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THE CONSCRIPTION BILL.

SPEECH

OF

HON. S. S. COX, OF OHIO.



DELIVERED IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 26, 1863.

The House having under consideration the bill to call out the national forces, Mr. COX said:

Mr. SPEAKER. I am obliged to the Chair for the prompt manner in which he has protected my right to the floor, and for the emphasis with which he brought down the gavel for that purpose. [Laughter.] I hope now that I shall not be further interrupted.

Mr. Speaker, I was somewhat amused and instructed by what fell from my reverend brother [Mr. FESSENDEN] from Maine, who has just taken his seat. It was proper that he should defend his clerical brethren. But after the high wrought eulogy which he uttered in their behalf, I was surprised at the lame conclusion to which he arrived. How could he as a patriot argue that so valuable a class of citizens should be excluded from serving their country in the army? If they are as worthy and as patriotic as he believes, will they seek exemption? The very argument of the gentleman, combining with other reasons which I may give but from which he will doubtless dissent, compel me to oppose the exemption of the clergy from this sweeping conscription.

There are some clergymen for whom I have an unbounded reverence and respect—men who preach the gospel of “peace on earth and good will to men.” They do not turn the living word into reproach by “vain disputations.” They do not create jar and conflict on earth and ill will to men. From the first settlement of the region from which the gentleman comes, down to the present time, the largest part of the clergy seem to have been specially commissioned, in their own opinion, to read lectures upon political matters to the people of this country and to all mankind. They have descended from their spiritual elevation to grope amid the passions and corruptions of partisan strife. They have thus, divided the churches and degraded the mission left them by their loving Master.

Mr. S. C. FESSENDEN rose.

Mr. VOORHEES. I object to interruption.

Mr. COX. I will yield to the gentleman if he wants to say something. Does he want to ask me a question?

Mr. S. C. FESSENDEN. I challenge the gentleman to produce the proof of that assertion.

Mr. COX. I refer the gentleman for the proof, to New England history from the days of Cotton Mather and the burning of witches, down to the present unhappy time. Why, sir, let the dominant clergy of New England continue to have way now as they had it once when Catholics, Episcopalians, Baptists and Quakers were persecuted, punished, exiled and murdered for conscience sake, and the gentleman will live to witness, perhaps with transport, Episcopalian and Catholic clergymen garoted and burned in the streets of Boston. [Laughter.]

Mr. S. C. FESSENDEN. Will the gentleman allow me now?

Mr. COX. I have no objection if the gentleman wants to ask a question.  
 Objected to by a member from the Republican side of the House.

Mr. COX. That objection does not come from this side.

Mr. Speaker, there is a certain class of preachers to whom gentlemen on this side of the House are under no special obligations. They have prayed us frequently into the nethermost abysses. [Laughter.]

And why? Because we belonged to that old Democratic party which has been coeval with this Government—which has never, as an organization, been unfaithful to the interests and honor of the whole country, and which has never lost its chivalric respect for the safeguards and immunities of the Union and Constitution. Simply to have affiliations with that party has always been sufficient to bring down the anathemas, by "bell, book and candle," of those clergymen who now through the ministerial member from Maine, seek exemption from the inconvenient consequences of the troubles which they have themselves been mainly instrumental in bringing upon our beloved land. Long before the radical politicians, north and south, began to rend the nation in their hate, these preachers had riven the churches in their crazed and demoniac fury. I ask you men of the South yet remaining with us, as I ask you Northern Representatives—is any one more responsible for the present unhappy condition of the country than these firebrands of the sanctuary—north and south? Have not the fiercest zealots of secession and abolition been found among those who have kindled on God's altar, the unhallowed embers of sectional asperity?

The gentleman from Maine wants proof. Why, sir, it is easy enough to furnish it. Go back to the three thousand clergymen of New England, who, in the name of the Most High, felt themselves accredited to send to the Congress of the United States, a special denunciation of Stephen A. Douglas for his championship of the rights of the people of the Territories. Their anti-slavery evangel was met by him with the same defiance which the Democracy displayed in the days of Jefferson, when the New England clergy reviled that apostle of our political faith. The impertinent and improper interference by a portion of the clergy in the politics of the country, is not peculiar to our day, though never before has it been so conspicuous as in fomenting the troubles which have culminated in this calamitous war.

There are two kinds of clergymen in this country. I have before me a description of one class with which I have no doubt gentlemen on the other side are more familiar than with those who minister in the church in which I happen to worship. [Laughter.] I will recite the description:

"A minister, whom hell had sent,  
 To spread its blast where'er he went,  
 And fling, as o'er our earth he trod,  
 His shadow, betwixt man and God."

