress, not in the people; and that possessing the sovereign power, they are under no restraint but that of their own consciences and judgment. Senator Vinton says:

"All our law books tell us that the right to confiscate enemy property is in the sovereign. Who is the sovereign in this country? Who is the President? He is but the servant of the people. Our generals are still lower down, but the servants of the President. Who is sovereign I repeat again? Congress. This is a representative government, and the highest source of power in this country is Congress. What is the next sovereign power in this country? The Legislature of a State. Now the war powers of the constitution have so guarded this matter that they will not let even a sovereign State, the second repository of power, speak on this question unless the danger be imminent. The constitution says: 'No State shall, without the consent of Congress, engage in war, unless actually involved, or in such imminent danger as will not admit of delay.' The moment you touch the war power of the constitution, everything is vested in Congress."

Again he says:

"Mr. President, I think I have gone far enough to establish the question of the right to confiscate rebel property; that the right is in Congress, and that Congress is the sovereign in this country. I have said that the President, to whom you propose to refer this matter, can do nothing."

His premises being conceded, his reasoning is correct. The sovereign power is an absolute power, subject to no control. Congress has no such power. *The people of the United States possess the sovereign power.* They have created Congress as their agent, and given it certain limited and well defined powers. If Congress possessed the sovereign power, it might make and unmake constitutions; and there would be no limit to its authority or power over the subjects of the government. Choosing in a time of civil war to cast behind them the constitution, as it is contended they may, their will is law! That such doctrines as these should be put forth in the high places of the nation, is one of the most startling evidences of the degeneracy of the times! If such principles are carried into effect, they become not

less revolutionary—not less subversive of the government of the country, and the liberty of the people, than the acts of the so called “Confederate States.”

How different, sir, were the doctrines of the “Fathers!” Read the writings of Madison, of Hamilton, of Jefferson, of Jay, and learn of them—read the constitution which is the palladium of your liberties—read the great “expounder” of that constitution, Webster, in his great speech of Feb. 1833. He says: “The nature of sovereignty, or sovereign powers, has been extensively discussed by gentlemen on this occasion, as it generally is, when the origin of our government is debated. But I confess myself not entirely satisfied with arguments and illustrations drawn from that topic. The sovereignty of the government is an idea belonging to the other side of the Atlantic. No such thing is known in North America. Our governments are all limited. In Europe, sovereignty is of feudal origin, and imports no more than the state of the sovereign. It comprises his rights, duties, exemptions, prerogatives and powers. But with us, *all power is with the people*. They alone are sovereign; and they erect what governments they please, and confer on them such power as they please. None of these governments is sovereign in the European sense of the word, all being restrained by written constitutions. It seems to me, therefore, that we only perplex ourselves, when we attempt to explain the relations existing between the general government and the several State governments, according to those ideas of sovereignty which prevail under systems essentially different from our own.”

The last sentence applies with equal force to an attempt to explain the relations existing between the government and its subjects.

Congress is but one department of the government. The government consists of three departments—legislative, executive and judicial. These three constitute “government.” Neither of them possesses the sovereignty; nor do the three combined, except so far as it is delegated to them. This statement would be unnecessary, but for the extraordinary theories recently put forth on the subject, here and elsewhere. Mr. Vinton says that “all our law books tell us that the right to confiscate property is in the sovereign power.”

Grant it. But the “sovereign power”—the people of the United States—have passed their decree upon this subject. When they ordained and established the constitution, they solemnly declared, as a guarantee of the rights of the citizen, that the government which they thus created, should have no power to take from him the perpetual title of his property for crime, not even if he should be guilty of the highest crime known to nations, treason. Until that constitution is changed by the sovereign power, no department of the government can accomplish what these resolutions propose, without usurping the power of the people, and trampling their constitution under its feet. Mr. Webster says above: “Our governments are all limited. * * With us all power is with the people. They alone are sovereign, and they erect what governments they please, and confer on them such powers as they please. None of these governments is sovereign in the European sense of the word, all being restrained by written constitutions.” Again he says: “Congress has no powers except those conferred by the constitution, which was ordained by the sovereign power.”

It is a strange misapprehension to say, as the Senator does, that “the moment you touch the war power of the constitution, everything is vested in Congress.” It is the duty of Congress to provide the means, but it is the duty of the Executive to employ them,—to direct the operations of war. He has not well studied the nature and necessities of government, who supposes all its powers and operations in war could be successfully conducted by a numerous legislative body. Unity of idea, and unity of action, are indispensable to the successful conduct of armies, and all the operations of war, foreign or domestic. Hence it is, that the constitution wisely vests in the President, not in Congress, the command of the army and the navy of the United States, and of the “militia of the States, when called into the actual service of the United States.” (Art. 11, sect. 2.) And makes it his duty “to take care that the laws be faithfully executed,” and to suppress insurrections. The war power is, after the means are provided, purely an executive power, so far as domestic war is concerned. It is the power which executes the laws. Congress makes laws and provides the means of execution, but it has no power of execution, as the Senator seems to suppose.

By the constitution, forfeiture of property for the crime of treason, except a life estate, is prohibited. But the duty of enforcing the laws and of suppressing rebellion is imposed. Not as a punishment for treason, but as a necessary means of sup-

pressing rebellion, the military authorities may deprive the rebels of the property which they employ as instrumentalities of resistance, upon the same principle that we deprive the burglar of his tools, the counterfeiter of his dies, the rioter of his weapons, &c. But in prescribing punishment for treason, Congress, the civil arm of the government, cannot declare the forfeiture of property, except under the limitation suggested. Nor even if it be held that Congress may declare the mode in which the Executive shall proceed in the enforcement of the laws, (which I regard as impracticable,) can they go beyond the deprivation of property employed in resisting the government, because it would be punishment for the crime already committed—not a means of preventing a further continuance of it—not a means of suppressing rebellion, or reducing the insurgents to obedience.

The true theory, however, seems to me to be, that the right to disarm the insurgents, and to deprive them of all instrumentalities of resistance, is an executive power, in the exercise of which there can be no intervention of Congress; to be exercised by no fixed rule, but to depend upon the peculiar circumstances of each case; the property to be taken when brought within the reach of the military power—when it lays its hands upon it. An act of Congress could have no force—could not help the process. If it were to declare, for instance, that the President might disarm the rebels, it would be *brutum fulmen*; not conferring any power upon the President which he does not already possess, as a necessary incident to the duty of enforcing the laws.

It is the duty of Congress “to provide for calling forth the militia to execute the laws of the Union, and to suppress insurrections;” but it is the duty, not of Congress, but the President, to call them forth, and to do the work. This is purely in its nature an executive, not a legislative power. And inasmuch as the right to disarm the rebels, and to take from them all instrumentalities directly employed in resistance of the government, is an incident to the duty of enforcing the laws, it follows that this power is also executive, as every incident of the constitution follows the principal power to which it is attached. This power of disarming may, in a certain sense, be said to be a belligerent right against the insurgents, and in the same sense as the investing of the port of an insurgent city, as one means of reducing it to obedience, is said to be a belligerent right which even foreign nations are bound to respect; though not, I apprehend, in obedience to any principle of public law regulating the intercourse of independent nations, but upon the principle that every nation is bound to have due regard for the municipal regulations of its sister nations. This is not a “belligerent right” in the larger sense of international law. But these rights of the military power of the government, called by whatever name, are to be exercised under the constitution, and by virtue of the constitution, not outside of it, otherwise we have no such power. That instrument does not prescribe the precise means to be employed in “suppressing insurrections;” but the duty imposed upon government to perform an act, implies the right to use all proper and necessary means, always restrained and limited by the express inhibitions of the constitution, (the instrument which confers the power,) if there are any upon the subject. No stream can rise higher than its fountain.

While, therefore, to disarm the rebels, and deprive them of the instruments of resistance, are proper and legitimate means of suppressing rebellion, the confiscation or forfeiture of all property, wherever found, is not; because, first, it is not a natural and necessary means of overcoming resistance, but is rather in the nature of punishment for the treason; and, second, because it is explicitly prohibited by the constitution, which is the supreme law, not only for the governed, but over all departments of the government.

In the hands of the Executive, the exercise of this right to deprive rebels of property, is governed by no forms of law, nor by any inflexible rules of procedure, but is to be governed by the necessity of the case, under the principles which I have suggested. But if Congress, the civil arm of the government, attempts confiscation or forfeiture, it must conform to the constitution in the mode of forfeiture, and provide “due process of law,” or its acts are null and void.

Will the gentleman from Augusta tell me that this is too limited a view of the powers of government—that upon this theory there is not power enough in the government to save itself? If so, I reply by asking, what more power you could have? The government is resisted by physical force. How is it to be overcome? *Force* is to meet *force*, and victory is with the *strongest*! Upon the theory which I have advanced, government wields and brings to bear upon rebellion, all the physical

power of the country ! It may command the assistance of every man able to bear arms, and may arm and man every vessel that floats, if occasion shall require. And with all these forces, the Executive may invade the land of Secessia with armies and navies, and may take possession of every inch of her soil, striking down whatever resists as he goes. He may strike down the rebel in his trenches—he may deprive him of his weapons, his horses, his *slaves*, or whatever else he employs in hostile demonstrations against the government. In a word, he may do everything necessary to overcome the resistance. What more could the government do upon anybody's theory ? If there is not physical power enough in the country, on the side of the government, to overcome the insurgents, pray tell me, would any confiscation scheme give it to us ? Would a decree of Congress, that all the property in the South should be vested in the government, add to our numbers or to our arms ? Would we not be compelled to take possession of every piece of such property by force of arms, before it would be of any avail to us ? Well, sir, what are we doing now, but this very thing ? And who doubts our right to take possession of, and hold, all the property of the rebels, if we have occasion, until they submit ? Of what avail then, would be an act of Congress, saying that we might do it ? And inasmuch as we have power to take and hold their property if it can avail us anything, how would an act of Congress, even if it had any legal validity, declaring that such property should not go back into the hands of the rebels after the war was over—after they had submitted to the government, add to our strength, or aid us in putting down the insurrection ? Statutes won't do it. It is men and arms ! And I am for employing men and arms, until the last vestige of rebellion is crushed out.

I hear it said that, because we are for preserving the constitution, believing as we do, that there can be no future reunion of the people of all the sections of this country in carrying on the government upon any other basis, we are for "treating the rebels tenderly." I will not be misunderstood upon this subject by him who will hear what I say—of him who willfully perverts it, I take no notice. Time will correct him. I have told you that I am for employing every element of strength in the country to suppress the insurrection—every man capable of bearing arms, if necessary. I have attempted to show you that this may be done without violating any of the provisions of the constitution—that it can better be done under the constitution than outside of it—that, indeed, outside of the constitution we have no power—that so wise were our fathers that they provided ample self-preserving powers within the constitution—that we do but weaken our powers, when we go counter to any of its provisions.

Indeed, sir, if emancipation is the sole object of this resolve—and I can see no other, as it is now conceded that we have men enough and to spare, more than can be profitably employed—our own soldiers lying here by thousands all winter, in vain seeking an opportunity to get into the field, fearing every hour that they are to be disbanded because the service is full—victory dawning upon us at every step—the bright hope of speedy suppression of opposition springing up on every hand—if emancipation is the only object, what is gained even to that cause by an act of Congress ? Not a slave would be freed until our armies were set at the work of liberation. To do this they must first conquer and get possession of the territory where they are. And then if liberty should come to the slave, an act of Congress would give it no legal character which would ever be recognized by the judicial department of the government, with which is the authority to declare whether a legislative act is constitutional. The most that could be said for it would be that it was liberty by the abandonment of the master. Would not the same liberty come to the slave, and under the same circumstances, without an act of Congress ? As our armies advance, the master flies one way and the slave the other, and freedom comes without violence to the constitution—comes by the *master's own act of abandonment* ! And when they return to their allegiance, finding their slave property gone, they have none to blame but themselves. They can complain of no violation of their constitutional rights—no forcible emancipation by the army, in execution of an edict of Congress, which was forbidden by the constitution. All they can say is, the armies came to reduce us to obedience, we left them to themselves, and our slaves have taken to themselves liberty. I ask the gentleman from Augusta, then, in what way the cause of emancipation is to be subverted by the confiscation policy ?

THE CONSTITUTION SILENT.

