

SPEECH

E 458

.1

.B82

Copy 1

OF

HON. JOHN C. BRECKINRIDGE,
OF KENTUCKY,

ON

EXECUTIVE USURPATION;

DELIVERED

2510
5353

IN THE SENATE OF THE UNITED STATES,

JULY 16, 1861.



WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.
1861.

E 458

11
B 82

SPEECH.

The Senate having under consideration Joint Resolution No. 1, to approve and confirm certain acts of the President of the United States for suppressing insurrection and rebellion—

Mr. BRECKINRIDGE said :

Mr. PRESIDENT : The grounds of opposition to the joint resolution now before the body have been very fully stated by the Senator from Missouri [Mr. POLK] and by my colleague, [Mr. POWELL.] I have heard no defense of this joint resolution offered by the majority party in the Chamber. Under ordinary circumstances I should content myself with a simple vote; but regarding the subject as one of immense importance, I am unwilling to see the resolution pass without a brief expression of the reasons of my opposition to it.

It proposes, sir, after enumerating certain acts of the President done since the 4th of March last, to declare that—

“ All of the extraordinary acts, proclamations, and orders, hereinbefore mentioned, be, and the same are hereby, approved and declared to be in all respects legal and valid, to the same intent, and with the same effect, as if they had been issued and done under the previous express authority and direction of the Congress of the United States.”

The joint resolution would seem, upon the face of it, to admit that the acts of the President were not performed in obedience to the Constitution and the laws. If that be true, I should be glad to hear some reasons assigned by gentlemen showing the power of the Congress of the United States, by joint resolution, to cure a breach of the Constitution or to indemnify the President against violations of the Constitution and the laws. If, in any respect, that officer has violated the laws, he has also violated the Constitution; because one clause of that instrument declares that “ he shall

take care that the laws be faithfully executed.” It confers on him the power to see that they are executed; but no power to violate them.

I deny, Mr. President, that one branch of this Government can indemnify any other branch of the Government for a violation of the Constitution or the laws. The powers conferred upon the General Government by the people of the States are the measure of its authority. Those powers have been confided to the different departments, and the boundaries of those departments determined with perfect exactitude. The President has his powers and rights conferred on him by the Constitution; the legislative authority its powers and rights; the judicial authority its powers and rights; and I deny that either can encroach upon the other, or that either can indemnify the other for a usurpation of powers not confided to it by the Constitution. Sir, Congress, by a joint resolution, has no more right, in my opinion, to make valid a violation of the Constitution and the laws by the President, than the President would have by an entry upon the executive journal to make valid a usurpation of the executive power by the legislative department. Congress has no more right to make valid an unconstitutional act of the President, than the President would have to make valid an act of the Supreme Court of the United States encroaching upon executive power; or than the Supreme Court would have the right to make valid an act of the Executive encroaching upon the judicial power.

To say that Congress, by joint resolution, may indemnify the President against a breach of the Constitution is substantially to declare that Congress may alter the Constitution in a manner not provided by the instrument; may add to it or take

from it. If a bare majority of the two Houses of Congress can, by resolution, make that constitutional and valid which was unconstitutional, by the same authority it may confer upon the President in the future powers not granted by the Constitution; so that, sir, in whatever aspect the subject may be viewed, it appears to me the principles involved in this joint resolution are utterly subversive of the Constitution, and contain the very essence of a Government without limitation of powers. I had supposed that these general principles were too clear and too well recognized in this country to need statement or illustration.

But it may be well, Mr. President, to inquire, has the President of the United States assumed powers not delegated by the Constitution or the laws? I speak not now, sir, of many acts of the President not enumerated in this resolution. I shall confine myself, for the present, to the enumeration here. I think that the acts here enumerated were usurpations on the part of the Executive of the United States; and that so far from a resolution being passed ratifying and approving them, I think the Chief Magistrate of the country—and I have a right in my place to say it—should be rebuked by the vote of both Houses of Congress.

The President of the United States, first, has established a blockade of the whole southern coast, and an interior blockade of the chief rivers. By what authority has he done it? Where is the clause of the Constitution that authorized him? An attempt was made at the last session of Congress to confer the authority by bill. It did not pass. Congress refused to grant this authority by law in face of the fact that seven States had then withdrawn from the Federal Union. Will any Senator say that the power exists, under the Constitution, upon the part of the President to establish a blockade? It is an incident of war, sir; it is the exercise of the war power; and the Constitution of the United States declares that Congress shall pass an act to declare war, or exercise that power.

But, Mr. President, since no argument has been made in favor of the constitutional right of the President to do this thing, I might rest the case here. I propose, however, to fortify what I have said by a little authority. I remember, sir, during the last session of Congress, that questions arose here in regard to the right of the President to collect the revenue without the ports of the seceded

States, or the right of the President to institute a blockade; when the late Senator from Illinois (Senator Douglas) delivered a speech upon this floor against the power to blockade those ports, which was not only not answered, but, in my opinion, was unanswerable. I read a brief extract from what he then said. It was a speech delivered upon the 15th day of March last in this body:

“But we are told that the country is to be precipitated into war by blockading all the southern ports; blockading ports within the United States; blockading our own ports with our own Army and Navy! Where is the authority for that? What law authorizes the President of the United States to blockade Federal ports at discretion? He has no more authority to blockade New Orleans or Charleston than he has to blockade New York or Boston?”—

Remember, the state of facts which exists now existed then. Those States had set up a government of their own, and withdrawn from the Union—

“and no more legal right to blockade Mobile than Chicago. Sir, I cannot consent that the President of the United States may, at his discretion, blockade the ports of the United States or of any other country. He can do only what the Constitution and laws authorize him to do. He dare not attempt to obstruct commerce at the mouth of the Mississippi river, or at Mobile, or at any other port in the seceded States, or even those that have remained loyal to the Constitution and to the Union. The intimation that he is to do this implies a want of respect for the integrity of the President, or an ignorance of the laws of the land on the part of those who are disturbing the harmony and quiet of the country by threats of illegal violence.”