Now, sir, all ministers who come within that definition I want to see enrolled in the Army and marched to its front. There let them do their duty, and see whether they cannot help to put down this rebellion which they have been so long instigating. Let them suffer some of the consequences that our brothers undergo in the Southwest and along the Rappahannock. I would not have them go merely as clerks, letter writers, or chaplains. Let them shoulder the twelve pound musket, do picket duty, and trudge like our brave boys amid winter snows, spring mud and summer suns, under the packed knapsack, and my word for it, they will come back sanctified by grace. [Laughter.]

After the eulogy pronounced upon the clergy by the gentleman from Maine, may we not presume that they would be in a better condition for the sacrifice, than many an unsanctified Democrat? Would they not ascend into the realms of glory with less inconvenience or delay? [Laughter.] Very many of them, from my observation would not be as much loss to the country as my clerical friend over the way would suppose.

But, Mr. Speaker, I would not have addressed the gentleman from Maine in this style, had it not been that he wrung into his speech over and over again, what has been wrung into the speeches of other gentlemen on that side of the House since this debate began, as well as into newspapers and stump speeches,

the usual quantity of malignant talk about "Copperheads" and the disloyal Democracy.

A very beautiful mode of argumentation this! It is calculated to produce a very pleasing impression on this side of the House! The debate on this measure from its opening has been characterized by this tender affability of manner! One would have supposed it would have been wise to have made the effort to conciliate this side of the House in favor of this measure; but you sought to conciliate nobody. War Democrats—peace Democrats—to use your inapposite language, are all alike. My eloquent friend from New York who has spoken so well for the Governor of his State, and the rights of his State, and who expressed his willingness to sustain through the States, your calls for aid,—he is no exception, [Mr. STEELE.] You sought not to conciliate my friend from Indiana [Mr. HOLMAN,] who has been laboring for the last two hours at my side, to make this bill, if possible, less objectionable by a substitute—he too has the fang and poison of the Copperhead. You sought not to conciliate any class of opinion, however loyal and conscientious. You were unwilling when this bill came in first, to allow it to be scrutinized? You sought to force it through without amendments, without discussion; and but for the determined nerve of this side of the Chamber, you would have accomplished your purpose and passed the bill with all of its infernal machinery of oppression. Gentlemen, you did not know us. We were determined in the first place to have discussion; and in the second place to get the bill back into a position where it could be amended, and as many of its obnoxious features removed as it was possible to remove in this Congress. What we resolved to do that we have accomplished. Before I come to the discussion of the bill itself, I owe it to the people of my district to repel the charges made by you upon their representative.

The three Republicans who have last spoken [Messrs. DUNN, STEVENS, and FESSENDEN] have charged that we are disloyal to the country, to the country we love as well—I will not say better than you—to that country which we love only less than we should love our Heavenly Father. From the beginning of the debate we have heard nothing but contemptuous scorn and contumely hurled against this side of the House. Do you believe that members of this House, though in a minority, who are your equals here, will silently permit such language to go unlashd? If we were dishonored at home, do you think we are craven enough to receive such epithets without giving scorn for scorn? But being in fact the majority, having received the approbation of our constituents at home, do you imagine that we will sit here in timid crouching and receive your contumely without making some fit reply? Do you expect that we will, under the forms of courtesy, mouth honied words for your abuse? Do you imagine we cannot tell denunciation from debate? You forget that we come fresh from the people, covered all over with their generous approbation. My eloquent friend from Indiana [Mr. VOORHEES] told you last night that you were but corpses stalking against public decency, for a short time only, before the public gaze. [Laughter.] A nice party, indeed, this company of corpses, to talk to us, the Representatives of the people! [Laughter.]

The gentleman from Indiana, [Mr. DUNN,] conscious of his defunct condition, talked to us, as he confessed, from the confines of his sepulchre.

"Hark, from the tombs, a doleful sound,  
Mine ears attend the cry."

[Great laughter.]

If you gentlemen who play the political phantom wish to carry out the proper definition of a ghost, cease to squeak and gibber your abolitionism and go back into your cerements, for daylight, thank God! has begun to dawn. [Laughter.] Do you suppose that we, who are fresh from the people, have any reason to distract our minds at what you utter against us? Do you suppose, for instance, that we who represent Ohio, where we had nineteen members of Congress to elect, and, under an infamous gerrymander which allowed us only two democrats, and who will come back to the next Congress fourteen to your five, are to be lectured by you for disloyalty? Do you take us to be as contemptible as yourselves? You ghosts of the dead past mistake the temper of our constituents as you have mistaken us. We know our rights under the Constitution. We have a sound record, to which we can forever point; for

we have stood by the country when you failed it. We have, under the ineradicable love of law and order, stood by your own Administration when you have stigmatized and denounced it. We did our best in Congress before this, to settle these troubles, when adjustment was easy. We labored, with anxious care, that peace might continue in the land. The people believe that you were recreant then; that you are responsible for the failure to settle these difficulties by compromise. You know that the people so believe, for that was a part of their decision at the recent elections.

