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REPORT

OF THE

COMMITTEE

ON FEDERAL RELATIONS.

To the Honorable,

The Speaker of the House of Delegates:—The Committee on Federal Relations, to whom were referred the Message and Correspondence of the Governor, the Bill calling a Sovereign Convention, &c., &c., ask leave respectfully to report as follows:

The Message of his Excellency, the Governor, demands the consideration of the Legislature, from two points of view—first, in regard to the State of public affairs which it discloses, and secondly, as to the remedy which it suggests to the people of the State for the perilous contingencies which surround them.

So far as we can ascertain the views of the Governor, from the brief presentation of them, which the haste of our meeting had, as he states, permitted him to make, it appears that he regards the circumstances which have transpired since the attack upon the Massachusetts regiment in Baltimore, on the 19th of April, as constituting all the facts to which it is necessary your attention should be drawn. Your Committee, of course, recognize the propriety of avoiding at this moment all unnecessary recurrence to discussions which have already been far over-stepped by the rapid progress of events; but they find it, at the same time, quite impossible to do justice to the questions before them, without a frank and explicit reference to at least a portion of the public events which had proceeded and were so closely connected with the occurrence alluded to.

The President of the United States, by his Proclamation of the 15th of April, had called upon a portion of the States to place at his disposal a body of militia, to the number of seventy-five thousand men. The Proclamation was directed against the people of the newly-formed Southern Confederacy, and its purposes and policy were obvious, although its terms were technically shaped in conformity with the Act of Congress of 1795. It recited, with formal percision, in the language of the Act, "that the laws of the U. States were opposed, and the execution thereof was obstructed," in the seven seceded States, "by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the Marshals," and it called forth the militia of the other States, in the further language of the statute, "to suppress such combinations, and to cause the laws to be duly executed." In pursuance of another section of the law, it then commanded "the insurgents to disperse and retire peaceably to their respective abodes" within twenty days. If there is any proposition clear beyond dispute, it must be, that if the occasion which authorizes the President to call out the militia, under the act of 1795, existed at all, it was declared, by the explicit terms of the Proclamation, to exist only in the States of the Southern Confederacy, which were therein enumerated. It is equally indisputable, as a matter of law, that the militia, it called out lawfully at all, were lawfully empowered to execute the laws and suppress unlawful combinations in the seven States named, and in none other. Such a conclusion of law is not only obvious and unavoidable, as matter of construction, but equally to be insisted upon as matter of principle and self protection on the part of the people; for the exercise of the military power, in a free government, is never to be permitted, except within the limits and under the severest restrictions and checks of the law. If a President of the United States, under the fraudulent pretence of suppressing unlawful combinations in Louisiana and Florida, could be permitted to call out troops, to be used for any purpose in Maryland or Virginia, no soil of any State would be free from invasion, and no right of the citizen anywhere would be secure against overthrow.

It was not, however, because of any apprehension that the militia which were called out by the President would be used in other than the designated quarters, that the Proclamation created an intense and immediate excitement in the Southern and Border Slave States. On the contrary, it was the very purpose announced by Mr. Lincoln which kindled so intense a flame of resentment and resistance. His proclamation was regarded as a declaration of war against the Southern Confederacy—as a deliberate summons to the people of the two sections, into which his party and its principles had so hopelessly divided the land, to shed each other's blood, in wantonness and hate. A scheme so full of wickedness—so utterly subversive of every principle upon which our government was founded, and so sure to involve the destruction of that government, let the fortune of war be what it might—could not but excite almost to frenzy every feeling of those who sympathise with the people against whom it was fulminated. Independently, too, of its wantonness and humanity, it was felt and known to be a gross violation of the Constitution, and without color of lawful authority. The people of the seceded States, whether constitutionally or unconstitutionally, had separated themselves from this government of their own, with all the forms of a constitution and all the substantial attributes of actual independence.—Through their constituted authorities and in their collective capacity, as communities, they had withdrawn themselves from the Union—repudiated its laws and excluded its officers, of all sorts, from the exercise of all functions and jurisdiction. The U. States Government no longer had among them either courts to issue, or marshals to execute process. They had substituted their own courts and their own processes, to which they yielded cheerful obedience. The authority of the Federal Government was in fact dead within their limits. They were in an attitude towards it, not only of independence, but of forcible resistance, for they had repelled the assertion of its authority over any portion of their soil, and had subdued, for their own protection, one of its fortifications within their borders. The Confederate Government and that of the United States were, in fine, belligerents, engaged in actual, though undeclared war, and with all the rights and responsibilities which it gives and entails. This last is none the less true, because of their being engaged in civil war, for that is like any other war, when waged among civilized people. Vattel defined the relations which exist in such cases in terms too clear to be misunderstood, and too well recognized to be disputed.

