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The Authority of the Nation Supreme and Absolute; that of
the States Subordinate and Conditional.

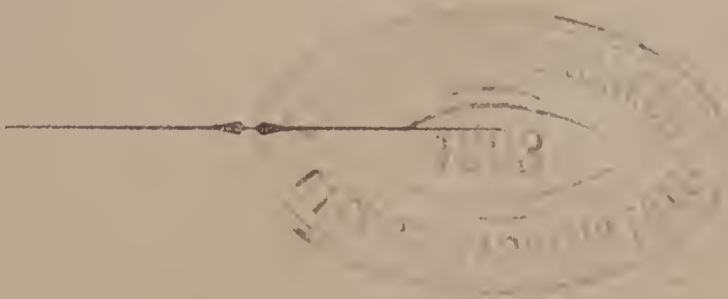
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S P E E C H

OF

HON. T. O. HOWE,

OF WISCONSIN,

In the Senate of the United States, January 10, 1866.



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S P E E C H .

The Senate having under consideration the following resolution :

“Whereas the people of Virginia, of North Carolina, of South Carolina, of Georgia, of Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee have heretofore declared their independence of the Government of the United States, have usurped authority denied to every State by the supreme law of the land, have abjured duties imposed upon every State by the same law and have waged war against the United States, whereby the political functions formerly granted to those people have been suspended ; and whereas such functions cannot yet be restored to those people with safety to themselves or to the nation ; and whereas military tribunals are not suited to the exercise of civil authority : Therefore, “*Be it resolved by the Senate and House of Representatives in Congress assembled, That local governments ought to be provisionally organized forthwith for the people in each of the districts named in the preamble hereto.*”

Mr. HOWE. Mr. President, when Paul stood there “in the midst of Mars hill,” a needy, perhaps a ragged, missionary, and told the indolent, idolatrous, and luxurious Athenian’s that God had “made of one blood all nations of men to dwell on all the face of the earth,” do you believe he was playing the demagogue or not ? When the Congress of 1776 assembled in Independence Hall, representing a constituency few in numbers, poor in resources, strong only in their convictions of right, and announced to the world that “all men are created equal, that they are endowed by their Creator with certain inalienable rights ; that among these are life, liberty, and the pursuit of happiness ; that to secure these rights governments are instituted among men ; and when the members of that Congress pledged their “lives, their fortunes, and their sacred honor” to maintain those assertions against the whole power of the British empire, do you really suppose they were talking for bunkum or not ? And when the American people declared in their organic law that—

“This Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land ; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding”—

do you think they actually meant that, or did they mean that the constitution and laws of each State should be the supreme law of the land, anything in the Constitution or laws of the United States to the contrary notwithstanding ?

I have put these questions, because however generally we may assent to these propositions in our speech, there are scarcely three theses in the whole field of discussion more flatly denied practically than these three.

We do very generally admit Paul to have been a minister of the true religion, and yet if he had proclaimed in the Smithsonian Institute six years ago what he did in the Areopagus at Athens, he would have been driven out of the city.

We do with our lips very generally assent to the doctrines of the Declaration of Independence, and yet when the American *auto-da-fe* kindles its hottest fires, it is to roast some reckless Radical who dares to assert the political equality of men.

We cannot well deny that the Constitution is the supreme law of the land, because the Constitution says so, and we have sworn to support it ; but practically we do seem to treat it much as if every law was supreme but that.

I cannot now afford the time to defend the teachings of the Apostle, or the doctrines of the Declaration. But if it will not annoy the Senate, I would like to make a few remarks in vindication of the Constitution of the United States.

In my judgment, Mr. President, it is time the American people adopted the Constitution. We have, indeed, been taking the tincture for nearly a century. I am sure it has done us great good. I believe now we should try the sublimate, and I am confident it would cure the nation. Hitherto we have taken the Constitution in a solution of the spirit of States’ Rights. Let us now take it as it is sublimed and crystalized in the flames of the most gigantic war in history.

The war, as we know, was designed to demonstrate that the will of each State was supreme, and that the United States must defer to it. Before the Constitution was adopted, such was the case precisely. The several States were sovereign, and for that very reason the Union formed between them was worthless. The Congress of the Confederation could enact laws, but as their laws were addressed to the States, and the States were sovereign, they would obey or not, as they pleased.

Said Mr. Sherman :

“The complaints at present are not that the views of Congress are unwise or unfaithful, but that their powers are insufficient for the execution of their views.”

Said Mr. Randolph, of Virginia :

“The true question is, whether we will adhere to the Federal plan or introduce the national plan. The insufficiency of the former has been fully displayed by the trial already made.”

The national plan was adopted. Thirteen weak and thriftless sovereignties were welded into one great and prosperous Republic. It was not the purpose of the Convention to destroy the State governments, but to change their character, to strip them of sovereignty and leave them no manner of authority to impede the execution of the national will.

Hence it provides a national Legislature, to enact laws, not for the direction of States, but for the government of the people, whether within or without any of the States; a national Executive, sworn to see those laws executed if they are constitutional, whether a State dislike them or not, and a national Judiciary, to determine whether they are constitutional or not.

The President, therefore, aptly says in his late message that, “the sovereignty of the State, is the language of the confederacy and not the Constitution.”

But in the Convention which framed the Constitution there was a party opposed to depriving the States of their sovereign authority. And since the adoption of the Constitution, there has been a party in the country which has stoutly maintained that the States have not been deprived of their sovereignty. They insist that unless each State can defy the authority of the Government the rights of the States are in imminent peril. They forget that it was the existence of this very power of defiance which imperilled all the States under the Confederation.

And, sir, there can be but little danger that the several States will be despoiled of their rights by a Government constituted like that of the United States. The President rightly says that “the subjects that come unquestionably within its jurisdiction are so numerous that it must ever naturally refuse to be embarrassed by questions that lie beyond it.”

Mr. Madison urged this same consideration in support of the national plan in the constitutional Convention. To my mind the States have another security against the encroachments of the national Government even more reliable than this. It lies in the fact that the people who compose the several States *make* the Government of the United States. It is not much to be apprehended that the creature will devour the Creator. But the State-rights party resemble a congregation of dervishes dancing before an idol their own hands having created and frantically imploring it not to destroy them.

And the Government often seems almost as nervous as that party. Like the elephant with its owner under its belly, the Government often seems so conscious of its own weight as to be afraid to move for fear it will crush its proprietor. Let the Government move. It will not destroy the States unless it betrays them. When true to its office it is but the voice of the States. Is there danger that the voice will slay the speaker?

Mr. Madison declared in the Constitutional Convention—

“That in the first place there was less danger of encroachment from the General Government than from the State governments; and, in the second place, that the mischiefs from encroachments would be less fatal if made by the former than if made by the latter.”

Who that has lived during the last fifteen years will deny the correctness of that estimate?

Yet, in spite of the terrible admonitions we have received against the liability to State encroachments, and of the disastrous consequences resulting therefrom, there are those among us still who talk rapturously of the priceless value of the States to the nation, who persist in estimating its grandeur by the number of States subject to its sway, and who dwell upon the idea of their “indestructibility” with something of that fond and reverent air with which we speak of the immortality of the soul.

Sir, it is not the business of the National Government to sway States. That was the business of the old Confederation. It is the business of this Government to control people, and I estimate its strength, as I estimate the strength of all other Powers, by the extent of its territory, by the number, the wealth, the intelligence, and the loyalty

of its people. I dissent entirely and altogether from the idea that a citizen is worth nothing to the nation unless he is included in the government of a State. I aver that a citizen of this District, that a citizen of Washington Territory, is worth as much to the nation, and adds as much to its strength and its greatness as a citizen of New York or Massachusetts.

If a citizen be loyal, he adds to the strength of the nation, equally whether he be in a State or Territory. If he be disloyal, he diminishes the strength of the nation, whether he be in a State or Territory, but not equally. The citizen of a State has more authority than the citizen of a Territory, and, therefore, if he be disloyal, he can do more injury in the former than in the latter position.

Has any one yet attempted to explain what principle that is which renders a State indestructible? Does any one comprehend it? For myself, I do not. A State is a manufacture as much as a wagon is. It is not, indeed, made in the same way nor at the same shops. But it is nevertheless made, and made by mortals. My friend from Nevada has just helped to make one. A State can be made only by those who are permitted by the nation to make one by those who are willing to make it.