If you still entertain any doubt about your recreancy and responsibility, read this letter, recently produced in the Illinois legislature by Hon. Mr. Hays, from Judge Douglas, dated the 29th of December, 1860. In it he says:

*"The South would take my proposition if the Republicans would agree to it. But the extremes, North and South, hold off, and are precipitating the country into revolution and civil war."*

*"While I can do no act which recognises or countenances the doctrine of secession, my policy is peace, and I will not consider the question of war until every effort has been made for peace, and all hope shall have vanished. When that time comes, if unfortunately it shall come, I will then do what it becomes an American Senator to do on the then state of facts. Many of the Republican leaders desire a dissolution of the Union, and urge war as a means of accomplishing disunion; while others are Union men in good faith. We have now reached the point where a compromise, on the basis of mutual concession, or disunion and war are inevitable. I prefer a fair and just compromise."*

If you still doubt, read again another letter from the same honest and noble man, with which the country is familiar, in which he attributed the defeat of all amicable adjustments to the partizan desire of the Republican Senators, to confirm certain appointments by the (then) incoming Administration. The Republican Senators wished to have a majority in the Senate for this purpose. But for this petty political object, Judge Douglas thought that they would have passed some compromise. They wanted the seceded States to go out—they wanted the Southern Senators to leave the Senate. Because, without their absence the Senate would never have approved of such abolition appointments as Cassius M. Clay as Minister to Petersburg; which I believe he yet holds in connection with Simon Cameron, and a major-generalship in the army, [laughter,] and which offices he is filling to the President's contentment, by philandering around Willards' Hotel in these several capacities, [laughter,] if indeed he has any capacity. [Laughter.] The Republican Senators knew that the President might send in the nomination of such a man as Carl Schurz, as Minister to Spain, a German abolition in fidel, who brought to this country the belief that license was liberty, and that Almighty God was a figment of the brain—some strange abstract entity, with the concrete attribute of drinking lager beer in the regions above the sun. [Great laughter.] They wanted to confirm another class of abolitionists like the inveterate abolitionist who used to represent the Ashtabula district of Ohio in this House. I mean the Hon. Joshua R. Giddings, now Consul General to the Canadas. They wanted to confirm Helper, the author of the Helper Book endorsed by the Republican members of Congress, and which urged robbery, murder, and insurrection, in order, by violence, to rid the country of slavery. I might enlarge the catalogue of abolitionists until the House were surfeited. Hence it was that Judge Douglas declared that the Republicans were responsible for not making an amicable adjustment of our troubles. In his opinion, they were willing to welcome civil war, and all its attendant horrors, from a mere greed for office, and to reward the anarchists and destructionists of the land. Hence it is that, before God and the country, I hold you, on the testimony of Douglas, responsible for the failure to settle these difficulties.

But after all had failed through Republican partianship and greed for office, we came to the extra session of Congress. You will remember that, with Douglas, we doubted if ever war could reclaim the Southern States. We thought then, that war alone would widen the abyss. We plead—you know how even so humble a member as myself plead—against the arbitrament of the sword, for the settlement of these feuds of the sections. But we plead in vain. Douglas told you war was disunion. But war came! It is unnecessary for me to say who struck the first blow. It is idle now to argue who provoked the blow that was first struck. You know it all. We came to the extra session of 1861.

We were still, as ever, loyal, law-abiding. We were willing to do our all for the Government. Sadly we acted as the coadjutors of *FOROS*. But the great drama of blood having been begun, not by our aid or comfort, we acted on the side of the Government—loyally, firmly, sadly. We could not do otherwise, so help us God!

The record of that session will show how we supported the Administration, which we had not contributed to place in power. I remember well when on the 15th of July, 1861, General McClelland, of Illinois, offered the following resolution, (*House Journal, 1st session, 37th Congress, page 87:*)

“Whereas, a portion of the people of the United States, in violation of their constitutional obligations, have taken up arms against the National Government, and are now striving, by aggressive and iniquitous war, to overthrow it and break up the Union of these States: therefore,

“Resolved, That this House hereby pledges itself to vote for any amount of money and any number of men which may be necessary to insure the speedy and effectual suppression of said rebellion, and the permanent restoration of the Federal authority everywhere within the limits and jurisdiction of the United States.”

I find nearly every member of this House, upon this side, voting for that resolution. There were but five votes against it; and of those three of them are now absent and openly disloyal to the Government. Did you want anything more—anything better than that? You sought harmony among all parties at that time. All the men and all the money that was wanted was granted by our votes. Your President asked for four hundred thousand men, and we gave him five hundred thousand; he asked for four hundred millions of dollars, and we gave him five hundred millions. Whenever he came here asking men and money, we gave them to him. Could we do more? Were we copperheads for that? Were we disloyal men for that? What followed? Shortly afterwards the venerable member from Kentucky [Mr. CRITTENDEN] offered his resolution as to the purposes of the war. All of us joined in its adoption. It was offered for the very purpose of declaring how the men and money should be used, and that this war should be carried on for the one great purpose of restoring the federal authority everywhere, and not for the interference with or destruction of the institutions of any State—meaning slavery—and that when the object of federal supremacy was accomplished the war should stop. We gave it our adhesion, as the direction which we were to follow in the pursuit of this war against this rebellion.

