

E

668

S73

COPY 2



Class _____

Book _____



SPEECH

OF



HON. RUFUS P. SPALDING, OF OHIO,

ON THE UNION;

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, JANUARY 5, 1866.

WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE
1866.



SPEECH

OF

HON. RUFUS P. SPALDING, OF OHIO,

ON THE UNION;

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, JANUARY 5, 1866.

WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.
1866.

L. 668

. 273

copy 2

SPEECH.

The House resolved itself into the Committee of the Whole on the state of the Union, (Mr. WASHBURN, of Illinois, in the chair,) and proceeded to the consideration of the President's annual message.

Mr. SPALDING said:

Mr. CHAIRMAN: Our republican Government, after being exposed for three fourths of a century to the derisive doubts of carping critics abroad, and to the more insidious and cruel assaults of ambitious men at home, has, at length, "by wager of battle," vindicated its claim to be ranked as first among the nations in all the elements of stability and power.

This proud stand-point has not been reached without unparalleled sacrifices of blood and treasure on the part of our loyal fellow-citizens, but as the recuperative energies of the American people are known to be adequate to any probable exigencies, it is not so important that we dwell upon the havoc and cost of the war, from which we have so recently emerged, as that we try to profit by the injunction of Roman patriotism, and "take care that the Republic receive no detriment" therefrom.

To the end that we may approach the discharge of this duty with a just appreciation of the character of that Government which originated in the wisdom of our fathers, and is now sanctified by the blood of their sons, I propose to examine, in a somewhat cursory manner, that dogma of Mr. Calhoun which has been the prolific source of much of our intestine troubles—"that the Government of the United States is the Government of a community of States, and not the Government of a nation." Upon this political heresy hangs the whole claim of the "nullifier" and the "secessionist," which has plagued our country more than thirty years, and finally resulted in the most devastating war known to the history of mankind.

I am not wanting in respect for the tran-

scendent abilities of the "great Carolinian," but it is painful to notice how

"Wild ambition loves to slide, not stand,
And Fortune's ice prefers to Virtue's land."

I propose to bring this notion of a copartnership of States to the touch-stone of the Constitution itself, as well as its contemporaneous history, and then leave to impartial minds the just conclusion.

As early as the 8th of April, 1787, James Madison, then a member of the Congress of the Confederation, sitting in New York, wrote to Governor Randolph, of Virginia, and thus succinctly gave his views in regard to the proper action to be taken by the Convention about to assemble in Philadelphia to revise the Articles of Confederation:

"I hold it for a fundamental point that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient.

"Let it be tried, then, whether any middle ground can be taken which will at once support a due supremacy of the national authority and leave in force the local authorities, so far as they can be subordinately useful."

This letter of Mr. Madison very truly depicts the constitutional Government which he afterward assisted to frame, and which he administered for eight years as the immediate successor of Thomas Jefferson in the presidential chair.

The Constitutional Convention was organized at Philadelphia on Friday, the 25th day of May, 1787. On Wednesday, May 30, the Convention, while in Committee of the Whole on the state of the Union, adopted the following significant resolution with but one State (Connecticut) voting in the negative:

"Resolved, That it is the opinion of this committee that a national Government ought to be established, consisting of a supreme legislative, judiciary, and executive."

This was the first resolution adopted by the Convention, and its author was Edmund Randolph, the gentleman to whom Mr. Madison had written the letter of the 8th of April to which allusion has been made.

It forms the first of a series of resolutions which were subsequently placed on file in the Department of State by President Washington.

The distinguished lawyer, Luther Martin, of Maryland, who was a member of the Convention, and who was strongly opposed to the adoption of the Constitution by the people, thus speaks of this resolution in his address to the Legislature of his own State:

"Nay, so far were the friends of the system from pretending that they meant it or considered it as a Federal system, that, on the question being proposed 'that a union of the States, merely Federal, ought to be the sole object of the exercise of the powers vested in the Convention,' it was negatived by a majority of the members, and it was resolved, 'that a national Government ought to be formed.'"