But once made, we are told "a State can never die." "Once a State, always a State," they shout. And when, a few years since, it was hinted that the rebellious States had committed suicide, politicians laughed the suggestion to scorn.

Galileo, when condemned to renounce the heresy of the earth's motion, is said to

"Have made his abjuration with all the formality commonly attending such proceedings. Clad in sackcloth and kneeling, he swore upon the Gospels never again to teach the earth's motion or the sun's stability. Then rising from the ground, he exclaimed, 'it *does* move, after all.'"

And so I, rising as well as I can under this load of derision, cannot refrain from assuring the Senate that States can commit suicide and can die. History is but little more than a graveyard in which one reads the epitaphs upon buried States.

Sir, it is poetical license and not political science which talks of the immortality of States. Have the people of Nevada made an organization which they cannot unmake? If they refuse hereafter to choose Governors and legislators and judges and municipal officers, will the State survive that mere neglect?

On the contrary, would it not be the imperative duty of Congress, in such an event, to resume the prerogatives you have just granted to that people, and provide a government to save that people from anarchy? Do you say the State is still there in contemplation of law, the national authority cannot enter upon its sacred domain, and that if the people choose anarchy they must have it? So, then, because of your passionate desire to drag a State to heaven, you would let its people plunge in the other direction.

There are those among us who seem really to believe that we have been fighting these terrible battles expressly to uphold the governments of the several States. I did not understand such to be the purpose of the war. If I had so understood it I should have comprehended the significance of Earl Russell's criticism. "I understand," said he, "how you may lead a horse to the brook, but I do not understand how you can make him drink." As much as to say, "I know the United States may overcome resistance to its Government, but I do not see how the rebels can be made to maintain State governments."

Mr. President, the Constitution does not command any portion of the American people to maintain the organization of a State. It permits such organizations only. I repudiate the whole theory that there is any political necessity requiring the people of any district to be a State against their will. I stand upon the doctrine, and I want the American people to understand it, that it is a high political privilege to be an American State. It is a privilege which California had to struggle hard to obtain; and I do not believe this nation would have voted \$3,000,000,000, and sacrificed two hundred thousand lives to force upon South Carolina and her confederates privileges which were so reluctantly yielded to California. For one I would not have consented to sacrifice a man or a dollar for such a purpose. I understood the purpose of the war to be *not* to maintain the governments of the several rebellious States, but to defend the Government of the United States. As such I stood by its prosecution; as such I stand by its results.

A State is a public corporation. It has limited powers of government. The exercise of those powers by some one is necessary to the welfare of its citizens, and therefore to the welfare of the nation. If it utterly refuses to exert them it defeats the purposes of its being, and the common welfare requires the nation to resume them. It is charged with duties also, and if it persistently disregard those, or willfully persist in the exercise of powers not intrusted to it, it may thereby forfeit its right to being, and the common welfare and the common safety may require the nation to resume its prerogatives.

But it is not every neglect of duty, nor every usurpation of power, which will justify the resumption of the franchises of a State. The Constitution declares "that no State shall make anything but gold and silver coin a tender in payment of debts." But suppose the Legislature of Massachusetts should provide by law that bank notes should be a tender in payment of debts. Such an enactment would not justify the nation in denying to her a representation in Congress, or in depriving her of the functions really belonging to a State. Such a remedy is needless, and therefore unjustifiable. The courts could afford ample protection against such an act, and no detriment could arise from it.

But the Constitution also declares that "no State shall enter into any treaty, alliance, or confederation." Suppose the State of Texas does negotiate an alliance with Maximilian, by which she engages to furnish a given number of troops, her whole military strength, indeed, to support him in his enterprise against the republic of Mexico? What is the remedy for that violation of the supreme law? You may say her people are not bound by the compact. But suppose they are consenting to it? Suppose they demand it? Suppose they choose their Governor and Legislature for the express purpose of making it? Suppose her whole militia force is officered and trained with the view of supporting the alliance?

What is your remedy? You say the compact is illegal; so it is. You may say that in law it is null; so indeed it is, but in fact it is none the less mischievous. If your courts could get jurisdiction of the compact they would doubtless declare it null and void. But how is the court to get jurisdiction of a contract against which neither party complains, but to which both parties are resolved to adhere? You may enact laws, perhaps, for punishing criminally State officers who shall thus offend against the supreme law; but when you have punished the officers you have not terminated the compact.

You may picket with our army the whole border of Texas to prevent the egress of troops or munitions of war; but can you prevent unarmed citizens from crossing the boundary of a State? And if you can, can your picket guard tell whether the traveler he halts on the line is from Texas or from New York? But suppose you could by sleepless vigilance and boundless expenditure prevent all the citizens of Texas from crossing into Mexico, that is not the mischief against which you have most to guard. It may not much harm the nation that citizens from Texas go into Mexico and shoot, or get shot; but it does harm the nation that the whole municipal authority of a State is lodged in tribunals pledged to the support of an alliance which the Constitution forbids, and to the prosecution of a design which may involve the nation in a foreign war. It *does* harm the nation that a people and government so compromised by a compact which the supreme law condemns should still be allowed to appoint representatives to participate in the enactment of your laws, and to sit in the secret councils of this Senate, to supervise treaties, perhaps, which have been negotiated with Mexico herself. Is the Government of the United States helpless against such perils?

I put another case. The Constitution contains this provision:

"The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution."

That is the supreme law, as every part of the Constitution is.

The nation forbids that any part of the authority vested in the several States shall be wielded by any agent who is not bound by oath to support the authority of the nation. The Constitution expressly exacts of the President that "he shall take care that the laws be faithfully executed." And each incumbent thereof, before he enters upon the execution of his office, must solemnly swear that he will faithfully discharge that duty. He must then see that the Governor and every other officer in each State take the oath of allegiance to the national Government. How will he do it? How shall this law be enforced? The President has no methods or means for enforcing the laws but writs and armies. Marshals and major generals are his forces. But they are not forces in the use of which the President has an option. When the marshal can do the work there is no use for the major general.

I mean to say, and I want it heard by all whom it may concern, that wherever the marshals of the United States can execute the writs of the United States, there is no work for an army: and an army cannot actively be employed in the execution of municipal law. But when the marshal is resisted by force, force may be employed to overcome the resistance; so much force as is needed for that purpose—the posse, if that will suffice; the Army, if that be necessary; the whole military resources of the nation, and the whole enginery of war, if the exigency requires them. But what writ will you employ to make the Governor of Virginia take the oath to support the Consti-

tution of the United States, in case he is determined not to take it, and the people of Virginia are determined their officers shall not be bound by such oath? This question is not speculative.

I remember, Mr. President, when you offered a resolution in the executive session of 1861 to expel a member of this Senate because he declared upon this floor that he owed no allegiance to the Government of the United States. The resolution was opposed by a Senator from Virginia. In the course of his remarks he went on to explain how and why his allegiance was pledged to Virginia, and not to the United States. I quote from his remarks the following:

"The oath of allegiance in Virginia, to be taken by all those who are admitted in any way to participation in the political power of the State, is this:

"I declare myself a citizen of the Commonwealth of Virginia, and solemnly swear that I will be faithful and true to the said Commonwealth, and will support the constitution thereof so long as I continue to be a citizen of the same."

"I will be faithful and true to the said Commonwealth—that is allegiance. Am I to be told by the Senator that we have a divided allegiance, that we can owe allegiance to two sovereigns? Am I to be told by the Senator that when I come here as a representative of a sovereign State I put off my allegiance and put on a new garb, and not to a sovereign, but to a mere agency?"—*Congressional Globe, second session, Thirty-Sixth Congress, part two, page 144*).

When, then, a State binds her officers by the most solemn oaths to allegiance to herself, and forbids their taking the oath prescribed by the United States, what is your remedy? Clearly, neither writs nor armies can supply a remedy. But cannot this law be enforced?

Must we permit the municipal authority of Virginia to be administered by officers who persistently defy the Constitution? Must we admit to the counsels of this Chamber Senators appointed by a Legislature who refuse to take an oath to support the Constitution of the United States?

Sir, we have been diligently taught from our youth up that the Government of the United States is a Government of delegated powers; that no power not delegated to it can be rightfully exerted by it. I admit the doctrine. I have adhered to it all my life, and I abide by it to-day. But I ask the country to comprehend at last the extent of the powers which are delegated.

Among the powers delegated to this Government are not only the power to levy taxes, to borrow money, to regulate commerce, to coin money, to establish post offices and post roads, to declare war, to make treaties and alliances, to raise armies and maintain navies, but there is also this other power:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department or office thereof."

