

SPEECH

OF

HON. WILLIAM ALLEN

OF OHIO,

ON

CONFISCATION AND EMANCIPATION.

DELIVERED IN THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

APRIL 24, 1862.

WASHINGTON, D. C.:

McGILL, WITHEROW & CO., PRINTERS.

1862.

S P E E C H.

The House being in the Committee of the Whole on the state of the Union, (Mr. WALTON, of Vermont, in the Chair)—

Mr. ALLEN said :

Mr. CHAIRMAN: I am reluctant to claim the attention of the committee when matters of more importance than my remarks might receive its consideration. But in view of the discussions which have already been had in this Hall during the present session, I desire in an informal and brief manner to present my views upon some of the measures which now engage the attention of Congress and the country.

Sir, we are in the midst of a civil war of formidable proportions and appalling magnitude. When and with what result that war will end no one can with certainty predict; and perhaps it is neither prudent or profitable at this time to attempt to speculate upon that subject. It is certainly, however, the desire of every patriot that it shall terminate in the speediest possible manner by a return of the people of the rebellious States to their allegiance to the Federal Government, and by a willing submission on their part to its constituted authorities. When that period shall arrive, the people of the country will demand that the army which has been so suddenly called into the military service of the country shall be disbanded, and its gallant soldiers be permitted to return to their peaceful avocations and to the endearments of home; that the country may be as speedily as possible relieved from the financial embarrassment in which it is now involved, and which must continue and increase as long as hostilities continue to exist between the Government and the rebellious States. I believe the loyal people of the country will be willing to make every sacrifice that patriotism can demand to restore the Government to its original unity and strength; that for this purpose, and this alone, they will willingly sacrifice their property and their lives. But when the object of this war is diverted from that for which it was inaugurated, and the great struggle now going on becomes one for the existence of a party or a theory, instead of one for the existence of the Government as our fathers gave it to us, they will not render that cordial support which is necessary to insure the complete triumph of our arms.

I concur most cordially with my colleague, [Mr. HARRISON,] who, in the course of his able speech, submitted to the committee some weeks ago, declared that, in his judgment—

“The predominant sentiment of the people of all the loyal States is that the war must be efficiently prosecuted in conformity to the Constitution, and for its maintenance and preservation, and for no other purpose.”

Sir, I have no doubt of that sentiment among at least nine-tenths of the people of the loyal States. The war was inaugurated to vindicate the Constitution and the laws, and not for the purpose of violating them. And neither the plea of a “military necessity,” or any other that can be framed by the ingenuity of man, will be sufficient to justify any of the departments of the Government in violating the Constitution and laws which it is sought to make the people of the rebellious States obey. Sir, there can be no dispute as to the original objects of this war. They

are plainly stated in the proclamation of the President, issued on the 15th of April last, as well as in all his subsequent proclamations on the same subject. I will read a portion of his first proclamation, which is as follows :

"Whereas the laws of the United States have been for some time past, and now are, opposed, and the execution thereof obstructed in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law :

"Now, therefore, I, Abraham Lincoln, President of the United States, in virtue of the power in me vested by the Constitution and the laws, have thought fit to call forth, and hereby do call forth, the militia of the several States of the Union, to the aggregate number of seventy-five thousand, in order to suppress such combinations, and to cause the laws to be executed."

Under this proclamation thousands of our brave countrymen rallied to the rescue of their country. No other appeal was made to them than that which was suggested by this manifesto. No other appeal than that would have produced such an outburst of popular feeling and patriotism. The appeal was made to the people to vindicate and aid in enforcing the laws of the land against those who were in arms against the Government, trampling the Constitution and laws under foot, and was not an appeal to the loyal people to violate them because the people of the disloyal States were doing so. This proclamation of the President was under the authority and in the precise words of the act of Congress passed in the year 1795, but a few years after the Constitution was adopted, and which was passed for the purpose of carrying into effect that clause in the eighth section of the first article of the Constitution which authorizes Congress to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. The proclamation of the President subsequently issued calling for additional volunteers was based upon the same clause and was for the same purpose—namely, to suppress unlawful combinations against the laws. This resistance to the laws was treated by the Government at the beginning, and ever has been treated, as a rebellion—not as a public war; no war has ever been declared either by Congress, or the President, and the rules which govern two sovereignties or nations at war with each other do not apply, except so far as it may become necessary to apply them for our own protection in consequence of the magnitude of the rebellion; for since the war began it has become necessary to send flags of truce to the rebels, to recognize the rank and command of their military officers, exchange prisoners with them, and in many instances to deal with the so-called confederate States as a belligerent power.

But these are only acts growing out of the immediate operations of the armies, and demanded by the exigencies arising in a conflict of arms between two powerful sections of a common country. But when we shall cease to regard the Constitution, and to fight the battles of the country outside of it and the Union, applying in this contest with the rebellious power all the rules of international law regulating two sovereignties at war with each other, we admit the so-called confederate States to be a government, and we should no longer denounce their people as rebels and traitors. Nor have we a right, in that event, to seriously complain if other nations treat them as a government, and claim the right to exercise that intercourse with them which neutral nations are permitted to have with either or both of two belligerent Powers.

But, in addition to the proclamation of the President, to which I have alluded, treating this as an insurrection, we have the act of Congress of July last, which is merely an amendatory act of that of 1795. But it is a loss of time to dwell in showing that the Government has thus far prosecuted hostilities against the seceding States for the purpose of executing the laws and protecting the public property. Every call that has been made for troops, and every other act thus far on the part of the Government, has been for this and no other ostensible purpose.