Chief Justice Yates, of New York, in his notes of the secret debates of the Federal Convention, says, under date of Tuesday, May 29, 1787:

"His Excellency, Governor Randolph, a member from Virginia, got up, and in a long and elaborate speech showed the defects in the system of the present Federal Government as totally inadequate to the peace, safety, and security of the Confederation, and the absolute necessity of a more energetic Government.

"He closed these remarks with a set of resolutions, fifteen in number, which he proposed to the Convention for their adoption, and as leading principles whereon to form a new Government. He candidly confessed that they were not intended for a Federal Government. He meant a strong, consolidated Union, in which the idea of States should be nearly annihilated."

On the following day, and when said resolution in respect to a national Government was under consideration, in Committee of the Whole. "it was asked," says Justice Yates, "whether it was intended to annihilate State governments?" It was answered, "only so far as the powers intended to be granted to the new Government should clash with the States, when the latter were to yield."

Hon. Elbridge Gerry, in a letter to the Legislature of Massachusetts, assigning reasons for withholding his signature from the Constitution, says:

"It has few, if any, Federal features, but is rather a system of national Government."

Hon. John Jay, in an address to the people of the State of New York, urging the adoption of the Constitution, uses this remarkable language:

"The Convention concurred in opinion with the people, that a national Government, competent to every national object, was indispensably necessary."

I could multiply the declarations of eminent men who were upon the stage of action at the time the Constitution was framed and adopted, all to the same purport, but I feel the necessity of appropriating some portion of the hour allotted to me to the consideration of the evi-

dence furnished by that instrument itself. It purports, on its face, to be a transfer of governmental power directly from the people to certain constituted authorities, involving the exercise of the higher attributes of sovereignty. It gives "Congress" power "to make war and to make peace; to raise and support armies and navies; to coin money and regulate the value thereof; to regulate commerce with foreign nations and among the several States; to lay and collect taxes, duties, imposts, and excises." On the other hand, it effectually interdicts the exercise of powers, by the States respectively, that shall in anywise interfere with these and other high prerogatives of Congress.

For that purpose, it provides that—

"No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

Moreover, it provides that—

"No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws."

Also, that—

"No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign Power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

And, as if to make "assurance doubly sure," the second clause of the sixth article of the Constitution speaks this language perpetually:

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

Here I pause, and hail with respectful gratitude the enunciation made by the President in his annual message:

"The sovereignty of the States' is the language of the Confederacy, and not the language of the Constitution."

Thus far I have attempted to show that the framers of the Constitution contemplated the creation, "by the people of the United States," of a national Government, and not a Confederacy of States.

This national Government was approved and ratified by the people, assembled for the express purpose of considering it, in their respective State conventions.

I have next attempted to show that the national Government is invested with the exercise of many of the high powers incident to sovereignty, while the exercise of similar powers is expressly denied to the States.

It is doubtless true that both governments exercise important functions, and, in their respective spheres of action, each is independent of the other. But both are limited, and neither

is "sovereign." If I be asked, "Where, then, may sovereignty, in our country, be found to reside?" I answer, unhesitatingly, IN THE PEOPLE. Look where you will, throughout all the ramifications of Government, State and National, and you will find it, happily, so ordered that all power, executive, legislative, and judicial, returns, periodically, to its only true source—THE PEOPLE.

The President of the United States, whose official position is infinitely more dignified than that of any potentate in Europe, is only an agent of the people for a term of years. And so of the Senators and Representatives in Congress; while the Justices of the Supreme Court are all the time "on their good behavior." I am made strong in this position by calling to my support the highest authority. Chief Justice Jay says in the address to which I have once alluded, as an argument for the adoption of the Constitution:

"The proposed Government is to be the Government of the people; all its officers are to be their officers, and to exercise no rights but such as the people commit to them. The Constitution only serves to point out that part of the people's business which they think proper, by it, to refer to the management of the persons therein designated. Those persons are to receive that business to manage, not for themselves and as their own, but as agents and overseers for the people, to whom they are constantly responsible, and by whom only they are to be appointed."