But we are met with the new and startling doctrine that in time of war the constitution is silent in one-half of the country—that there are “peaceful provisions” and belligerent provisions of the constitution. Surely we are following after strange gods! They are not the gods of our fathers. Mr. Senator Vinton has put forth a theory for the government, which was thought at the time to be impregnable by the friends of these emancipation resolves, and had much to do with their passage in the Senate, as was understood. And in what he says I perceive that he reflects the sentiments of a class of men in Congress as well as in this Legislature. Let us see what it is. He says :

“But the difficulty is that those who say that there is no power under the constitution, refer to its power in time of peace and not in time of war. They seek to apply the peaceful operations of the constitution to us to-day. Congress can pass a confiscation bill under the war power of the constitution, because the peaceful provisions are no longer in force. When the nation was united and the constitution was stretched from Maine to Florida, when the obligations of all were alike, then all were under the protection of the constitution, but now those States that have rebelled against it have no rights under it which we are bound to respect. Mr. Webster, to be sure, as quoted by my colleague, says ‘you have no more right to say that slavery ought not to exist in Virginia, than Virginia has to say that slavery ought to exist in New Hampshire.’ He said that as applicable to a state of peace. * * * * * It would be just as proper for my colleague to eke out his speech by citing Mr. Webster in any of his great efforts, his Dartmouth College case, trial of the Knapps, or his eloquent words at the laying of the corner or top stone of Bunker Hill Monument, or at the Anniversary of the Landing of the Pilgrim Fathers, as the quotation which he made. One would be as applicable to our times and the present state of things, as the other. Mr. Webster never expounded the constitution as applicable to these times.”

And again he says: “In time of war, as I have said, all is changed. Our rights, duties, obligations, all changed.”

The constitution of the United States—one thing to-day and another thing to-morrow! One thing in *peace*, and another thing in *war*! Our “duties and obligations” to obey the plain provisions of the constitution “all changed” in time of war! The rebels “have no rights under the constitution” which we are bound to respect! “The peaceful provisions are no longer in force!”

O shades of Madison, of Hamilton, of Story, of Webster!—hide your diminished heads in very shame for your ignorance of the great charter of our rights and our liberties, which you studied so long and so well! These whilom worthies not only thought, but declared, for the benefit of posterity, as they supposed, that this constitution of ours—this *whole* constitution—this constitution in every part—was ordained and established, as a perpetual instrument of government, for *all* the people of these United States!

The provisions of the constitution—the force and power of the constitution—the authority of the constitution, are the same—yesterday, to-day and forever! The same in peace, and in war; whether its subjects will hear or will forbear—whether they are obedient or disobedient. “Mr. Webster never interpreted the constitution as applicable to these times!” He who uttered that sentence, ought to tremble, lest the ashes of that once stately form should rise up to rebuke him. In 1851 Mr. Webster says of his own efforts to understand the constitution :

“If I have attempted to expound the constitution, I have attempted to expound that which I have studied with diligence and veneration from my early manhood to the present day. If I have endeavored to defend and uphold the Union of the States, it is because my fixed judgment and my unalterable affections have impelled me, and still impel me to regard that Union as the only security for general prosperity and national glory. Yes, gentlemen, the Constitution and the Union! I place them together. If they stand, they must stand together; if they fall, they must fall together.”

“The peaceful provisions of the constitution no longer in force?” When were they suspended? and by whom? Have the people who made the constitution been consulted about it? Let the advocates of these resolutions answer. Is this but an attempt to overthrow the constitution, because its provisions stand in the way of a

long cherished purpose? And is this time of civil commotion seized upon as a favorable opportunity to do it? If so, I can understand the production of such arguments as these, for no crime was ever perpetrated for which an ingenious mind could not invent a pretext. But in those who have studied the constitution in the spirit and with the purpose and faith of its "great defender," whom I have just quoted, I cannot comprehend them. It seems to me that gentlemen trifle with their own understandings.

Have the rebels "no rights which we are bound to respect?" And is it therefore contended that we may punish them for their crime in a manner prohibited by the constitution, may take from them the perpetual title to all their property, and withdraw every inducement from them and their children to ever become loyal citizens? Is the constitution a law against them, and not also a law for them? Do we demand of them obedience to it, and enforce that obedience at the point of the bayonet, and at the same time, deny to them its protection? What worse tyranny than this was ever attempted over a free people? Is your love of liberty all for the black man? I stand here to defend the liberties of my own race, and in their behalf to declare that when they return to their allegiance, they with us are entitled to all the benefits of a common government.

It is not in our power to say that subjects in rebellion forfeit all civil and political rights. When we entered into the compact with each other, we agreed the contrary, and when we violate that compact we are equally guilty with them, not guilty in the same degree, but equally guilty of an attempt to destroy the foundation of the government. When the constitution, the bond by virtue of which alone, we claim to hold them, is abrogated—set aside by ourselves—what further claim have we to their obedience, or allegiance? By what authority do we assert the supremacy of the government of the United States over the Confederate States? They were independent before the Union was formed. The constitution is the only bond of union. It is almost universally admitted that the constitution confers no power upon the government of the Union to abolish slavery. The act, then, would be void of authority, and could only be accomplished by superior force, without law—without right—alone by the law of conquest. If this should be attempted, every State would be, by our act, absolved from its obligation to obey the constitution, and the Union is broken by our own hands.

THE UNION DISSOLVED.

But, sir, the advocates of these resolves do not seem to think the theory that "the peaceful provisions of the constitution are silent," is a safe groundwork for their new and extraordinary powers of government. They boldly proclaim that the Union is dissolved. Says the Senator just quoted:

"Mr. Webster, to be sure, as quoted by my colleague, says 'you have no more right to say that slavery ought not to exist in Virginia, than Virginia has to say that slavery ought to exist in New Hampshire.' He said that as applicable to a state of peace when the States were all in the Union. But when Virginia has taken herself out of the Union and from under the constitution and is in open arms against New Hampshire who is in the Union and under the constitution, I ask in the name of common sense why cite Mr. Webster who gave utterance to such great and noble sentiments, but applicable to an entirely different state of things from the present?"

"And again he says: One nationality! Where is our nationality to-day? Torn, tattered and broken. And all along the southern border a confederation in arms to destroy what of it still remains."

Virginia not in the Union? How did she get out? By secession? Have gentlemen become secessionists? By successful revolution? Is that admitted? Which horn of the dilemma will gentlemen choose? The right of secession was never maintained by any true lover of the Union. The doctrine was invented by the most subtle mind which this country has produced, to open the door for the peaceful withdrawal of the State of South Carolina from the Union. But for the consequences in which it would have involved the remaining States, it might have been fortunate if we had suffered her to go upon that theory thirty years ago. But those consequences would have been fearful. It would have taken the corner stone from our fabric of government. The only safe theory for the Republic is "No stripe erased, no star obliterated." When the constellation is once broken, the great magnetic law which holds every star in its place is forever destroyed.

The theory that "the insurgents have ceased to be parties to our constitutional union, and that Congress may legislate for the loyal people of the United States as one nation, and against the insurgents as an independent nation, which we are seeking to conquer," was first started in Congress the 12th of December, by Mr. Conway of Kansas, in a speech in opposition to the administration and condemnatory of its policy, in the House of Representatives. His speech is logical, his conclusions consistent with his premises; but his premises are disunion. He would not only conduct the war in all respects as towards a foreign enemy, but upon principles of foreign war, which have been condemned ever since the dawn of the christian era. He manfully declares the purpose of this new theory to be to furnish some ground upon which emancipation by the government can be justified. He is to be honored for his boldness and his refusal to resort to subtleties to conceal his purposes, as well as for the consistency of his reasoning. If all the advocates of these measures would speak out as boldly, their advocacy would do less mischief. He would have this not only a war of conquest, but would have the conqueror act upon principles long since renounced by civilized nations, because upon no other principle could private property of the conquered nation be interfered with.

Mr. Conway, after declaring that "our common constitution does not fix the legal status of the Confederate States, but that they are to be dealt with as a foreign power, having no rights under the constitution," says :

"The work of the government, at its present stage, is not, therefore, suppression of insurrection, in any just sense; but the overthrow of a rebellious belligerent power. Its success does not signify the execution of the terms of an existing government in the seceded States—remitting them to their original status in the Union; but implies their subjugation to the sovereignty of the United States, to be held as territories, or military dependencies, or States, or anything else we please. This is clearly the present attitude of the case.

"Now the evil of our system is the institution of slavery. Conflicting with the rights of human nature, it is required to grasp, monopolize, and exercise power despotically, in order to perpetuate its own existence. It has been to us a prolific source of national disaster. It is the sustaining cause, the object, and chief resource of this rebellion; at the same time that it is the point at which the most fatal blow may be inflicted upon it.

"The abolition of slavery is no longer a 'contraband' proposition. It has been elevated by events into a measure of wide-spread public importance, demanding the favorable consideration of statesmen. It is no longer the shibboleth of a sect or party, but the overruling necessity of a nation. To retain slavery, under existing circumstances, in our body politic, would, in my judgment, evince the very worst kind of folly or wickedness. To eliminate it forever should be the unwavering determination of the government.

"Nevertheless, the administration refuses to heed such counsel, and persists in regarding the institution as shielded by such constitutional sanction as it is not at liberty to infract."

And after reciting the public acts of the President and those acting under his immediate authority from the commencement of the war up to that time, he very discriminatingly remarks :

"I cannot see that the policy of the administration, as thus exemplified, tends, in the smallest degree, to an anti-slavery result. The principle governing it is, that the constitutional Union, as it existed prior to the rebellion, remains intact; that the local laws, usages, and institutions of the seceded States are to be sedulously respected, unless necessity in military operations should otherwise demand. There is not, however, the most distant intimation of giving actual freedom to the slave in any event."

And in respect to the character of the officers of the army, he says :

"For my own part, I think it quite problematical whether there is more than one sincere abolitionist or emancipationist among the military authorities; or that the rebellion will ever hold out to the point of rendering the liberation of the whole body of slaves necessary to subdue it.

"Slavery cannot be abolished in a State by act of Congress. The thing is impossible. Congress is the legislative branch of the government, performing its duties under certain constitutional limitations. Slavery in the States is outside of these

'limitations. It can be abolished only by the States themselves, or by the Executive in time of war, on principles of public law, as ably expounded many years ago by John Quincy Adams. In the suppression of insurrection, however, the Executive has not this power, unless the insurgents have ceased to be parties to our constitutional Union; in which case they have, in fact, ceased to be insurgents, and become belligerents.'

And thereupon proceeds to argue, that as we have no constitutional power over slavery in the States, we ought to abandon the constitution and all purpose of preserving the Union, and that the war should in all respects be put upon the same footing as war between two independent powers, our purpose being to conquer the southern States, take their property, liberate their slaves, and hold the States as subjugated provinces, or to use his own words, "military dependencies." And there is no other logical conclusion to which gentlemen can come who start upon the theory that the constitution has ceased to have any force in the so-called seceded States, and that they are to be treated as a foreign enemy. The logic is, that the Union is dissolved and we are two independent peoples, that we have no longer one nationality.

Senator Sumner in furtherance of this theory, advances the idea that the Confederate States have by their act of rebellion become *felo de se*. That the rebellion of persons who were at once citizens and subjects of the United States, and of the several States, operates as an extinguishment of the State governments. I read his preamble and first resolve :

"Resolutions declaratory of the relations between the United States and the territory once occupied by certain States, and now usurped by pretended governments, without constitutional or legal right.

"Whereas certain States, rightfully belonging to the Union of the United States, have through their respective governments wickedly undertaken to abjure all those duties by which their connection with the Union was maintained; to renounce all allegiance to the constitution; to levy war upon the national government; and, for the consummation of this treason, have unconstitutionally and unlawfully confederated together, with the declared purpose of putting an end by force to the supremacy of the constitution within their respective limits; and whereas the extensive territory thus usurped by these pretended governments and organized into a hostile confederacy, belongs to the United States as an inseparable part thereof under the sanction of the constitution, to be held in trust for the inhabitants in the present and future generations, and this territory is so thoroughly linked with the constitution that it is forever dependent thereupon; and whereas the constitution, which is the supreme law of the land, cannot be displaced in its rightful operation within this territory, but must ever continue the supreme law thereof, notwithstanding the doings of any pretended governments acting singly or in confederation, in order to put an end to its supremacy; Therefore

"Resolved, That any vote of secession or other act by which any State may undertake to put an end to the supremacy of the constitution within its territory is inoperative and void against the constitution, and when sustained by force it becomes a practical abdication by the State of all rights under the constitution, while the treason which it involves still further works an instant forfeiture of all those functions and powers essential to the continued existence of the State as a body politic, so that from that time forward the territory falls under the exclusive jurisdiction of Congress as other territory, and the State being, according to the language of the law, *felo de se*, ceases to exist."