If, then, the supreme law commands the officers of a State to be bound by oath to support the Constitution of the United States, and if the President be authorized to enforce that law, here is authority for making any law necessary and proper for its enforcement? What conceivable law is so necessary and proper for that purpose, as a simple enactment, which declares that, since Virginia will not require her officers to take the oath prescribed to the officers of every State, Virginia shall not be a State. Since her people will not elect officers who will take the oath of allegiance, this Government may appoint officers to administer her municipal affairs. Since she has no Legislature whose members are qualified as the Constitution prescribes, her Legislature shall not send members to this Senate. Since she abjures the obligations imposed upon her by the Constitution, she shall forfeit the privileges conferred upon her by the Constitution.

Sir, I know of no remedy so complete as such a law would afford, and therefore I can conceive of no law so necessary and so proper.

But this, we are told, is in effect a dissolution of the Union by act of Congress. Dissolution of what Union? Dissolution of the Union of the States under a compact? We have had no such Union since 1787. Before that time we had just such a Union. But then we formed a "more perfect Union." A more perfect Union of what? Of States? No, there could be no more perfect union of States than we had under the Confederation. But in 1787 we formed a Union, not of States, under a compact, but of the people under a Government.

From that Union there is no withdrawal, except when the citizen withdraws his allegiance, and the citizen can only withdraw his allegiance by withdrawing his domicile, not merely beyond the limits of a State, but beyond the limits of the United States.

The Union which the Constitution ordained, and which I champion, is no close corporation, monopolized by a few States, more or less. It is, on the contrary, a broad and national association of the people, coextensive with the boundaries of the Republic, and holding under its shelter the rudest hamlet on your remote frontier no less than this magnificent marble pile in which I now speak.

But we are told that only States can appoint members of this Senate, and only the people of States can choose members of the other House, and that only States can appoint electors of President and Vice President.

I admit it. And it is argued that if there were no State governments there would soon be no Government of the United States.

I admit it. And hence we are admonished that if we admit the destructibility of the State governments we do, in effect, admit the destructibility of the national Government. Unquestionably. Who doubts that the people of the States can destroy this Government? The people of one State cannot destroy it. That, I think, South Carolina will admit. The people of eleven States cannot do it. That, I hope, is settled. But that the people of all the States can do it, I do not think has ever been denied. They can destroy it, too, without first destroying themselves.

Sir, is it not evident that if every elector in Massachusetts should blow his brains out on a given day there would be no one left to choose her Governors and her Legislatures? And yet who would think of arguing that it was unconstitutional to affirm that an elector could commit suicide because it would argue the destructibility of a State?

But the flag! We are pointed to the flag of the Union; we are impressively told that it bears thirty-six stars, and that it "declares, in more than words of living light, there are thirty-six States still in the Union;" and my colleague asked the other day, with much emphasis and fervor, if that was a truth or a "hypocritical, flaunting lie." Nay, Mr. President, the stars do not lie; only my colleague, I think, fails to read them aright. If they asserted what my colleague seems to think they do, they would not tell the truth. But, in fact, they make no such assertion.

Sir, it was a law of my father's household that the name of every child born to him should be inscribed upon a certain page in the family Bible. It was not provided that when death removed one from the circle the name should be erased from the record. And so it happens that the Book, which is still extant, bears to-day the names of eight brothers and sisters. But I know, sir, I know full well, that only four of us are now living.

So Congress enacted in April, 1818, that upon the national flag there should be "twenty stars, white in a blue field," and "that on the admission of every new State into the Union, one star be added to the union of the flag."

It was not enacted that when any State should revolt against the authority of the nation, and impiously raise its hand against its own life, a star should be dropped from the flag. And so it happens that our flag, wherever it floats to-day, flashes thirty-six stars in the light. But they gleam there not in evidence that thirty-six States still exist, but that thirty-six States have been created.

Sir, whatever may be thought of the right of Congress to strike South Carolina from the roll of States, I take it no one will seriously question the authority of Congress to strike one or all the stars from the flag; and what would then be the testimony of the flag?

But the great argument against the doctrine of the destructibility of the States is this: It is urged that the States cannot be destroyed, because the law forbids it. Every suicidal act is illegal, and is therefore null and void. Sir, I believe the laws of Connecticut forbid murder. But if some near and dear friend of yours should be waylaid, and have his throat cut from ear to ear, and you should apply for letters of administration upon his estate, would you not be surprised, after you had marshaled in the probate court the proofs of his death, to be gravely told by the judge, "Sir, you are mistaken; your friend cannot be dead; the law forbids murder. The cutting of your friend's throat was clearly illegal, and therefore null and void?" If South Carolina had done nothing but adopt the ordinance of secession, no one would have urged that she had thereby forfeited the prerogatives of a State.

We would have been content to have the courts pass upon its validity, and they would have pronounced it invalid. But she did more. Having declared her independence of the United States, she proceeded to have her officers take an oath which bound them to *resist* the Constitution instead of *support* it. And when the local government had thus disqualified itself for the exercise of any authority whatever, it proceeded to usurp every power which the Constitution denies to a State, and to abjure every duty which the Constitution imposes upon a State. And when she had thus revolutionized her local government, she proceeded to crush out the Federal organs within her limits; to take possession of her forts; to convert her post offices and post roads to her own use; to shut up her custom-houses; the judge of the United States district court pulled down the national flag from the court-house, and hoisted the Palmetto flag in its place; the judge of the circuit court was excluded from the State, and I think has not since seen the State; marshals resigned, so that there was no officer who could

serve the writ of the United States, and there was no Federal court in which the citizens of another State could collect a debt that was due, or recover a horse or a ship that was tortiously converted.

And then she planted her batteries opposite one of your own forts, garrisoned by a handful of your own troops, and for forty-eight hours hurled its iron hail upon the walls until they were said to resemble a honey-comb.

I do not doubt but all this was illegal, but I could not readily admit it was all a nullity.

If it was a nullity, what authority had this Government for planting the "swamp angel" off against Charleston and raining its iron messengers upon the city, or for sending Sherman flaring through the State as if he were himself the angel of retribution?

Sir, the awful truth is these acts were not nullities, but were great, unprovoked, unparalleled, atrocious crimes, by which every State official forfeited not only the franchise of his office but his life, and by which every citizen who participated in that guilt forfeited not only his right to vote, but his right to breathe.

The President is pleased to say that by these acts "the States attempting to secede placed themselves in a condition where their vitality was impaired but not extinguished, their functions suspended but not destroyed." I am, myself, quite unable to find any clause of the Constitution which discriminates between those acts which *impair* the vitality of a State and those which *extinguish* it. Nor do I comprehend that principle of philosophy which admits that any form of life *can* be impaired and yet *cannot* be extinguished. With all deference, I should suppose that any form of vitality, in order to be *sure* against extinction, should be proof against deterioration. But I am not disposed to insist upon this criticism.

Nor do I think it worth while for the great Union party to divide upon the question whether the Constitution requires us to say that the functions of a State in a given emergency are "suspended" or "destroyed." Being classed with the radicals this year, I acknowledge a leaning to the more positive forms of expression. I have, therefore, rather insisted upon the theory of suicide. But rather than disrupt our organization I think I could compromise upon that of syncope. But it is conceded that the functions of the rebel States were suspended, were gone. Perhaps the most succinct and apposite term to be found in the American lexicography would be to say they were "played out." At all events they were suspended. Now, that is precisely what ailed Lazarus. When he had lain four days in the grave and already stunk, it was only because his "functions were suspended." [Laughter.] Nevertheless, "Jesus said unto them plainly *Lazarus is dead*," notwithstanding he knew he could raise him from the grave. And so I say these rebellious States are dead. But I know although they have lain in the grave four years, and smell worse than Lazarus did, [laughter,] yet the recreative power of the nation can make them live again. Indeed, the suspension of the functions is sure death to a man or a State.

But since their functions were suspended the question remains, for how long were they suspended? Were they suspended during the pleasure of the several States, or during the pleasure of the United States? Certainly during the pleasure of the United States. That is already decided, at least by the executive department of this Government.

In April last, General Johnston of the rebel army offered to surrender his whole army upon condition that the several districts might be allowed to resume the functions of States at once. But the Government then wisely and firmly said, "No; we do not propose to purchase the surrender of that army, nor sell the remission of those functions. That army we propose to take, because it belongs to the United States. Those functions we will restore when we see you know how to use them." Is it then the pleasure of the United States that these suspended functions be now restored?

