

ognize this as a war in that sense, why undertake to apply to it the rules of war? Is a war existing in my State? By virtue of the military authority, men in the State of Illinois have been arrested. Is war existing in Baltimore? By what authority are you arresting men in the city of Baltimore and holding them in custody? Is the Senator from Vermont, or is anybody in this country, for leaving the power in the hands of the President, or rather in the hands of your Commanding General, just when he pleases, without proclamation, to march to any locality, arrest men, put them in prison, and do what he pleases with them? Shall we be told that Congress has no power, although the express authority to make rules and regulations for the government of every officer is vested here in Congress and nowhere else? Our power is omnipotent over this Army; and they ought to have rules and regulations by which to be governed. And let me tell Senators, it is no new feature for courts-martial in time of rebellion, insurrection, and civil war, to bring men before them, and try them, sentence them, and shoot them, without the intervention of any grand or petit jurors.

Mr. BRECKINRIDGE. I do not know how the Senate may vote upon this question; and I have heard some remarks which have dropped from certain Senators which have struck me with so much surprise, that I desire to say a few words in reply to them now.

This drama, sir, is beginning to open before us, and we begin to catch some idea of its magnitude. Appalled by the extent of it, and embarrassed by what they see before them and around them, the Senators who are themselves the most vehement in urging on this course of events, are beginning to quarrel among themselves as to the precise way in which to regulate it.

The Senator from Vermont objects to this bill because it puts a limitation on what he considers already existing powers on the part of the President. I wish to say a few words presently in regard to some provisions of this bill, and then the Senate and the country may judge of the extent of those powers of which this bill is a limitation.

I endeavored, Mr. President, to demonstrate a short time ago, that the whole tendency of our proceedings was to trample the Constitution under our feet, and to conduct this contest without the slightest regard to its provisions. Everything that has occurred since, demonstrates that the view I took of the conduct and tendency of public affairs was correct. Already both Houses of Congress have passed a bill virtually to confiscate all the property in the States that have withdrawn, declaring in the bill to which I refer that all property of every description employed in any way to promote or aid in the insurrection, as it is denominated, shall be forfeited and confiscated. I need not say to you, sir, that all property of every kind is employed in those States, directly or indirectly, in aid of the contest they are waging, and consequently that bill is a general confiscation of all property there.

As if afraid, however, that this general term might not apply to slave property, it adds an additional section. Although they were covered by the first section of the bill, to make sure of that, however, it adds another section, declaring that all persons held to service or labor, who shall be employed in any way to aid or promote the contest now waging, shall be discharged from such service and become free. Nothing can be more apparent than that that is a general act of emancipation; because all the slaves in that country are employed in furnishing the means of subsistence and life to those who are prosecuting the contest, and it is an indirect, but perfectly certain mode of carrying out the purposes contained in the bill introduced by the Senator from Kansas, [Mr. POMEROY.] It is doing under cover and by indirection, but certainly, what he proposes shall be done by direct proclamation of the President.

Again, sir: to show that all these proceedings are characterized by an utter disregard of the Federal Constitution, what is happening around us every day? In the State of New York, some young man has been imprisoned by executive authority upon no distinct charge, and the military officer having him in charge refused to obey the writ of *habeas corpus* issued by a judge. What is the color of excuse for that action in the State of New York? As a Senator said, is New York in resistance to the Government? Is there any dan-

ger to the stability of the Government, there? Then, sir, what reason will any Senator rise and give on this floor for the refusal to give to the civil authorities the body of a man taken by a military commander in the State of New York?

Again: the police commissioners of Baltimore were arrested by military authority without any charges whatever. In vain they have asked for a specification. In vain they have sent a respectful protest to the Congress of the United States. In vain the House of Representatives, by resolution, requested the President to furnish the Representatives of the people with the grounds of their arrest. He answers the House of Representatives that, in his judgment, the public interest does not permit him to say why they were arrested, on what charges, or what he has done with them—and you call this liberty and law and proceedings for the preservation of the Constitution! They have been spirited off from one fortress to another, their locality unknown, and the President of the United States refuses, upon the application of the most numerous branch of the national Legislature, to furnish them with the grounds of their arrest, or to inform them what he has done with them.