Mr. Sumner's theory seems to be, that this is a Union of the States, and not of the people. Upon this theory the preamble of the constitution should have commenced, "We the States," not "We the people." The defect in his premises is this : He assumes that our relation is with the revolted States, as such, whereas it is with the people. The States owe no allegiance, and can commit no treason. No act of a State government can displace it from the Union. We have nothing to do with them as States in this war. We know them only as a part of "the people of the United States." The people owe a double allegiance, to the State, and to the United States, the latter always paramount. No treason of the citizens of a State against the United States, would work a forfeiture of the State governments, nor would treason against the State work a forfeiture of any rights of the guilty party as a subject of the United States. The States, and the United States, are each independent in their sphere. Each punishes individuals for offences against their respective governments.

Mr. Sumner asserts that, "whereas, certain States have through their respective governments, wickedly undertaken to abjure all those duties by which their connection with the Union was maintained; to renounce all allegiance to the constitution; to levy war upon the government, &c., therefore, *Resolved*, * * * that the treason which it involves works an instant forfeiture of all those functions and powers essential to the continued existence of the State as a body politic," &c. He makes the States "renounce allegiance," "levy war upon the government," and "commit treason."

Mr. Webster entertained a somewhat different idea of the character of our government. In the speech to which I have already referred, he says: "The maintenance of the constitution does not depend upon the plighted faith of the States, as States, to support it; and this shows that it is not a league. It relies on individual duty and obligation. The constitution of the United States creates direct relations between the government and individuals. This government may punish individuals for treason. * * * * * If the States be parties, as States, what are their rights, and what their respective covenants and stipulations? And where are their rights, covenants and stipulations expressed? The States engage for nothing—they promise nothing. In the Articles of Confederation they did make promises, and did enter into engagements, and did plight the faith of each State for their fulfillment; but in the constitution there is nothing of the kind. The reason is, that in the constitution it is *the people* who speak, and not the States."

Individuals in the Southern States, acting to some extent through their State organisms, have levied war against the United States; the crime is not the States', but the individuals'. And we have power to punish the individual, not the State. Rebellion to be effective, must be organized. The State organization, being already in existence, was used as an aid in organizing treason. But we have no way of punishing the means which the rebels employ—but we punish the rebels themselves. The government deals directly with the individual. A State can only become *felo de se*, by neglecting to keep its functions in motion.

Mr. Sumner's theory is that of the secessionists—that the government is a league of the States—or he could not employ the language which he does in his resolutions. Upon no other theory could he declare that States, as such, are to be recognized by the government as the guilty party, and as suffering the consequences of their crime in their State body politic. In his second resolution he seems to destroy the ground upon which his first rests. It is:

"*Resolved*, That any combination of men assuming to act in the place of such State, and attempting to ensnare or coerce the inhabitants thereof into a confederation hostile to the Union, is rebellious, treasonable, and destitute of all moral authority; and that such combination is a usurpation, incapable of any constitutional existence, and utterly lawless, so that everything dependent upon it is without constitutional or legal support."

If the acts of the insurgent States are all null and void, it is difficult to perceive how such serious consequences can follow from them.

In his third and fourth resolutions we get the gist of the whole matter. We perceive that his sole purpose is to establish some ground upon which slavery can be abolished. The purpose is not to suppress the rebellion and preserve the Union, but to abolish slavery; though he admits that the Union will thereby be destroyed, nearly half the States being struck out of existence:

"*Resolved*, That the termination of a State under the constitution necessarily causes the termination of those peculiar local institutions which, having no origin in the constitution or in those natural rights which exist independent of the constitution, are upheld by the sole exclusive authority of the State.

"*Resolved*, That slavery being a peculiar local institution, derived from local laws, without any origin in the constitution or in natural rights, is upheld by the sole and exclusive authority of the State, and must therefore cease to exist legally or constitutionally when the State on which it depends no longer exists; for the incident cannot survive the principal."

Having been referred to the speeches in our Senate as furnishing the ground upon which the House was expected to support the emancipation demanded by this resolve, it became necessary to examine this theory of Senator Sumner, as he was explicitly endorsed in the only speech which is relied upon as a constitutional argument. Mr. Vinton says of Mr. Sumner and his theories:

"I think I hazard nothing in saying that a majority of the people we represent believe in Charles Sumner. They believe in his law and in his logic—in his head and in his heart."

Now, sir, with all respect to that very estimable and ingenious gentleman, always a consistent, and I doubt not, conscientious sympathizer with Mr. Sumner's views upon the subject of slavery, and its relation to the constitution, I beg leave to differ with him in thinking that "a majority of the people we represent believe in Charles Sumner—in his law and in his logic." If they now think they believe in him, they certainly would not, if they understood what "his law and his logic" were. I don't think a majority of the people of the State of Maine are disunionists; or that they will go for striking ten States out of existence; or refuse them the privilege of returning to their allegiance, with all the rights of States under the constitution. Nor do I think they will be induced to espouse such principles by the passage of these resolves. The people will think and act for themselves, whatever we may do.

INTERNATIONAL LAW.

It is contended that the system of public law which regulates the intercourse of independent nations, should govern this contest, to the entire exclusion of the municipal law of the country. And that the government, by virtue of the rebellion, has acquired extra-constitutional powers over those engaged in it—that Congress, therefore, exercising the sovereignty of the country, may, in the execution of international law, confiscate all the property of the insurgents, and liberate their slaves, as it is said they might do, against a foreign enemy. But this can only be upon the assumption that the bond which binds us in one political society is dissolved—that we are separate peoples. International law is a code of rules established for the government of the intercourse of independent nations, in war and in peace. It cannot be appealed to, to regulate the conduct of different members of the same State. If they differ, the arbiter between them is the municipal law; and in our case the fundamental, or organic law, which forms the Union, and the laws made in conformity with it.

If Congress were to pass a resolution or act declaring that international law, to the exclusion of the constitution and laws of the country, should govern this contest, and that the rights of the government against the insurgents were just such as they would be against an enemy in public war, the act would be an official recognition of the independence of the "Southern Confederacy;" and our authority over them as subjects would cease. But in all military operations, involving the conflict of large armies, it is nevertheless necessary to adopt the humane usages of war, or the contest would become sanguinary, and presently degenerate to the most barbarous practices. This is not strictly speaking international law, but is of the public law of the world, dictated by the general sense of mankind, regulating the intercourse and operations of armies, however employed, whether in fighting the battles of nations, resisting government, or suppressing rebellion.

By voluntarily relinquishing its extreme rights against rebels, and adopting towards them the usages of war, government does not acknowledge separate nationality, or renounce its sovereignty; nor yet if rebels accept these usages and reciprocate them, does government acquire the right to treat them as it might a conquered foreign power; the legal status of the parties remains the same as if there had been no adoption of the laws of war. We have, to some extent, adopted the usages of war in our dealings with the insurgents, and they have reciprocated. But we still have the right to punish such of them as we choose for treason. And they have the corresponding right to demand that they shall be punished according to the law of the land, and in no other way. Rights and duties between government and subject are reciprocal. If *allegiance* is due from the subject, *protection* is due from the government. Until government renounces its sovereignty, it is bound to exercise it according to its organic law.

The action of our government in the exchange of prisoners, is understood to have been based upon the principles developed by the Massachusetts Historical Society in respect to the exchange of prisoners in our Revolutionary war. Dec. 19, 1861, a report was made by a committee of that society, consisting of as learned a body of men as can be found in this country, upon a vote of the society in trusting them "to inquire and report to what extent an exchange of prisoners, during the American Revolution, was effected by the action of the King's Government on the one side, and the Continental Congress on the other side, or by and between the respective military

commanders; and especially to ascertain and report whether, by such exchanges, the rights of sovereignty claimed by the Crown were supposed in England to have been in any way impaired or set aside." I read the following extracts:

"REPORT.—It is not necessary for us to remind the society, that the war of the American Revolution was conducted, on the part of the King's government, as against rebellious subject Provinces. The great question at issue, after actual hostilities had commenced, was, whether the allegiance claimed to be due from the people of the Colonies to the Crown, upon the principles of the law of England, should be continued, or should be dissolved by a successful revolution. The British government on the one hand, sought to maintain its authority by force of arms; the people of the Colonies, on the other hand, sought to secure and maintain their independence by the same means. Your committee do not conceive it to be any part of their duty under the vote above recited, to seek for analogies between the causes which produced the American Revolution, and the alleged reasons on which the people of the seceded States of this Union are now acting in their efforts to separate themselves from the operation of the constitution and laws of the United States. If we were to seek for such analogies, we should not find them; for there is obviously one broad distinction between the two cases, founded on the fact, that the government of the United States has not given, and is not charged to have given, cause for this revolt. But inasmuch as every government that has the misfortune to encounter a serious revolt of large and organized masses of its people which it is obliged to meet by conducting the operations of actual war, is also obliged to consider how far, and on what occasions, it can relax its rights of sovereignty, and deal with its subjects who take part in the revolt as ordinary prisoners of war,—your committee do conceive that the precedents of exchanges to be found in the action of the British government, during the war of the American Revolution, are important subjects of inquiry at the present time."

* * * * *

"The great interests of civilization and humanity require that this war should be so conducted as to secure its legitimate objects at the least expense of human suffering; and whatever tends to throw light upon the principles on which a government may safely conduct such a war ought not to be withheld by those who have the means of exhibiting it. We proceed, therefore, without further preface, to state the general course of action adopted by the government of Great Britain, after the commencement of actual hostilities between the people of the Colonies and the Crown."

After stating some of the opening scenes of the Revolution, the committee proceed:

"The two parties were thus brought face to face in the field; the one acting as a sovereign to suppress the rebellion, and determined to apply all his judicial powers of punishment, as well as his executive powers of dispersing the rebellious forces; the other acting upon revolutionary principles to accomplish its independence by arms. The one could, of course, make no concession of belligerent rights, beyond those which actual war renders unavoidable, if a civil war is to be conducted between sovereign and subject with reasonable regard to the usages of civilized warfare; the other claimed all the rights of belligerents, as well as those of an independent sovereignty."

In respect to Lord North's bill, defining the position of the British government upon this matter, they say:

"It shows several important things:

"1st. That the government intended to reserve and exercise all its sovereign judicial powers of punishment.

"2d. That it meant to punish for treason or for piracy, according as the prisoners captured might be amenable to the law of England, from being taken on the land; or from being taken on the sea, cruising against British commerce.

"3d. That it was intended to have the trials for such offences take place at the pleasure of the Crown; thus holding the prisoners in a position to be dealt with as criminals or as ordinary prisoners of war, as the executive government might find expedient."

In regard to the refusal of the British government to treat Mr. Laurens, our minister to the Hague, who was captured on the coast of Newfoundland, and carried to London in 1780, as a prisoner of war, the committee say:

"Before this event, some thousands of prisoners had been exchanged in America, upon the principles and in the mode above described; that is to say, while the British government was unwilling to make that species of convention *durante bello*, which is known to the public law as a cartel between nations at war, they constantly permitted exchanges, under the rules of war, for purposes of military convenience, and in relief of the sufferings of their own officers and privates in captivity. Had they not saved the point which distinguishes between an admission of sovereignty and an admission of the physical fact of temporary military force, there would have been gross inconsistency and impropriety in treating Mr. Laurens otherwise than as a prisoner of war. As it was, they had reserved the right, upon their principles of allegiance, to make him amenable to the law of England; but Mr. Laurens, after suffering a long and severe confinement of fifteen months, was released on bail as the prospect of peace drew near, and was finally exchanged for Lord Cornwallis just before the preliminary articles of peace were signed."

It has been contended in this discussion that the exchange of prisoners, and the application of certain other usages of war to this contest by our government, is a recognition of the insurgents as belligerents, in the highest sense of that term in international law; and that we are now to deal with them only as such. Gentlemen have even gone so far as to say that "we can hold the prisoners only as prisoners of war." And it has been contended that the determination of the Executive to hold convicted pirates, only as prisoners, and not for the present, at least, to inflict the extreme penalty of the law upon them, is a concession that the attitude of the parties towards one another is that of belligerents, and belligerents only.

After stating the whole history of the Revolutionary War upon this subject, the committee thus conclude :

"Your committee are not aware that any American taken during the war of the Revolution was actually put upon trial for treason or piracy. Probably, had the struggle terminated differently, some trials and executions for both of those offences would have taken place; for it is an undoubted maxim of all governments, that the sovereign who succeeds in suppressing a revolt may reserve for punishment those whom he sees fit to punish, although, in the course of the struggle, he may have made any number of military exchanges for reasons of temporary policy. Such exchanges are made in his own interest and for his own convenience, and involve of themselves no concessions to the political pretensions of his enemies. They are made from a pure principle of justice to his faithful subjects who expose their lives and liberties in his service, and for the re-enforcement of his own military strength. If a sovereign could not make them, when carrying on a war to preserve the integrity of his dominions against domestic enemies, it would follow that he must wage such a war without one of the most important of the means which belong to him in all other wars; and it would be just as reasonable to suppose that they involve an admission of the political claims of the enemy in a foreign war, as it is to make that supposition when the war is between two parts of the same nation. Certainly, great care should be taken, in making such exchanges, to exclude all political admissions; and your committee are satisfied that the precedents of the American Revolution amply show that this can be done. Those precedents show, that, where the exchanges are made by direct negotiation and correspondence between the commanding generals, no political admission can be implied. Where it is necessary to appoint commissioners for a general or a limited exchange, to continue for a greater or lesser period, the powers exchanged may be so framed as to exclude any such admission; and, if the enemy insists on not treating with such an exclusion from the powers, the parties can fall back upon the first-mentioned mode of exchanging man for man, by the direct correspondence of the generals in command."