At this point, the Senator from New York [Mr. KING] suggested that, under the right to prevent smuggling, the President might have the power to blockade the southern coast; to which Mr. Douglas replied:

“I am not talking about smuggling. It is his duty to enforce the laws of the land in respect to smuggling. But, sir, it is not his duty to prevent smuggling in any other mode or by any other means than those provided by law. Will the Senator from New York intimate to the Senate and to the country that, under the pretext of preventing smuggling, the President can close a port created by law, and stop all commerce connected with it? Will he intimate that, under suspicion that if the revenue cutter allows a vessel to enter the port of New Orleans she will not pay any duties, therefore the President will prevent her going there? The law gives him no such power, no such discretion. The suggestion, therefore, of the Senator from New York, that these ports of the United States are to be blockaded by the Navy at the discretion of the President, under pretense of preventing smuggling, only shows how loosely even Senators talk about the powers and duties of the President. It is not necessary to argue the question. There is no law that authorizes it. To do the act, or attempt it, would be

one of those high crimes and usurpations that would justly subject the President of the United States to impeachment."

That, sir, was the language uttered by that Senator at that time. I will read also a few words uttered by one who ought to be authority with many in this Chamber, and, indeed, ought to be an authority with all Americans upon questions of constitutional law. It is an extract from some remarks made by Daniel Webster, during the troubles in South Carolina in 1832-33, when it was suggested that President Jackson would blockade the port of Charleston. That eminent statesman uttered the following language:

"Sir, for one, I protest in advance against such remedies as I have heard hinted. The Administration itself keeps a profound silence, but its friends have spoken for it. We are told, sir, that the President will immediately employ the military force, and at once blockade Charleston! A military remedy, a remedy by direct military operation, has thus been suggested, and nothing else has been suggested, as the intended means of preserving the Union. Sir, there is no little reason to think that this suggestion is true. We cannot be altogether unmindful of the past, and therefore we cannot be altogether unapprehensive for the future. For one, I raise my voice beforehand against the unauthorized employment of military power, against superseding the authority of the laws by an armed force, under pretense of putting down nullification. The President has no authority to blockade Charleston; the President has no authority to employ military force, till he shall be duly required so to do, by law, and by the civil authorities. His duty is to cause the laws to be executed. His duty is to support the civil authority."

Sir, I approve these sentiments uttered by these eminent men. They were formerly regarded as sound and true, and I trust the time will come again when it will not be considered treason to maintain them.

It is proposed, sir, to approve and make valid the act of the President in enlisting men for three and five years. I ask you by what authority of Constitution or law he has done this act? The power is not conferred in the Constitution; it has not been granted by the law. It is, therefore, an unconstitutional and illegal act of executive power. The President, of his own will—and that is one of the acts enumerated in this joint resolution, which it is proposed to approve and ratify—has added immensely to the force of the regular Army. The Constitution says that Congress shall raise armies, and a law now upon your statute-book limits the number of the regular force, officers and men. Hence, sir, that is an act in derogation both of the Constitution and of the laws.

The President has added immensely to the Navy of the United States. The Constitution

says that Congress shall provide and maintain a navy; and there is now a law upon the statute-book limiting the number of men to be employed in the Navy. That, like the rest, sir, will not bear argument. I doubt if an attempt will be made to defend it upon constitutional or legal grounds. I pronounce it a usurpation.

Again: this resolution, after reciting the authority conferred by the President upon the Commanding General of the Army, "to suspend the writ of *habeas corpus* at any point on or in the vicinity of any military line between the city of Philadelphia and the city of Washington," and reciting the fact that "he did, on the 10th day of May last, issue a proclamation authorizing the commander of the forces of the United States on the coast of Florida to suspend the writ of *habeas corpus*, if necessary," proposes to ratify and make that valid. Mr. President, we have had a good deal of talk about rights, the rights of States, and the rights of individuals; some of them have been said to be shadowy and imaginary; but the right of every citizen to be arrested only by warrant, and his right to have his body brought before a judge, the judicial authority, in order that the grounds of that arrest may be determined upon, is a real right. There can be no dispute about that. It is a right of rights. It belongs to all—high, low, rich, poor. It is especially the right of that class whom his Excellency the President calls plain people. It is a right, the respect for which is the measure of progress and of civilization. It is a right that has been struggled for, fought for, guarded by laws, and locked up in constitutions. To have maintained it by arms, to have suffered for it, and then to have established it upon foundations so immutable that the authority of the sovereign cannot shake it, is the chief glory of the British people, from whom we derive it. I need not say to the Senate that in England, whence we derive this right, the legislative power alone can suspend it. We all know, sir, that the monarch of England cannot suspend that writ; but transatlantic freemen seem to be eager to approve and ratify acts which a European monarch would not dare to perform.

Mr. President, it needs no elaborate argument to show that the executive authority of the United States has no right to suspend the writ of *habeas corpus*. I content myself here, unless some defense be offered upon this floor, with referring to the fact that the privilege to suspend the writ in case of rebellion or invasion is classed among

the legislative powers of the Constitution. That article of the Constitution which refers to the powers of the President, executive powers, touches not the question. I may add, that upon no occasion has it ever been asserted in the Congress of the United States, as far as I recollect our history, that this power exists upon the part of the Executive. On one memorable occasion in our history, Jefferson thought a period had arrived when, perhaps, that writ might properly be suspended. He did not undertake to do it himself. He submitted the question to Congress. He did not even recommend that it should be done; and in the long debates that occurred in this and the other branch of Congress upon the question of suspending the writ, which finally was not suspended, not one intimation was given by any speaker in either House, as far as I remember, that the power existed on the part of the President. I then point to the Constitution, and ask Senators who desire to approve this act, to point me to that clause in it which gives the right, or deduces it by fair construction from any provision of that instrument.