Hon. James Wilson, of Pennsylvania, too, in addressing the convention of his own State, assembled to deliberate on the propriety of adopting that Constitution, to the excellence of which, he had, by his consummate wisdom and virtue, contributed so largely, thus expatiated upon this branch of my subject:

"There necessarily exists in every Government a power from which there is no appeal; and which, for that reason, may be termed supreme, absolute, and uncontrollable. Where does this power reside?"

"Perhaps some politician who has not considered with sufficient accuracy our political systems, would answer that in our governments the supreme power was vested in the constitutions. This opinion approaches near to the truth, but does not reach it. The truth is that in our governments the supreme, absolute, and uncontrollable power remains in the people."

"As our constitutions are superior to our Legislatures, so the people are superior to our constitutions. Indeed, the superiority in this last instance is much greater, for the people possess over our constitutions control in *act* as well as *right*. In this Constitution, all authority is derived from the people."

And so the President very justly declares in his message:

"Our Government springs from and was made for the people; not the people for the Government. To them it owes allegiance; from them it must derive its courage, strength, and wisdom."

It has been claimed, however, that notwithstanding the General Government, in all national matters, is supreme in its authority, and although the individual States have not the shadow of a right to secede peaceably from the Union, yet, if any one or more States resort to armed force to accomplish that purpose, the strong arm of the national Executive is paralyzed; and for the reason that "the Constitution nowhere dele-

gates to the General Government the power to declare and make war against a State."

I hold this objection to be puerile in the lowest degree. As well may the citizen of a State, when arraigned at the bar of the court of his county for the commission of a crime, demand an exhibition of the war power, on the page of the State constitution, before he can be subjected to punishment for his offense. The nation does not declare war against its dependencies; it, nevertheless, exerts sufficient force to restrain them, when they madly attempt to revolutionize the Government.

The true theory, however, is that the General Government, like the State government, acts upon the individual citizen, and it may always use the degree of force necessary to secure obedience to law, whether resistance be offered by one citizen, or all the citizens of a State, or the citizens of a dozen States combined.

It is often said, by the friends of the doctrine of "secession," that the Convention refused to insert in the Constitution a clause authorizing the exertion of "the force of the Union against any member of the same, failing to fulfill its duty under the articles thereof." It is doubtless true that such a resolution was offered in Convention, and that the same was, for wise reasons, indefinitely postponed. It is equally true that a proviso was offered, in Convention, to the third section of the third article of the Constitution, which defines the crime of treason. It was in these words:

"Provided, That no act or acts done by one or more of the States against the United States, or by any citizen of any one of the United States, under the authority of one or more of the said States, shall be deemed treason or punished as such; but in case of war being levied by one or more of the States against the United States, the conduct of each party toward the other, and their adherents respectively, shall be regulated by the laws of war and of nations."

This provision "was not adopted," says Mr. Martin, "and the consequence is that the State, and every one of its citizens who acts under its authority (in making war upon the Government of the nation) are guilty of a direct act of treason." (Elliot's Debates, vol. 1, page 382.)

I receive this construction of Mr. Martin as a correct exposition of the constitutional provision in respect to treason, with the understanding that the word State is used by him as synonymous with the words "all the citizens of a State," which is really the only true signification of that term when used in connection with moral responsibility.

This national Government, which it has been my endeavor to elucidate, was in operation seventy-two years, bringing "order out of chaos," and changing an impotent "Confederacy" into a great republican empire whose banner, illustrative of unity—"E pluribus unum"—floated in every breeze, and afforded protection to every citizen in every land. Under its benign influence, the bounds of dominion had been extended to the Pacific ocean, and the country

had increased in wealth and population to an extent unparalleled in the annals of nations.

Over the heads of its citizens it had shed the blessings of peace and personal security; and overflowing prosperity was seen everywhere to abound.