What more could we do and be faithful? Could we have done less? We were only pursuing what we had declared before in our speeches here. I remember a scene which was recalled to my mind by some remarks from the gentleman from Indiana, [Mr. DUNN.] I was a member of this Congress when State after State sent here their ordinances of secession. I recall the first motion that was made by a member from Florida, [Mr. HAWKINS,] who sat in that seat occupied by my friend from Maryland, [Mr. CRESFIELD,] to be excused from service upon a committee raised to compromise these troubles. He gave us as a reason that his State was already resolved to secede. I then said that I would not vote to excuse him, when he gave such a seditious reason. And when afterwards secession speeches were made, I had the honor, as the first member of this House, to struggle for the floor with my friend, General McClelland, to denounce the doctrine of secession as alien to the Constitution, bad in theory, and worse in practice. I picture now the scene which took place here, after General McClelland and myself had concluded our speeches, and when the present Post Master General of the confederate States [Mr. REGAN] denounced us as the tail of the abolition kite. Great God! that I should ever have lived to have had such a reproach even from a rebel. [Laughter.]

We who have been striving to keep this war in its proper direction, so as thereby to make it successful, if success can be had, and the Union restored at all by coercion; we who have stood here from the first to sustain this Government and this Administration which we did not contribute to place in power, do not deserve the contemptuous reproaches cast upon us by ingrates upon the other side. Copperheads, are we? Copperheads! I would not follow this piteable example of discourtesy by speaking of other sorts of heads, either cabbage heads or blockheads. [Laughter.] I would not hurl such epithets across this chamber. It would be unparliamentary, and I forego the luxury of being

out of order here. I know the gentlemen are dead heads, and that is the reason why—on the principle of "*nisi bonum, nil mortuiis*,"—I speak of them with respect. [Laughter.]

It has been laid down by the best ethical writers upon free government, that it is perfectly right and proper to encourage criticism upon the administration of public affairs. We were taught that, in the first English literature we read in our language. John Milton dedicated his grandest work, the "*Areopagitica*," to the defence of free speech and unlicensed printing. Even in the Corps Legislatif of France now, the fullest debate is allowed to the opponents of the reigning dynasty and its measures, even of war. The noblest use of free speech in this or any free country is to criticize closely the political conduct of our agents. Hence in England it became a part of the Constitution to have what is called a "constitutional opposition." There is always a party out of power to watch the party in power. Why? Because, as was remarked the other day, power tends to slide from the many to the few. It tends to aggrandize itself. It grows by what it feeds on. A healthy state of the body politic requires a party at all times, standing upon the fundamental law as the basis of its existence, and fearlessly vigilant against the encroachments of power. This is the present mission of the Democracy. We assume now no further responsibility. We have never failed to appeal to the Constitution as the guide of our conduct. We who have opposed this and similar bills, have done so because we thought them infringements upon the Constitution. It is for this that gentlemen on the other side hurl at us epithets of "secession sympathizers," "disloyal men," "Copperheads." I am yet to learn that any member upon this side, has yet gone outside of the proper constitutional opposition to this Administration. You cannot point to a single act, or to a single vote, or to a single speech uttered by us, looking to any opposition to this Government. Our opposition is to the continued and persistent breaches of our Constitution. Every vote upon this side, and every speech, has been in favor of some mode, one mode by one, and another mode by another, of sustaining this Government to the end.

No proposition for a separation of the Union has ever come from this side of the chamber. None, none. The only proposition of that sort, as was remarked the other day by my friend from Indiana, [Mr. HOLMAN,] emanated from a gentleman who has always acted with the other side, [Mr. CONWAY.] He tried the other day to explain his position. I have since read his resolution in order to get the benefit of his explanation. But as I read his resolution, it says, as reported in his printed speech, "that the Executive be, and he is hereby requested to issue a general order to all commanders of forces in the several military departments of the United States to discontinue offensive operations against the enemy, and to act for the future entirely on the defensive."

"*Resolved*, That the Executive be, and he is further requested to enter into negotiations with the authorities of the Confederate States, with reference to a cessation of hostilities, based on the following propositions: Recognition of the independence of the Confederate States."

What does that mean? It was not offered by a Democrat. No Copperhead offered it. What does it mean? Gentlemen upon this side of the chamber denounced that resolution. No man upon that side has yet risen to denounce it.

Mr. BLAKE. I want to say to the gentleman, that every gentleman upon this side of the House denounced it by their vote.

Mr. COX. I know they voted against it. I wish they would confine their denunciations of the Democracy to their silent votes.