What part of the Constitution is it, sir, which confers upon the President the right to do this act more than upon any other officer, executive or judicial, of the Government? Surely it is not that portion of the Constitution which declares that he shall take care that the laws be faithfully executed. The most eminent commentators on the Constitution of the United States concur in saying that it is purely a legislative act. Justice Story, one of the most eminent judicial lights of New England, in his Commentaries on the Constitution, declares it to belong to the Legislature, and not to the Executive. The Supreme Court of the United States have determined that Congress alone can suspend the privilege of the writ. Upon a recent occasion, in a case which arose in Maryland, the present Chief Justice, in an opinion which has never been answered, and never will be answered, exhausts the argument, and makes all other reference to the subject idle and superfluous.

Sir, one of the worst signs of the times, I venture to say here, is the manner in which that opinion has been received. A subordinate military officer in the city of Baltimore arrests a private citizen by military force without warrant of law, and confines him in a fortress. His friends attempt to get out a writ of *habeas corpus* before the Chief Justice of the United States, and the reply

is that he will not be delivered up by the military. The Chief Justice then gives an opinion, which has commanded the respect and acquiescence, not only of the profession of which he is so great an ornament, but of almost all thoughtful men in the country; and, sir, I must express my admiration for the prudence and the wisdom of those who, while they are determined that the military power shall usurp the judicial authority, do not undertake to defend it. The newspapers of the country, and men excited by the violent passions which mark the times, have denounced the Chief Justice, but they have not answered his opinion. There it stands, sir; and it is one of those productions which will add to his renown. The abuse of the press, the refusal to respect just authority, the attempt to make that eminent judicial officer odious, will yet recoil upon those who attempt it. I honor him, sir—I honor him for the courage with which he did his duty, as well as for the calm, temperate, conclusive manner in which he performed it. I am glad that he yet remains among us, a man so remarkable for his honored length of years, for his eminent public services, and for the rectitude of his private life, as that he may be justly ranked among the most illustrious Americans, living or dead.

You propose to make that valid; you propose to approve it, without making a defense of it either upon constitutional or legal grounds. What will be the effect, sir? In approving what the President has done in this regard in the past, you invite him to do the like in the future; and the whole country will lie prostrate at the feet of executive power when, in the opinion of the President, the time shall have come to suspend the rights of individuals, and to have substituted military power for judicial authority.

Mr. President, although there are but few of us here who take the view of the Constitution and of right which I am advocating to-day, I trust that we will not, under any circumstances, fail to protest, in temperate, but manly language, against what we consider usurpations of the Constitution. Let me call the attention of the Senate and the country briefly to other acts, against which, in my place, I protest in the name of the Constitution, and in the name of the people I represent.

You have, sir, practically, martial law established all over this land. The houses of private citizens are searched without warrant. The right of citizens to bear arms is made nugatory by their being taken from them without judicial process,

and upon mere suspicion. Individuals are seized without legal warrant and imprisoned; and they cannot be taken from prison by judicial process. They are taken upon suspicion and confined by military authority. The other day, since Congress met, a military officer in the city of Baltimore appointed a marshal for that city. Will any man defend that act? Is it not martial law? Does it not override all other law? Is it not substituting the will of a military commander for the laws of the land? What more authority had that officer to appoint a marshal for the city of Baltimore than he had to appoint a pastor for one of its congregations, or a president for one of its banks? The Constitution undertakes to guard the right of the people against unreasonable searches or seizures, or any seizure without warrant of judicial authority. Has not the President of the United States, by one broad and sweeping act, laid his hands upon the private correspondence of the whole community, ranging through some one or two years? Who defends it as conformable to the Constitution?

I am told, sir, (and if I had the power to do it, I would have it inquired into in the name of the public liberties,) that at this moment, in the city of Washington, in the jail of this city, are individuals who have been taken by the military authorities, in Maryland, in other States, and in this District, who now lie here and cannot be got out by judicial process; and in some instances such an oblivion, in the hurry of events, has come over the imprisonment that it has been absolutely forgotten. I was told by a Senator of one instance in which a man was seized by military authority without any process of law whatever, put in jail here, and remained perhaps for some weeks, forgotten—forgotten, sir, as if he had been in the Bastille. His friends at last made application at one of the Departments of the Government. They looked into his case, found nothing against him, and he was ultimately discharged; but in the rush of events the very existence of the man and the cause of his imprisonment had been forgotten.

Mr. President, we may pass this joint resolution to approve these acts; we may upon the face of the joint resolution make them valid; but we cannot make them valid in fact. I know, sir, that Congress, in the exercise of its legislative functions, may appropriate money which has been expended by the President without warrant of law; but whatever unconstitutional act he may have

committed cannot be cured by a joint resolution of Congress; but stands there, and will stand forever, a breach of the Constitution. Nor can this Congress, by a joint resolution, prevent any succeeding one from holding any officer of the Government responsible for any violation of the Constitution. I enumerate what I regard as usurpations of the Executive to go upon the record as a protest of those of us who are not willing to see the Constitution subverted, and the public liberty trampled under foot, under whatever pretext, of necessity or otherwise.

The Constitution declares that Congress alone shall have power "to declare war." The President has made war. Congress alone shall have power "to raise and support armies." The President has raised and supported armies on his own authority. Congress shall have power "to provide and maintain a navy." The President has provided an immense Navy, and maintains it without authority of law. The Constitution declares that no money shall be taken from the Treasury except in pursuance of appropriations made by law. The President has taken money from the Treasury without appropriations made by law for the purpose of carrying out the preceding unconstitutional acts. One of the amendments to the Constitution declares that—

"A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

They have been disarmed, and disarmed without criminal charge and without warrant. One of the amendments to the Constitution declares that—

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

The people have not been exempt from unreasonable searches and seizures. Their property has been taken from them; their houses have been searched without authority of law, and by a pure military authority.

"No person"—

Says one of the amendments to the Constitution—

"shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

Many persons have been held to answer for infamous crimes without presentment or indictment,

and without warrant, by military authority. The same amendment continues:

“Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.”

Citizens have, by military authority, been deprived of liberty and property without due process of law.

These great and fundamental rights, sir, the sanctity of which is the measure of progress and of civilization, which have been carefully guarded and locked up in your Constitution, have been trampled under foot by military power, are being now every day trampled under foot by military power here and hereabouts in the presence of the two houses of Congress; and yet, so great upon the one side is the passion of the hour, and so astonishing the stupid amazement on the other, that we receive it as natural, as right, as of course. We are rushing, and with rapid strides, from a constitutional government to a military despotism.