During the time that recruiting was going on for the Army, if there was any considerable sentiment in favor of prosecuting the war in any other than a constitutional manner, or for any other than a constitutional purpose, it remained for some reason comparatively quiet. This House went so far at the extra-session of Congress in July last as to pass almost unanimously certain resolutions offered by the distinguished gentleman from Kentucky, [Mr. CRITTENDEN,] which declared :

"That the existing civil war should not be waged on the part of the Government in any spirit of oppression, nor for any purpose of conquest or subjugation, nor for the purpose of overthrowing or interfering with the rights or established institutions of the States, but to defend and maintain the

supremacy of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired, and that as soon as these objects are accomplished the war ought to cease."

For this resolution I believe every member present at the time, with three or four exceptions, voted. The term "established institutions of the States," would plainly include the institution of slavery, although some persons have tried to avoid that construction by denying slavery to be an "institution" of civilized society. I will not say that the resolution of the gentleman from Kentucky was adopted as a matter of policy, for the purpose of lulling the suspicions of those who might hesitate to enter the military service for the purpose of fighting to vindicate the anti-slavery sentiment of the country; but I must say that the passage of this resolution, and the suppression for the time being of anti-slavery projects, was very inconsistent with the policy which has been advocated by so many gentlemen on the other side of the House since the beginning of the present session.

From the very first day of this session, resolutions and bills proposing emancipation in various degrees, from the abolition of slavery in the District of Columbia to those proposing its entire abolition in all the States, have been continually introduced, and are now being matured. The first of these measures, the abolition of slavery in the District of Columbia, has already passed the two Houses of Congress by the entire vote of the Republican party, and is now a law. This is but the first act in the programme which the party in power, in my humble judgment, have laid down, and intend to carry out. The passage of this measure will be followed by the announcement of the success of others, all looking to the one grand object of prolonging the war until slavery is abolished in all the States, or until the free States are separated from the slave States in which it is found impossible to abolish the institution. It may yet be denied by many of the leaders of the Republican party that such is the design of the party. But have they not heretofore denied their intention to interfere with slavery in any place where it already existed in the States or in the District of Columbia?

I recollect that during the last Congress a prominent member of the Republican party, then a member of this House, and now a Senator from Ohio, [Mr. SHERMAN,] declared on this floor, in the strongest terms, his opposition to the abolition of slavery in this District while the institution existed in Maryland and Virginia. Now he, with his Republican colleagues, have originated and passed a bill which some of them, less than two years ago, protested against. The same distinguished gentleman, on the 11th day of February, 1861, while a member of this House, introduced the following resolution:

"Resolved, That neither the Congress of the United States nor the people of the non-slaveholding States have the constitutional right to legislate upon or interfere with slavery in any of the slaveholding States in the Union."

Which received the unanimous vote of this House. Yet the same gentlemen on the Republican side of the House who supported this resolution are now supporting measures in direct violation of it—measures proposing to interfere with the institution where it exists, not only in the District of Columbia, but in the States. Most of these propositions for emancipation in the States have sought to reach the institution under the head of confiscation of rebel property, by bills providing for confiscation generally, and emancipation particularly. The most recent project on this subject, however, is that which came from the Executive Mansion in the shape of a proposed resolution for the consideration of Congress, as follows:

"Resolved, That the United States ought to co-operate with any State which may adopt gradual abolition of slavery, giving to such State pecuniary aid, to be used by such State in its discretion to compensate for the inconveniences, public and private, produced by such a change of system."

And which was at once adopted by the dominant party in Congress.

Why this message was sent to Congress by the President at the time it was, or what its precise object and meaning are, I have never heard satisfactorily explained. There was to ordinary minds no apparent necessity for such a proposition at the time, as no State had at any time proposed emancipation nor asked Congress to co-operate with it in a measure of that kind; nor is it probable that the *bona fide* citizens of any of the slave States will, for a considerable time, ask any such relief of the national Legislature. A few men from the free States who go into some of the slaveholding States as soldiers or adventurers may go through

the forms of voting on the subject, assuming, under the name of a provisional government or otherwise, to act for the State, and having voted in favor of emancipation, Congress may then proceed to carry out the wishes of these men who are but its own agents, and thus the free States through Congress, under color of the sanction of authority derived in this illegal manner, may do that which it is admitted by the resolutions so unanimously adopted a year ago, that neither Congress nor the non-slaveholding States have the right to do. The people of the free States thus, by the consent of their own citizens, would, by the power of Congress, abolish slavery in these States. This would be about as legal a proceeding as that of a felon sending his accomplice in advance into a neighbor's house, that the accomplice being in the occupancy of the house, assuming to act for the rightful occupant, might confer title to stolen property by such assumed occupancy. If at any short day any request of this kind is made of Congress it will, in my opinion, be through some such subterfuge, for I am satisfied that the *bona fide* citizens of these States do not desire the passage of emancipation bills at this time.

It may be that this suggestion of the President was in part made from the fact that those schemes which proposed emancipation in the States, under the plea of a "military necessity," and without constitutional authority, were so transparently absurd that the Administration was fearful they could not be sustained, and that it was thought best to try to accomplish the great aim by another resort and upon a new idea. And I am further inclined to conjecture that the President became alarmed on account of the conservative position he found himself assuming on this subject, and that being no longer able to resist the "irrepressible conflict" which was waged against him by the *ultra* portion of the Republican party—(which I am sorry to believe includes most of its leaders)—he sought this proposition as a means of letting himself down from the proud position he had attained in the minds of the conservative masses of the people of the country. Much as I admire the President for the independence of thought and sound judgment which he has on many occasions exhibited, I fear he in this instance yielded to the entreaties of politicians, instead of following the dictates of his own judgment, as well as the feelings and sentiments of the people of the country. For both he and gentlemen on the other side of the House will learn that most of these measures will not be sustained by the people, except in those radical sections of the country where on this subject they are "joined to their idols," and forget the interest of the white man in prosecuting their projects of false philanthropy for the black race.