Mr. BLAKE. That we are doing.

Mr. COX. I do not mean to include my colleague among those, who have so offensively denounced Democrats. But all who have spoken have denounced us although they know that we have again and again asserted that we are for the Union at all hazards, and by every means which will in our judgment secure its integrity. We were for this Union by war when war seemed a necessity. We are for this Union by peace whenever peace is honorable and possible. We are opposed to any war like that for the abolition of slavery, that



will make disunion eternal. We are opposed to any peace that will mutilate the Republic. That is the "Copperhead" policy, and I ask my friend from Maine to pray over it to-night and see if he cannot think better of us. [Laughter.] Mark the Democratic policy: No peace with the idea of dismemberment; no war that is fatal to the Union; everything for the Union under the Constitution; we will never break that instrument to bring back the Union, for when the Constitution is broken, there is no Union, but a unity of territory, a despotism of power. My honorable friend from Massachusetts, [Mr. THOMAS,] told you at the last session that you could not hold the sword in one hand to defend the Constitution while in the other you held a hammer to break it to pieces.

Mr. Speaker, I desire now to discuss some of the features of the bill before us. I will be very brief; for they have been thoroughly dissected by members upon this side of the House. I want to refer to only one or two propositions in that connection. I proposed two days since, to amend the bill by inserting the word "white" in the first section. At that time the gentleman from New York, [Mr. OLIN,] advised us that no amendments would be permitted at all and no discussion either. One good thing we have gained by this discussion at least, and that is that if this bill is to pass at all, it will pass in a less obnoxious shape. The leader of this House, the gentleman from Pennsylvania, [Mr. STEVENS,] in the speech he made a while ago proposed radical amendments.

The SPEAKER *pro tem.* The gentleman will suspend his remarks while the Clerk reads a clause from the Manual.

The CLERK read as follows:

"No person in speaking is to mention a member then present by his name, but to describe him by his seat in the House, or who spoke last, or on the other side of the question."

Mr. VALLANDIGHAM. It is always in order to name a member after having described him.

Mr. COX. No, I do not think it is perfectly in order. I differ with my colleague. It has become a bad habit here and I have only followed the precedent set me by distinguished members.

The SPEAKER *pro tem.* The gentleman will proceed in order.

Mr. COX. I am very glad the Speaker made that point on me, for I shall take it more good naturedly than some others might have done.

The SPEAKER *pro tem.* [Mr. DAWES,] that is the reason why the point was made on the gentleman.

Mr. COX. I mean then, the gentleman from Pennsylvania, who is Chairman of the Committee of Ways and Means; the gentleman who has such a chronic dislike to Democrats that he always lectures them at the end of his speeches; [Laughter,] the gentleman who said he was sick of hearing this talk about the Constitution, who did not want the old Union restored. The speaker will now recognize whom I mean. [Laughter.] If I am not explicit enough, I will describe him as the gentleman who stated a great many apocryphal things, and among them that all the Democrats stayed at home to vote while the Republicans are the belligerent part of the people; the gentleman who undertook in his speech to-night, to destroy the well-earned fame of a general born in his own State, General McClellan—an undertaking that all Pennsylvania, with all her iron, and all her tariffs, and all her Camerons, and all her robberies, can never accomplish. [Laughter.] Perhaps I am not yet explicit enough. The Chair will know who I mean when I refer to a speech made by a distinguished member from Massachusetts, now in the Chair, about composing political difficulties by the gentle amenities of horse contracts.

Now, this gentleman whom I have just described offered to amend this bill in several important particulars, and, among the rest, he proposed to strike out the words "authorizing provost marshals summarily to arrest for treasonable practices." Humpf! We have come to that! You are getting along pretty well for dead men. [Laughter.] Go on a day or two longer with this discussion, and you will drop the bill altogether, for when you shall have blotted that out of the

bill, you will take the meanest sting out of it. If there be one thing that the people I represent fear and despise most, it is, that these miserable inquisitors, created by this bill, these sneaking spies, these pliant servitors of power, called provost marshals, spooned off the scum of the Abolition party of the North, should have power to pry in and around the homes of quiet and loyal citizens to play the informer upon Democrats and Conservatives, drag them to the Bastiles of the Administration, not because they are disloyal, but because they happen to differ in opinion with their fellow-citizens about this war, its conduct, and this Administration and its conduct. I congratulate you that you have saved many provost marshals from the rope. The chairman of the Military Committee, when we started this debate, said he would not allow any amendments, not even to effect this object. But you are not entitled to any credit for making this amendment. You have been forced by the cogent eloquence of the debate upon this side of the chamber, to withdraw your "reasonable practices" from the bill. So much for debate. We have made a little by it at least; and now I hope that some one upon the other side, like the gentleman from Pennsylvania, will progress a little further, and agree first to insert the word "white" in the first section of the bill, so that instead of reading "all able-bodied male citizens of the United States," it shall read "all able-bodied white male citizens of the United States." It is only a verbal amendment. [Laughter.] Suppose you consider it over night. We may all get together, after a little more debate, and agree to kill the bill entirely.