The Constitution says the freedom of speech and of the press shall not be abridged. Three days ago, in the city of St. Louis, a military officer, with four hundred soldiers—that was his warrant—went into a newspaper office of that city, removed the types, and declared that it should no longer be published, giving, among other reasons, that it was fabricating reports injurious to the United States soldiers in Missouri. Mr. President, is there a Senator here, is there a citizen in all the land, who will say that the slightest color of authority exists on the part of a military officer, either to deprive a citizen of his liberty without warrant, or of his property, or to suppress the freedom of the press? We are told in the same dispatch that the proprietors of the paper submitted, and intended to make their appeal—where, and to whom? To the judicial authorities? No, sir; but to Major General Frémont when he should reach St. Louis; to appeal from General Lyon to General Frémont. The civil authorities of the country are paralyzed, and a practical martial law is being established all over the land. The like never happened in this country before, and would not be tolerated in any country in Europe which pretends to the elements of civilization and regulated liberty. George Washington carried the thirteen colonies through the war of the Revolution without martial law. The President of the United States cannot conduct the Government three months without resorting to it.

Mr. President, I presume every Senator here

has read the opinion of the Chief Justice to which I have referred. I content myself by reading a few extracts from the close, as expressive of my opinions of the public danger. The Chief Justice says:

“The Constitution provides, as I have before said, that ‘no person should be deprived of life, liberty, or property, without due process of law.’ It declares that ‘the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.’ It provides that the party accused shall be entitled to a speedy trial in a court of justice.

“And these great and fundamental laws, which Congress itself could not suspend, have been disregarded and suspended, like the writ of *habeas corpus*, by a military order, supported by force of arms. Such is the case now before me, and I can only say that if the authority which the Constitution has confided to the judiciary department and judicial officers, may thus, upon any pretext or under any circumstances, be usurped by the military power at its discretion, the people of the United States are no longer living under a Government of laws, but every citizen holds life, liberty, and property, at the will and pleasure of the Army officer in whose military district he may happen to be found.”

I cannot say whether this great judge will be able to preserve the Constitution of his country; but we owe him, and posterity will owe him, a debt of gratitude for the vindication of the principles of constitutional liberty and of personal liberty which antedated and possibly may survive the Federal Constitution.

Then, Mr. President, the Executive of the United States has assumed legislative powers. The Executive of the United States has assumed judicial powers. The executive power belongs to him by the Constitution. He has, therefore, concentrated in his own hands executive, legislative, and judicial powers, which, in every age of the world, has been the very definition of despotism, and exercises them to-day, while we sit in the Senate Chamber, and the other branch of the legislative authority at the other end of the Capitol. What is the excuse; what is the justification; what is the plea? Necessity. Necessity? I answer, first, there was no necessity. Was it necessary, to preserve the visible emblems of Federal authority here, that the southern coast should have been blockaded? Did not the same necessity exist when Congress, at its last session, refused to pass the force bill, that existed at the time the President assumed these powers? As Congress refused to do it, and adjudged that there was no necessity at that time,

what was the additional necessity afterwards? Was it necessary, until Congress should meet, to the existence of the Union of these States, and of its Constitution, that powers not conferred by the instrument should be assumed? Was there any necessity for overrunning the State of Missouri? Was there a necessity for raising the largest armies ever assembled upon the American continent, and fitting out the largest fleets ever seen in an American harbor? What I mean to say is, that there was none of that overriding necessity for present preservation and existence which is sometimes made the plea of unconstitutional usurpation. In the case of the man in Maryland, who has been confined so long in Fort McHenry, and upon whose case the question arose which drew out the opinion of the Chief Justice, to which I have referred, was there a necessity, in the view gentlemen take of it, for holding that man in that fortress, instead of turning him over to the civil authorities? What was the charge? The chief charge, I believe, was that weeks before he had been concerned in treasonable acts, and in burning down bridges. Was not the judicial authority there to take charge of it, try him, and, if guilty, to convict him and punish him? Will any Senator point out the necessity for the occurrences which are now taking place every day, of arresting individuals without warrant of law? If that be a necessity in the present condition of affairs, and when Congress is in session here, what a long necessity we have before us, and impending over us! Sir, let Congress adjourn approving and ratifying these acts, and the same character of necessity precisely, even stronger perhaps, will justify the President in superseding the laws in every State of this Union where, in his opinion, it should be done; and, sir, there will not be a vestige of civil authority left to rise after the passing tread of military power.

But, Mr. President, I deny this doctrine of necessity. I deny that the President of the United States may violate the Constitution upon the ground of necessity. The doctrine is utterly subversive of the Constitution; it is utterly subversive of all written limitations of government; and it substitutes, especially where you make him the ultimate judge of that necessity, and his decision not to be appealed from, the will of one man for a written constitution. Mr. President, the Government of the United States, which draws its life from the Constitution, and which was made by that instrument, does not rest as does the Con-

stitution in many other countries, upon usage or upon implied consent. It rests upon express written consent. The Government of the United States may exercise such powers, and such only, as are given in this written form of government and bond which unites the States; none others. The people of the States conferred upon this agent of theirs just such powers as they deemed necessary, and no more; all others they retained. That Constitution was made for all contingencies; for peace and for war. They conferred all the powers they deemed necessary, and more cannot be assumed, to carry on the Government. They intended to provide for all contingencies that they thought ought to be provided for, and they retained to the States all the powers not granted by the instrument. If in any instance it may be supposed that the powers conferred are not sufficient, still none others were granted, and none others can be exercised. Will this be denied, sir? Or is the doctrine to be advanced that all constitutional questions are to be made entirely subordinate to the opinions and ideas that may prevail at the hour in reference to political unity and association? It has been held heretofore—I thought it was axiomatic, and received everywhere—that the terms of the Constitution of the United States were the measure of power on one side, and of obedience on the other; and let us take care how we establish a principle that, under the presumed stress of circumstances, powers not granted may be assumed; take care that you do not furnish an argument which the world and history will respect upon the part of people and States, to throw off an authority which no longer respects its own limitations.