Our revolution was a civil war. But this rebellion can hardly be said to have the character and the consequences attached to civil war even, as it has been defined, though if the contest were such, the principles contended for do not apply. Vattel p. 424, says: "Custom appropriates the term of civil war to every war between the members of one and the same political society. If it be between part of the citizens on the one side, and the sovereign, and those who continue in obedience to him, on the other, provided the malcontents have any reason for taking up arms, nothing further is required to entitle such disturbance to the name of civil war, and not that of rebellion. This latter term is applied only to such an insurrection against lawful authority as is void of all appearance of justice."

Will the gentleman from Augusta contend that "the malcontents had any reason for taking up arms?" The position of the government is, that the insurrection "is void of all appearance of justice."

But while I agree with the Massachusetts Historical Society that "there is obviously a broad distinction between the American Revolution and this rebellion, founded on the fact that the government of the United States has not given, and is not charged to have given cause for this revolution," and that the analogies of civil war do not therefore fully apply, for my present purpose I shall be willing to treat this contest as civil war; for as Vattel tells us: "The sovereign, indeed, never fails to bestow the appellation of rebels on all such of his subjects as openly resist him; but when the latter have acquired sufficient strength to give him effectual opposition, and to oblige him to carry on the war against them according to the established rules, he must necessarily submit to the use of the term civil war." But though this name be given to the contest, it does not change its character, nor does it change the legal status of the parties. The insurgents are rebels still, owing allegiance to the government which they resist, and amenable to its laws. And the government retains its sovereignty over them so far as the people invested it with sovereignty, with the rights and powers of sovereign over subject, and none other. The application of the laws of war to the contest by it, is only a remittal of some of its extreme rights for humanity's sake; but gives it no powers over the subject, which it did not before possess. Notwithstanding the confident citations which have been made in this discussion, when carefully considered, there is no authority to the contrary. This whole question pertains rather to the science of politics, than international law, but the references have been wholly to works upon the latter, from which we get no certain light, as the discussion of the relation between members of the same State, or subject and sovereign, is foreign to their purpose and only incidentally treated.

We are told that in those works it is declared that "A civil war breaks the bonds of society and government, or, at least, suspends their force and effect; it produces in the State two independent parties, who consider each other as enemies, and acknowledge no common judge." * * * "They stand, therefore, precisely in the same predicament as two nations who engage in a contest, and being unable to come to an agreement, have recourse to arms. This being the case, it is very evident that the common laws of war—those maxims of humanity, moderation and honor, which we have already detailed in the course of this work, ought to be observed in every such war." Vattel p. 425.

The attention of the author is drawn wholly to the circumstances under which the "laws of war" should be applied. If he had been treating upon the science of government, and his attention wholly upon that subject, he would have given no encouragement to the idea that a mere revolt or rebellion, "breaks the bonds of government," as the revolution must be successful, must accomplish its purpose before the bond of government is broken. So when he says "They stand in precisely the same predicament as two nations who engage in contest," he means simply in respect to those circumstances which make it necessary to apply the laws of war to the contest. Not in respect to the political relation of the parties.

What those "laws of war" are, Vattel immediately explains, by saying not "the law of nations," "belligerent rights," the "right of conquest," the "right of confiscation," or the "right to deprive an enemy of his possessions and goods," not any of these, but "those maxims of humanity, moderation and honor, which we have already detailed in the course of this work, ought to be observed by both parties in every civil war. For the same reasons which render the observance of these maxims a matter of obligation between State and State, it becomes equally, and even more necessary, in the unhappy circumstance of two incensed parties lacerating their common country. Should the sovereign conceive he has a right to hang up his prisoners as rebels, the opposite party will make reprisals; if he does not religiously observe the capitulations, and all other conventions made with his enemies, they will no longer rely on his word. Should he burn and ravage [or confiscate,] they will follow his example, the war will become cruel, horrible, and every day more destructive to the nation." Here is a distinct recognition of the continued unity of the State. And the laws of war, ("maxims of humanity") are spoken of as contra-distinguished from "belligerent rights" or the right of the conqueror to commit outrages upon private property, seize and confiscate it, deprive the insurgents of all their possessions, and destroy that which the conqueror can make no use of. All these things would tend directly to promote the "lacerating of their common country," and to make the war "cruel and horrible, and every day more destructive to the nation," the very results which he would most seek to avoid.

In a subsequent paragraph in the same connection, this author says: "Whenever, therefore, a numerous body of men think they have a right to resist the sovereign, and feel themselves in a condition to appeal to the sword, the war ought to be carried on by the contending parties in the same manner as by two different nations." Obviously meaning in respect to the intercourse of the armies and the maxims of humanity, of which he had just been speaking, and he adds, "and they ought to leave open the same means for preventing its being carried to outrageous extremes, and for the restoration of peace." Would confiscation and emancipation tend to such a result? When the paragraphs cited from the writings of other authors upon the same subject, are carefully examined in connection with the context, the same result will be reached.

The acts proposed would be as punishment for the offence of the rebels; but writers upon international law declare it to be the duty of the sovereign to apply the laws of war during the contest, and wait for more quiet times to inflict punishment. Vattel p. 427 says: "The flames of discord and civil war are not favorable to the proceedings of pure and sacred justice, more quiet times are to be waited for. It will be wise in the prince to keep his prisoners till having restored tranquility, he is able to bring them to a legal trial." The advocates of this resolution demand the contrary course on the part of our government—that the punishment shall be inflicted immediately, and as the rebels cannot now be brought to a "legal trial," Congress shall usurp judicial functions, pass a judgment of confiscation, to be executed by the army.

Gentlemen have perplexed themselves by not distinguishing properly between the principles which are to govern this contest, as between ourselves, and as between either of the contending parties and a foreign power, which has recognized both as belligerents. Such foreign power applies to both parties the law of nations, when either of them is brought into its courts. They will declare neither to be outlaws; but apply to them the more humane principles of public law, although if the same tribunal was called upon to decide upon the rights of the parties as between themselves, a very different conclusion might be reached. This was our case in respect to the revolted Spanish provinces in South America. We recognized the revolted provinces as belligerents, and therefore, when their privateersmen were brought into our courts, we refused to treat them as pirates. But it would not have been denied, that if the same parties had been in the courts of Spain, they would have very properly been regarded as pirates, not as belligerents, protected by letters of marque issued by the revolted province because such an adjudication would be a recognition of their independence.

What is the result of the theory that both parties in this contest are invested with the rights of belligerents? Have not the rebels a right to demand that they shall be treated as belligerents, and in no other way? Or will gentlemen contend that we have the rights of belligerents against them, but that they have no such rights against us? That we have against them, both the rights of a sovereign and of a foreign belligerent power; but as against us, they have neither? That, as Mr. Vinton says, "They have no rights which we are bound to respect?" If they have the rights of subjects, as I contend, the case is plain. We may treat them as violators of our national law. But if they have the rights of belligerents, how is our conduct to be justified?

Their privateers have been indicted, tried and convicted as pirates. Does any one doubt the legality of that conviction? Whether we will execute the sentence or not, depends altogether upon the grace which we shall see fit to extend to them. But does any member of this House question our right to hang them? We have taken rebels on land, most of them we choose to treat as prisoners of war, because they are too numerous to be punished according to the laws. It would almost depopulate some sections of the country. But does any one question the right of the government to indict, try and hang them for treason? How is it in respect to General Buckner, who has been committed to Fort Warren, not as a prisoner of war, but as a criminal? How would it be with Jeff. Davis if we caught him? Could we not legally punish him as a traitor? Not if he has the rights of a public enemy, the chief of a nation at war with us. Not if his case is to be governed by international law. But if the laws of his own country are to govern, he may be punished for treason.

The learned Judge Ware of the U. S. District Court at Portland, recently, in the case of the "William Arthur," said:

"There is indeed here an insurrection. But insurgents do not, in international law, constitute a party having the rights of a nation. Foreign nations do not acknowledge them. Towards them they are simply violators of the laws and are

'legally entitled to no more rights than their criminals. In the law of nations they are only malefactors. If Guernsey or Jersey, or any of the channel islands, much more if Yorkshire or Lancashire, which form part of the mainland of the British Empire, should abrogate all the laws of England and set themselves up as an independent nation, would England consider them as having equal rights with herself, or as revolted subjects, guilty of the crime of treason, the highest crime known to her laws and punished with the highest penalty? If a high functionary of another nation should acknowledge an equality and offer to treat them as an independent nation, having the same rights in the commonwealth of nations as herself, especially if this was done immediately and in hot haste, would she consider this a doubtful or equivocal act, or as taking part with a revolted province? Let her own acts in the war of 1776 with this country, answer this question. We at that time formed a part of the British Empire, and commenced a civil war to resist intolerable grievances, not so much in the amount of these grievances, as in the principles advanced. France with sharp eyes looked on, and in the course of three years, so says the British Cabinet, 'formed connections, first secret and afterwards avowed, with the revolted colonies of America, and according to the acknowledged law of nations these connections may be regarded as a breach of the peace between the two crowns and as a declaration of war on the part of the most christian king.'"

This declaration emanated from the British Cabinet, of which Lords Thurlow and Loughborough constituted a part, and clearly shew that in her understanding of the law of nations, revolted subjects are not acknowledged as a nation under that law. I think correctly. The practice of nations I know is not in all cases in harmony with the law. Rome extended her empire not by just war, as we now understand it, but by seeking on all occasions to take part with the minority against the majority, and finally reducing both to slavery, and perhaps some may think that England has followed the same policy in the East. But this I believe to be the law of the christian world in the West. Judge Sprague in a charge to the grand jury in Nov. last, I think, held that confederate privateers were guilty of piracy. What conclusion he may have since come to inconsistent with that, I am not able to inform you. I believe no court can ever give them a different legal status.

But however and wherever the laws of war,—the law of nations, or the public law of the civilized world,—can be applied to this rebellion, they are all modified, restricted and restrained by the constitution of the United States. Both the people who support the government, and those who oppose it, are parties to that constitution, and bound by it. We cannot, with entire safety, appeal to the practice of governments possessing the entire sovereign power, towards its subjects in rebellion, for example. As Mr. Webster says, "we only perplex ourselves when we attempt to explain the relations which exist between the general government and the several state governments," (and the same may be said of the people of the several States,) "according to those ideas of sovereignty which prevail under systems essentially different from our own." This is not, strictly speaking, a contest between sovereignty and the people. It is a part of that very people who possess the sovereignty with which government is dealing. They yielded up to government certain powers of sovereignty, to be exercised according to the instrument by which they yielded it, but the residue of all those powers were retained by the people, as the constitution declares. To the extent to which the people yielded their right of sovereignty to the government, it may be exercised against them. But when it steps beyond this, it is without authority, and the people have a right to resist. Among other things, the people yielded to the government the right to deal with them in a certain manner if they rebelled—to put the rebellion down in the first place, and then punish the treason—but they confined the power of punishment to certain limits. Government cannot increase that power by appealing to the laws of nations.

Wheaton tells us that in civil wars in monarchical governments, the "exercise of the rights of the laws of war may be modified," even by the "obligation of treaties previously made by the government." Treaties are but a part of the laws of a country. And Judge Story, in his opinion in *Brown's case*, (8 Cranch, 142,) in effect, concedes that, if there was anything in the British constitution against the right to confiscate enemy's property, (in that case debts,) it must govern. And he also recognizes the binding force of treaty stipulations, and even of the English common law. May we not, with vastly greater force, urge the objections in that constitution upon which our very government rests?