"A civil war," he says, "breaks the bands of society and government, or at least suspends their force and effect. It produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. These two parties, therefore, must necessarily be considered as thenceforward constituting, at least for a time, two separate bodies, two distinct societies. Though one of the parties may have been to blame in breaking the unity of the State and resisting the lawful authority, they are not the less divided in fact. Besides, who shall judge them? Who shall pronounce on which side the right or the wrong lies? On earth they have no common superior. They stand, therefore, in precisely the same predicament as two nations, who engage in a contest, and being unable to come to an agreement, have recourse to arms." (Vattal, Book 3, ch. 18, sec. 293.) To attempt to apply, under such circumstances, to a belligerent people, at Act of Congress, which was meant as a domestic remedy, in aid of civil process and to secure obedience to the laws under judicial proceeding—in States still recognizing the authority of the Union and the jurisdiction of its tribunals—was to trifle with the understandings of educated men. To issue a proclamation to three millions of free Americans, composing seven powerful States and ascerting the sacred and indefeasible right of self-government, with arms in their hands, and "command" them as "insurgents" to "retire peaceably to their respective abodes," like a mob at a street corner, was an absurdity too gross to be here respectfully discussed. No government would venture to palm such an imposition upon a people, except in the well-assured confidence of absolute power. Nay, in the passionate excitement of the moment, the President forgot even the suggestions of political decorum, and did not hesitate to transgress all possible constitutional limits, and confess a purpose of animosity and revenge, by distinctly calling on the people, whom he summoned to the field, "to redress wrongs already long enough endured." The Proclamation, therefore, meant war, and nothing but war. It could signify nothing else, and to attempt to cloak its meaning and purpose under the flimsy pretext of executing the laws" and "suppressing unlawful combinations," was to cover up a flagrant usurpation with words.

Neither the Constitution nor the laws of the United States can be tortured into conferring the war-making power upon the President in any contingency. Where foreign nations are concerned, the plain language of fundamental law entrusts it to Congress only. As against the States of the Union, the possibility of such a thing is not even contemplated, much less provided for. Like parricide at Athens, it was held too heinous and impossible, to be named, even for the purpose of punishment. As early as the fifth day after the meeting of the Convention for the formation of the Federal Constitution, "the use of force against a State," by the rest of the Union, as contemplated in the plan of Mr. Randolph wos denounced by Mr. Madison, and on his motion the resolution providing for it was indefinitely postponed by unanimous assent. Mr. Madison announced it as his deliberate opinion that "a union of the States, containing such an ingredient, seemed to provide for its own destruction." From that day forward such an idea ceased to be a part of the theory of those by whom the Constitution was framed. When Gen Hamilton was called upon to express his opinion upon it, he asked, "How can this force be be exerted on the States collectively? It is impossible; it amounts to a war upon the parties. Foreign powers, also, will not be idle spectators. They will interpose; the confusion will increase and a dissolution of the Union will ensue." The reasoning was unanswerable, and the Constitution happily was not stained with the perilous folly, against which these two great statesman so earnestly protested. There was not a discussion in the debates on the Federal Constitution, whether in the Convention which framed it or the State Conventions which adopted it, that does not confirm this view of its spirit and purpose. The essays of the Federalists are pregnant with demonstrations to the same effect, and there is no constitutional lawyer who does not know, that the whole theory of the Government is to act, through the courts, upon individuals, and not through the Army and Navy upon the States. The brave and wise men who framed and upheld it, would have died in the breach before they would have submitted themselves to it upon any other basis. It could never have been adopted, it would never have been ratified, upon any other understanding. The States would have endured anarchy, distracted counsels, and all the evils of the old Confederation, aggravated tenfold, before they would have surrendered themselves to any system which the Federal Government, and least of all, the Federal Executive, was clothed with the constitutional power of coercing them by force of arms. They entered into a constitutional Union, depending for its permanence upon the good faith and good feeling of its members; and deriving its strength from their consent only. They did not abandon themselves to the bayonets of a military despotism enthroned upon popular majorities.