"I look upon this country, with our institutions," said Mr. Stephens, of Georgia, in November, 1860, "as the Eden of the world—the Paradise of the universe." It was to break down and destroy this beneficent Government, to blight this earthly paradise, that the serpent of secession entered into the garden of our national prosperity.

On the 20th of December, 1860, an ordinance of secession was adopted by the delegates of the people of South Carolina, declaring that the Union then subsisting between that and other States, under the name of the United States of America, was thereby dissolved; and one of the distinguished actors in the treasonable work, had the impudence to exclaim:

"We have now pulled a temple down that has been built three quarters of a century. We must clear the rubbish away to reconstruct another."

In quick succession five other States followed the example of South Carolina; and in February, 1861, the much-vaunted southern confederacy was formed at Montgomery, in Alabama.

On the morning of the 12th of April, under orders from L. P. Walker, confederate secretary of war, the rebels at Charleston opened fire upon Fort Sumter, and thus inaugurated a civil war which, in four years, cost the nation half a million lives, and an amount of wealth beyond the measure of reasonable computation.

The people of eleven States had formally absolved themselves from all allegiance to the Government of the United States, and had made use of all their material resources to effect its full and final overthrow. They had marshaled mighty armies in the field. They had sent armed ships to prey upon the commerce of the country in distant seas. They had sent their emissaries, with torches, to burn the dwellings of loyal citizens, and with the seeds of pestilence to destroy their lives. They had resorted to starvation to thin the ranks of captive soldiers. In fine, they had used every means, practiced by civilized or barbarous nations, to break down and destroy the constitutional Government of the United States, and were only prevented from accomplishing their work by the heroic endurance and patriotic valor of our citizen soldiers. They had refused terms of pacification unless accompanied by what they claimed as a *sine qua non*—the acknowledged independence of the southern confederacy.

At length their armies were discomfited in the field and compelled to surrender. Their chief executive was captured and thrown into prison; and their "confederacy" was dissipated "like the baseless fabric of a vision." The fragment-

ary population of eleven revolted States, acknowledging their defeat in the ordeal of battle, but showing no signs of regret for their gigantic treason against the best rights of man, now unblushingly claim an immediate restoration to a full participation in the councils of the Republic. Their advocates insist that their ordinances of secession were nullities, and, consequently, "they were never out of the Union." Hence, their Senators and Representatives are entitled to seats in Congress, in an equal degree with those from States whose sons gave their lives to save the nation.

Another class of politicians claim that the rebellious communities of the South voluntarily abjured all allegiance to the United States, and, having set up and fought to maintain another and distinct government, they had ceased to exist as States in the American Union. Perhaps a middle ground may be entered upon, that will reconcile these extreme views without doing especial violence to either. There is obviously in our complex system of government a power that governs and a subordinate power that is the subject of government. The States, when in harmony with the Constitution and represented in Congress, may properly be called the governing power of the nation. The Territories and the District of Columbia are no less in "the Union" than the States just mentioned, but they form no part of the governing power of the nation; they are governed by the Congress. A community may be in the Union in one sense of the word and not in the Union in another and different sense. A State may be in the Union as the subject of government, when, by reason of its misconduct, it has forfeited its privileges as a part of the governing power. In this last sense it is not in the Union. I know not but the President means the same thing when he says—

"The States attempting to secede placed themselves in a condition where their vitality was impaired but not extinguished; their functions suspended, but not destroyed."

Indeed, it would be shocking to our sensibilities, to hear it soberly claimed that the rebel States, after abjuring all allegiance to the Government of the nation, and carrying on a furious war for its overthrow, had a constitutional right to appear in its halls of legislation, and take part in the enactment of its laws, by simply acknowledging their inability to contend with it in arms.