Mr. President, these are a few of the reasons which control me in voting against this resolution. It seems to me that Congress should express some opinion upon it, and I trust it will be voted upon. If the vote shall be as I fear it will, it will be an invitation to the President of the United States, in the absence of other legislation, to do the like acts of usurpation whenever he thinks they are necessary. What will be the effect of it? Herein Washington, in Kentucky, in Missouri, everywhere where the authority of the President extends, in his discretion he will feel himself warranted by the action of Congress upon this resolution to subordinate the civil to the military power; to imprison citizens without warrant of law; to suspend the writ of *habeas corpus*; to establish martial law; to make seizures and searches without warrant;

to suppress the press; to do all those acts which rest in the will and in the authority of a military commander. In my judgment, sir, if we pass it, we are upon the eve of putting, so far as we can, in the hands of the President of the United States the power of a dictator.

With such a beginning as that, what are we to expect in the future? Sir, when I see men imprisoned within hail of the Capitol, without a warrant, and the courts paralyzed, and Congress not rising to protest in indignant tones against it, my mind is filled with gloomy forebodings of the future. What may we expect, except a line of conduct in keeping with what has occurred?

Mr. President, is this contest to preserve the Constitution? If so, then it should be waged in a constitutional manner. Is the doctrine to obtain that the provisions of the Federal Constitution are to be entirely subordinated to the idea of political unity? Shall the rallying cry be, "the Constitution and the Union," or are we prepared to say, "the Constitution is gone, but the Union survives?" What sort of Union would it be? Let this principle be announced, let us carry on this contest with this spirit, and wink at or approve violations of this sacred instrument, and, sir, the people will soon begin to inquire what will become of their liberties at the end of the strife. The pregnant question, Mr. President, for us to decide is, whether the Constitution is to be respected in this struggle; whether we are to be called upon to follow the flag over the ruins of the Constitution? Without questioning the motives of any, I believe that the whole tendency of the present proceedings is to establish a Government without limitations of powers, and to change radically our frame and character of Government.

I was told the other day, by a very excellent and distinguished man, who was not long since in the service of the Government abroad, with whom I was conversing upon the present extraordinary condition of public affairs, that many Americans abroad, when they are asked by foreigners, in view of the present condition of things here, "We supposed that your Federal Government rested upon consent: how do you propose to maintain it by force?"—often, he says, the answer coming from citizens of the United States would be, "it was intended to rest upon consent; it has failed; it is not strong enough; we intend to make it stronger; we will change the character of the Government, and we will give it all the

strength that we deem essential, without regard to the provisions of the Constitution, which was made some eighty years ago, and is found not to fit the present condition of affairs."

Sir, I think it is quite time that the attention of the Senate were called to the tendency of the day. I know that there are thousands and hundreds of thousands of true, conservative, thoughtful men, who love the Constitution of their country, scattered all through the adhering States, and who never would consent to conduct this contest with arms one step further or one day longer if they believed that any purpose existed substantially to change the character of our system, to interfere with personal rights, or the rights of political communities, and who are willing to go just as far as the Constitution warrants them, and no further. There are many who are of a different opinion, and have a different purpose to pursue. I read the other day in a leading, able, influential paper in one of the northern States, some suggestions which are abroad in this land, which fill many heads and many hearts, and which derive strength and consistency and point from much that I see passing around us here. That able paper says:

"The war may soon pass away; we may have a quick and vital battle-field, and the North prove its prowess, as certainly it will; but the truth of national unity and power that these events have given endures—combined, condensed, concentrated—in Army and Navy.

"It is the characteristic of the history of our times, that it gives to years the labor which was the burden in other times for ages; and the sudden rushing into one bounding artery of all the life-blood of the North may now create us. We shall ask the question, Why all these State lines? Why all this needless, cumbersome, intricate entanglement of different powers to make law and to decree judgment? We can afford now to efface the old colonial geography. It is the admitted powers of States within the nation that has been the source of all our trouble. Nor will the removal of State power, and the creation of a nationality, be a task so formidable." * * * *

"This artificial difficulty of State rights is not an insurmountable one. It must yield to the greatest good of one power; we are not strangers and strange to each other." * * * * "We need not all these Legislatures, all these sovereignties. We are one, and to move as one."

That, sir, in my opinion, is the purpose of a growing party in this country, and is the inevitable tendency of the present conduct of affairs. I remember to have read, not long since, a speech made by the present able Secretary of War, in this city, in which he said that the southern States must be subdued, and that at the end of this contest there would be no more Virginians as such,

or Carolinians as such; but only Americans all. Sir, the name of American is a proud one, and I love it; but it is the preservation of the names of Virginians and Pennsylvanians, and the distinctive existence of all these States, which alone can keep the name of American a proud one. I never want to see them blotted out.

I said, sir, that in my opinion, the tendency was to change our character of Government, and that the purpose, if not avowed, is acted upon to conduct those proceedings without regard to the limitation of the Constitution. These things I have enumerated go to show it. This joint resolution goes to show it. I call upon Senators to defend the constitutionality of these acts, or else to admit that we intend to conduct this contest without regard to the Constitution. Sir, the character of the contest itself gives a fearful foreboding of it. The whole subject has been argued over and over again, and I will not weary the patience of the Senate in speaking of the character of the Government now. I content myself with saying that it never was in contemplation, by the framers of the Constitution that this Government should be maintained by military force to subjugate the different political communities that compose the States. It was declared by Madison, ay, and by Hamilton, the great Federalist, himself a member of the convention that framed the Constitution, that it was not in the competency of the Government thus to preserve it. But look at the contrast. An army of half a million men concentrating from all points, not to execute the laws against individuals; not a military force employed in aid of the civil power—the civil power of the United States does not exist in the States which have withdrawn—but for the purpose of military subjugation. Call it what you will, it is military subjugation if successful. Suppose the Federal troops are able to overcome all the opposition before them: what is contemplated and avowed? They are to march through Virginia, through the Carolinas, through all the Gulf States down to New Orleans, to occupy them, to subdue them, in the language of the press, and in the language of eminent gentlemen, who represent the feelings and the purposes of the majority. That, sir, is prosecuting the war unconstitutionally. Even if there was a warrant in the Constitution to carry it on in that way, it would be the overthrow of the Constitution finally, and of the public liberty. There is no warrant in the Constitution to conduct the contest in that form.