But, illegal and unconstitutional as was the war which the Proclamation summoned one section of the country to wage against the other, the causes and purposes of that war, made it chiefly obnoxious to the people of Maryland and of the slave States of the border. It was a war of propagandism and sectional aggression and domination. It was a war of the North upon the South. It was a war in which the dominant section had seized upon the name and flag, and resources and powers, of the General Government, and was abusing them for its own ends, and for the permanent establishment of its dominion over the other section. It was a war, to the unholy purposes of which the sacred associations and memories of the Union were prostituted, and in which its honored name was taken in vain. It was a war waged against a people of our own name and blood; who sought peace and kindly relations with us, and who asked only to be let alone and to be permitted to govern themselves. It could bring no good, for it could end only in the defeat of the invaders or the subjugation of the invaded, and in either case the Union, which our fathers left to us, must be at an end. Subjugated provinces could not be sister States, and a Federal Government, professedly Republican, maintaining its authority by armies, could not be other than the worst and most unprincipled and uncontrolable of despotisms. The South had entrenched itself upon the principle of self-government. It had offered to negotiate, peaceably and honorably, upon all matters of common property and divided interest, claiming only that three millions of people had a right to throw off a Government, by which they no longer desired to be ruled, and to live under another Government of their own choosing. Unless the American Revolution was a crime, the declaration of American Independence a falsehood, and every patriot and hero of 1776 a traitor, the South was right and the North was wrong, upon that issue. The people of Maryland, therefore, could have but one choice in such a contest, and while as devoted to the Union and as loyal to the Constitution, as the people of any of the thirteen States, who had formed the one and pledged themselves to the other, they could not but throw the whole weight of their sympathies upon that side to which common interests and institutions inclined them, and with which they felt that the right and truth were. Nor was it a matter of sympathy merely. The breach of the Constitution involved in the coercive policy of the Administration, was a breach of their rights, and not less than an unlawful aggression upon the rights of the Southern people. It was an overthrow of the principles of free government, and could end in nothing but an ignominious annihilation of the noble institutions of the Republic. The people of Maryland were summoned to take part, as soldiers, in the strife, and as citizens they were asked to contribute their means to its prosecution, and were to bear the share of its unconstitutional burdens; their stake in the struggle, therefore, was one of political and individual self-preservation. They were bound by every principle and pressed forward by every impulse of right and self-respect, to make every protest against the wrong to their brethren, and the oppression to themselves, which their situation and circumstances would permit. To the requisition upon them for troops, to take part upon the side of the Government in such a strife, their answer, if they could have given it with their own voice, would have been an instant and indignant refusal.

It is deeply to be regretted that the response of his Excellency, the Governor, should have fallen so far short, in this regard, of the manly and patriotic spirit with which the Governors of Virginia and N. Carolina, Tennessee, Kentucky and Missouri, threw back the insulting proposition of the Administration. Indeed, the Committee are unable to determine, from the correspondence with which the Governor has furnished the Legislature, whether his Excellency does not still contemplate complying with the requisition as made. His letter of April 20th, to the Secretary of War, is the only one which gives a key to his intentions, and in that he merely announces that he thinks it "prudent to decline (for the present")—not because of the illegality and wickedness of the demand, and the disgrace which the State would incur from acceding to it—but on account of the then alleged disorderly condition of the militia themselves. Your Committee are not prepared to admit the accuracy of the statement made by the Governor in the letter referred to, to the effect that "the principal part of the organized military forces" of Baltimore took part with the "disorderly element" in the affair of the 19th of April. On the contrary, they have every assurance and every reason to believe that the organized military of Baltimore, under the direction of the constituted authorities, and in implicit obedience to their orders, did all that could have been expected from brave men and good citizens to preserve the public tranquility. But whether the hasty statement of the Executive be well or ill-founded in that particular, the determination of the State of Maryland, upon the question of furnishing her quota of militia to make war upon the Southern States, ought not, in the opinion of your committee, to rest a moment longer upon any such collateral and accidental issue. It becomes the self-respect of the State that she should speak out openly and decidedly upon the point, and the question should no longer be left dependent upon what may be hereafter regarded as "prudent" by the Executive. For this purpose, your Committee have prepared and reported a resolution, which is appended to this report, and the adoption of which they respectfully recommend.