The late local elections throughout the country, and particularly in the great West, in which the Democracy and other conservative men of the country have achieved the most complete, and in many instances unexpected victories, are but the mutterings of a storm of indignation which will sweep over the entire country, hurling from place those who persist in using this Government for their personal interest and political preferment, while the public Treasury is bleeding to the amount of \$3,000,000 per day, (and which is to be replenished by an exorbitant and oppressive system of taxation,) and while thousands of our brave countrymen are laying down their lives upon the battle field, leaving homes desolate and friends disconsolate, to restore the Government as it was prior to the election of the present Chief Magistrate. Sir, I indulge in no idle prediction when I say that the people neither East or West will much longer be made the dupes of politicians and speculators, for the pitiful consideration of a little worn-out "twaddle" about the "negro" and "negro slavery," and for the still less beneficial consideration of having their fertile and beautiful country overrun by an ignorant population of worthless negroes, to annoy and disturb society, driving from employment white persons who rely on daily labor for their support.

Another, and to my mind most probable motive in sending to Congress the message alluded to, was to inaugurate a policy looking to an ultimate separation of the Gulf States from the Confederacy, and to enlarge the area of a northern confederacy of free States. I have ever been satisfied that, with all the pretences of the leading members of the Republican party of devotion to the Union, a majority of them do not in reality desire to see the Union exist as it was, but desire that slavery shall either be abolished in all the States, or that a northern confederacy of free States shall be established in which they may rule supreme. The latter result would be most acceptable to the capitalists of the eastern States, to whom we of the West are made tributaries in all things. If a southern confederacy should maintain con-

trol, as it would, of the Mississippi river, that great natural outlet for our commerce, this would force us for all time to come, as it has since the rebellion, to find an outlet to the eastern cities for our trade, and thus become tributaries to their commercial interests upon their own terms.

We have had an illustration on a small scale during the last few months of the manner in which eastern capitalists would make us subservient to their interests, by the manner in which the railroad interests of the country have been identified with the Government. For several months the Baltimore and Ohio railroad—one of the principal thoroughfares of the country—which was in places destroyed at the beginning of the rebellion, has remained obstructed, from the fact that the Government has not afforded it that protection which was in its power. And this is said to have arisen from the fact that the late Secretary of War and his immediate friends were largely interested in another rival thoroughfare, which has been, during that time, monopolizing the transportation of freight, passengers, troops, and munitions of war, upon such terms as its managers might demand; and the consequence has been that our produce has been taxed to advance the interests of these patriotic gentlemen, as is evidenced from the fact that since the first-named road has been opened there has been a reduction on freight of some five dollars on the ton between Cincinnati and the eastern cities, which amount now goes into the pockets of our people instead of those of eastern railroad capitalists. I only mention this as an instance, less important, of the manner in which we of the West are made to play into the hands of eastern capitalists, for the consideration of their co-operation on the negro question.

The late Secretary of War, while his Department was committing the most gross abuses—according to the statements of his political friends—was loudest in his protestations of devotion to the anti-slavery cause. In proportion as these abuses grew extreme in his Department, he grew extreme in his views, until he became the great champion of the radicals on this subject, receiving their unqualified approbation and applause.

Some months ago the country was thrown into a state of alarm by a letter of Secretary Seward, (an eastern gentleman also,) addressed to the Governors of various States, intimating the necessity of immediately strengthening our coast defences. Some of the States have proceeded to expend money, as suggested, in increasing their defences, and it is proposed to reimburse them from the Federal Treasury; a bill is now before one of the committees of the House to receive loans from the States in which such defences are situated, and to issue the bonds of the Government to the amount so accepted, which is nothing more than the Government issuing its bonds to those States that they may convert them to their use in what they may be pleased to call strengthening their "coast defences." What the probabilities of "foreign intervention" were at the time, which was supposed to be the cause of the extraordinary letter from the able Secretary of State, he was best qualified to determine, although he has in more than one instance proven to be no prophet. But this much the far-seeing Secretary well knew, that whether foreign intervention took place or not, his State and his section would lose nothing by these precautions, as all or nearly all the money expended by the Government in this way would go into the hands of eastern gentlemen. Now, since for a time apprehensions of foreign intervention have subsided, it is mooted that it may be necessary to not only strengthen but remodel our whole system of coast defences, for which very large appropriations must be made, and a host of additional officers be appointed, for fear an iron-clad steamer down about Norfolk, called the "Merrimac," may slip into some of the harbors of the great eastern cities, and lay them in ashes before their citizens shall be aware of her approach—an occurrence certainly less probable than foreign intervention was some months ago.

Again, we have before Congress a bill for a Pacific railroad, a measure which, in a proper form, at a proper time, would receive the assent of most of our people; but on examination of the bill, there will be found a clause requiring the iron used in the construction of the road to be of *American manufacture* without regard to its cost; and this at once explains the reason why its passage is urged so earnestly by certain eastern gentlemen from sections interested in the manufacture of iron. Thus it is that nearly every measure in Congress that is of any advantage to any section, is framed with a view of advancing the interests of the East in a special manner. Whether it be tariff, tax bills, railroad bills, fortifications, Government

contracts, or what not, the eastern States are sure to have the "lion's share." And I have no doubt our eastern friends will do all in their power to consummate their measures, while they have their allies in the West who are content with the "negro" for their share of the benefits of the Government; and that the war will be prolonged, if necessary, until they shall have secured the success of their enterprises.