Sir, in further proof of my statement, that the disposition is to conduct this contest without regard to the Constitution, witness the remarks that fell the other day from the able and very eloquent Senator from Oregon, [Mr. BAKER.] He is a constitutional lawyer; he knows what the Constitution of his country is—no man better. He declared, in the presence of the Senate and the country, that he meant direct war, and that for that purpose nothing was so good as a dictator; he therefore was for conferring upon the President of the United States almost unlimited powers. I give his words. Nobody so good as a dictator to conduct this sort of war we were in, and of which he is in favor! Is anything necessary more than to state this to show that, at least so far as that Senator is concerned, he proposes to conduct it without regard to the Constitution? I heard no rebuke administered to that eminent gentleman. Upon the contrary, I saw warm congratulations from more than one Senator, apparently upon the sentiments and the character of the address.

In the course of the same speech to which I have referred, that eminent Senator declared that not only must that country be ravaged by armies, but that unless the people of those States paid willing and loyal obedience to the Federal Government, their State form must be changed, and they must be reduced to the condition of Territories; to be governed by Governors sent from Massachusetts and Illinois. This was said seriously; and afterwards, when referred to by my colleague on a subsequent day, reaffirmed by that eminent Senator. If necessary, reduced to the condition of Territories! Is there authority in the Constitution to do it?

Mr. BAKER. Mr. President—

The PRESIDING OFFICER, (Mr. SHERMAN in the chair.) Does the Senator from Kentucky yield to the Senator from Oregon?

Mr. BRECKINRIDGE. Certainly.

Mr. BAKER. I deem myself very unfortunate that I cannot get either of the Senators from Kentucky, junior or senior, to understand what I did say, whether it was well said or ill. Now, with great respect for the Senator, I will try once more; and because I am so misrepresented, I hope he will bear with me one or two moments; it will not hurt his speech. I was making a speech the other day against giving too much power to the President. I was occupying my usual constitutional-guarded position against the

increase of a standing army. I gave, as an excuse for voting for an army at all, the present condition of public affairs; and in that light and with that purpose, I did say, in a speech very well reported, that, in order to save the Union, I would take some risk of despotism. I repeat that now: I will risk a little to save all.

Again: I expressed my sincere hope—perhaps I may have added my conviction—that in a better and not a very distant day, the southern States would not only return to their allegiance, but would become loyal in sentiment, as well as opinion. I expressed then what I feel now, a fervent hope that the people for whom, he well knows, I pleaded, with his friends as well as mine, during the last session of Congress, should again be one with us, in feeling and in destiny. But I declared then what no comment of his or his colleague will drive me from, that if, contrary to that hope—if I may not add that conviction—they did not do it, if they would not send members here to govern them, it was better, for the sake of ultimate peace, for freedom, civilization, humanity, that they should be governed as Territories are governed, rather than permit perpetual anarchy, confusion, discord, and civil war. [Manifestations of applause in the galleries.] I did say that, and I do believe that now; and I think the events of the next six months will show that it would be better for the country and the world and the Senator himself, if he believed it. [Applause in the galleries.]

The PRESIDING OFFICER. It is the duty of the Chair to inform citizens in the galleries that there must be no interruption. There must be no marks of approbation or disapprobation. The Sergeant-at-Arms and the doorkeepers will see that the order of the Senate is strictly enforced, and will arrest any person who violates the rules.

Mr. BRECKINRIDGE. Mr. President, I did not misunderstand the position of the Senator from Oregon, and I think that I stated it in substance as he has stated it himself. I accept, however, his statement, if it varies from the one I made. The declaration just made by the Senator is additional proof that the Constitution of the United States is not to be the measure of the authority exercised by the Government in the prosecution of this contest; and the approval of the public, in so far as that public is represented here, is additional evidence to my mind that the sanctity of the instrument is ceasing to influence the feelings and actions of the people. Sir, I want the coun-

try at large, I want the people of the United States, to understand distinctly what the issue is. However they may determine it, it may be well to let them understand what it is. In the valley of the Ohio and the Upper Mississippi, they are, I think, resting under the impression that the Constitution of the United States is not to be violated; and they are not yet prepared to take the ground that the principle of political unity shall be held superior to the provisions of the Constitution. Now, the Senator reaffirms upon this floor that, if it should become necessary in the opinion of Congress, he would be in favor of reducing these States to a territorial condition. Well, sir, if they are out of the Union, I suppose we have the power to make war on them under that general power, which exists in all people to make war, and conquer them and do as we please with them; but if they are regarded as still being States in this Union, and to be treated according to the provisions and the powers conferred by the Federal Constitution, there is no pretense of argument, none will be made, that the instrument contains any authority to reduce them to the territorial condition. It is an additional proof of the statement I made, that the Constitution of the United States is put aside in this contest. I want the people to know it. Let them determine. They will determine as they think best for their own interest and their own destiny. Perhaps, sir, they will pause and consider what is likely to become of their own liberties after this spirit shall have worked out itself.

I consider it not only subversive of the Constitution, but I consider it subversive of the public liberty, to clothe any man with dictatorial powers, and to undertake, under a republican form of government, to govern ten million people as if they were in a territorial condition. This Union is composed of States. The people of the States made it. The Constitution declares, in express terms, that "the United States shall guaranty to every State in this Union a republican form of government;" and yet it is announced upon the floor of the American Senate, by a Senator of the United States, that, in a certain contingency, he would destroy a State itself and make it a Territory.