It is but justice to the Executive of the State to observe, in this connection, that his Excellency appears to have been misled, in his action upon the requisition of the U. S. Government, by the two letters of the Sec. of War, dated April 17, in which that gentleman informs him that "the troops to be raised in Maryland will be needed for the defence of the Capital and of the public property in that State and neighborhood."—"There is no intention," the Secretary adds, "of removing them beyond these points." In conformity with this information, the Proclamation of the Governor—of which he has not furnished a copy to the General Assembly, but which is matter of public notoriety—informs his fellow citizens to the same effect, and holds out the idea that troops from this State may be furnished for the purposes indicated. Your Committee would be happy to persuade themselves that in suggesting the possibility of its being "prudent" at any time, for the Maryland quota to be furnished to the Government, his Excellency could only have contemplated their employment, in any contingency, for the limited purposes in question. But it does not become the House of Delegates to allow themselves to be deceived by any such intimations from the Government, as these which imposed upon the Governor. The proclamation of Mr. Lincoln, under which the troops of Maryland have been called into the field, is directed (as has already been observed) against the seceded States and none other. The militia were summoned to execute the laws and suppress unlawful combinations in South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas, and not in Maryland or the District of Columbia. The very requisition of the Secretary of War upon the Governor, is in direct and absolute contradiction to the assurance contained in his letter. The one asks for troops to be used in the South, and not at the Federal Capital, the other declares that their employment, at the Federal Capital and not in the South, is the only purpose contemplated.

One or two things, therefore, is perfectly clear. Either the Government had called out troops under the pretence of needing them for one purpose, while intending to use them for another, or it contemplated employing a portion of them at Washington, as a guard and a reserve, but in aid, at the same time, of its offensive movements to the South of the Potomac. In the one case, it can have no claim upon our confidence; in the other, we should be false to ourselves and to free institutions, if we were to hesitate about refusing it our co-operation. Whatever destiny the people of Maryland may be able or willing to shape for themselves, now or hereafter, the Committee would be pained to believe it possible, that a single citizen of the State could be forced or persuaded to take part, directly or indirectly, in the slaughter and subjugation of our Southern brethren and the overthrow of Constitutional Government by usurpation and brute force. If the Government desires to put an end to all doubts as to the safety of the Capital, it can do so at a word, by putting an end to its own purposes of coercing the South.

What the Committee have already suggested in regard to the character and purposes of the conflict, which Mr. Lincoln has inaugurated, under the pretense of enforcing the laws, is so manifestly and indisputably corroborated by his course since the Legislature was convoked, that the Committee cannot discharge their duty without alluding to that course in this connection. Reference is especially had to the Proclamation of the 3d of May, calling out over forty-two thousand additional volunteers, to serve in the militia for a period of three years, and increasing the regular force of the U. S. by an addition of nearly twenty-three thousand men to the army, and eighteen thousand seamen to the navy. The most unscrupulous advocate of the Administration and its policy, would be compelled to shrink from the task of pointing out any legal or Constitutional authority of any sort, for this unprecedented measure. The right of increasing the army and navy is one which belongs exclusively to Congress, and over which the President has no more Constitutional control than the humblest citizen. His right to call out the militia is expressly limited by the restriction that their use shall only continue "if necessary, until after the expiration of thirty days after the commencement of the then next session of Congress," (Act of 1795, Sec. 2.) The Proclamation is therefore without any color whatever of right, and is as plain and bald a subversion of the letter and spirit of the Constitution and the laws, as ever was attempted by the military power, in any Government ostensibly free. The pretense of "existing exigencies" is but the shape in which military revolutions have always begun, since the prestige of free institutions has rendered it necessary, even for usurpers to make a show of apology for overthrowing them.

If ever a triumphant illustration could be given of the wisdom of our fathers, in providing by the constitution, that the government should operate upon its individual citizens through the laws, and not upon the States by military coercion, it is to be found in the fact, that the first administration daring to depart from this fundamental and consecrated principle, has rushed, in the short space of sixty days, into the assertion of absolute control over the whole military resources of the country, in open and reckless defiance of every legal and constitutional restraint. The Committee hazard nothing in saying, that there is not a citizen of Maryland, whatever be his political opinions, who must not shudder at the palpable and ominous presence of this usurpation, and who does not recognize, for the first time, in his own experience or the history of Maryland, that he is living and moving and holding his civil and and political rights at the pleasure of an unrestricted military power, and subject to the arbitrary and anti republican caprices of what is entitled "military necessity." For any man to be able to persuade himself, under such circumstances, that the policy of the administration ever meant peace, and not war—the "enforcement of the laws," —the "defence of the capital"—and not subjugation—requires a peculiarity of mental construction with which reason is at a loss how to deal. To suppose that a blockade of the whole sea coast, from the capes of the Chesapeake to the extreme borders of Texas, with a land army extraordinary of one hundred and fifty thousand men, a naval increase of eighteen thousand, can be intended only in aid of "the ordinary course of judicial proceedings, or the powers vested in the Marshals," and is therefore within the scope of the President's civil functions, and not of the war-making power which only Congress can exercise, implies a facility of conviction, to which nothing can be regarded as impossible.