But if it were admitted that the law of nations alone was to govern this contest, we are not justified in confiscating private property on land, or to interfere with laborers who are non-combatants. Wheaton, p. 394, tells us: "All the members

of the enemy State may lawfully be treated as enemies in a public war; but it does not therefore follow, that all these enemies may be lawfully treated alike; though we may lawfully destroy some of them, it does not therefore follow, that we may lawfully destroy all. For the general rule derived from the natural law is still the same, that no use of force against an enemy is lawful, unless it is necessary to accomplish the purposes of war. The custom of civilized nations, founded upon this principle, has therefore exempted the persons of the sovereign and his family, the members of the civil government, women and children, cultivators of the earth, artisans, laborers, merchants, men of science and letters, and generally all other public or private individuals engaged in the ordinary civil pursuits of life, from the direct effect of military operations, unless actually taken in arms, or guilty of some misconduct in violation of the usages of war by which they forfeit their immunity.

The application of the same principle has also limited and restrained the operations of war against the territory and other property of the enemy. From the moment one State is at war with another, it was, on general principles, a right to seize on all the enemy's property, of whatsoever kind and wheresoever found, and to appropriate the property thus taken to its own use or to that of the captors. By the ancient law of nations, even what were called *res sacra* were not exempt from capture and confiscation. Cicero has conveyed this idea in his expressive metaphorical language, in the fourth oration against Verres, where he says that 'victory made all the sacred things of the Syracusans profane.' But by the modern usage of nations, which has now acquired the force of law, temples of religion, public edifices devoted to civil purposes only, monuments of art, and repositories of science, are exempted from the general operations of war. Private property on land is also exempted from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field or in besieged towns, and of military contributions levied upon the inhabitants of the hostile territory. This exemption extends even to the case of an absolute and unqualified conquest of the enemy's country. In ancient times, both the movable and immovable property of the vanquished passed to the conqueror. Such was the Roman law of war, often asserted with unrelenting severity, and such was the fate of the Roman provinces subdued by the northern barbarians on the decline and fall of the western empire. A large portion, from one-third to two-thirds, of the lands belonging to the vanquished provincials, was confiscated and partitioned among their conquerors. The last example in Europe of such a conquest, was that of England, by William of Normandy. Since that period, among the civilized nations of Christendom, conquest, even when confirmed by a treaty of peace, has been followed by no general or partial transmutation of landed property. The property belonging to the government of the vanquished nation passes to the victorious State, which also takes the place of the former sovereign in respect to the eminent domain. In other respects, private rights are unaffected by conquest."

Senator Vinton takes a paragraph out of its connection in what I have quoted, and claims it as authority to confiscate private property. He says:

"Wheaton, in his work on International Law, (and there is no better authority,) says: 'From the moment one State is at war with another, it has on general principles, a right to seize on all the enemy's property of whatsoever kind, and wheresoever found, and appropriate the property thus taken to its own use or to that of the captors.' [Wheat. Inter'l Law, 395.]"

When read with its context, it will be perceived that the paragraph quoted by him, relates to public not private property; and that there could be no stronger authority against his proposition:

Do we belong to the "civilized nations of christendom?" Or are we 'of the "northern barbarians" of whom the author tells us? Among which class will the gentleman from Augusta place us? The rebels have placed us among the latter. Will the members of this House do the same? This proposition is to take private property—not merely that which the exigencies of the war demand, nor temporary occupation, or sequestration of private property, nor "booty in special cases," nor "military contributions"—but confiscation and appropriation to ourselves of all the private property of the insurgents. If you appeal to the usage of nations, to the destruction of your own organic law, will you not be bound by it? Or will you return to what was once the usage of nations, and that in the dark ages of the world? Has the spirit of christianity and civilization no charms for you? Or do you prefer the spirit of the Goths and Vandals in their conquest of the Roman provinces?

Chancellor Kent (1 Com. p. 92,) says: "There is a marked difference in the

right of war, carried on by land and at sea. The object of a maritime war is the destruction of the enemy's commerce and navigation, in order to weaken and destroy the foundations of his naval power. The capture or destruction of private property is essential to that end, and it is allowed in maritime wars by the law and practice of nations. But there are great limitations imposed upon the operations of war by land, though depredations upon private property, and despoiling and plundering the enemy's territory, are still too prevalent, especially when the war is assisted by irregulars. Such conduct has been condemned in all ages by the wise and virtuous, and it is usually severely punished by those commanders of disciplined troops who have studied war as a science, and are animated by a sense of duty or the love of fame. The general usage now is, not to touch private property upon land, without making compensation, unless in special cases, dictated by the necessary operations of war, or when captured in places carried by storm, and which repelled all the overtures for a capitulation."

In Brown's case, (8 Cranch,) so often cited, the court were called upon to consider what were the absolute rights of public war, independent of the usage of nations, which for eight hundred and fifty years has been uninterrupted, since the days of William the Conqueror—the last to violate those principles of civilization of which I have been speaking—the last to appropriate private property to the conqueror. And while they admit the power of a conquering nation to do anything which it wills, they are very careful to state the qualification which modern usage has introduced in its exercise. They say: "Respecting the power of the government, no doubt is entertained, that war gives the sovereign full right to take the persons and confiscate the property of the enemy wherever found. The mitigations of this rigid rule which the humane and wise policy of modern times has introduced into practice, will, more or less, affect the exercise of that right," &c. I have already said that what the court there say about the power of Congress to pass a confiscation act, relates wholly to prize property in public war. The Chief Justice says (p. 122,) "the material question made at bar is this: can the pine timber, (the subject of adjudication,) even admitting the property not to be changed by the sale in November, be condemned as prize of war?"

It was a case where certain timber was seized within the United States after the declaration of war against Great Britain in 1812, belonging to a British subject, as lawful prize of war. The court held that inasmuch as by the constitution it is made the duty of Congress to "make rules concerning captures on land and water," the property of an alien enemy could not be condemned without an act of Congress. The learned Chief Justice Marshall would have been very incredulous if he had been told that half a century after it was made, an attempt would be made to use that decision as authority for a power in Congress to pass an act confiscating property for the crime of treason. Many illustrations might be cited from the opinions of that court to show, that they do not regard the provisions of the constitution giving Congress the power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water," as applicable to domestic war. That court carefully distinguishes between foreign and domestic war.

The provision of the constitution authorizing Congress to make rules concerning captures, relates wholly to prize or contraband property of the enemy. Private property on land, not employed in a belligerent manner, except "warlike instruments, or materials by their own nature fit to be used in war," is not contraband or lawful prize of war. No one will put the confiscation of lands on this ground. But there has been an attempt to put the capture of slaves upon the ground that they were lawful prize according to the usage of nations. And as this is a question which has attracted a good deal of public attention, I cannot pass it by. They have been called "contrabands" and "prize property." The history of our own country, in its foreign wars, has been appealed to, to sustain this proposition. That history, certainly, has great significance upon the question, and I agree may settle the question, so far as we are concerned. Senator Smart, in his first speech upon these resolves, in respect to this question, says:

"But we are told that if we do so, it will be a disparagement of our own courage, and disgrace us in the eyes of European civilization. Great Britain, whose favor the rebels are struggling so hard to obtain and whose sympathy they appear to have almost universally enlisted, cannot look upon us as disgraced, while her own conspicuous example is within the recollection of every student of history. In the sixteenth year of the reign of George the Third, Lord Dunmore issued a proclamation on board the ship William at Norfolk, from which I make the following extract:

* * * * * "And I do hereby further declare all indented servants, negroes

'or others, (appertaining to rebels) free, that are able and willing to bear arms, they joining his majesty's troops as soon as may be.'

"This was done in our first war with Great Britain. What was done in the second? On the 2d of April, 1814, Admiral Cochrane, the Commander-in-Chief of his Britannic Majesty's squadrons upon the American station, invited the slaves of the South to join the British standard, saying that 'it had been represented to him that many persons now resident in the United States had expressed a desire to withdraw therefrom, with a view to enter into His Majesty's service or of being received as free settlers into some of his majesty's colonies,' and that 'all those who might be disposed to emigrate from the United States would be, with their families, received on board his majesty's ships, or vessels of war, or at the military posts that might be established upon or near the coast of the United States, when they would have their choice of either entering into his majesty's sea or land forces, or of being sent, as free settlers, to the British possessions in North America or the West Indies, where they would meet all due encouragement.'"

And the Senator proceeds to argue that this example shows the usage of the leading power in Europe upon this question, in its dealings with us; that, to use his own language, "here is the whole operation now under consideration, "confiscation, arming and colonization." * * * * "I am showing the respectability of confiscating, &c., the slaves of rebels."

Now, Mr. Chairman, that Senator did not state the sequel of the matter. If he knew what it was, I am at a loss to perceive why he produces this piece of history. Slaves, to some extent, were enticed from their masters in the revolutionary war by British commanders, and retained by them until the close of the war. But the British government in the treaty of peace of 1783, yielded to our claim that they had violated the right of private property, contrary to the laws of nations, and stipulated that "the evacuation should be made (by the British troops) without carrying away any negroes, or other property, belonging to the American inhabitants." This stipulation was nevertheless violated, as were many other provisions in that treaty; and though indemnity was demanded by Washington, and Mr. Benton says "the very first message of Washington to Congress, when he became President, presented the inexecution of the treaty of peace in this particular, among others, as one of the complaints justly existing against Great Britain," and though "all the diplomacy of his administration was exerted to obtain redress," it was avoided.

Not so in respect to the slaves carried off by the British troops, in the war of 1812. Again yielding to the arguments of our commissioners, that slaves were not lawful prize of war, and that there was no ground in the law of nations upon which interference with that kind of property belonging to private persons, could be justified. Great Britain in the treaty of Ghent (1814) stipulated for the restitution of all such slaves. This stipulation, like the former, was for a long time disregarded, and became the subject of diplomacy and arbitration. Our government did not cease to prosecute the claim until at length, during the administration of the not very ardent pro-slavery President, John Quincy Adams, the British government paid an ample price for every slave thus carried away. Mr. Benton in chapter thirty-two of his *Thirty Years in the United States Senate*, vol. one, says:

"At the commencement of the session of Congress, 1827-28, the President, Mr. John Quincy Adams, was able to communicate the fact of the final settling and closing up of this demand upon the British government for the value of the slaves carried off by its troops. The sum received was large, and ample to pay the damages; but that was the smallest part of the advantage gained. The example and the principle were the main points, the enforcement of such a demand against a government so powerful, and after so much resistance, and the condemnation which it carried, and the responsibility which it implied, this was the grand advantage. Liberation and abduction of slaves was one of the modes of warfare adopted by the British, and largely counted on as a means of harrassing and injuring one-half of the Union. It had been practiced during the revolution, and indemnity avoided. If avoided a second time, impunity would have sanctioned the practice and rendered it inveterate; and in future wars, not only with great Britain, but with all powers, this mode of annoyance would have become an ordinary resort, leading to servile insurrections. The indemnity exacted carried along with it the condemnation of the practice, as a spoliation of private property to be atoned for, and was both a compensation for the past and a warning for the future. It implied a responsibility which no power, or act, or term could evade, and the principle of which being established, there will be no need for future arbitrations."

The sum of one million two hundred and four thousand nine hundred and sixty dollars was paid by the British government to the government of the United States, to be by the latter, divided among those whose slaves had been carried off. Thus became established, by the persistent demand of our government, continued during a period of near forty years, the principle, that in no war, foreign or domestic, can slaves of private citizens be seized or confiscated, as contraband, or lawful prize of war, or as a legitimate mode of annoying or punishing subjects in rebellion. Here is the history of the subject during two wars. The first was a war by subjects against sovereign, and the last between independent powers. In both we insisted and Great Britain conceded, that interference with slaves was unwarrantable. I thank the Senator from Knox for drawing my attention to the subject.

Notwithstanding the principle is maintained by the highest and uniform consent of authorities, that while conquest transfers to the conqueror the sovereignty of the country and the public property, in civilized countries private property remains undisturbed. We find Mr. Trumbull asserting that "the Supreme Court said, in the case *Johnson vs. McIntosh* (5th Curtis, 513,) that conquest gives a title the courts cannot deny. That is settled by judicial decision."

The question under consideration was an Indian title. Mr. Trumbull does not give himself the trouble to inform us (so far as the report which I have before me shows) of the distinction between the conquest of a civilized and the conquest of a savage people. Among other things on this subject the court say :

"Although we do not mean to engage in the defence of those principles which Europeans have applied to Indian title, they may, we think, find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them. The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually they are incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other, the distinction between them is gradually lost and they make one people. Where this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired, that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections and united by force to strangers. * * * But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high-spirited as they were fierce, and were ready to repel by arms every attempt on their independence. * * * That law which regulates, and ought to regulate in general, the relations between the conqueror and conquered, was incapable of application to a people under such circumstances. The resort to some new and different rule, better adapted to the actual state of things, was unavoidable. Every rule which can be suggested will be found to be attended with great difficulty."

The Senator does not seem content to resort to practices of the semi-barbarous ages of the world for his principles of international law, but to rules adopted in respect to the untamed and untamable savage of the forest, for the rights of the conqueror of a civilized and christian people.