But I am traveling with my remarks outside of the course I had intended to pursue. I was proceeding to notice some of the apparent changes of the policy and sentiments of the Republican party within the last six months on the subject of intervention on the part of the General Government with the institution of slavery. As a further evidence of a decided change in what appeared to be the policy of the dominant party up to the time the present session began, it will be remembered that shortly after the commencement of the session, the gentleman from Indiana [Mr. HOLMAN] offered a resolution reaffirming the "Crittenden resolutions," passed so unanimously in July last; but this House refused to pass the resolution. The proposition was laid on the table. And when, at a later day, I offered a resolution declaring that "in the judgment of the House, no part of the appropriations now or hereafter made, nor of the taxes now or hereafter laid, should be used in carrying on a war for the purpose of emancipation," it met with a similar fate, those voting to lay on the table being all Republicans, and those voting against laying on the table being Democrats and gentlemen from the border slave States. I thought my resolution a very fair one, and that since there had been so much said on the subject of emancipation during the session, if the majority of the House were opposed to making the war one for that purpose, they would unhesitatingly adopt it; and that while Congress was appropriating money to the amount of some nine hundred millions of dollars annually, and since it was proposed to levy a direct annual tax upon the country of over one hundred millions of dollars, it was due to the great mass of the people who, in my judgment, are opposed to all these emancipation schemes, that they should have some assurance as to the manner in which their money was to be applied. For, as I have already said, while the people of the country will, as I believe, cheerfully contribute all that they have to support the Government, they will not willingly, in a time of general depression and distress, cheerfully submit to a tax on their property eventually amounting to its value, and hand over to the tax-gatherer their last dollar, to be carried to the Federal capital, one portion to be distributed among an army of officers and Government contractors, and the residue applied in keeping an army in the field that these contractors may continue to plunder the Treasury, and the abolition sentiment be vindicated. Much as they may be opposed to the institution of slavery, they will not cheerfully suffer such sacrifices as they are about to be called upon to make, when neither the black nor the white race will be benefited thereby, and when the object of these privations and sacrifices is that of violating the organic law of the Government, instead of sustaining it, as was the declared object at the beginning of the war.

I was struck with much astonishment at the remarks made by the gentleman from Indiana [Mr. JULIAN] in the course of an able speech which he delivered in the early part of the session. I knew that gentleman was radical in his opinions, but I did not think that he or any other gentleman would publicly announce the sentiments which he did on that occasion. In the course of his remarks he used the following language:

"The nation is greater than the Constitution, because it made the Constitution. We had a country before we had a Constitution, and at all hazards we must save it. The Constitution was made for the people, not the people for the Constitution. Cases may arise in which patriotism itself may demand that we trample under our feet some of the most vital principles of the Constitution."

The gentleman is entitled to great credit for candor of statement, but not, in my judgment, for sound logic. The fact that the nation—or the people who comprise it—through their delegates, framed the Constitution, which was afterwards ratified by the States, does not authorize Congress, which is the creature of the Constitution, to violate that instrument while it remains in force as the organic law of the land. The people of the nation having adopted the Constitution as it is, are bound by its provisions until they amend it in the manner therein provided for, or by common consent annul it. But in no case, while it is in force, can a majority of the people, assuming to be the nation, violate the national compact to the injury of the

humblest citizen. While it may be true that the nation is greater than the Constitution, it follows on the same principle that the Constitution is greater than Congress or either of the departments of Government which the Constitution has called into existence. And neither Congress nor any other department of Government can exercise powers not authorized by that instrument, which is the "source of their being."

If it be admitted that either of the departments of Government have the right, in a particular instance, to disregard the Constitution, because, in the opinion of some organization of men over zealous in a particular cause, a military necessity requires the exercise of unconstitutional powers, the same necessity may constitute an excuse for the most flagrant and oft-repeated violations of the Constitution and abuses of power by the officers of Government, when their personal interest or that of their friends prompt them to their commission; and in the end all constitutional as well as natural rights will be at the disposal of our rulers; and instead of having a Constitution and a Union to vindicate we shall find ourselves without hope for the future, serving no other purpose than that of sustaining those in power who are trampling upon the rights which were handed down to us by the patriots of the Revolution.

I know whenever the slavery question arises there is a disposition to pass lightly over all such considerations as I have indicated; but if violations of the Constitution are permitted, they will not stop with measures connected with the institution of slavery, but the same gross violations, under the same plea, will extend to all the operations of the Government upon all subjects. I cannot, therefore, consent to any plain infractions of the Constitution, under any plea whatever. Although I might not be disposed to cavil about the exercise of doubtful constitutional powers when the exercise of such powers were required for the public welfare, yet I have not thus far seen the necessity of Congress or the Executive exercising any powers for the emancipation of slaves, if by any reasonable construction of the Constitution they may do so; and, in my humble judgment, no such power can be exercised by either over any of the slaveholding States of the Union. But it is unnecessary so argue the question of *power* over the States as heretofore understood by all parties. I have already referred to the resolution of the 11th of February, 1862; supported by every Republican member of Congress, not even excepting the distinguished gentleman from Illinois, [Mr. LOVEJOY,] who is so notorious for his radical views on this subject.

I might also refer to the following resolution, offered about the same time by Mr. Palmer, of New York, a Republican, and supported by the entire Republican delegation present in the House at the time:

Resolved, That neither the Federal Government, nor the people or governments of the non-slaveholding States, have a purpose or a constitutional right to legislate upon, or interfere with, slavery in any of the States of the Union."