There is another objection to this bill, which has been urged here, and which was most eloquently urged by my colleague, [Mr. WHITE.] It is this: This bill breaks down not only the rights of the States, but the executive, legislative, and judicial departments of the States. It infringes the letter and spirit of the Constitution. It seeks to take from the States certain rights over their own militia—a right never to be yielded by a free people without dishonor and danger.

How is that objection met by gentlemen on that side? Not as it was met in the other branch of Congress; for there it was not pretended that this bill was not intended to call out the militia. Here, it is a bill for enrolling and calling out the *national forces* and for other purposes, as if you could, by a dash of the pen, change the nature and purpose of this measure. When this bill was first reported in the Senate, all admitted that it was a bill to call out the militia; and its language, but not its scope or effect, is changed only for the purpose of avoiding the attacks that would be made upon it on account of its breaking down the rights of the States over the militia.

Now there is an army of the United States, just as well known as the militia of the States. The former is subject to the command of the Chief Magistrate, and completely controlled by the rules and regulations made here; the latter is not subject to the federal Government, until called into the service of the United States, in pursuance of the federal Constitution and laws. But gentlemen say that this is a bill for creating or increasing the regular army, and that there is no limit to our power over that subject. Well, if this be true, and this bill is executed, there will be no militia left in the States after this regular army is constituted. You sweep out of being the whole militia of the States into the federal control. You leave the States unprotected, so far as the militia protects them. This bill is, to all intents and purposes, a bill to call forth the militia of the States; but it does not make the call according to the Constitution and the law. The militia is to be called out, under this bill, directly by the President or his subordinate federal agents acting upon the individual citizens. It never was the custom of the Government so to call them. They should be called through the intervention of the States, and in that way alone. I need not refer gentlemen to the articles of the Constitution on this subject. They are familiar. I will read, however, the second section of the second article:

"The President shall be Commander-in-Chief of the army and navy of the United States and of the militia of the several States when called into the actual service of the United States."

Not while they are being enrolled, but "when called into the actual service of the United States," is the President the Commander of the militia of the States. In my judgment, then, the federal Government has no

authority over the militia until it is called into the service of the United States. By another section, the Constitution of the United States authorizes Congress—

“To provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasions.

“To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States.”

You may provide for their organization. You may provide for their enrolment, which is a part of the organization. You may provide for arming them. You may provide the mode and manner in which they shall be disciplined. But you cannot do that by your federal Executive. That is to be done by the States themselves. They are authorized to do it, and the Federal Government is excluded from that office. That is the opinion of the best commentator on the Constitution, Judge Story. I refer to vol. 3, sec. 1208:

“The question, when the authority of Congress over the militia becomes exclusive, must essentially depend upon the fact when they are to be deemed in the actual service of the United States. There is a clear distinction between calling forth the militia and their being in actual service. They are not contemporaneous acts, nor necessarily identical in their constitutional bearings. The President is not Commander-in-Chief of the militia, except when in actual service; and not when they are merely ordered into service. They are subjected to martial law only when in actual service, and not merely when called forth, before they have obeyed the call.”

One of the sections of this bill proposes to subject the men who may be drafted, to martial law, to deprive them of the legal right of being tried for criminal offences by a jury of their peers, before they are mustered into the service of the United States. Such a power is not conferred by the Constitution. It will be resisted as a usurpation. In this connection I refer to Elliott's Debates, pages 287, 288 and 294, to show that Judge Story is justified in his construction, by the language of those who were contemporaneous with the formation of the Constitution.

It is unnecessary for me, Mr. Speaker, to comment on that commentator. Judge Story lays down the constitutional interpretation explicitly. If you intend to take these men as the militia of the country—and you mean nothing else—you cannot do it except by the intervention of the States themselves. There is another clause of the Constitution (article 2d of the amendments) which reserves to the States, for a vital purpose, the control of their own militia:

“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.”

Let this Federal Government beware how it seeks a conflict about the clearly reserved rights of the States. The practice of arbitrary arrests, the past year and a half, is not calculated to make future arrests of citizens either pleasant or safe for the minions of federal power.