But, first, who shall answer that question? What department of the government is charged with the duty of declaring from time to time the pleasure of the United States? No one pretends that the judicial department has this power. But there are those who argue that it is for the President to decide when these functions shall be restored, and that he has already decided it. I do not myself understand that the President has decided that question. If he had done so, I think he would not have withheld so important a fact from Congress when he made his annual communication upon "the state of the Union." I have carefully read that well considered and able message. I find an unequivocal declaration that the functions of those State which attempted to secede have been suspended, but I find no intimation that they have been restored.

And manifestly it is not within the purview of his official duty to restore them. It is the province of the President to execute the national will, not to expound it. He is

placed in command of the Army and Navy, to enable him to "take care that the laws be faithfully executed," not that they be wisely made. With all that power in his hands he cannot rightfully so much as transfer an old musket from one citizen to another without the warrant of the United States, tested by a judge, declaring the right of the claimant to have it. The President cannot fix the price to be paid for an acre of the public domain, nor the duty to be paid upon the importation of a pound of tea. Is it supposable that the people who withheld from the Executive the right to legislate upon such trifling concerns, would authorize him to fix the terms upon which eight millions people, who had forfeited their lives by law, should be organized into eleven States of the Union? I am not only confident that this is the last power which the people would confer upon the executive department, but I am persuaded it is the last power which the present Executive would consent to exert; and that not solely or mainly because of the unsuitableness of his office for ascertaining the national will upon the question, but chiefly because of his personal relations to and his possible interest in the question to be determined.

Do Senators comprehend what consequences result necessarily from restoring the functions of those States? It will add fifty-eight members to the House of Representatives, more than one-fourth of its present number. It will add twenty-two members to this Senate, nearly one-half its present number. The Constitution designed the Legislature to be independent of the Executive. But what independence has that Legislature into which the Executive may at his pleasure pour so many votes? The Queen of Great Britain has no such power over the Parliament of the realm. She *may* constitutionally add that number of votes to the House of Lords, but it is beyond the stretch of her vast prerogatives to add a vote to the Commons. But this is not all. Restoring the function of those States to the people of those lately rebellious districts adds eighty votes to the Electoral College which chooses the President and Vice-President of the United States. Suppose the present incumbent of the White House was ambitious of a re-election—the supposition is in no wise derogatory to him—that is an ambition which becomes any distinguished citizen of the Republic, and no one better than himself. But suppose he were, as some aspirants for that exalted place have been, not over-scrupulous as to the means by which he secured his election; who is so blind as not to see the terrible advantage which would be placed in his hands by conceding him the power to add to the vote of the Electoral College more than one-third of its present numbers?

A few years since we heard much of a set of felons in San Francisco who were designated as ballot-box stuffers. But what ballot-box stuffing ever known in San Francisco could parallel that which such a concession of power to a candidate for the Presidency would legitimate?

I make this comment because it is forced upon me by the attitude of those communities which are seeking at the hands of the President a restoration of the functions of States. Their professions of obligation, their proffers of support, are too conspicuous to pass unnoticed. To the inducements which they held out as the price of prompt restoration, I understand that a somewhat distinguished citizen of New York has lately added the proffer of the support of the Democratic party of the existing States. That tender, however, I am bound to say, does not, in my judgment, amount to an attempt at bribery. [Laughter.] And that for three reasons—first, because the gentleman making the proffer did not own what he tendered; second, because the thing he tendered had no value in the market; and third, because if it should come to have a value by the time the offer is to be redeemed, the legal presumption is the tender would be withdrawn. [Laughter.]

And I make this comment the more freely because from nothing I have seen or heard have I been led to believe that the judgment of the President has been swayed a single hair's breadth by the seductive arts which have been practiced before him. I am happy in the belief to-day that if Congress will but discharge its duty as firmly, as dispassionately, and as conscientiously as the President has addressed himself to the discharge of his, the country is safe.

To the legislative department then is delegated the responsibility of determining when these suspended functions shall be restored. To Congress it ought to be delegated, because its members coming more directly from the people, and from many different localities, are supposed to be better informed as to what is the popular will than any individual can be. To Congress it ought to be delegated, because its members have no personal interest in the decision of the question. The people of those revolting districts will have no more and no less influence upon the re-election of the members of these Houses whether the functions of States are restored to them or not. To Congress this power is delegated by the express terms of the Constitution. "New

States may be admitted by the *Congress* into this Union," is the language of the third section of the fourth article of the Constitution. To Congress also the Supreme Court assigns this power by necessary implication, if not by express adjudication, in the celebrated case of *Luther vs. Borden*, reported in the 7th Howard, Supreme Court Reports, page 1. There two distinct rival organizations claimed to be the government of Rhode Island. The question presented to the court was which of the two was the legitimate government. The court decided that the question was political and not judicial, and in the opinion of Chief Justice Taney I find the following conclusive words :

"The fourth section of the fourth article of the Constitution of the United States provides that the United States shall guaranty to every State in the Union a republican form of government, and shall protect each of them against invasion; and on the application of the Legislature, or of the Executive when the Legislature cannot be convened, against domestic violence.

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For, as the United States guaranty to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding upon every other department of the Government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and as no Senators or Representatives were elected under the authority of the government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts."

If Congress, then, may rightfully determine which of two rival organizations is the legitimate government of an acknowledged State, *a fortiori* must Congress decide when a particular organization is or is not the Government of a State.

Since, then, the responsibility devolves upon Congress to decide whether the functions of States shall be now restored to those rebellious and lately belligerent communities; how shall we decide it?

For one, I say no! I say no for all the reasons that could influence my decision of such a question.

And first, I say Congress ought not now to restore those suspended functions, because Congress has not been asked to do so.

The election of members to serve in this or the other House, issuing credentials to them, the presentation of such credentials here, is not an application to be restored to the *status* of States. Such proceedings characterize acknowledged States like New York and Ohio; States which have never forfeited their prerogatives. The fact of issuing such credentials assumes that their functions had not been suspended. We know they have been. The President declares they have been. In April last he distinctly notified all rebeldom that they were suspended. Why do they not ask for restoration, present their constitutions, and show us what sort of institutions they propose to establish in place of those they recently placed under the protection of the Confederacy? Other communities, when they have sought to enter the circle of American States, have asked permission to do so. Wisconsin asked for it. Until she obtained it she did not assume the right to choose members to represent her in Congress. It is useless to say this right was once conferred upon Louisiana and Mississippi. By rebellion they forfeited the right. In April they were notified the forfeiture would be enforced. Until the forfeiture is remitted they have no right to choose members of this Senate. Until they have the right to choose Senators we ought not to consider the question, whether they *have* chosen them, or whether those chosen have been regularly returned, or are properly qualified.

The simple truth is, the representatives of those revolting States left these Halls five years ago without the permission of the nation, and they now propose to come back without its permission. They defied the nation then to keep them in, they defy the nation now to keep them out.

You remember in what mood they left here five years ago. One of them, in debate upon this floor, on the 7th of March, 1861, in reply to Mr. Douglas, spoke as follows:

"Mr. President, I have tried to explain several times, the position which I occupy. I am not officially informed that the State which I represent here has abolished the office of United States Senator. When I am so advised officially, I shall file at your desk that information; and then if, after being so informed, you shall continue to call my name, I will answer, probably, if it suits my convenience; and if I am called on to vote, I shall probably give my reasons for voting; and, regarding this as a very respectable public meeting, continue my connection with it in that way. At present, though, I am not advised that Texas has withdrawn from the Union, and am waiting those instructions. I said the other night, it was very late, and I hardly recollect it now, not having slept for some forty-eight hours, except when I could take a nap now and then—I said, then, that in consequence of your having refused to recognize the secession of other States, and continue to call the names of their Senators whose official withdrawal had been filed here, I supposed I should continue to attend the meetings of the Senate. If it suits my convenience I certainly shall; if not, not."

Mr. JOHNSON. What Senator was that? Wigfall?