In addition to these resolutions we have had the declarations of the leaders of the Republican party, upon all occasions since its organization, that they had no intention of interfering with the institutions of any of the States; that it was to the extension of slavery that the opposition of the party was raised, and not against it where it already existed. Those who are now in rebellion against the Government denied the truth of those declarations. They charged that the party was insincere in making them; that the party being based upon the "one idea," that of hostility to slavery, its object was to get control of the Government by these promises of non-intervention, and then bring the whole power of the Government to bear against the institution wherever it existed, and "that the only safety of the slaveholders was to seize their portion of the public arms and public property, that these might not be used in sustaining and waging a war against them and their institutions." The Republican leaders denied those charges, and the resolutions to which I have referred were perhaps intended as further evidence of their sincerity. It is to be lamented, however, that these resolutions, as well as all other measures looking to a peaceful adjustment of our difficulties, were withheld until the Gulf States had withdrawn, and had a government of their own in operation. A heavy responsibility rests upon those who trifled until the last moment with events that were to determine the fate of thirty millions of people. I believe the people of the country and posterity will hold the men responsible who, having the power to propose and

adopt measures for conciliation with the South, sneered at their complaints until the time for conciliation had gone.

But what I have to say in regard to the proposed measures of emancipation is, that when they are adopted they will confirm the charges made, and the distrust expressed by those who are now in rebellion against the Government; and not only will the people of the South be confirmed in their belief of the insincerity of this party, but the people of the whole country will be brought to the conclusion that such was the policy of the party from the beginning, and that they have secured power by false pretenses. The pledges made to the people by this party are too fresh in their recollection to be so soon forgotten. A standing appeal of the party, when rallying friends to its support, was addressed to those "who desired to see the Government restored as it was in the days of Washington and Jefferson, and to those opposed to peculations and frauds in Government, to rally to the support of the party." "The Government has been restored as it was" with a vengeance. Instead of peace, harmony, and general prosperity, we have war, revolution, and general bankruptcy; instead of freeing the Government of peculations and frauds, we have them increased a hundred fold. The Treasury is bleeding at every pore by the depredations of Government contractors and unfaithful officials.

"Homes for the homeless," were among the pledges of the party; but there seems to have been a condition that those who receive them should serve three years in the Army, fighting for them before enjoying them.

But these are results which may not have intentionally been brought about, at least not by the President, who no doubt would gladly have had his Administration a more prosperous one. But they are results which were foretold years ago by the Democratic party, in the event of the success of a sectional candidate to the Presidency. The Republican party sneered at these predictions, and denounced those who made them as "Union croakers," scoffing at the idea of an attempt to disrupt the Union. Time has shown who was right and who was wrong in their views of policy. Let facts speak for themselves. We have the results before us, and let each man judge for himself as to where the responsibility rests.

But to return to the subjects of confiscation and emancipation, which are frequently used as synonymous, but which are very distinct; confiscation meaning to apply to the use of the public Treasury, emancipation being the act of liberating those in bondage. The motive in blending the two subjects together is, no doubt, to carry emancipation, which is the absorbing idea with gentlemen on the other side of the House, under the head of "confiscating property of rebels." Emancipation and confiscation are so distinct that it is entirely useless to consider them in the same bills. No one seriously proposes to sell the negroes of rebels and place the proceeds in the public Treasury, which would be the only way of confiscating them. This would be recognizing them as property, which, I am quite sure our Republican friends will never do.

It has been said by gentlemen on the other side of the House that those who refuse to support bills for the emancipation of the slaves of rebels are for making this species of property more sacred than other property. This is a slight admission on their part that slaves are property, which I have never admitted to be the case, except in those States where the institution exists by municipal regulation, or in those instances where the provision of the Constitution extends for the recapture of fugitive slaves. If slaves are property, and if confiscation bills are to be passed, a general law for confiscating the property of rebels will suffice. But the bills which have been introduced on this subject provide in some manner for confiscating the property of disloyal persons, and then conclude with a section, to which the residue of the provisions are a mere prelude, providing for the emancipation of persons claimed to be held to service or labor by disloyal persons. The object of framing these bills in this way is doubtless to compel gentlemen to vote for the whole of them, including the abolition of slavery, or be liable to the charge of opposing the confiscation of rebel property, which gentlemen suppose a very grave charge, but which I am at all times ready to incur when there is no constitutional authority for such confiscation. The only manner in which the private property of rebels can be confiscated is in pursuance of such laws as have been or may be enacted for the punishment of treason, in obedience to the third section of the third article of the Constitution, which is as follows:

"Treason against the United States shall consist only in levying war against them, or in adhering

to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

“The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.”

If the property of rebels is forfeited, it must necessarily be for treason, as there is no other crime that, by the Constitution, incurs this penalty; before the property can be forfeited the owner must be convicted, and this, according to the section of the Constitution just read, can only be on confession in open court, or on the testimony of two witnesses to the same overt act. The conviction must be through the medium of a court; not only must the conviction be in a court, but the trial in such case according to the second section of the same article of the Constitution, shall be by jury. The conviction must be in pursuance of existing laws defining the degree of guilt. Laws cannot be enacted for the purpose of reaching back to acts not made criminal by statutes existing at the time of their commission, nor can statutes be framed increasing the penalty of crimes already committed beyond their penalty at the time, for it is expressly declared by the Constitution that “no *ex post facto* law shall be passed.” Trial for treason, as well as all other crimes, when committed in any State, shall be in the State where committed. When trial and conviction of the party accused is had, which must also be upon presentment or indictment of a grand jury, (fifth article Amendments to the Constitution,) then follows, as the result of that conviction, forfeiture of his property, if annexed as a penalty by existing laws; but the forfeiture is only, at most, during the life of the person attainted. Thus it is that numerous guards and restrictions are thrown around the administration of the punishment of the crime of treason, which is the crime of which those engaged in the rebellion are guilty.