If a State once in the Union is always in the Union, as a branch of the governing power, how would it have operated if, while the Thirty-Eighth Congress was striving, in the face of a formidable opposition in its own body, to raise the necessary supplies to enable General Grant and his patriotic braves to "fight it out on the line" from the Rapidan to Richmond, Senators and Representatives had appeared from enough of the rebel States to overcome, by their

votes, the patriotic majority in Congress? The bare statement of the question shows the utter absurdity of the proposition.

I now assume, for the sake of argument, that the President is correct when he takes the ground that "the vitality" of the rebellious States "is impaired, but not extinguished; their functions suspended, but not destroyed." Where does the Constitution of the United States lodge the power to prescribe an effective remedy for this impaired vitality, and to restore to healthy action these suspended functions? My learned friend from New York [Mr. RAYMOND] thinks it is lodged in the hands of the "President as Commander-in-Chief of the Army and Navy of the United States." I maintain that it is given to the Congress of the United States by force of the last clause in the eighth section of the first article of the Constitution, which provides that Congress shall have power—

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

This clause vests the instrumentality by which all "implied powers" are called into action expressly in Congress, even such as may be necessary to carry into effect those expressly delegated to the President. In time of war, and when the life of the Republic was in danger, this high officer of the Government was, at times, necessarily in the exercise of dictatorial power. In time of peace, he can rightfully exercise no power unless it be expressly vested in him by the Constitution, or by act of Congress. Of this there can be no reasonable doubt. The discretionary powers of the Government were intended to be lodged in the members of Congress, who are responsible to the people of their respective States and districts, and to them alone, for the manner in which they discharge the solemn trust.

It is high time, Mr. Chairman, that the people of the United States should insist that the "ship of State" be overhauled and put in constitutional trim. She has been exposed to tempestuous gales and angry billows; but now, having weathered the storm of secession and strife, and being brought, by skillful pilots and a gallant crew, into a peaceful haven, it will be no more than an ordinary precaution to "sound the pumps."

I have great confidence in that self-taught statesman who now, to a great extent, wields the destinies of the American Republic; and I here make my humble protestation against the attempts of any man or set of men, in Congress or out of Congress, to place the majority of this House, with whom I feel it an honor to act, in an attitude of hostility to the President so long as he confines himself to the exercise of his own just prerogatives. Shall we, for

slight causes, distrust him who, not unlike the seraph portrayed by Milton—

"Faithful found,
Among the faithless, faithful only he;
Among innumerable false, unmoved,
Unshaken, unseduced, unterrified,
His loyalty he kept, his love, his zeal?"

Thus far I do believe he has most conscientiously followed in the footsteps of his martyred predecessor. Although I am decidedly of opinion that it would have been right and proper in calling the first legislative bodies into action, in the rebel States, to have used the suffrages of all loyal freemen, without respect to color, and to have rejected the votes of all who had participated in the war against the Government, I do not see but that a contrary precedent was established by Mr. Lincoln in his amnesty proclamation of December, 1863. So, also, the reconstruction bill passed by Congress in 1864, provided for the enrollment of "white male citizens" only, as voters.

In the matter of appointing provisional governors, and in advising the conventions of delegates, by them assembled, to abjure slavery and the rebel debt, I find no good cause for complaint. As to the ratification of the amendment to the United States Constitution, I am disposed to hold that the action of the so-called Legislatures of the rebel States, did "neither good nor harm." The amendment was fully ratified by three fourths of all the States represented in Congress, and acting in harmony with the Government, at the time the two-thirds vote was given in that body, and no additional sanctions were wanted, as none in fact could be given by assemblies of men having no share in the governing power of the nation. I regret exceedingly that the President did not wait for the action of Congress, which was being matured with all due respect to his high privileges as a coördinate branch of the Government, before he dismissed his provisional governors and turned over to men, lately dyed in the blood of our sons, the executive duties of the rebel States. But that is a matter of no vital importance so long as a portion of our Army remains to guard the lives of Union men.