Now, if the Constitution means anything, it means that in no emergency shall the States of this Union lose the power to control their own militia, for their own State purposes, except when it is merged in the actual service of the United States. By this bill you leave no power in the States to officer or direct their militia. The troops of Ohio may be mingled miscellaneously with those from Maine. There is a wise reason why the militia should be considered and kept as an institution of the States. You will find that reason in the very genius and structure of the federal system. We cannot, in these times, too often recur to the early expounders of the Constitution. I hold to the Jeffersonian and Madisonian construction of that instrument, with respect to the rights of the States. Nowhere do I find the tenets of this school so correctly yet so familiarly expounded as in the Private Correspondence of Mr. Madison, published for private distribution by my friend J. C. McGuire, of this city, and to whom I am indebted for the volume before me. Mr. Madison (page 119) defines the relations implied by the terms, union, federal, national, and State, in a letter written in September, 1829, wherein he says:

“That the Constitution of the United States was created by the people composing the respective States, who alone had the right; that they organized the Government into legislative, executive, and judiciary departments, delegating thereto certain portions of power, to be exercised over the whole, and reserving the other portions to themselves respectively. As these distinct portions of power were to be exercised by the General Government and by the

State governments, by each within limited spheres; and as, of course, controversies concerning the boundaries of their power would happen, it was provided that they should be decided by the Supreme Court of the United States, so constituted as to be as impartial as it could be made by the mode of appointment and responsibility for the judges.

Is there, then, no remedy for usurpations in which the Supreme Court of the United States concur? Yes, constitutional remedies. \* \* \* Remonstrances and instructions; recurring elections and impeachments; amendment of Constitution, as provided by itself, and exemplified in the 11th article limiting the suability of the States.

"These are resources of the States against the General Government, resulting from the relations of the States to that Government, while no corresponding control exists in the general to the individual governments, all of whose functionaries are independent of the United States in their appointment and responsibility. \* \* \*

"In all the views that may be taken of questions between the State governments and the General Government, the awful consequences of a final rupture and dissolution of the Union should never for a moment be lost sight of. Such a prospect must be deprecated, must be shuddered at by every friend to his country, to liberty, to the happiness of man. For, in the event of a dissolution of the Union, an impossibility of ever renewing it is brought home to every mind by the difficulties encountered in establishing it. The propensity of all communities to divide, when not pressed into a unity by external danger is a truth well understood. There is no instance of a people, inhabiting even a small island, if remote from foreign danger, and sometimes in spite of that pressure, who are not divided into alien, rival, hostile tribes. The happy Union of these States is a wonder; their Constitution a miracle; their example the hope of Liberty throughout the world. Wo to the ambition that would meditate the destruction of either."

I trust and pray that this House will not, by passing this bill, hazard the fearful consequences of a further disruption of the federal ties, by entrenching upon the rights of the States; that at least they will seek first as Mr. Madison suggests, the judiciary, as the arbiter of these mooted questions of power, before embarking this troubled people upon new seas of blood, amidst other and worse storms of conflicting passion.

Not alone to Jefferson and Madison, or the Supreme Court, will I go for the rule of construction as to the Constitution. Even that great apostle of consolidation, Hamilton, in order to secure the adoption of the Constitution by his own State of New York, presented this exposition of our Government:

"If the State governments were to be abolished, the question would wear a different face; but this idea is inadmissible. They are absolutely necessary to the system. Their existence must form a leading principle in the most perfect Constitution we could form. I insist that it can never be the interest or desire of the national legislature (much less the President) to destroy the State governments. It can derive no advantage from such a result; but, on the contrary, would lose an indispensable support, a necessary aid, in executing the laws and conveying the influence of Government to the doors of the people. The Union is dependent on the will of the State governments for its Chief Magistrate and its Senate. The blow aimed at the members must give a fatal wound to the head, and the destruction of the States must be at once political suicide. Can the national Government be guilty of this madness? \* \*

"And again I have stated to the committee abundant reasons to prove the entire safety of the State governments and of the people. I wish the committee to remember that the Constitution, under examination, is framed upon truly republican principles, and that, as it is expressly designed to provide for the common protection and general welfare of the United States, it must be utterly repugnant to this Constitution to subvert the State governments or oppress the people"

This doctrine of State rights, Mr. Speaker, does not carry us into secession, for, according to the doctrine laid down by Jefferson, Madison, and others, there is a line drawn, beyond which State rights cannot go, but within which there is perfect immunity to the exercise of powers by the States in their separate and sovereign capacity. If the State is aggrieved, it can neither nullify or secede. Mr. Jefferson, in his letter to Cartright, referred to in the "Private Correspondence," denied the right of any number of single States to arrest the execution of a law of Congress, or secede from the Federal system. A convention of the States, under the Constitution, he hailed "as the peaceable remedy for all the conflicting claims of power in our compound Government."

In the future complications to which this and similar bills will give rise, I can see no other than the Madisonian remedy for our safety and regeneration—  
A CONVENTION OF THE STATES UNDER THE CONSTITUTION.