Mr. HOWE. I have read from some remarks made by Mr. Wigfall, of Texas. A few days later Mr. Mason, of Virginia, then a member of this Senate, spoke in opposition

to a resolution for the expulsion of a Senator from Texas who had declared he owed no allegiance to the Government of the United States, and he used this language :

"If Senators still persist in saying, as matter of constitutional law, that these States have not separated, that their act is null, they are holding language which—I say it with great respect, for I feel no other sentiment toward them—is more disrespectful to the Senate tenfold than that which the Senator from Connecticut says deserves the punishment of expulsion in the case of the Senator from Texas; and why? Because, by their language, they declare that five million people and six or seven sovereign States are in a state of insubordination and insurrection, and they are taking no means to quell it. They declare herethat the acts of those States are null; and, although they have seized what they call the public property, although they have possessed themselves of the forts and of the public arms, yet they take nomeans whatever, and recommend and propose none, to recover it or to subdue them."

For one, I am unwilling to see those who then burst out of their seats taunting and jeering the majesty of the nation, now come vaulting back into the same seats defying and bullying the nation. If the nation has any authority I would like to see it consulted and respected.

But there is a graver objection still to immediate restoration. It is this: those communities are not now fit to take upon themselves the attributes of States. Our past history has demonstrated that absolute homogeneity is not necessary to the success of republican institutions, if existing differences of opinion do not prevent the exercise of reasonable toleration. But the history of the world has demonstrated that when great malignant antagonisms exist between the members of a State, republicanism must fail of its mission in that State. The powers of a State, even where its political action is confined within the limits prescribed by the Constitution of the United States, are immense for good or evil. A State may determine who may and who shall not participate in the Government; who may or who may not vote at the elections; may exclude whomsoever it pleases from the office of legislator, of judge, of juror, of witness; may make what expenditures it chooses, lay what taxes and contract what debts it chooses. It may regulate labor and control the acquisition and descent of property as it pleases. It may denounce what conduct it chooses as criminal, and impose what penalties it chooses as punishment.

Is it the deliberate judgment of the Senate that these communities are at the present time in that equitable and dispassionate temper of mind which makes them proper depositaries of such enormous powers?

To whom do you mean to assign those great powers which under the Constitution belong to a State? Do you mean to give them to the whole body of the people in these districts? That probably can be done with reasonable safety to them in a short time, but I do not believe it can safely be done yet.

During the past four unhappy years a division has sprung up between different portions of those people unknown to their former history. A gulf yawns between them as broad as that which stretched between the rich man in hell and Lazarus in the bosom of Abraham. That chasm was made by the civil war from which we have just emerged. On one side of it stand all the disloyalty and nearly all the wealth and intelligence in those communities. On the other stand all the loyalty and nearly all the poverty and ignorance in them.

On which side the greater number is to be found I do not know. Probably in some districts it would be found on one side, and in others upon the other side. It cannot be but that the spirit which animates both sides is most unfriendly, not to say malignant.

Hitherto we have seen only the temper which inspires those upon the other side. That is as full of the extract of hell as a rational man would care to see. Those upon this side, upon the American side of the gulf, have as yet been allowed little opportunity of developing the sentiments which actuate them. It cannot well be doubted, though, that the load of hatred and wrong with which they have for years been overborne has engendered feelings of a corresponding nature in their breasts.

When you have once committed this fearful engine known as a State government to a people, it is beyond the control of the nation. Thereafter that people must run it to suit themselves. So long as they exercise only the powers permitted by the supreme law, they may use them as they will. Whenever, then, you commit this power to the people of one of those districts, it will fall into the hands of one or the other of these antagonistic parties. I submit to you, sir, there is imminent danger that whichever party gets possession of it in their present mood, will use it to the utter destruction of the other. We hear much talk about securing guarantees for the future. It was recently said by a distinguished member of the other House while pleading for immediate restoration—

"I would exact at their hands all needed and just guarantees for their future loyalty to the Constitution and the laws of the United States."

For myself, sir, I care less—ininitely less—about security for their future good behavior towards us, than I do for security that they will keep the peace toward each other. Hitherto the United States has been able to take care of itself. I trust she will prove as capable in the future. But a minority under the government of a State in the hands of a majority, moved by that active and relentless hate which we have too much reason to believe animates both these factions, and which we know inspires one of them, is helpless and hopeless. Until, therefore, existing animosities have somewhat smoothed down, I would not dare to deliver these suspended functions irretrievably to those people for fear of just such a collision.

There are those among us, sir, I am sorry to know, who propose to avoid such a collision by committing these suspended functions to the white populaion alone, with power to exclude from participation in them so many of their number as they please.

Mr. President, I am not ready to accept that expedient this year. I do not expect to be next year. I cannot now foresee when I shall be prepared for it. But when I am born again, sir, and have a new gospel committed to me from on high which does not proclaim “peace on earth and good will to men,” but proclaims eternal war on earth, and hatred and all uncharitableness to men; which teaches that fraud and rapine are the commanding interests of a republican State, and that Governments should grace treason with laurel wreaths and heap chains upon fidelity; when I hear that gospel from on high—not from below, whence I have heard it all my life—if I accept it, I may be ready to try this expedient, but not until then.

This proposition is to clothe all on the rebel side of the dividing gulf with power and to deny it to nearly all upon this side. This is to make your enemies that controlling, irresponsible majority, and to make your friends that helpless and hopeless minority. This is to put the mill into the exclusive possession of pardoned traitors, and to throw all truth and loyalty into the hopper. That is the entertainment to which we are invited by the immediate restorationists. For one “I can’t go.” And I do not propose to send any “regrets.”

My colleague recently characterized these communities not inaptly as a “boiling caldron of passion and excitement.” Into that caldron we are cordially invited to throw all the loyalty there is there, while treason is employed to tend the fires. I must be pardoned if I object to the arrangement. Why, sir, do you remember who these are into whose hands you are asked to consign these enormous powers? They are traitors, and traitors not to a Government which oppressed them, but to a Government which gave them a monopoly of all the oppression there was practiced under it. They are criminals snatched from the gallows by executive clemency.

Mr. President you may ransack the history of civilized nations and you cannot find among the rulers who have been deposed for their crimes one who has so unequivocally demonstrated his unfitness for rule as the very class we are now asked to recrown.

I do not ask you to rest upon an assertion. I appeal to the record. If there is any practice which civilization and Christianity condemns, it is slavery. But in defiance of that judgment these people persisted in holding three million human beings as the mere chattels of half a million. If there is any principle of government upon which the American people and liberal people everywhere are agreed, it is the principle that opinion and speech ought to be free. Even in these communities every chapter in their codes, every article in their creeds, every measure in their policies, have been opened to free and licensed discussion, save only the rightfulness of slavery. Whoever raised his voice against that has been silenced or banished. In the earlier and better days of the Republic all were agreed that slavery ought not to go beyond the limits of the States in which it existed. But these people not only demanded free ingress for slavery to all the Territories, but in 1861 they waged flagrant war upon the people of the United States because they elected a man for President who was opposed to legalizing slavery in the Territories, and in the prosecution of that war have subjected the nation to an expenditure of three billions of treasure, and to a sacrifice of blood and of life which no man can contemplate without a shudder.

Why, sir, it is the recorded judgment of the nation that these communities are unfit to wield the powers *heretofore* possessed by the States of this Union. Heretofore American States have had the power to hold portions of their inhabitants in slavery. These communities have all done it. With two exceptions every other community has prohibited it. Against a wrong so gigantic the nation has been compelled to intervene, and has, in the face of an applauding world, deliberately stripped every community within the United States of that power. That judgment was unquestionably just; but who that believes in the universality of human justice doesnot hang his head at seeing thirteen great American communities arraigned at the bar of public

opinion, pronounced guilty of an intolerable abuse of power, and compelled by a national decree to renounce it?

Mr. President, will any one tell me that in spite of all these acts there are many good men in those communities, men as true to their convictions as are to be found anywhere? Who doubts it? Who doubts that Paul, when he threw Christians into prison, compelled them to blaspheme, gave his voice against them when condemned to death, and went snuffing on their track toward Damascus, was as true to his convictions as ever he was? But who believes he was then a suitable or a safe guardian for the disciples of Christianity? I am not clamoring for scaffolds or prisons, or penalties, or forfeitures for the authors of these crimes. Fling them pardons if you choose. If repentance will not come in quest of pardon, send pardon in search of repentance. Give to the rebels life and civil rights, and political privileges; give them offices and honors if you must; build altars to them, if you will, but, for God's sake, do not sacrifice men on those altars any longer. Will any one tell me that such recurrences to the past are calculated to postpone the era of good feeling for which the country yearns?