Mr. President, as a further proof, I will accumulate two or three more. The excellent Senator from Connecticut, [Mr. DIXON,] heretofore always regarded as one of the most moderate and conservative in the political organization to which he is attached, unless I misheard him yesterday

in some remarks which he was making just as I entered the Chamber, said in substance that, if the institution of African slavery stood in the way of the Union, it must be abolished. I may not give his words; but I think I have given the substance of his idea, and he nods approval. Well, Mr. President—

Mr. DIXON rose.

The PRESIDING OFFICER. Does the Senator from Kentucky give way?

Mr. BRECKINRIDGE. Yes, sir.

Mr. DIXON. I have here what I said yesterday, as reported in the Globe. I have marked the passage to which the Senator alludes; and I ask the Secretary to read it.

The Secretary read, as follows:

"I speak for only one State; and the voice of that State is, that this rebellion must be crushed. Let it require a longer or a shorter time, let it cost more or less money, a greater or less sacrifice of human life, still it can be, it must and will be, crushed. If the ordinary means of warfare can do this, let them, as I hope they may, suffice; but if more shall be required, more must be resorted to. It may be, should the war continue to drag its slow length along, that means, which seem to us terrific in their consequences, may be required; but it ought to be understood now, in the beginning, that whatever means may be necessary to preserve the territorial integrity of the United States and the unity of the nation, will, when the necessity shall arise, be used freely, fully, and unhesitatingly. If, in the course of events, it shall appear that either slavery or this Government must perish, then the voice of a united people will declare, let slavery perish, and let the Government live forever. Such is the stern determination to which thousands have come, who have been considered heretofore men of moderate views. I will not enlarge on this point. It is enough to state it. It is the calm, deliberate opinion of that great conservative class who, in the outset of these troubles, were anxious, if possible, to find a peaceful solution of our difficulties. Finding this impossible, they have come to the conclusion that the Government shall be saved from destruction whatever else may perish.

"Let me not be misunderstood. The object of the struggle we are now engaged in, on the part of the loyal States, is not the abolition of slavery; but if it shall prove a long continued contest, that may be its inevitable consequence. Let those most interested consider this truth in all its bearings."

Mr. BRECKINRIDGE. I believe, sir, that I did not misrepresent the position taken by the Senator from Connecticut. Let us pause one moment, Mr. President, and consider to what that leads. Men who love the Constitution and the Union of the States as sincerely and cordially as the Senator himself could possibly do, consider the Union not an end, but a means—a means by which, under the terms of the Constitution, lib-

erty may be maintained, property and personal rights protected, and general happiness secured. The substance of what is there declared by the Senator is, that the unity of the Government shall survive not only the Constitution, but all rights both of persons and of property.

The institutions of the southern States existed before the Constitution was formed; and were intended to be secured by it. Their political rights are no more sacred in the view of the Constitution than their other rights. Their property of any other description is no more sacred in view of the Constitution, or of their own laws, than the description of property to which the Senator referred. To declare that this contest shall be prosecuted, if necessary, to the abolition of slavery in the southern States, is in principle to declare that, if it becomes necessary, it shall be prosecuted to the total subversion of all State authority, to the total overthrow of all rights, personal and political, and to the entire subversion of their liberties, possibly of ours. The conclusions are not too large which I draw from the principle announced by the Senator; and taken in connection with the declaration of the Senator from Oregon, taken in connection with the acts which are treated in this joint resolution, and the other acts which I have enumerated, it proves what I fear, and what I desire the country to understand, that the Constitution of the United States is no longer to be held as the measure of power on one side and of obedience on the other, but that it is to be put aside to carry out the purposes of the majority.

I hold, sir, that it is no legitimate mode to preserve the Union of the States by trampling the Constitution under foot; and I do not believe that the people of the adhering States are willing to go into this strife with vast armies, make war, abolish institutions and political communities themselves, struggling simply for the idea of territorial integrity and national unity, finding, when they come out of the contest, the Constitution gone, and themselves at sea as to the character of the institutions with which they shall emerge from it.

Sir, I have accomplished my object if I have called attention to the fact that these acts which I have enumerated, and these declarations, and these proceedings which are occurring around us, prove that the Constitution is not to be the measure of action; and strangely enough it sounds for gen-

tlemen to declare that they do all these things to preserve the Constitution of their country!

Mr. President, in my judgment, the people of the United States are not for this; and, in my opinion, they will not agree to wage war for any such purpose with any such results. They will not agree to let any of the functionaries to whom they have confided power, under whatever patriotic pretext, wander away from the Constitution. If they shall become at any time satisfied that the tendency of this conflict, whether it be the purpose or not, shall be either to abolish the existence of any of the States or to abolish any of their institutions, including, I will add, that of slavery, however obnoxious to many, they will never consent to let the war be waged for that purpose.

Mr. President, I regret to say that what may be called the more extreme violent and resolute men of the Republican organization appear to have control of its destiny at this time, and all efforts are being made for the purpose of preventing any return to peace, and of inflaming the public passions against the institutions of the South. I heard a bill read at that table this morning by its title; and how did it read? "A bill to suppress the slaveholders' rebellion." If it had had a title, "A bill to provide for the execution of the laws," or any other parliamentary title known heretofore in American legislative proceedings, of course I should not have been astonished; but when I see in a deliberative body an attempt made, through the very heading of a bill, to create odium and prejudice against a particular interest, which is equally protected with others under the Constitution of your country, it shows a frame of mind which leads all thoughtful men to despair both of the Constitution and the country, if such a spirit can prevail. Yes, sir, there is now upon your Calendar, or has been referred to a committee, a bill, the title of which is, "A bill to suppress the slaveholders' rebellion." I have not seen the bill, but I am informed by a Senator near me that in the body of the bill there is a proposition to set free all the slaves in the States that have withdrawn. I suppose it will be printed.

Mr. BINGHAM. Will the Senator from Kentucky allow me to ask him a question?

Mr. BRECKINRIDGE. Will the Senator be kind enough to wait until I get through? Unless it bears on what I am now saying, I prefer not to be interrupted.

Mr. BINGHAM. The question I wished to ask did bear on what the Senator was now saying.

Mr. BRECKINRIDGE. I will hear the Senator.