It remains to be seen whether now, when confessedly the time has arrived when the war power is to be laid aside and the civil power is to resume its functions, the Congress of the United States is to be respected as the depository of "all legislative powers" granted by the people in the Constitution we have sworn to uphold. It is not only the privilege but the constitutional duty of the President "to give to the Congress information of the state of the Union, and to recommend to their consideration such measures as he shall judge necessary and expedient, from time to time." But the power "to admit new States into this Union;" "to guaranty to every State in this Union a republican form of Government, and to protect each of them against

invasion and domestic violence;" "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;" "to exercise exclusive legislation in all cases whatsoever over" the District of Columbia; "to make rules concerning captures on land and water;" these, and all similar powers, express or implied, belong to the Congress exclusively.

It has been strangely enough suggested that the President would seek to control the action of Congress in this great matter of restoring the revolted States to their original *status* in the Union, by withholding executive patronage from such Senators and Representatives as could not conscientiously fall in with his favorite policy. I respectfully beg pardon of the President and of the public for stating so scandalous a rumor upon this floor. I pronounce it as false as "secession" itself, and I find for the scandal no tangible authority except the following article, which I cut from the *Newbern* (North Carolina) *Times* of December 16, 1865:

"FUTURE HOPES.—The hope is expressed with all diffidence, still there is ground for the hope, that our future prospects for admission into full fellowship with the heretofore loyal States are growing brighter. The stand taken by President Johnson in reference to reconstruction is being fully maintained by that patriotic officer, and not even all the combined forces of radicalism have been able as yet to move him. Like a great rock he has withstood the shock of the angry waves of opposition, and he stands proudly erect to meet them again.

"There is evidence that the enemies of the conquered South are getting a little shaky. A sort of 'Stephen Hopkins' tremor is coming over them, for they have counted more upon their own strength than that of the national Executive. They are beginning to remember once more that the President of the United States has the appointing right as well as the veto power, and that the warmest friend of a radical Congressman may lose his little sinecure of an office whenever the President so wills. Patronage is a big thing—a fact fully recognized by the ultraists—but in their greed for the full control of it they have overlooked some of the little particles which have a great deal to do with the grand aggregate.

"We repeat there are brighter prospects ahead than events of the past had permitted the South to hope for. It is even possible that conservative influences will so far prevail as to bring about total reconstruction before the final adjournment of this Congress."

Thus the southern traitors, not content with

ascribing to the President such base motives to action as would bring him beneath the contempt of the loyal masses who elected him, most impudently and arrogantly attempt to appropriate him to their own vile purposes—

"Like gypsies, lest the stolen brat be known,
Defacing first, then claiming for his own."

I know not if the President has any fixed policy in regard to the guarantees which the loyal people of this country may exact before the States in revolt shall be restored to all the functions of governing States in the Union. Sure I am, he can have no desire to throw obstacles in the way of the deliberate and well-matured action of Congress, which may well be presumed to reflect the wishes of a great majority of the people. I have, at this time, no means of determining for myself what course will be taken by Congress, but I will venture to say that the substance of the following propositions, if adopted, will be satisfactory to the bulk of my constituents in Ohio:

1. Extend a qualified right of suffrage to the freedmen in the District of Columbia.

2. Amend the Constitution of the United States in respect to the apportionment of Representatives and direct taxes among the several States of the Union, in such manner, that "people of color" shall not be counted with the population making up the ratio, except it be in States where they are permitted to exercise the elective franchise.