Mr. President, the era of good feeling waits for one of two events. It will come when wrong surrenders to right, or when right surrenders to wrong. If it comes with the former event it will stay; if it comes with the latter it will leave early. Those who would have the era of good feeling stay when it comes should strive to hasten the surrender of the wrong, and should resist to the end the surrender of the right. But we are exultingly told that "slavery is abolished," as if now there was no more danger to be apprehended from the abuse of power. Yes, Mr. President, by the ordinance of emancipation three million people have been delivered from the slave pens and taken from the auction blocks. They have been redeemed from the kingdom of chattelism, but they have not been placed in the republic of man. Let us withhold our boasting for the present. Power can make men miserable otherwise than by making them merchandise. Who does not see that if the freedmen are placed under the political control of that white population, emancipation has only transferred them from the individuals who formerly owned them to a close corporation composed of the same persons? And what use is to be made of them then? Sir, we are not blind or deaf, unless we choose to shut our eyes and stuff our ears with cotton; and we cannot fail to know, as well as if their purpose was emblazoned on all the southern heavens, that they mean, in spite of emancipation, to monopolize still the labor of the freedmen, to control its wages, and to appropriate all of its proceeds not demanded for their bare support. To that end you are distinctly informed that, with their consent the freedmen shall not come to the polls; shall not enter the witness-box or the jury-box, or sue in the courts; shall not hold lands, nor inherit or transmit property. Oh, but you say some of those communities have agreed that the freedmen may sue in the courts and swear upon the witness stand. Yes, but will you tell me how, with all these disabilities heaped upon them, they are to be able to employ an attorney to appear for them? Or how, with all this prejudice arrayed against them, they are to find an attorney who dare appear for them? Or how, with all this indignity piled upon them, they are to find a jury that is not instructed not to credit what they say?

But how have even these beggarly concessions, not *to* justice but *toward* justice, been secured? How has the consent of either of those communities to the decree of emancipation been obtained? How is it that some of them agreed to annul their ordinances of secession while others have only repealed them? How have some of these communities been induced *not* to forego, but to postpone, the charge of the debt contracted in aid of the rebellion upon the industry of those communities? Sir, you and I know how it has been done. It has been done by the efforts of the President. We have seen him, as it were, strip himself and go down into those several arenas, armed with the whip of political exclusion, as I have seen Driesbach go into a cage of lions, and, in the name of national justice, struggle there for some recognition of it. For this labor, in the name of my constituents, I thank him. It was work in the right direction. He has done all it was necessary for *him* to do. He has demonstrated that those people, if the nation will remit them their forfeited lives and estates, and readmit them to political rights, will do whatever the nation demands. In the name of God, then, let the nation demand justice—not the shadow but the body of it; not the semblance, but the substance of it.

But, sir, they mean to do more than monopolize the labor of the freedmen; they mean to convince the American people that emancipation was a blunder and a crime. Hence it is that their organs clamor with tales of conspiracies, of idleness, vagrancy, and of crime. Hence it is that Christmas was assigned as the day for a general uprising. Hence it is that on that day, the anniversary of the day on which was born, in Bethlehem of Judea, Jesus, the Saviour of man, it happened that soldiers lately re-

turned from the rebel army, wearing the uniform of the Confederacy, within five miles of your Capitol, paraded the streets of Alexandria, doing their utmost to provoke a revolt. Hence it is that throughout that region, still heavily garrisoned by the troops of the nation, in defiance of any local public sentiment, if not in accord with it, and in defiance of the national power, murder sweats at its work of blood. If you, who are responsible for the law of emancipation, ardently desire to be damned for it, you have only to place it in the hands of its most relentless enemies to administer and illustrate. Withdraw the national authority, surrender the protection of the emancipated to the men who formerly owned them; dictate to them what constitutions and what laws you please to-day, so that you give them full authority to repeal them to-morrow; and you know what will happen.

Restored to the prerogatives of States and in full possession of their seats here, they will coolly tell you that having made one constitution and one code for the Washington market they will proceed to make one for home consumption. Having at your dictation agreed to the act of emancipation, they will, after their own fashion, proceed to show you what it is worth. Having at your bidding waived the payment of the rebel debt, they will proceed to cancel the old bonds and issue new ones for the amount. And when, under their new code, the freedman is excluded from the jury box, the witness stand, the courts, and from the whole remedial law, and from the schools; when their labor is charged with an enormous debt contracted in the effort to perpetuate and intensify their servitude; when the regenerated State shouts to them "Work!" and yet denies them all chance to work except in the employ of their late owners, the great landholders; when the freedman sees that his utmost efforts only secure him a subsistence which he always had, and that the strictest fidelity secures him no friends, which he once had; when he finds that the tie which linked him to the family of his old master is severed, and that no new tie links him to the family of man, what then?

Sir, I do not doubt that oppression, cunningly devised and persistently applied, can secure a revolt from these freedmen. And what then? Let Jamaica answer. A revolt has been effected there, and with what result? Shakspeare thought to caricature the tireless genius of slaughter when he made the "Mad-cap Prince of Wales" describe the "Hotspur of the north" as "he who kills me six or seven dozen Scots at a breakfast; washes his hands, and says to his wife: 'Pie upon this quiet life! I want work.' 'O, my sweet Harry,' says she, 'how many hast thou killed to-day?' 'Give my roan horse a drench,' says he, and answers, 'Some fourteen,' an hour after—'A trifle, A TRIFLE.'"

Poetry gives you that for caricature. When you ask the newspapers, those chroniclers of actual events, how many have been killed in Jamaica, they answer, weeks after the event, "from two to four thousand!" As if it only concerns the world to know the number in round thousands and was not necessary to be very particular as to the number of thousands.

I asked a friend of mine, a sagacious calculator of political results, what would happen if the freedmen were driven to a revolt. He answered, with the quiet assurance of one who, looking upon a clouded sunset, says *it will rain to-morrow*, "They will be exterminated."

Yes, Mr. President. But when the nation has returned from exterminating the emancipated, with what judgments will they visit the emancipators? Who of us, who are responsible for emancipation, will care to wait for his share of the execration that is sure to follow the act, when we have nothing to show for it but a maddened revolt and a relentless massacre?

But even if protection the most ample was already secured to these freedmen, I should still be unwilling to restore to those communities the functions of States. There is another class of people there who, in my judgment, deserve the attention of Congress. I refer to that class who have the luck to be white but have had the singular taste during the last four years to be loyal. Do we forget that during those last terrible years different portions of each of those rebellious districts have been under the control of different governments, deadly hostile to each other? A part of what we call Louisiana has been under the control of the military authorities of the United States. Those authorities have not only been protecting the territory within their possession against the incursions of rebel forces, but they have, in the absence of any civil government which the United States could recognize, been administering justice between man and man.

It is not to be doubted that in the discharge of these civil functions, as in the exercise of military functions, your authorities have acted in the interest of the United States. It is not to be doubted that they have discriminated in favor of the loyal and against the disloyal. Other portions of the same Louisiana have been under the con-

trol of rebel authority. We know very well that they have discriminated against the loyal and in favor of the disloyal. To what extent these discriminations have gone on either side we are not informed. An officer, who has recently been filling a high command in South Carolina, told me he knew of men whose whole estates had been confiscated by the rebel authorities for no other offence than having been true to the flag of the nation. Now, it is deliberately proposed to surrender the whole local authority in each of those districts to those men in whose favor the rebel authorities have discriminated and against whom our authorities have discriminated. Does any man suppose that any government can hereafter be elected by the people of Louisiana, of South Carolina, or Virginia, which will uphold the judgments of your military commissions, heretofore rendered against rebels, or that will reverse the judgments rendered by rebel tribunals against Union men? Does the United States really mean to suffer all its past action in those districts to be trampled under foot by its enemies, and all the wrong and oppression which has been visited upon its friends to go unredressed?

If your troops had taken possession of a State of Mexico during the war, they would have done what they have done in Louisiana, and for the same reason. And Mexico would have regarded your acts as Louisiana regards them—as the decrees of force and not of law. If the Mexican State should be ceded to the United States the Government of the United States would uphold its prior acts. If the State should be restored to Mexico the treaty of peace would settle the question of the validity or invalidity of what you had done. But you have had no treaty with Louisiana, and you can have none. Only in her new organic law can she abjure the claims or the pretences upon which she ought not to insist, or upon which you do not mean she shall insist.