As a practical illustration of the operation of the principles asserted in this resolve, let us suppose that the United States were at war with Spain. What effect would an act of Congress have, declaring all the estates in Cuba confiscated, and the slaves all the subjects of the Spanish government in that island liberated? Should we not expose ourselves to the just ridicule of the world by such an act?

But again, sir; suppose we conquered the island of Cuba, and succeeded in wresting the "brightest jewel of the Spanish crown" from her, should we "provide for the confiscation of estates, real and personal, of (Cuba,) and for the forfeiture and liberation of ever slave claimed by them?" No man who has any respect for himself or his country would contend for these propositions. And now, Mr. Chairman, let me ask, if you succeed in "conquering" our sister States of the South, would you not be willing to extend as much clemency to the children of our revolutionary fathers—to the sons of the men who with our fathers accomplished our independence, and framed this free government for us, our brothers and our kindred, as to the creoles of a Spanish island?

In this very case of Brown's, cited not only by Senators Vinton and Smart in our Legislature, but also in the United States Senate, to persuade Congress to confiscation and slave emancipation, the court, in respect to the modern usage of nations, restraining the right to take the private property of an enemy, say: "The rule, like other precepts of morality, of humanity, and even of wisdom, is addressed to the judgment of the sovereign, and, though it cannot be disregarded without obloquy, yet it may be disregarded." Of course, all laws, human and divine, may be discre-

garded. The government of the freest, the most enlightened, and most christian people upon the face of the earth, may disregard those "precepts of morality, humanity and of wisdom;" but, Mr. Chairman, the question for you and me to settle to-day is, shall we advise that government, by this resolution, to do it? You may, I will not! I will not first abandon and trample upon the constitution of my country, and then turn to its government and advise it to act upon principles of international law which have been condemned by the christian world ever since the dawn of modern civilization! I will vote to put no such weapon into the hands of the leaders of the rebellion. They have done mischief enough already by the use of such weapons. They are more potent against us than their armies or navies. Ten millions of free people, thoroughly convinced that their conquerors will despoil them of all their property, real and personal, and make them and their children strangers and wanderers in their own country, can never be subdued. They may be conquered perhaps, but, sir, they can never be subdued, never made again to participate in the government which thus despoils them. And more, sir, I have serious doubts whether the most powerful nation upon the face of the earth, could even conquer them. Why, sir, let it be proclaimed that the purpose of the war is to thus extinguish their rights, civil and political, (as has been advocated here and in Congress) and I fear that the sympathy of the christian world would be with them—that the God of christianity would help them!

The degeneracy of the times has lifted into high places, men who boldly advocate the exercise of irresponsible power, and shamelessly ask, who is to bring us to account for it? Senator Trumbull in his speech, says:

"Again, sir, if Congress declares the property of a rebel forfeited—declares his real estate forfeited—I want to know who is to controvert that question? If it is contended that, according to international law, Congress has no right to confiscate the real estate of a rebel, I ask who is to interpret international law? There is no common tribunal to which all nations submit their questions. International law is nothing more than a uniform usage of civilized nations, and each one at last interprets it for himself, running the hazard, it is true, of bringing upon himself the condemnation of other nations. I suppose if a nation should violate a well-settled principle of international law, such as violating the rights of an ambassador or of a passport, it would bring upon itself the condemnation of other nations."

But, if this government violates all law, the law of their own country, and the laws of the civilized world, against its own subjects, there is no remedy, there is no power to avenge the wrong. He tells us that other nations would have no occasion to interfere, and then asks, audaciously asks an American Senate and an American people:

"And if other nations would not interfere, who would interfere? Can our courts give a different construction to international law from what a sovereign power gives it? Certainly not. The courts are bound by international law as the nation establishes it. They cannot overrule an act of Congress, because in their opinion it does not harmonize with international law. They have no such power."

O, for another Cicero to stand up in the American, as he did in the Roman Senate, and with clarion voice which should reach the utmost bounds of the Republic, exclaim, "O, ye immortal Gods, where on earth are we?—in what country are we living?—what constitution is ours?"

RESOLVE CONDEMNES THE ADMINISTRATION.

Mr. Chairman, how are gentlemen to explain their consistency who vote for both the first and second resolutions? The first applauds, and the second condemns the policy of the administration from the day President Lincoln was sworn into office to this very hour, as that policy is evinced by all the public acts and declarations of the President, the Commander-in-Chief and the commanders of all the military departments under him.

This resolve declares for "confiscation of estates" and liberation of every slave of the rebels," and that this should be the policy of the war. It supports the theory that the Union is broken, the constitution abrogated in ten States of the Union, and that the laws therein are not in force. What says the President on this subject. In his inaugural address, he said:

"I hold that in contemplation of universal law, and of the Constitution, the Union of these States is perpetual. Perpetuity is implied, if not expressed in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our national constitution, and the Union will endure forever—it being impossible to destroy it, except by some action not provided for in the instrument itself. * * * * *

It follows from these views that no State upon its mere motion can lawfully get out of the Union—that resolves and ordinances to that effect are legally void, and that acts of violence within any State or States against the authority of the United States, are insurrectionary or revolutionary, according to circumstances.

"I therefore consider that in view of the Constitution and the laws, the Union is unbroken, and

‘to the extent of my ability I shall take care, as the Constitution itself expressly enforces upon me, that the laws of the Union be faithfully executed in all the States.’”

And again:

“Apprehension seems to exist among the people of the Southern States, that by the accession of a Republican administration, their property and their permanent peace and security are to be endangered. There has never been any reasonable cause for such apprehension. Indeed, the most ample evidence to the contrary has all the while existed, and been open to their inspection. It is found in nearly all the published speeches of him who now addresses you. I do but quote one of those speeches, when I declare that I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so. Those who nominated and elected me did so with the full knowledge that I had made this and many similar declarations, and had never recanted them; and more than this they placed in the platform for my acceptance and as a law to themselves and to me, the clear and emphatic resolution which I now read:

“Resolved, That the maintenance, inviolate of the rights of the States, and especially the rights of each State to order and control its own domestic institutions, according to its own judgment exclusively, is essential to that balance of power on which the perfection and endurance of our political fabric depends, and we denounce the lawless invasion by an armed force of any State or Territory, no matter under what pretext, as the greatest of crimes.

“I now reiterate these sentiments; and in doing so I only press upon the public attention the most conclusive evidence of which the case is susceptible, that the property, peace and security of no section are to be in any wise endangered by the now incoming administration. I add that all the protection which, consistently with the Constitution and the laws, can be given, will be cheerfully given to all States, when lawfully demanded, for whatever cause, as cheerfully to one section as to another.”

At the session of Congress then just closed, the following resolutions passed the United States House of Representatives, February 11th, 1861, by a nearly unanimous vote:

“Resolved, That neither the Federal Government nor the people or governments of the non-slaveholding States have a purpose or a constitutional right to legislate upon or interfere with slavery in any of the States of the Union.

“Resolved, That those persons in the North who do not subscribe to the foregoing proposition are too insignificant in numbers and influence to excite the serious attention or alarm of any portion of the people of the Republic, and that the increase of their numbers and influence does not keep pace with the increase of the aggregate population of the Union.”

And in consonance with these resolutions, with a like unanimity, Congress proposed an amendment to the constitution providing that the constitution should never be so amended as to authorize the general government to interfere with slavery in the States. In reference to this action, the President said:

“I understand a proposed amendment to the constitution, which amendment I have not seen, has passed Congress, to the effect that the federal government shall never interfere with the domestic institutions of the States, including that of persons held to service. To avoid misconception of what I have said, I depart from my purpose not to speak of particular amendments, so far as to say that holding such a provision to now be implied constitutional law, I have no objection to its being made express and irrevocable.”

To the extra session, on the fourth of July, the darkest hour of the Republic, when extraordinary measures would have been justified if ever, he thus re-assures us of his loyalty to every provision of the constitution, and his determination that the constitutional rights of every section shall be preserved. He tells us that

“Lest there be some uneasiness in the minds of candid men as to what is to be the course of the government towards the southern States after the rebellion shall have been suppressed, the Executive deems it proper to say it will be his purpose then, as ever to be guided by the constitution and the laws, and that he will probably have no different understanding of the powers and duties of the federal government relatively to the rights of the States and the people under the constitution than that expressed in the inaugural address. He desires to preserve the government that it may be administered by the men who made it. Loyal citizens everywhere have the right to claim this of their government, and the government has no right to withhold or neglect it. It is not perceived that in giving it there is any coercion, any conquest, or any subjugation, in any just sense of these terms.”

With the President's well known and publicly declared approval, that session passed the following declaration of the policy and purposes of the war:

“Resolved, That the present deplorable civil war has been forced upon the country by the disunionists of the southern States, now in arms against the constitutional government, and in arms around the capital; that in this national emergency, Congress, banishing all feeling of passion or resentment, will recollect only its duty to the whole country; that this war is not waged on their part in any spirit of oppression, or for any purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the constitution, and to preserve the Union, with all the dignity, equality and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease.”

This resolution was moved by Mr. Crittenden in the House, and by Andrew Johnson in the Senate, and was adopted in both branches by an almost unanimous vote. It was then, and still is regarded, as nothing less than a solemn pledge of the spirit in which the war was to be prosecuted, and the purposes to which it was to be con-

fined. It procured for us the co-operation of hundreds of thousands of men in the border States, who were before doubtful of our purpose—men who had witnessed with alarm the effect of the eloquence of impassioned anti-slavery orators upon the northern mind, and believed it so infected with prejudice against the institutions of the South, that they were ready to trample upon the constitution to get rid of them. This resolution did much to dissipate that belief. They came to our aid. Kentucky, Missouri, Tennessee, Western Virginia and the eastern shore are ours, and the armies of the Union meet a returning loyal sentiment at almost every step.

In August General Fremont assumed command at St. Louis, and issued his unfortunate proclamation to carry out the purpose which the resolution before us intended to promote. As soon as it came to the knowledge of the President, which was on the second of September, he sent a special messenger to St. Louis with this communication to General Fremont:

"I think there is great danger that the closing paragraph, in relation to the confiscation of property, and liberating slaves of traitorous owners, will alarm our Southern Union friends, and turn them against us—perhaps ruin our rather fair prospect for Kentucky. Allow me, therefore, to ask that you will, as of your own motion, modify that paragraph so as to conform to the first and fourth sections of the act of Congress, entitled 'an act to confiscate property used for insurrectionary purposes,' approved August 6, 1861, and a copy of which act I herewith send you."

He believed with those of us who oppose all schemes for forcible emancipation, and schemes for indiscriminate "confiscation of rebel property," that they "will alarm our southern Union friends, and turn them against us, and perhaps ruin our rather fair prospect" of preserving the Union as our fathers made it, of restoring to us, a united, harmonious, prosperous and happy people, from the lakes to the gulf, from ocean to ocean. And he therefore required General Fremont to modify his proclamation so as to conform to the act to confiscate property used for insurrectionary purposes, which property I have attempted to show you may be constitutionally taken from the rebels. That act does not liberate a single slave, but deprives their owners of their service merely, in case they have been employed by them in acts of hostility to the government.

The instructions to Generals in command, given under the immediate authority of the President, all breathe the same spirit. In an order to Major General Butler, dated May 30, 1861, the Secretary of War says:

"While, therefore, you will permit no interference by the persons under your command with the relations of persons held to service under the laws of any State, you will, on the other hand, so long as any State within which your military operations are conducted, is under the control of such armed combinations, refrain from surrendering to alleged masters any persons who may come within your lines. You will employ such persons in the services to which they may be best adapted, keeping an account of the labor by them performed, of the value of it, and of the expenses of their maintenance."

In another order to General Butler, dated August 8, 1861, the Secretary declares

"It is the desire of the President that all existing rights in all the States be fully respected and maintained. The war now prosecuted on the part of the Federal Government is a war for the Union, and for the preservation of all constitutional rights of States, and the citizens of the States in the Union. * * * Under these circumstances, it seems quite clear that the substantial rights of loyal masters will be best protected by receiving such fugitives, as well as fugitives from disloyal masters, into the service of the United States, and employing them under such organizations and in such occupations as circumstances may suggest or require. Of course, a record should be kept, showing the name and description of the fugitives; the name and character, as loyal or disloyal, of the master; and such facts as may be necessary to a correct understanding of the circumstances of each case after tranquility shall have been restored."