Mr. BINGHAM. I wish to ask the Senator if he denies that the present rebellion is a slaveholders' rebellion?

Mr. BRECKINRIDGE. I do, sir. I have no doubt that the question of slavery, and their rights as connected with that institution, as they understand them, had a great deal to do first with the controversies which preceded the separation, and then with the act of separation itself; but it is perfectly manifest to any one who takes the trouble to make himself acquainted through the public press and otherwise with the opinion in those States, that whereas the proportion of slaveholders to non-slaveholders is very small, the sentiments of the population are almost unanimous, without regard to the ownership of that description of property. Allow me to ask the Senator a question. Does he approve the title of that bill, and of what is represented to be contained in the body of it?

Mr. BINGHAM. I have not read the bill.

Mr. BRECKINRIDGE. I have told what it contains. Does the Senator think it an appropriate title for a bill, and does he approve the contents of the bill?

Mr. BINGHAM. I do not know what are the contents of the bill; but I do approve of its title.

Mr. BRECKINRIDGE. The Senator did not answer the other part of my question. I will ask him whether he is in favor of freeing the slaves in the seceded States?

Mr. BINGHAM. I will answer the Senator that I agree entirely with the remarks of the honorable Senator from Connecticut. If it be a necessity, I am.

Mr. BRECKINRIDGE. I am very happy that I asked the Senator the question, and that he has answered. I regret to hear that answer; I regret that the fact is so; but it serves to bring the mind of the country to consider the actual condition of affairs, and the danger which is impending over us.

Mr. President, there were some other aspects of this question which I proposed to discuss; but I will not now. I may, or I may not, at some time during the session, speak of them. The field is a boundless one. I say I may, or I may not, speak of them. I am quite aware that nothing which the few of us who are here, who take the same views that I do, can utter, will have the slightest effect; and I would not now detain the

Senate with these broken and plain remarks, but that I consider it a public duty.

Mr. President, some of us came to this session of Congress with a lingering hope that something might yet be done to avert war; with a hope that words of peace might be heard from the Executive Mansion, or, if not there, might be heard from the Halls of Congress. We have been disappointed. In one branch of Congress, it is out of order to propose peace; and here it would be vain and idle. I have no proposition to make; none would be listened to; certainly none could succeed. But let the country know that war, unrelenting war, is resolved upon, and that the Congress of the United States has deliberately refused to embrace perhaps the last opportunity that was offered to avert the horrors of this infernal strife.

Unconditional submission, it is said, is the alternative of war. What man's influence could or would produce this result? I know, you know, Senators, that there is no human power that could induce a peace upon those terms; because ten million people, earnest and sincere, never yet surrendered at discretion. The man who speaks of peace is looked upon with suspicion, if he is not openly accused of treason.

Let it also be remembered, history will record the fact, that when efforts were made at the last session of Congress, earnestly and persistently made, to heal our then existing difficulties, the gentlemen of the majority refused to listen to any terms, although what has since happened was predicted. It was stated upon the floor of the Senate, by the late Senator from Illinois, and I happened personally to know the fact myself, that the leading statesmen of the lower southern States were willing to accept the terms of settlement which were proposed by the venerable Senator from Kentucky, my predecessor. Senator after Senator, most of them from the southern States, a number from the northern States, offered and pressed here terms of adjustment. Everything was rejected and everything was refused. Was it worth while to bring the country to this condition for the sake of a political platform? Was it worth while, for the purpose of getting an opportunity to vindicate the power of the Government at the expense of the Constitution, to bring the country to this condition; to obstinately reject every proposition for adjustment?

My colleague has this moment handed me the bill that bears the novel title, "A bill to suppress

the slaveholders' rebellion." The enacting clause of the bill, as might have been anticipated from the title, reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, there shall be no slavery or involuntary servitude in any of the States of this Union that claim to have seceded from the Government and are in open and armed resistance to the execution of the laws and the provisions of the Constitution of the United States.

I believe that is to be carried out by a proclamation of the President:

And be it further enacted, That immediately after the passage of this act, the President of the United States shall cause his proclamation to be issued, setting forth the immediate and unconditional emancipation of all persons held as slaves in any of the aforesaid States under the laws thereof, and also ordering all officers to give protection to all such emancipated slaves, and to accept the services of all who may tender them in behalf of the Government, if, in the judgment of such officers, such services shall be useful or necessary to the prosecution of this war.

It is not only a congressional act of emancipation, but it is intended to arm the slaves against the masters. It is not only to confiscate the whole property, but it is to foment a servile war. That is a proposition offered in the Senate of the United States! Sir, I shall find myself denounced in the newspapers to-morrow morning as a man who was uttering treason here, for speaking a word in favor of the Constitution; but not one word will be uttered against a Senator who deliberately proposes to trample that Constitution under his feet, and to plunge the country into all the horrors of civil and of servile war.

Why argue the question further? I have done, sir; I shall trouble the Senate no longer. I know that argument and appeal are all in vain. The Senate pants for action. I shall not, for my part, longer delay it. I have cherished all my life an attachment to the Union of the States under the Constitution; and I have always revered that instrument as one of the wisest of human works. Now, I see it put aside by the Executive of the United States, and that act about to be approved by the Senate; and I see proceedings in regard to it which, in my opinion, will not only subvert the Constitution but destroy the public liberty. It is vain to oppose it. I am quite aware that, in the present temper of Congress, one might as well oppose his uplifted hand to the descending waters of Niagara as to reason or to appeal against the

contemplated proceedings. The few of us left here who are faithful to our convictions can only look with sadness upon the melancholy drama that is being enacted before us. We can only hope that this flash of frenzy may not assume the form of

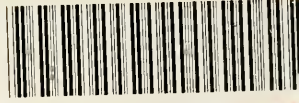
chronic madness, and that in any event Divine Providence may preserve for us and for posterity, out of the wreck of a broken Union, the priceless principles of constitutional liberty and of self-government. [Applause in the galleries.]

LIBRARY OF CONGRESS



0 012 026 246 4

LIBRARY OF CONGRESS



0 012 026 246 4

Hollinger Corp.
pH 8.5