Every new State, when she offers herself to the acceptance of the nation, is required to renounce by her constitution whatever claims Congress deems she ought not to prefer, and especially is required to respect, after her admission, whatever has been done by the authority of the nation before her admission.

But, sir, if these people were entirely friendly to each other, there would still, in my judgment, be an insuperable objection to their immediate restoration to the prerogatives of States. That objection lies in the fact that a large and controlling portion of them are still really hostile to the United States. Gentlemen affect to discredit this fact. God knows I would be glad to discredit it; but I cannot. The evidence of it is conclusive and overwhelming.

But you say they have laid down their arms. Yes, Mr. President, being physically unable any longer to hold them up, they have laid them down. But they seek to re-enter the community of States! Yes, Mr. President, having found they cannot have control of their own domestic and foreign affairs both, they would, doubtless, like to have the sole control of their domestic affairs only; and having found they cannot successfully *fight* against the United States, they would, doubtless, like the privilege of send here some hundred or more representatives to *vote* against it. But they will take the oath of all giance! Yes, Mr. President; but the oath they will take is no more binding than that they were under in 1861, when they made flagraet war upon you. But some of them have even renounced the right of secession! Yes, Mr. President, as Galileo renounced the theory of the earth's motion.

But everywhere you see unmistakable evidences that their hearts are unchanged. The uniform of the rebellion is still worn and its songs still sung. In a church in this city last Sabbath, I am told, three gentlemen were seated with the insignia of the rebellion upon them. In Alexandria, on Christmas, men whom your law condemns to death wantonly assaulted men for no other reason than that your law proclaimed them free. In a theater in North Carolina, a short time since, the orchestra played the "Bonnie Blue Flag," and it was received with rapturous applause.

It is suggested that those who parade these evidences of hostility are few in number, and do not represent the feeling of communities. I challenge the Senate to show me what rebel community has ever rebuked such displays. Last week in a theater in Mobile, the orchestra, in playing a medley, carelessly or by design introduced a strain from "Yankee Doodle." It was hissed at once. Some officer in command there directed it to be played by the orchestra the next night. It was applauded by those wearing the American uniform, and hissed by others. The papers say that it seemed likely a general tumult was to ensue, and the ladies left the theater. I find here extracts from three Mobile newspapers commenting upon that transaction, and I wish to read portions of these extracts. I read first from the Mobile Tribune of December 30:

"The music of the thing is execrable. We have been averse to that ever since we first heard it. But it was, in some sort a national air, and that made it respectable. Is it not likely that it was hissed by some person who meant distaste to the music and not the sentiment which it conveys? At all events it was a bit of folly to hiss it under present circumstances."

What are the "circumstances?" Why, we have not got our representatives into Congress yet. Under these circumstances "it was a bit of folly to hiss" an air to which the people of the United States are supposed to be somewhat attached.

"A moiety of the audience was probably composed of those who admire it in every respect. Their feelings and tastes ought to be respected by a genteel audience."

The audience in Mobile was supposed to be "genteel," but not patriotic or loyal.

"Besides, we are informed that 'Dixie' and the 'Bonnie Blue Flag,' both of which were considered semi-confederate national airs, are often performed by the orchestra without provoking hisses from that part of the auditorium which is supposed to be averse to them.

"Cannot our people be as polite as their 'Yankee' friends?"

It is a question of politeness!

"We shall take the liberty also of informing those who seem to forget it, that this State of Alabama is presumed to be within the Federal Union—that it has no power, even if it had the desire, to put itself in hostility with the central Government."

The Tribune is satisfied on the question of power, but uncommitted on the question of desire.

"It lies yet in large measure, at the mercy of those who overpowered it. Now, cannot people remember this imposing fact and restrain their prejudices, which can only excite prejudice, and thus lead to disturbances and give the enemies of the State an opportunity to demand that more rigid restraints shall be put on us?"

That means, "keep still till we get in a position where they cannot put any more restraints upon us; hush for the present; wait till we get out of the woods before you whistle or hiss the whistling."

"We do not take these manifestations of displeasure as meaning anything of the slightest importance, but the indulgence of them may lead to what will be of importance.

"We are not censuring any one"—

Of course not—

"but may conclude with a suggestion to the managers that they had better hereafter omit the performance of all airs which are likely to provoke a repetition of the scene we are alluding to."

"You had better not play Yankee Doodle any more in that theater," says the Tribune.

The Mobile Times of the same date has an article headed "Music and Liberty," in which, after reciting the circumstances, it says:

"Now, with due respect to all parties, the whole of this is wrong."

That is, playing the music and hissing the music, the ordering by the military officers that it be replayed, and hissing it again, is all wrong, says the Times.

"First of all, no law, of either State or Congress, ever made 'Yankee Doodle' a national tune."

They cannot find it in the statute. You have no business to complain that a tune is hissed unless the law declares it to be a national tune, and this is not recognized by the law yet!

"The very words which are adapted to the air exclude any idea of the kind."

The Times goes on to argue that it is really an old Neapolitan fishing song, &c. I will not detain the Senate with that argument. It is curious in itself, and I have no doubt would interest them.

"On the strength of this the tune may be hissed as a musical performance without any direct or indirect insult to our national feelings.

"On the other side, it is true to state that national prejudice has to a great extent adopted this tune as an emblem, and that, right or wrong, it should be respected.

"The Times is too well known as a consistent and independent advocate of peace and conciliation to be suspected of partiality in giving its views."

I do not suspect it of any partiality, in giving its views, between those who hissed a national air and those who played it. Under present circumstances, unquestionably, the Times is neutral. When these circumstances have passed by, and you can no longer impose any restraints upon them, I think the neutrality of the Times will be ended, and I do not think there is the slightest doubt on which side of the controversy the Times will appear.

"It might be remarked here," says the Times, "that, as the military authorities never objected to the performance of the 'Bonnie Blue Flag,' 'Dixie,' and other southern tunes, it was in bad taste on the part of the theater to introduce in their musical executions anything calculated to alter the present good feelings.

That is pretty sagacious. The Times has got a remedy. The national authorities down there do not object to the orchestra's playing the Bonnie Blue Flag, and the Times suggests and urges upon the managers of the theater to stick to the Bonnie Blue Flag; then you will have none of this disturbance. Why introduce national airs? Confine yourselves to one class of music, and let that be rebel music!

The Mobile Register of the same date says :

“ We are free to admit that it ought not to have been hissed; but surely it was not politic, by playing it, to run the risk of making the theater an arena of political emeute.”

It ought not to have been hissed since the orchestra stumbled on to it, but the managers of the theater ought to have taken care not to have their orchestra stumble on a national tune!

“ The officers who took part in this portion of the play ‘not in the bills,’ must determine for themselves how far they have aided the President in his policy of reconciliation, and to what extent the sum total of ‘loyalty’ has been increased in the community by the evening’s performances.”

So says the Register to the officers in command, “ You must take care how you insist upon having these national airs played in our theaters; you will balk the President’s plan of reconstruction if you do not quit that.” [Laughter.] That I read you, Mr. President, from papers that are the advocates of the southern style of loyalty. They are defending them, and this is the way they defend them.

Nowhere can you find but two sentiments; one blustering with hostility to the national authority, regardless of consequences, and the other mildly suggesting, “ Do not bluster yet; there is too much depending upon our good behavior!”

There are those who flatter themselves that the temper of these communities is improving. My own observations lead me to the conclusion it is constantly growing worse. And I think the fault is less theirs than ours. When the war closed the rebels very evidently and very naturally assumed that as they could not govern the United States they must obey it. Hence they began at once their preparations either to obey the country or to leave it. At once a party sprang to the front prepared to champion the cause of the nation and to uphold its authority. The party was not strong in numbers or in influence. If the nation had stood by it, it would have grown strong, and would soon have become controlling.

But, unfortunately, in a very few months it was proclaimed that the President was in alliance, not with the party that prosecuted the war, but with the party that opposed it; not with the party that elected him, but with the party that opposed his election.

Soon public rumor pointed to Senators, Representatives, and presses who had hitherto supported the national cause, and declared them ready to go with the President wherever the President might choose to go. Then it was declared that we had fought this gigantic war, not to make the rebels obey the United States, but to make them govern their own States; that they would be invested with those governments as soon as they would accept them, and all could see that as soon as the rebels were installed in those governments all who dared to befriend the United States would be subjected to every outrage that political rancor, clothed with the prerogatives of a State, could inflict. Since then the United States has had no friends in those districts. There have been but two parties there; one endeavoring to awe the Government with professions of defiance, and the other endeavoring to cheat it with professions of friendship.