In May General McClellan, whose name will go down to posterity among the greatest military commanders of the world, was put in command of the department of the Ohio, and representing the administration, he immediately issued to the people of Western Virginia, a proclamation containing the following:

"I have ordered troops to cross the river. They come as your friends and brothers—as enemies only to the armed rebels who are preying upon you. Your homes, your families, and your property are safe under our protection. All your rights shall be religiously respected. Notwithstanding all that has been said by the traitors to induce you to believe our advent among you will be signalized by an interference with your slaves, understand one thing clearly:—Not only will we abstain from all such interference, but we will, on the contrary, with an iron hand, crush any attempt at insurrection on their part."

An order to Brig. Gen. Sherman, commanding the land forces of the United States in the recent expedition to Port Royal, dated Oct. 14, 1861, is as follows:

WAR DEPARTMENT, Oct. 14, 1861.

SIR: In conducting military operations within States declared by the proclamation of the President to be in a state of insurrection, you will govern yourself, so far as persons held to service under the laws of such States are concerned, by the principles of the letters addressed by me to Major General Butler, on the 30th of May and the 8th of August, copies of which are herewith furnished to you. As special directions, adapted to special circumstances, cannot be given,

much must be referred to your own discretion as commanding general of the expedition. You will, however, in general, avail yourself of the services of any persons, whether fugitives from labor or not, who may offer them to the national government; you will employ such persons in such services as they may be fitted for, either as ordinary employees, or, if special circumstances seem to require it, in any other capacity, in such organization, in squads, companies, or otherwise, as you deem most beneficial to the service. This, however, not to mean a general arming of them for military service. You will assure all loyal masters that Congress will provide just compensation to them for the loss of the services of the persons so employed. It is believed that the course thus indicated will best secure the substantial rights of loyal masters, and the benefits to the United States of the services of all disposed to support the Government, while it avoids all interference with the social systems or local institutions of every State beyond that which insurrection makes unavoidable, and which a restoration of peaceful relations to the Union, under the Constitution, will immediately remove.

Respectfully,
SIMON CAMERON, Secretary of War.

In pursuance of these instructions, a proclamation was issued by Gen. Sherman to the people of South Carolina, saying:

"In obedience to the orders of the President of these United States of America, I have landed on your shores with a small force of national troops. The dictates of a duty which, under these circumstances, I owe to a great sovereign State, and to a proud and hospitable people, among whom I have passed some of the pleasantest days of my life, prompt me to proclaim that we have come amongst you with no feelings of personal animosity, no desire to harm your citizens, destroy your property, or interfere with any of your lawful rights or your social or local institutions, beyond what the causes herein alluded to may render unavoidable."

Maj. Gen. Dix also issued a proclamation to the people of Accomac and Northampton counties, in the State of Virginia, dated Nov. 13, 1861, beginning as follows:

"The military forces of the United States are about to enter your counties as a part of the Union. They will go among you as friends, and with the earnest hope that they may not, by your own acts, be forced to become your enemies. They will invade no rights of person or property. On the contrary, your laws, your institutions, your usages, will be scrupulously respected. There need be no fear that the quietude of any fireside will be disturbed, unless the disturbance is caused by yourselves."

"Special directions have been given not to interfere with the condition of any person held to domestic service; and, in order that there may be no ground for mistake or pretext for misrepresentation, commanders of regiments and corps have been instructed not to permit any such persons to come within their lines."

Maj. Gen. Halleck, within a few weeks, departed from Washington to supersede Gen. Fremont in the western department; and immediately upon arriving at headquarters issued an order excluding all slaves from the lines of his command, and prohibiting their further admission.

But a change came over the spirit of the dreams of the Secretary of War. Serious charges against his honesty in the administration of the pecuniary affairs of the War Department, were made, and generally believed by the friends of the President. The supporters of the war had already become divided into two parties—the constitutional and anti-constitutional—the administration and the anti-administration parties. Those who applauded Fremont, and condemned the course of the President in modifying his proclamations, on one side—and those who applauded the President, and condemned Fremont, on the other.

The Secretary seems to have come to the conclusion that his fortune was most secure in the hands of the rebels; that if in their eagerness to compass the *summum bonum* of their political ambition, negro emancipation, they would not hesitate to jeopardize the liberties of their own constituents—they would but lightly regard frauds and peculations upon the treasury of the people, if they were but practised by some co-worker in what they appear to consider as a holy crusade. His annual report, therefore, reiterated and elaborated the doctrines of the Fremont proclamation. The President required that this portion of the report should be struck out, as the only condition upon which it could be submitted to Congress. A more Jacksonian act has not been done by a President of the United States since the hero of New Orleans presided over the fortunes of the nation. And in the following emphatic language from his last message, we have the President's reaffirmation of his principles and purposes:

"In considering the policy to be adopted for suppressing the insurrection, I have been anxious and careful that the inevitable conflict for this purpose shall not degenerate into a violent and remorseless revolutionary struggle. I have, therefore, in every case, thought it proper to keep the integrity of the Union prominent, as the primary object of the contest on our part, leaving all questions which are not of vital military importance to the more deliberate action of the Legislature. * * * * * The inaugural address at the beginning of the Administration, and the message to Congress at the late special session, were both mainly devoted to the domestic controversy, out of which the insurrection and consequent war have sprung. Nothing now occurs to add or subtract, to or from, the principles or general purposes stated and expressed in those documents."

The telegraph this morning informs us that the President has departed from his usual course, by asking Congress to thank those gallant and judicious commanders,

Gen. Burnside and Com. Goldsborough, who sent before their victorious forces, and scattered everywhere among the rebellious people of North Carolina, this official proclamation of the purposes of the government and the principles of the war :

A joint Proclamation from Com. Goldsborough and Gen. Burnside to the people of North Carolina.
ROANOKE ISLAND, N. C., Feb. 13, 1862.

The mission of our joint expedition is not to invade any of your rights, but to assert the authority of the United States, and to close with you the desolating war brought upon your State by comparatively a few bad men in your midst.

Influenced infinitely more by the worst passions of human nature than by any show of elevated reason, they are still urging you astray to gratify their unholy purposes.

They impose upon your credulity by telling you of wicked and even diabolical intentions on our part; of our desire to destroy your freedom, demolish your property, liberate your slaves, injure your women, and such like enormities—all of which, we assure you, is not only ridiculous, but utterly and wilfully false.

We are Christians as well as yourselves, and we profess to know full well, and to feel profoundly, the sacred obligations of the character.

No apprehensions need be entertained that the demands of humanity or justice will be disregarded. We shall inflict no injury, unless forced to do so by your own acts, and upon this you may confidently rely.

Those men are your worst enemies. They, in truth, have drawn you into your present condition, and are the real disturbers of your peace and the happiness of your firesides.

We invite you, in the name of the constitution, and in that of virtuous loyalty and civilization, to separate yourselves at once from those malign influences, to return to your allegiance, and not compel us to resort further to the force under our control.

The Government asks only that its authority may be recognized; and, we repeat, in no manner or way does it desire to interfere with your laws, constitutionally established, your institutions of any kind whatever, your property of any sort, or your usages in any respect.

L. M. GOLDSBOROUGH, Flag Officer, Com'g North Carolina Blocka'g Squadron.
A. E. BURNSIDE, Brig. Gen. Com'g Department North Carolina.

They speak in the name of "the Government"—and they directly represent the Executive. That Executive does not rebuke them, or require them to modify their proclamation, as in the case of Gen. Fremont; but in a most emphatic and public manner endorses *all their acts*. That proclamation has, therefore, virtually become the official announcement of the President to the people of all the States in rebellion, that "the government asks *only* that its authority may be recognized;" and that "in no manner or way does it desire to interfere with your laws, constitutionally established—your institutions of any kind whatever—your property of any sort—or your usages in any respect."

How striking in contrast is this spirit of catholicity to the Union and the Constitution, with the utterances of one of our own members of Congress, (Mr. Pike,) who declares in a recent speech in the House—not that the purpose or the duty of the government is simply to "enforce its authority," to preserve the constitution, to "keep the integrity of the Union prominent, as the primary object of the contest on our part," as the President declares—but that "our duty to-day is to tax and fight. Twin brothers of great power; to them in good time shall be added a third; and whether he shall be of executive parentage, or generated in Congress, or spring, like Minerva, full grown from the head of our army, I care not. Come he will, and his name shall be emancipation. And these three—Tax, Fight, and Emancipate—shall be the Trinity of our salvation. In this sign we shall conquer."

Gen. Halleck has just issued a proclamation to the army of the Southwest, which breathes the same noble spirit as that of Burnside and Goldsborough, from which I cannot forbear the reading of a single paragraph, as another most recent indication that the policy of the government is not to be changed in obedience to the behests of confiscation and emancipation agitators in Congress or out of Congress :

"Let us show to our fellow-citizens of those States that we come merely to crush out the rebellion and to restore them to peace and the benefits of the Constitution and the Union, of which they have been deprived by selfish and unprincipled leaders. They have been told that we come to oppress and plunder. By our acts we will undeceive. We will prove to them that we come to restore, not to violate the constitution and the laws. In restoring to them the glorious flag of the Union, we will assure them that they shall enjoy under its folds the same protection of life and property as in former days."

The President has just issued a proclamation through the Secretary of War, in which he clearly signifies that he sees no occasion for a change of policy, but that the policy upon which he has conducted the contest is about to triumph. He says : "The insurrection is believed to have culminated, and to be declining. The President, in view of these facts, is anxious to favor a return to the normal course of the administration," as far as the public welfare will allow; and he therefore "directs that all political prisoners or State prisoners now held in military custody be released on their subscribing a parole engaging them to render no aid or comfort to enemies in hostility to the United States." As soon as possible, he proposes to recede from the exercise of any unusual powers of the government, and now proposes that all fu-

ture arrests for political offences shall be made by the civil officers wherever their authority is respected.

Another gratifying indication that the President is determined that the constitution shall not be broken down by any of the means which have been suggested by the emancipationists, is the care which he is taking that the Supreme Court of the United States shall not become radicalized for the purpose of perverting that sacred instrument; or of hereafter procuring a judicial endorsement of the confiscation and emancipation schemes, should they be successful in carrying them through the legislative department of the government. There are several vacancies upon that bench. But one appointment has been made by President Lincoln, that of Judge Swayne of Ohio. I read a statement in respect to this appointment from a press which gives and has always given the administration a most reliable and efficient support—Gov. Sprague's organ :

"The telegraph states that the oath of office was administered yesterday to Judge Swayne, recently appointed Associate Justice of the Supreme Court of the United States. Judge Swayne is from Ohio, and is the same man who, as one of the Judges of the Supreme Court of Ohio, a few years ago, held the fugitive slave law to be constitutional, and refused to release fugitive rescuers who presented their case to him, after their arrest by a federal officer, through a writ of habeas corpus. His integrity, as then exhibited, caused the republican convention, which met a short time afterwards, to throw him overboard, and he has since remained in private life. The President could have done scarcely any act more offensive to the abolitionists than appointing him to be one of the judges of the Supreme Court. He is represented as an able jurist and a thoroughly constitutional man."

The importance of the manner in which that court is constituted, can only be appreciated, when we call to mind its great powers, as, in its sphere, an independent department of the government. It has the power, Mr. Chairman, of declaring these very confiscation and emancipation acts null and void, as in contravention of the constitution. In respect to the powers with which it was the design of the convention which formed the constitution to invest the judicial department of the government, I read a paragraph from the speech of Mr. Ellsworth of Connecticut, of whom Mr. Webster, forty-five years afterwards, said : "He was a gentleman who has left behind him on the records of the government of his country, proofs of the clearest intelligence and of the deepest sagacity, as well as the utmost purity and integrity of character." Mr. Ellsworth said : "This constitution defines the extent of the powers of the general government. If the general legislature should, at any time, overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers—if they make a law which the constitution does not authorize, it is void; and the judiciary power—the national judges—who, to secure their impartiality, are to be made independent, will declare it to be void."

That department was called by one of the great advocates of the adoption of the constitution, "the citadel of public justice, and public security." Our good President seems to be resolved that it shall not be suffered in his hands to go to decay—that no guard shall be placed within its walls who has given any indication of faithlessness to that constitution, which it was designed to protect. I hail this indication with a heartfelt gratitude to him, from the support of whose administration I will not be driven, so long as he remains thus faithful to his high trust.