It may be said that laws thus tardy in their operation cannot be executed in a rebellion so formidable, and that we must not thus be restrained in administering punishment to those who have been attempting to overthrow the Government—that there are no courts in many of the States to administer the law on this subject. If the Constitution has not made ample provision for emergencies like the present, it is no part of our duty, sworn as we are to support the present Constitution, to undertake to make a new one. But if we shall succeed in subduing the rebels, so that the practicability of punishing for treason shall arise, there will be no difficulty in executing the law on this subject. But for the present we shall have enough to do in using all the power of the Government in suppressing rebellion and restoring Federal authority in the seceding States. When this is accomplished, the laws can be executed, and not effectually until then. As was suggested by the learned gentleman from Massachusetts, [Mr. THOMAS,] in his very able speech upon this subject, even if the rebellion should not for a time be suppressed in all the seceded States so far as to permit the restoration of the judiciary and the execution of the laws therein, yet many, and perhaps most, of those actively engaged (as leaders at least) in the rebellion, might be tried in some of the States where the judicial authority has not been obstructed, or where it has been restored. For instance: in Tennessee, Kentucky, and Missouri, the military operations of the rebel government have been extensive, and, although many of the leaders have not been actually present in these States in person heading the rebellion, yet they have been constructively present, from the fact that they have directed, controlled, and superintended those military operations, and are therefore liable to trial, conviction, and punishment in some of the loyal States for treason. I suppose the president of the so-called confederate States might be tried in Missouri, Kentucky, Tennessee, Virginia, or Maryland for treason, before a court and jury which would administer the law in all its rigor, but, to use an old adage, “as catching is before hanging,” it is needless to speculate upon this feature of the question now.

It remains to be seen yet whether the Government will find it practicable to execute the penalty of the law against those in custody of its proper officers, and in the trial and conviction of whom there is no impediment; or even whether the rigor of the law will be visited on those already convicted of that most heinous of crimes, “piracy.” If it shall be found impracticable to execute the penalties of the law in these cases, when the remedy is plain, why complain about persons escaping punishment where there is no remedy, or an incomplete one? If the penalty of the law which affects the person cannot be executed against a party in custody,

why need the penalty be visited on the property of those not in custody, if it were legal and possible to do so?

The Constitution has provided that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted." This is a humane provision, intended to confine the punishment to the person committing the crime, and to prevent the iniquities of the guilty party from being visited on his innocent family; but the confiscation bills alluded to propose to punish the guilty party by taking from his family, who may have been guilty of no crime, their means of subsistence, turning them out of house and home, to become outcasts in the world, for no fault of theirs. I ask if humanity sanctions such measures as those, if there were no constitutional impediment. Another objection to the justice of this absolute confiscation of property, not only for life, but in fee, is that suggested by the same distinguished gentleman from Massachusetts, [Mr. THOMAS,] to whose able remarks I have already adverted, namely: that it takes from the hundreds and thousands of Union men in the disloyal States the means by which they might, in the future, indemnify themselves for outrages committed upon them and their property by the rebels, whose property would be liable to respond to the amount of damages incurred by Union men from their illegal acts. But if the property of rebels is appropriated by the Government, Union men in the disloyal States, who have been dispossessed of their entire property by those in rebellion, whether under the color of so-called confederate law or without the sanction of law, will be left without a remedy for all time to come.

But it is claimed by those who admit that these sweeping acts of confiscation and emancipation have no sanction in the Constitution in times of peace, that Congress, by virtue of the war power, can confiscate the property and emancipate the slaves of rebels. If Congress, or any of the departments of Government, have any "war power," varying from their power in peace, they must derive it from the Constitution; as they are called into existence by it and receive all their powers from it. What is the "war power" of Congress, as it is called? The eighth section of the first article of the Constitution provides that—

"Congress shall have power to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

"To raise and support armies;" "to provide and maintain a navy;" "to make rules for the government and regulation of the land and naval forces."

"To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, 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."

The above paragraphs contain all the power that is vested in Congress over the military operations of the country. Congress has the power to declare war; but that power has not been exercised against the disloyal States, for the reason that it would at once be recognizing them as a foreign Power.

The proclamation calling out the present military force was based upon and authorized by the third paragraph quoted, namely: that Congress shall have power "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections," &c. The present military operations are not governed, therefore, by the first paragraph quoted, which applies to a case of war arising between this Government and a foreign Power. Provision concerning captures, and the granting of letters of marque and reprisal apply also to a war with another Government, in which all the inhabitants are to be treated and held as alien enemies, and their property the subject of capture and prize, without regard to the sentiments or conduct of the individual owner of such property; but certainly no one would favor the capture of the property, either on land or sea, of unoffending Union men, because they might happen to be residents of the disloyal States. It seems to me, then, that the first paragraph gives no power to Congress to forfeit the private property of individuals in the insurrectionary districts, when such property is not used in or designed for the purposes of the rebellion. The power to make rules for the government of the land and naval forces has reference to the organization and discipline of the regular army, and confers no power upon Congress to authorize the spoliation or appropriation of private property without compensation. The paragraph authorizing the calling forth the militia to suppress insurrections, &c., con-

fers no power beyond the authority to fix the occasion when and the number to which the militia may be called out.

The succeeding and closing paragraph on this subject authorizes Congress, when the militia is thus called out, to provide for organizing, arming, and disciplining them, and for governing such part of them as may be employed in the service of the United States.