No Government can expect friends, and no Government deserves them, which does not demonstrate its ability, or, at least, its willingness, to protect them.

But we are told that it is not strange that these people should not cherish any very lively regard for the United States at present. Perhaps it is not. But it seems to me surpassing strange that the United States should insist upon thrusting vast political powers into the hands of millions who maintain enrelenting hostility to the national cause.

I therefore conclude that upon every consideration, both of national honor, of national safety, and of local interest, Congress ought not yet to restore the suspended functions of those rebelling States.

But it is said, such is the policy of the President, and my colleague exhorts us in vehement terms to “stand by the President and to uphold his hand.” Why, sir, I desire to say to my colleague, and to the President, if he will listen, that we will stand by him if he will stand by the United States. I desire to remind my colleague, and the President, if he will listen, that we have stood by him because he did stand by the United States.

Mr. President, when at Baltimore, in 1864, the representatives of the Union party selected Andrew Johnson, of Tennessee, to be their candidate for Vice President of the United States, there was no tie in common between them and him except that both stood committed to the defence of the supremacy of the United States. We knew, then, that if elected there would be but one life between him and the command of the Army and Navy of the Union. We knew that if by any Providence he should succeed to that command he could surrender both to the enemy. But we did not believe he would do it. No man had given more signal evidences of his devotion to the national cause

than he. No man believed more implicitly in the sincerity of that devotion than myself. No man, perhaps, dwelt upon the conclusiveness of those evidences with more grateful enthusiasm than I did in my addresses to my constituents during the canvass of that year. I believe still he was loyal then. I believe still he is loyal now.

Sir, who says the President demands the immediate restoration of those communities to the status of States? Certainly he has not told us so. It is certain, also, the Constitution gives him no authority to make such a demand. It does give him express authority to "recommend" to the consideration of Congress such measures "as he shall judge necessary and expedient." But he has not recommended even any such measure as I have been combatting. On the contrary, it seems to me he has studiously forborne to make any such recommendation.

"And if an angel should have come to me,
And told me Hubert should put out mine eyes,
I would not have believed no tongue but Hubert's."

And let who will come and tell me the President would surrender one of the choicest prerogatives of the national supremacy, and would surrender the protection of its freedmen, its heroic soldiers, and its faithful friends to their direst enemies, I will believe no tongue but the President's. Whatever may be thought of what he has already done it should be remembered he has not acted in defiance of congressional direction, but in want of it—a want which I have often urged the Senate to attempt to supply.

Besides, sir, if I knew that the President differed from the views I have here advanced, I cannot forget it was Wisconsin that placed me here and not the President.

I believe that to-day I have given utterance to the convictions which animate the loyal people of Wisconsin. I know I have given utterance to my own convictions, deliberately formed and long cherished. And I trust the President has too just an appreciation of the office of representative to expect or wish any one to betray the dictates of his own conscience or his own constituents to echo the views of the Executive.

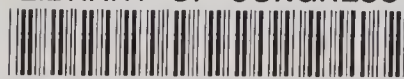
Sir, let the day be far-distant when the Senate shall be seriously importuned to surrender its own convictions of duty to executive dictation. And if the day shall ever come when the Senate shall yield to such importunity, then the American system will be destroyed, and the fragments only will remain to be scrambled for.

But because these people are not yet prepared to resume their suspended functions, does it follow that they must be left to the control of military authority? By no manner of means. The objections to that are second only to those I have urged against immediate restoration. I cannot detain the Senate by a recapitulation of them.

Upon this point I content myself with citing the argument presented by the late message of the President:

"Now, military governments, established for an indefinite period, would have offered no security for the early suppression of discontent; would have divided the people into the vanquishers and the vanquished; and would have envenomed hatred, rather than have restored affection. Once established, no precise limit to their continuance was conceivable. They would have occasioned an incalculable and exhausting expense. Peaceful emigration to and from that portion of the country is one of the best means that can be thought of for the restoration of harmony; and that emigration would have been prevented; for what emigrant from abroad, what industrious citizen at home, would place himself willingly under military rule? The chief persons who would have followed in the train of the Army would have been dependents on the General Government, or men who expected profit from the miseries of their erring fellow-citizens. The power of patronage and rule which would have been exercised, under the President, over a vast and populous and naturally wealthy region, are greater than, unless under extreme necessity, I should be willing to intrust to any one man; they are such as, for myself, I could never, unless on occasions of great emergency, consent to exercise. The wilful use of such powers if continued through a period of years, would have endangered the purity of the general administration and the liberties of the States which remained loyal."

To my mind this argument is unanswerable. But one expedient then is left. That is to organize provisional governments for each of those districts. Give them Governors and judges appointed by the national authority. Give them Legislatures chosen by the people of the districts, reserving to Congress a veto upon any laws designed to oppress any portion of the people. Allow them also to be represented in one or both Houses of Congress by Delegates chosen by themselves. This is precisely what has been done in every case where any considerable number of our citizens have been found without the limits of organized States. It was done for those people who poured out of the old States to settle the Territories northwest of the Ohio. It was done for those people who inhabited the territory we purchased from France, and for those inhabiting the territory we conquered from Mexico. The reason for doing it was precisely the same in every case. There were people to be governed, and they were not prepared for State governments. The reason is the same in this case. There are people who must not be left to anarchy, and they are not fitted to be clothed with the prerogatives of States.



But gentlemen say this is radical, and the times demand conservative measures. Why, sir, if gentlemen will say what it is they wish to conserve, I can better say whether this will answer their purpose.

If they wish to conserve the supremacy of the nation, this will enable them to do it, for it retains authority in the hands of the nation until the late belligerents are prepared to wield it in harmony with the national interests. If they wish to conserve the equality of men, this enables them to do it, for it will enable the nation to forbid any class of men from being placed beyond the protection of law. If they wish to conserve the integrity of the States, this will enable them to do it, for it respects the rights of every State which has not forfeited its own functions. If they wish to protect the national debt, this will enable them to do it, for it guards that debt, for a time at least, against the machinations of those who are most hostile to it. If they wish to conserve the people of the revolted States against the payment of the rebel debt, this enables them to do it. If they wish to conserve the peace in those insurrectionary districts, this enables them to do it, and to employ for that purpose the whole authority and the whole power of the nation. If they wish to conserve the cause of emancipation, it will enable them to do it, for it will enable them to make emancipation a blessing to both the master and the freedman. If they wish to conserve what loyalty there is in those districts, and to hasten its development, this will enable them to do it, for it will demonstrate to the world that it is no longer dangerous to be loyal. If they wish to conserve the rights of those Union men whose fidelity has been visited with penalties by rebel tribunals, or to conserve those rights which now rest upon the decrees of our own military tribunals in the revolted districts, this will enable them to do it.

Mr. President, I cannot foresee what will be the judgment of Congress upon the great problems now confronting it. If they can find a shorter and a surer path to safety and peace than this, I will gladly accompany them in it. For myself, I have looked for such a path for four years, and I have been wholly unable to see any other than this. I earnestly invoke the Senate to try it.

Mr. President, I know of nothing in the life of Christ more touching, or, if you think of it, more terrible, than that scene narrated by His first biographer when, standing in the temple and contemplating the great destruction that was soon to overtake the city, he exclaimed:

“O Jerusalem, Jerusalem, thou that killest the prophets, and stonest them which are sent unto thee, how often would I have gathered thy children together, even as a hen gathereth her chickens under her wings, and ye would not!

“Behold, your house is left unto you desolate.”

And when I remember how the Almighty has held us by the hand during the late deadly struggle, how He has led us more visibly than He ever did any other people since He guided the Israelites out of Egypt; how we in these very days have seen Him again part the Red sea that this nation might walk through dry; and when I contemplate the possibility that we may refuse after all to cross the river of prejudice that lies before us, that we may not be able even now to cast off the idea that “they are all giants” on the other side, that we may not after all dare to be sensible, that we may leave those who have been sent to us to be stoned by their enemies, I sometimes think I hear the same Jesus bending from the great white throne, where He sitteth evermore by the side of the Father, and exclaiming with the same infinite tenderness, O America, America, how often would I have gathered thy children together, even as a hen gathereth her chickens under her wings, and ye would not; henceforth *your* house is left unto you desolate.

Mr. President, I move that this resolution, if there is no occasion for its further consideration at present, be referred to the joint committee on reconstruction.