Fortunate for the country is it, that the President selected, and still retains, for the chief of his constitutional advisers, a gentleman of such enlarged and statesman-like views—so capable of rising above the dogmas of party, to the consideration of the good of the whole country—so courageous as to win victories over himself, and cast behind him the favorite inventions of his own fertile genius, while agitating for a revolution in the administration of the government, the moment he saw that the government itself was likely to be endangered by them. That gentleman, in his official communications to our representatives abroad, has assured foreign powers that we intend no interference with either the natural or constitutional rights of the people of the States in rebellion—that we intend no such violation of the law of our own country, or the usages of civilized nations, as these resolutions contemplate—that private property, and the rights of the people under their State governments, are to remain the same as before the rebellion, if we succeed in suppressing it. In Secretary Seward's letter to Mr. Dayton, he says :

"The condition of slavery in the several States will remain just the same, whether it (the revolution) succeed or fail. There is not even a pretext for the complaint that the disaffected States are to be conquered by the United States if the revolution fail; for the rights of the States and the condition of every human being in them will remain subject to exactly the same laws and forms of administration, whether the revolution shall succeed or whether it shall fail. In the one case, the States would be federally connected with the new Confederacy; in the other, they would, as now, be members of the United States; but their constitutions and laws, customs, habits and institutions, in either case, will remain the same."

Upon the faith of such representations as these, foreign powers have refrained from intervention. Shall we, sir, now tell them, that our policy is changed, and that we propose to wipe out the State governments—to seize upon private property which has not been employed for insurrectionary purposes, and to put the contest upon principles which have been repudiated since the days of William of Normandy? Let us do this, sir, and can we count upon their long forbearance to interfere? Government, without reference to its character, is not the highest good of mankind. It may be made so intolerable, even to an erring people, as to justify the intervention of the strong, to protect or assist the weak. Let not that case, sir, be ours. Let us stand by the President—stand by the constitution, as we have stood, up to this time, and victory will be ours, and the blessings of posterity will be upon us. The advocates of these resolves do not stand by the President, but they in effect, and indeed in words, condemn him and his course. Senator Smart in his first speech said:

“President Lincoln has tried to win back the rebels without enforcing the rule of confiscation against their most valuable property. The first year of his administration has nearly worn away, and the bloody front of rebellion still stares us in the face. * * * But it is evident that this policy of the administration has not been appreciated by those in revolt.”

Although he says he intends no assault upon the President or his course, these are words of condemnation, in advocacy of *acts* of condemnation—as the passage of the second and third resolves could be regarded at this time, as nothing short of a condemnation of the President and his policy, so opposite are they to the conduct and policy which I have shown he has so steadily pursued.

And again the same Senator says of General Sherman, of whom it is well known as of all the other commanders of departments, that he is opposed to the emancipation schemes, and cordially supports the President's views:

“Gen. Sherman, writing from Port Royal to a United States Senator, says, ‘if he had issued a proclamation immediately on landing, offering protection to all slaves that should enter his lines, he might have had ten thousand about him by this time.’”

“According to his own acknowledgment he might have taken \$8,000,000 worth of property. But he waits for the rebels to take their slaves into the interior and then he will perhaps be ready to advise the government that it is best to make proclamation, and this, I suppose, is called generalship.”

When it is remembered what instructions from the War Department General Sherman acted under, (already read by me) the Senator in condemning “the generalship” of General Sherman, condemns the administration. And again he says, for the purpose of rallying those who were hesitating to oppose the administration, in his second speech: “I am afraid we shall get ahead of the President,” whispers one, “and that the Senator from Cumberland and those who sympathize with him will take possession of Abraham Lincoln. Then what will become of me? where shall I go?”

Other Senators uttered similar sentiments. That there is an attempt being made in Congress and out, to change the policy of the government, or to organize a party in hostility to it, is too plain for denial. I have already exhibited much proof and could multiply it from the most reliable sources if time would permit. That it should have gained such headway in our own State, is humiliating to every true friend of that administration which gives us such hopeful promise that it will presently restore to us the union of our fathers, not merely preserve to us the legal bond of union, but will restore to us the old union of heart, the cordial sympathy and fraternal feeling, without which the bond of union is not worth preserving. The State paper, which is receiving so liberally of the money of the people, quotes the paragraph from Mr. Pike's speech, which I have read, and says of it: “The style of the speech is terse, sharp, and characteristic of the author. We give the concluding paragraph as showing the genuineness of the metal of the production.”

The member of Congress from my own district, Mr. Fessenden, in a recent speech thus arrays himself against the administration. He said:

“Men and money my constituents would have me vote for this war; men and money I will vote for it—all of both that government may require. The State of Maine, one of whose representatives in this Congress I have the honor to be, has already sent into the field sixteen thousand men—five hundred more than her quota of the five hundred thousand which were thought requisite for this war. If you call for them she will as promptly and cheerfully furnish sixteen thousand more. But let not the war policy of the cabinet be founded on the idea of pacification without conquest, and without disturbing slavery, the continued existence of which has been, considered, we fear, an essential element of pacification, whether with or without conquest.”

With this condemnation of “the war policy of the cabinet,” of “pacification without disturbing slavery,” his constituents have no sympathy. There is no more loyal or constitution-loving district in the State. We support “the war policy of the

cabinet" with great unanimity, and shall do so to the end. In this respect our representative does but misrepresent us. No section of the State sprang to the rescue with more alacrity. Without distinction of party they rallied around the standard of their country, and asked only to be enrolled among her defenders, and are to-day as ready to fight the battles of the constitution, as for the supremacy of the flag. Nearly two-thirds of the 4th regiment were from the ranks of the Democratic party. Quick to the instincts of a lifetime, they sprang to the defence of the Union and the constitution, ready to stake life upon the issue. Are they now, sir, to be told, by the passage of resolutions which so conflict with their convictions of duty, and with the purpose of the government, as they have so often been told it was, and that by their own Legislature they have been deceived? And are they to be told by that same Legislature that they are unfit for the duty which they have assumed, and that it would be better for the country that they should be compelled to give up their arms to emancipated slaves? Pass the third resolution, under the advocacy of it which has been published to the world, and you do it.

The principal reason which has yet been given for arming the negroes, was in the speech of Senator Vinton. He says:

"I have looked over the history of nations with a dull eye if I have not discovered that the first element of a good soldier was what Gen. Shields said the other night in his serenade speech, viz: discipline. Why, we all know—every commander tells us so—that New England men, never make good soldiers in this particular; not because they are not brave and valiant; but because they want to inquire into everything. No order can come from a superior, but they ask, 'what is that for?' This is a trait of the New England character—a blessed one, too;—the result of our schools and colleges. A man must obey implicitly without any 'why or wherefore' the commands that come from his superior, in order to be a first-rate soldier. Have not negroes, by a long system of training, running from generation to generation, learned by this time, to receive orders and obey them? Now this element in the negro character is supreme. Why not take it?"

Now, Mr. Chairman, when that resolution passes, let the clerk of the House be sent to hold up the record before the sixteen thousand gallant sons of Maine in the armies of the country, and tell them that the government needs no more of their service, that "New England men never make good soldiers," they must lay down their arms for the use of emancipated negroes, because they have "an element in their character which is supreme" in making up a soldier—that though the armies are already overflowing, the negro must be introduced, or all is lost.

If we pass these resolutions, we are the first State in the Union to advise the government to this policy, and we shall be the last. We shall be left alone in the glory of an attempt to convert a war for the constitution into a war upon the constitution. Massachusetts refuses. Where is the State that will follow our example? Not New Hampshire—not noble little Rhode Island, which has furnished almost as many men for the army as she has acres of ground—not conservative Connecticut—not the Green Mountain State, which has just now adopted the amendment to the constitution declaring that it shall never be so amended as to authorize the government to interfere with slavery in the States. Where then, sir, are we to look for company in our ignoble work? Outside of New England it would be worse than idle to look for a co-operating State Legislature, unless it be in the extreme northwest, and I will not thus suspect the virgin States of the West. We have been looked to by the struggling loyal men of the southwest for better things. They have hailed indications from Maine of a spirit of loyalty to the constitution with joyous response. Not long ago, petitions were sent from this State asking Congress to let this negro question alone, and shortly after, on the 12th of February, the Louisville Journal, a paper of great influence in Kentucky and portions of Tennessee, the organ of the Union men of that section of the country, published the following response, hailing our action with gratitude, as an aid to the cause of the Union, as a bright star in the East, come to aid in dispelling the already breaking darkness of the South. That paper says:

"Our loyal readers, we are sure, did not fail to note with delight the following passage in the Washington despatches of yesterday:

"Mr. Davis presented a petition from the citizens of Maine, asking Congress to drop the negro question and attend to the business of the country; to sustain the President and Gen. McClellan; and to support the Constitution of the United States."

"This is capital. And we take the forwarding of it to our own gallant Senator, as a special compliment to him, and a general one to Kentucky. When we consider that the speech of Mr. Davis, which we published a week or more ago, has had, since the day of its delivery, just about time enough to travel from Washington to Maine and back again, this petition gathers particular significance, and, indeed, may with reason be accepted as a response to the hot bolts of indignation hurled in that speech against the ranks of abolitionism. In this point of view, the petition is doubly gratifying. We like the response of Maine. It is patriotic. It is statesmanlike. It is glorious. In the calmer and happier days of the republic, when the healthful strife of parties alone disturbed the surface of affairs, our great national contests used to be ushered in with the cry—'As goes Maine so goes the Union!' And the event nearly always

'justified the cry. 'Now, in the dark and stormy days of our career, when patriots contend with traitors on the battle field and in the halls of Congress, for the existence of the republic, Maine, responding to Kentucky, declares against traitors in whatever guise, and wherever found. We renew the olden cry—'As goes Maine so goes the Union.' And we feel a proud confidence that the event will show the cry has lost none of its olden virtue.'

Is that bright hope of aid from us in overcoming the most potent weapons which the leaders of the insurrection wield, so soon to be worse than dispelled by our action? Pray, Mr. Chairman, let me ask you and every member of this House, shall we thus encourage the enemies, and discourage the friends of the Union? And shall we be foremost and stand alone in this inglorious work? No sir, we have a better work to perform. Our State has covered herself with honor by instant abandonment of party when danger came, by the union of all good men, of whatever shade of sentiment, in support of the President, by sending her best blood into the field to save the country from dismemberment, or water its soil in the attempt. We have stood together in their support, and stand together to-day in furnishing the means to carry on the war, and shall we not stand together in support of our plighted faith—plighted by the action of our Representatives in Congress—plighted by the action of all loyal men in the last State campaign, "that this war is not waged for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights or established institutions of the southern States, but to defend and maintain the supremacy of the constitution, and to preserve the Union with all the dignity, equality and rights of the several States unimpaired." Victory, sir, is not yet wholly ours. It may elude our grasp. Let not gentlemen flatter themselves that we are strong enough, if we are wrong enough, to adopt the theory that might makes right. And, sir, if we had the power, who would desire to participate in a triumph over the ruins of the constitution? How are we to construct another? Would the North agree with the South? Would the East agree with the West? Would the great States again agree with the small, to an equal representation in the Senate? No sir, we heed not the counsels of our fathers when we break that bond which I have feebly been attempting to defend against what seems to me to be a clear infraction of its most vital principles. I have detained you long, but the subject is vast and of transcendent importance, laying at the very foundation of this, our system of free government. I have endeavored to point out some of the principles on which that system rests, and some of the dangers which beset us in this the great trial of our national life. If we succeed, civil liberty is to receive a new baptism, and we are again to take our place among the great and powerful nations of the earth. Our system of government, tried as by fire in the severest crucible to which government was ever subjected, and not found wanting, is to be respected and imitated by mankind. But, Mr. Chairman, let me warn the House, that this can be accomplished by no divided counsels. We have a Union to preserve and to restore to harmony before this can be done. A republic can only rest upon an agreement to a common government. Let us unite to teach our erring brothers of the South, that though we will not suffer them to do wrong to us, we will consent to no wrong against them—that while they must not lift the hand of violence against the common mother of us all, we will see to it that they shall have their full measure of paternal care when they return to their duty. Let us unite to inform them, that with resolute purpose we have resolved, that the family relation shall not be broken up—that while we cherish their memories, this beautiful house which our fathers builded shall not be destroyed. Let us remind them, that we have made a covenant with them—that we will transmit it, in all its beauty, and all its integrity, to our children, and that we propose to keep that covenant as in execution of a religiously sacred trust. Let our watchwords be the Constitution and the Union—they can never be separated. "If they stand they stand together—if they fall they fall together." By all the sacred memories of the past, I implore you—by all the hopes of the future, I implore you, to stand by that constitution. Its destruction is disunion. As now sir, I stand upon this eminence of present time, and look back through the long line of the past, I see there from its small beginnings, the constant progress of my country, by the blessings of union, and the protection of a good Providence, up to the place of foremost nations of the world. And, sir, as from the same eminence of time, I look down the long vista of the future on this side of disunion, I see there the blessings of civil and religious liberty, and security of all I desire for myself and my children to the latest posterity. But, sir, beyond, let not mortal hand lift the veil! All is dark!—I cannot see.

ERRATUM. On 8th page, 27th line from top, for "they could" read "to." There may be other errors in the speech, as only a portion of the "proof" was read by the author.