When the military force (regular or volunteer) has been organized, armed, and disciplined, it is the province of the Commander-in-Chief to order them, or such portion of them as may be necessary for the purpose, into the insurrectionary districts, and, by force of arms, repress and subdue those in actual resistance to the laws; but it is no part of the duty of the commanding officer, or his subordinates, to hear and determine who is loyal in sentiment, or who is not; nor to confiscate or emancipate, at pleasure, the property of those that are deemed disloyal. He has nothing to do with those not found resisting the laws or in arms against the Government. Nor has he any right to interfere with the private property of individuals, whether found in actual resistance to the laws or not, unless such property is used directly in aiding or carrying on the rebellion, or actually designed for that purpose. Of course all arms and munitions of war are of the latter class, as well as supplies of any kind designed for the use of those in arms against the Government.

But the fact that private property may indirectly be used to aid in the rebellion by being applied to the use of rebels in arms, when not of itself contraband, furnishes no ground for its capture by a military force engaged in suppressing rebellion. If the people of the seceding States were aliens, and we had a right to deal with them as such under the laws of nations, we would have a right to capture their property wherever found; and in that event no distinction would be made between loyal and disloyal persons, as all citizens of the disloyal States would be presumed to be and treated as enemies. But such is not, or should not be, the policy in this war. We cannot treat loyal Union-loving citizens as enemies, because they reside in disloyal States, where they have already suffered immense hardships at the hands of rebels because they remain loyal. And yet, if we are to confiscate property or emancipate slaves to weaken the enemy, as claimed by some, there is as much necessity to confiscate the property and emancipate the slaves of loyal as of disloyal persons residing in the slave States; for the property of the loyal men in the seceded States forms a part of the resources of the rebel government as much as that of the disloyal. Taxes may be levied upon it in either case for the support of government, or it may be taken in either case to be applied to the purposes of revolution.

It is said that the slaves of the rebel masters must be emancipated, because they are a source of strength to the insurrectionists. That they may be set to work in building fortifications, or even bear arms, or at least may be used on the plantations while their masters fight. The slaves of loyal masters are liable to be used in the same way, if not with the consent of their masters, without it. And whether their masters are in the confederate army or not, the slaves, by their labor, contribute to the resources of and are the basis of the wealth of the confederate government. The same reason, then, that would require confiscation or emancipation in the one case, would in the other. Great complaint has been made of certain military commanders in surrendering slaves, to be used, as has been alleged, in promoting the rebellion. And yet white men, who have been taken prisoners, in arms against the Government, have repeatedly been returned; and these, if not to bear arms, return to contribute by their means to the rebellious movement. These men taken in arms are guilty of treason, and the Constitution does not require their surrender; yet we "swear them, and let them go," or exchange them for those of our own section who may have been taken prisoners by the confederates. And yet, when a black man—whose surrender is required by the Constitution—is given up on claim of his owner, it is a wonderful outrage, and woe be to the military commander who requires the confirmation of the Senate after the act of surrendering one of those fugitives.

But, suppose emancipation bills and confiscation bills are passed in every form in which they have been suggested on the other side of the House. Of what avail will they be? They cannot be successfully carried into effect until the rebellion is suppressed. Even if that most odious and inhuman of all propositions—of arming the slaves—is sought to be carried into effect, in which our soldiers would be as

apt to become victims of these ignorant and treacherous creatures as those of the confederates, and which would at most accomplish the inhuman massacre of innocent children and helpless females, you must get to the slaves before you can arm them; and you cannot get to them for this purpose until you have not only conquered the rebel army, but you must first subdue every man, woman, and child in the fifteen slaveholding States, for they would all resist to the last so barbarous an attempt.

There is little danger, however, in my opinion, of this project being carried into execution. It was thought by many before the rebellion that the slaves on the first outbreak would rise *en masse* in insurrection against their masters. No such disposition has been shown on their part as yet. When the inhabitants were compelled to leave Beaufort and vicinity, the negroes made a heavy *charge* on the *abandoned property* of their masters, and, from accounts, could be induced to do nothing but riot on what remained on the deserted plantations, showing no disposition to aid in building intrenchments, or to perform any manual labor whatever. So it is said to be with the so-called contrabands brought into this city. They have no disposition to engage in any business, or perform any labor whatever, while they can be kept at the Government's expense. There is no danger of a very formidable army being composed out of such a population, under the lead of the kind-hearted gentlemen who would be placed in command. These negroes prefer their freedom for the privilege of living without labor, and our Republican friends will not find it an easy task to get them into the military service, or any other service, involving labor. Neither, as I apprehend, are there many who seriously contemplate a policy of this kind; but such propositions serve to pander to the prejudices and passions of a certain portion in the loyal States, and serve to further exasperate those in rebellion, and prolong the bloody struggle, which is inuring to the benefit of a certain class, while it impoverishes the great mass.

So far as there is anything practicable in these propositions for emancipation, the country is realizing all it would in case of their passage. Hundreds and thousands of slaves will and do escape wherever the army advances. They will not be pursued by their owners if disloyal, and the consequence is that they will escape to the North, and we will have our satisfaction of them without the passage of these bills. If this is the natural consequence of the rebellion, all must submit to it. What more do gentlemen who favor emancipation desire? Do they desire that the soldiers of our army shall be engaged in running down and carrying off negroes, and nothing else? The emancipation now going on without law ought to suffice; especially when it could not be accelerated by congressional enactments.