The Committee are of course not unacquainted with the familiar doctrine laid down by the Supreme Court of the U. States in the case of Martin vs. Mott, (12 Wheaton, 19,) and so often cited by those who maintained the absolute authority of the President over the whole question of calling out the militia. The Committee might readily dispose of it if they were willing to stand upon the same grounds with the Administration, by applying to it the doctrine of the inaugural of Mr. Lincoln, and might insist upon confining the ruling of the Court to the particular case and the individual parties concerned, repudiating its controlling authority, upon the one side or the other, on a question of administrative government. Believing, however, that the true and only "loyalty" of a free people consist in their reverence for the laws and Constitution, and their obedience to the tribunals by which these are expounded, the Committee assume that the people of Maryland will cheerfully bow to whatever the Supreme Court has determined, upon the question under discussion, or any other. The case of Martin vs. Mott was a controversy between a private of militia and one of the United States Marshals, who had seized his goods, in enforcement of a fine imposed by court-martial, for failure to enter the service upon requisition, according to law, during the war of 1812. The jurisdiction of the court-martial, and the authority of the President to issue the Proclamation under which the militia were called out to repel invasion, were both consided in the case; the question in chief, however, of course being the right of the individual citizen to judge, for himself, whether the legal occasion existed, upon which the President might rightfully summon the citizens to arms. This latter was the real and only point in controversy, and the Court decided, that under the Act of 1795, it was for the President, exclusively, to determine whether the exigency contemplated by the law had arisen, and that no soldier or officer had any choice but to obey.

The principle of military subordination upon which this adjudication is distinctly placed by the court, is too obvious to be confounded with the recognition of arbitrary and irresponsible power, to which the decision is sought to be perverted, by the supporters of the existing order of things. To determine that the President is the exclusive judge of whether an exigency has arisen, in a case to which his discretion is lawfully applicable, is one thing.—To give him the exclusive and irreversible authority to determine, not only the existence of the exigency, but the existence of the case in which it may lawfully arise, is quite another thing. The first is what the Supreme Court has done, the second is what no respectable Court, it is confidently assumed, can be persuaded or forced to do, except under the pressure of "military necessity." The one gives to the President the exercise of a discretion, in certain named and ascertained cases. The other gives him absolute power in all cases. The one endows him with a necessary executive function. The other makes him supreme over all law, by granting him the exclusive control of its application. If the President cannot only invoke the military power at his discretion, in cases of invasion, insurrection, and resistance, by merely proclaiming that they exist, whether, in fact, they do so, or not; there is not a moment of his term, at which he cannot constitutionally compass the absolute subjugation of the people, through the mere official assertion of a falsehood. Assume for a moment, for the sake of the argument, that the attitude of the U. S., is not, in fact or law, a case authorizing the President to call out the militia, under the act of 1795, is to be pretended that he makes it such a case simply by calling it such, in a proclamation? Is it to be gravely argued, under a constitutional government, that the nation is bound to acquiesce in it as a fact, against the public knowledge to the contrary, and must accept the war, indorse the bloodshed, pour out the treasure, and submit to the usurpation, with no other remedy than articles of impeachment, or the chances of the next Presidential election?

The commonest intelligence—the most superficial acquaintance with the scheme and spirit of republican institutions—revolts at conclusions so monstrous. And yet precisely such must be the conclusions to which any man must yield who supposes the Supreme Court to have decided, as has been pretended. That high tribunal never meant to decide, and never did decide, a principle so wholly irrational and despotic. It is a disrespect to its character to put such a question even in dispute. The way in which the States and the people may and ought to deal with such a usurpation is a matter apart, but that it does not cease to be a usurpation, because of the insertion of a form of words in a Proclamation, is a matter which the Committee will not disparage the manliness and sense of the House by discussing farther. Indeed, in his letter of

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