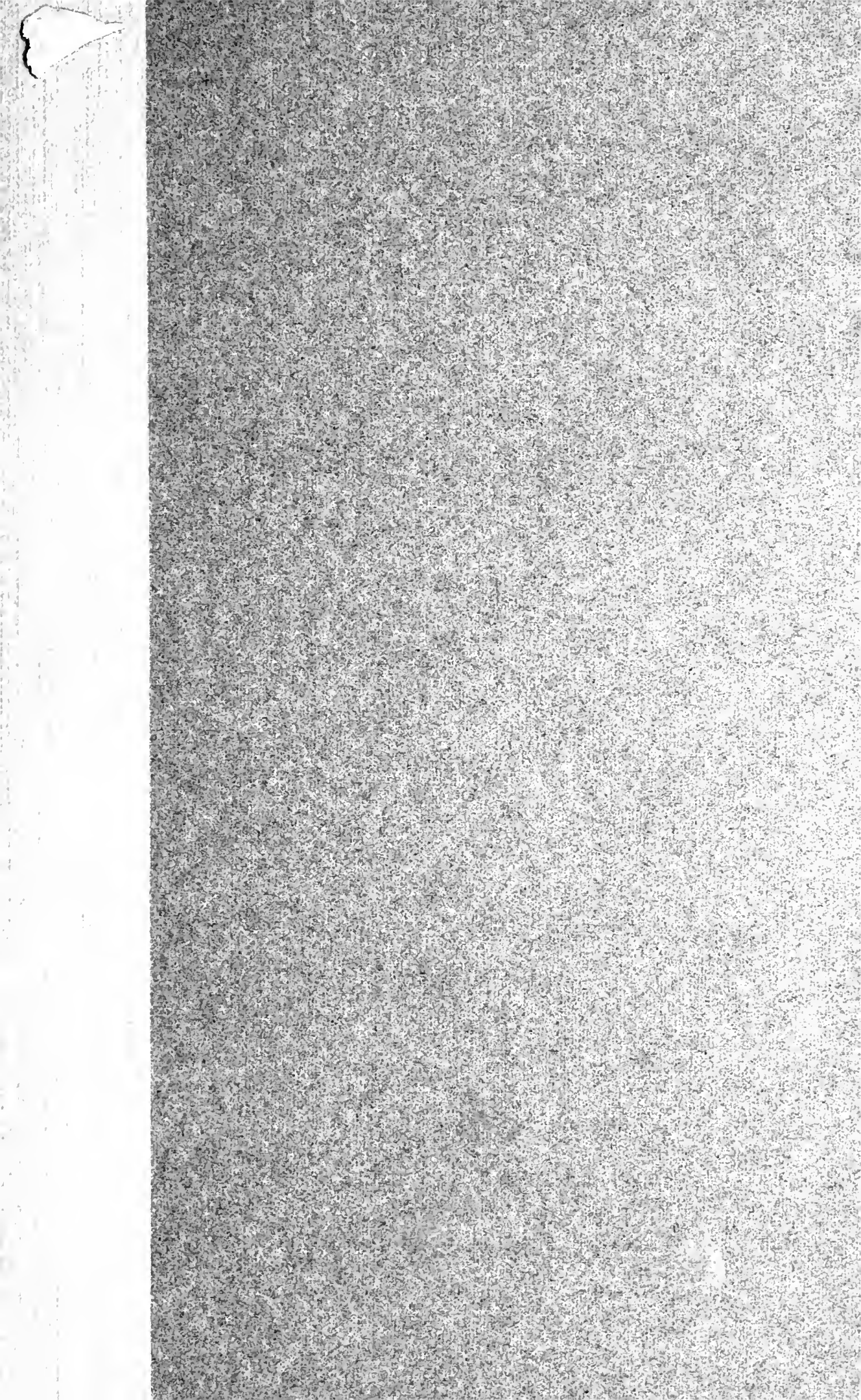
3. Insert a provision in the Constitution prohibiting "nullification" and "secession."

4. Insert a provision in the Constitution prohibiting the repudiation of the national debt, and also prohibiting the assumption by Congress of the rebel debt.

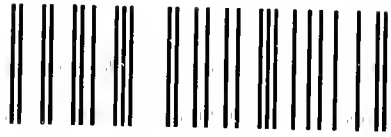
5. Provide in the Constitution that no person, who has, at any time, taken up arms against the United States, shall ever be admitted to a seat in the Senate or House of Representatives in Congress.

Let these guarantees be given to loyalty, and I will try to forgive—I can never forget—the injuries received by my country from TRAITORS.





LIBRARY OF CONGRESS



0 013 744 786 1