Again: by your impracticable and unconstitutional enactments, will you add to the efficiency of our grand army now in the field? Will these brave soldiers fight any more valiantly when the abolition of slavery is declared to be the object of the war, than they do when the perpetuity of the Union is the paramount object? Certainly not. The majority of these men have been opposed to the abolition sentiment when at home, and will not cheerfully vindicate it on the tented field. They have fought at the ballot-box at home against this doctrine, and will not fight in its favor abroad. On the contrary, when the objects and policy of the war has changed, as seems the determination of the party in power, they will conclude that they have been made the dupes of politicians to sustain their schemes of self-aggrandizement, instead of the more glorious purpose of sustaining the "stars and stripes."

Sir, as was said by the gentleman from New York [Mr. STEELE] in his remarks in the early part of the session, "when you adopt your proposed policy you paralyze our grand army."

It is said "Nero fiddled while Rome was burning," and little less than the reckless spirit of that tyrant could induce gentlemen at this critical time in the history of our country, when tens of thousands of our brave countrymen are falling victims to the dire misfortunes of civil war; when the country is in a blaze of discord and ruin, tottering and groaning under the weight of its dreadful calamities, to be forcing upon it the very policy which helped to inaugurate this fearful struggle.

What is to be the effect of these measures upon the loyal people of the border slave States? Sir, you have the testimony of every gentleman present from those States who has addressed the House on the subject, and who is identified by birth, education, and interest with the people of those States. They all concur in saying

that they will be disastrous to the Union cause there. I cannot more correctly give the expression of sentiment from gentlemen representing those States, than by reading the following extract from the eloquent and able speech of the gentleman from Kentucky, [Mr. WADSWORTH,] made early in the session. He said:

"News comes to us frequently of once faithful but fainting hearts, who have stood manfully with us, succumbing to this destructive agitation. When they read that you intend to proclaim emancipation, to repeal the fugitive slave law, and to exterminate slavery in the States and the District, they faint and fall, and they say you justify the ground upon which the rebellion originally started. Why do you drive them from you? Is it that you may secure the support of the African race? Is it for any benefit which they may bring to you? Do you prefer to fraternize with the negroes of the slave States rather than with the freemen there? This day you have to make that choice. If you are for the emancipation of the slaves, you arm each man of those States against you. You must choose between negro slavery or the white people of fifteen States in opposition to you."

The venerable gentleman from the same State, [Mr. CRITTENDEN,] and his venerable colleague, [Mr. WICKLIFFE,] two distinguished statesmen and patriots, who were the cotemporaries of Clay, Webster, and Jackson and the other statesmen and patriots of those better days of the Republic, have both repeatedly appealed to the dominant party to abstain from the rash measures proposed.

But neither appeals, entreaties, or arguments from any source seem to be heard by those who are determined to use power while they have it to further their political purposes. Sometimes there is a suspension of movements on this subject, but it is only temporary. But why should gentlemen of the party in power pursue the course which has thus far been pursued and is likely to be pursued? They have the complete control of the Government in all its branches, and cannot they afford to be generous? All the patronage of the Government is at their disposal; scarcely a post office in the country which has an annual income of twenty dollars has been permitted to remain in the hands of a Democrat, although he might be ever so loyal, and be found in many instances doing more to sustain the Government than his successor. In all the Departments of the Government—except perhaps in the War Department—the guillotine has been used unsparingly; and even in this Department the appointments of Democrats have been to places in the active service, and will be found to be comparatively few. Yet this fact has not in the least prevented the conservative masses of the country from giving the Government a hearty support. Thousands and hundreds of thousands of Democrats have been found willing to accept the position of "high private" in the Army at thirteen dollars per month.

Now, while those brave men are in the field fighting to sustain the Government, that the dominant party may enjoy the spoils which they have so long been struggling to possess, should not the leaders of the party be satisfied to enjoy this patronage, without trying to force upon their political opponents the doctrines they have ever abhorred? Yet such seems to be the object; and if any one dares to protest against the policy of this party, he is denounced as an enemy of his country, as if it was necessary to be in favor of the measures and success of the Republican party to be a patriot. Surely these things cannot last. I do not complain of the dominant party enjoying the patronage of the Government; it is their right to do so, although the circumstances which surround the Administration would afford an excellent opportunity for magnanimity. Yet the party is responsible for the acts of its Administration, and but few true Democrats will care to share its responsibilities, and in the end its disgrace, for the consideration of any place, high or low, within its gift.

What I have said in opposition to these measures of emancipation and confiscation has been from an earnest conviction that they are without warrant in the Constitution, and would tend to widen rather than heal the breach now made in the organization of the Government, and because I believe their effect will be to inaugurate a policy that will forever alienate the people of the fifteen slaveholding States of the Union from those of the North and West, and array them further in hostility to a Government which would devise means to deprive them of their constitutional rights rather than to aid them in retaining them. In that event, we will become involved in a long, bloody, and suicidal struggle which will eventually terminate in the total ruin of both sections of the country, and an entire separation of these States.

Sir, I am in favor of that policy which will strengthen the hands of the Union men of the slaveholding States, and which will dissipate the apprehensions of those

who have been deluded into the support of the rebel government from the belief that this war is waged for the purpose of confiscating their property and for the desolation of their homes, that they may be induced to again render that willing support to the Government of our fathers necessary to its existence, and without which no free Government can long endure. Let us for the time, forgetting all mere abstract opinions, remembering only that we have a common interest and a common destiny, strike hands on that patriotic sentiment of the hero of New Orleans: "the Union, it must and shall be preserved;" and prosecute this war while prosecute it we must for its original object, "the suppression of rebellion and the execution of the laws."

When we firmly unite on that policy, and not until then, can we confidently indulge the fond hope which pervades the American heart, that the star-spangled banner shall again wave in triumph over every portion of the vast Confederacy.