I believe that this bill not only subverts the State governments, but that it will suppress the people. It breaks down the barrier which the people erected against consolidated power; for never in the history of this or any other Government has such a stupendous power been reposed in one man, as the power reposed by this bill in the President of the United States. It makes this Government, so guarded in its delegation of power, so full of reservations to the

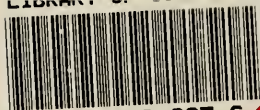
source of all power, the people—an irresponsible despotism, worse than that of France and more tyrannical than that of Russia. You have already given to this Administration the pure, you now throw the sword into the scale, and nothing is left to the people but abject submission or resistance. It becomes Congress to see to it before it entrusts such a power to any one man—first, whether it is Constitutional, and, if Constitutional, whether it is expedient to entrust it to the present Chief Magistrate of the country. For my part, sir, I do not trust the present Chief Magistrate. I have my reasons for it. These reasons spring out of his conduct with regard to the slavery question. Again and again, beginning with his inaugural message, down to the last conference which he had with the Border-State members of Congress, who now sit around me, he asseverated that he would not interfere in any way with the Constitutional rights of the States with regard to negro slavery. He said he had no right, and no inclination thus to interfere; and he kept his word for a brief time. But abolition pressure was brought to bear upon him. Abolitionists improved every opportunity to poison his mind, and to salute his ear with their flatteries. They made him believe that he was the saviour of the black race. In the very face of his own declarations to the contrary, and after he had promised solemnly to the Border-State Congressmen, in a public conference with them, that he would do nothing to injure either the sensibilities or the interests of their States with regard to slavery, he issued that proclamation which has been so fatal to the army, fatal to “a united North,” fatal to the Government, and will be, I fear, fatal to this Union, unless gentlemen on the other side come up boldly and manfully and demand of him to repudiate it forever. Let them prepare him for the retraction by the repeal of their confiscation measures as useless, impotent, and unconstitutional. Let the President then follow them and withdraw his proclamation. Let us start anew. Go back to the Crittenden resolutions, or if you cannot, by war, restore the federal authority, try some other mode. Withdraw the negro entirely from your counsels, and conduct and make one grand effort to preserve this Government of white men. Will you do it? If you would thus resolve to act, you would need no conscription to increase and inspirit your army. You would then invigorate the public heart. You would restore again the public confidence. There is your path. Will you follow it? I believe that you will get no men under this bill. You will get no men through your despicable and irresponsible provost marshals. This bill will only make trouble. I fear more than I dare say. I fear you do not expect to get men under this bill. If the bill means anything in reason, it is a bill to enslave the people of the North, and not a bill to put down the rebellion. It gives you the power to annihilate the ballot box, destroy personal liberty, and scatter your spies and informers all over the country as thick as the locusts of Egypt. I protest against it as a needless torture to the citizen, and as a cruel insult to the patriotism of a proud and free people.

I wish I could see in this bill anything good. It will simply irritate the people of the North. It will not bring about that harmony among the people which is indispensable to the success of an army against this rebellion.

You have tried many expedients against our warning and failed. At first you had the whole North, twenty millions of people, forgetting their divisions and sustaining the Government on the plain question for the restoration of the Constitution. You had victories on that policy. Your organs, like the Tribune, boasted, after the fall of Sumter, that—

All party prejudices and passions were forgotten, and the new administration, strengthened by an assurance of popular confidence, stood before the world the unquestioned representative of the whole loyal people of the Union.

Who and what has changed all that? Your President and his abolition advisers and policy. The Proclamation sounded; and lo! the Rebellion was to fall. “The war would not last till Christmas,” said the zealots of the hour “By a single blow the President has palsied the rebellion,” said the Tribune. Fatal delusions! But will you learn nothing? This bill will prove more impotent against the South and more mischievous in the North than your proclamations and confiscations.



A good deal has been said about the Democrats being loyal. Why, sir, we went from this Hall at the close of the last session of Congress and found the President's call for volunteers among the people. We went before our constituents and asked for soldiers to fill the new regiments called for by the Governors in pursuance of that call. My colleague over the way [Mr. HARRISON,] will bear me witness, with what zeal we endeavored to fill our quotas in order to save our respective counties from a draft. In my own county at the capital of the State, we succeeded in raising the requisite number and there was no draft. My colleagues, [Mr. WHITE, Mr. MORRIS, Mr. NOBLE and others,] found it not hard by their appeals to fill the call in their localities.

This, however, was before the proclamation. When that masterpiece of folly and treachery was issued, further enlistments became almost impossible. We could then make no more speeches for recruits. Why? We had told the people that this was a war for the Union and for the Constitution. When it was thus perverted by base treachery and falsehood from this, its proper purpose, we took our appeal directly to the people, and denounced the treachery and unveiled the falsehood of this Administration. The people understood and endorsed us. I might refer you to resolutions passed by the Democratic Convention, of Ohio, wherein we said to the people that the Democracy were willing to join hand in hand with any citizen of the State to strengthen and invigorate the Government and suppress the rebellion. They deprecated the divisions and distractions which the abolitionists were forcing upon the country, as hostile to its best interests.

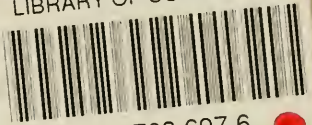
Here the hammer fell.

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Towers, print.



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