Sir, it was said the other day by the Senator from Illinois [Mr. BROWNING] that I had assailed the conduct of the Executive with vehemence, if not with malignity. I am not aware that I have done so. I criticised, with the freedom that belongs to the representative of a sovereign State and the people, the conduct of the Executive. I shall continue to do so as long I hold a seat upon this floor, when, in my opinion, that conduct deserves criticism. Sir, I need not say that, in the midst of such events as surround us, I could not cherish personal animosity towards any human being. Towards that distinguished officer, I never did cherish it. Upon the contrary, I think more highly of him, as a man and an officer, than I do of many who are around him and who, perhaps, guide his counsels. I deem him to be personally an honest man, and I believe that he is trampling upon the Constitution of his country every day, with probable good motives, under the counsels of those who influence him. But, sir, I have nothing now to say about the President. The proceedings of Congress have eclipsed the actions of the Executive; and if this bill shall become a law, the proceedings of the President will sink into absolute nothingness in the presence of the outrages upon personal and public liberty which have been perpetrated by the Congress of the United States.

The Senator from Vermont objects to the bill because it puts a limitation upon already existing powers. Sir, let us look for a moment at the provisions of this bill. I shall speak presently of the Senator's notions of the laws of war. The first section of the bill authorizes the President of the United States to declare any of the military districts in a state of insurrection or actual rebellion against the United States. Those military districts are composed of States and of parts of States. When the President shall so declare, and he is authorized to do it in his discretion—there may, or there may not, be insurrection or rebellion: the President may say there is, and no man shall challenge his assertion—when that is done, the military commanders in those respective States or military districts shall give notice thereof, and what then follows? It provides in the second section that any military commander in one of those States or districts shall make and publish such police rules and regulations, conforming as nearly as may be to previously existing laws and regulations—not mere police rules and regulations, but just such rules and regulations as he may desire, conforming as nearly as he may choose, in his discretion, to the existing laws of the several States or military districts, "and all the civil authorities within said districts shall be bound to carry said rules and regulations into effect." They are subordinated, at the discretion of the President, to the dictation of any of his subordinate military commanders.

The third section provides:

"That if, from any cause whatever, the said civil authorities fail to execute the said rules and regulations."

So made by this subordinate military commander—

"the said military commander shall cause them to be executed and enforced by the military force under his command."

The fourth section authorizes, not the President, but any military commander in any of these districts, generals, colonels, majors, captains—if one of them should be the commander of a military district, in his discretion to suspend the writ of *habeas corpus*, and make return that he will not obey; to any judge that may issue it.

Then, sir, if any person—not a camp follower, not any one subject to the rules and articles of war—but if any person—

"Shall be found in arms against the United States, or otherwise aiding and abetting their enemies or opposers, within any district of country to which it relates, and shall be taken by the forces of the United States, shall be either detained as prisoners for trial on the charge of treason or sedition, or other crimes and offenses which they may have committed whilst resisting the authority of the United States; or may, according to the circumstances of the case."

This to be judged of by this military commander—

"be at once placed before a court-martial, to be dealt with according to the rules of war in respect to unorganized and lawless armed bands, not recognized as regular troops."

Or in his discretion may be discharged upon parole. The Constitution of the United States declares that the crime of treason and all other crimes shall be tried by a jury, and not by a military commander, or a drum-head court-martial. The power to suspend the *habeas corpus* which Congress may do by the Constitution, but cannot delegate to the President, or any one else, it is proposed by this bill to authorize the President to delegate to any subordinate military authority—a power which he does not himself possess.

The sixth section provides that—

"No sentence of death pronounced by a court-martial upon any person or persons taken in arms as aforesaid, shall be executed before it has been submitted to the commander of the military department within which the conviction has taken place, or to the Commanding General of the Army of the United States."

Sentence of death may be passed upon any person under these circumstances, with the approval either of the General-in-Chief of the Army or of the subordinate military commander who may have the control of the district in which he is taken.

Sir, I do not at present comment upon the seventh section, in regard to persons put upon parole; nor the eighth section, which provides that any military commander may cause any person suspected of disloyalty to the United States to be brought before him, and may administer, or cause to be administered, to such person an oath of allegiance—a very peculiar oath—an oath not alone to support the Constitution of the United States, but to bear true allegiance to many other things not provided for in the Constitution of the United States. There is no legitimate oath which can be put upon any one except an officer under the Government, and that oath is limited to a support of the Constitution of the United States; and I think the public liberties are at a low ebb when any military commander may seize, throughout the length and breadth of the land, any citizen suspected merely, and compel him to take such an oath as is prescribed in this bill.

Then, Mr. President, without discussing the other points at present, how does it sum up? Let me take the State of Kentucky, for example. That State is a military district. Suppose that, for any cause, the President may choose to say that that State is in a condition of insurrection or rebellion—though she has suffered enough from violations of the Constitution committed by the Executive; although she has been clinging with her characteristic fidelity to the Union of the States—he is to be the sole judge of the facts; he is to declare that Kentucky, for example, is in a state of insurrection or rebellion. What follows? The military commander in charge of the United States forces in the district may then publish just such rules and regulations for the government of that Commonwealth as he may choose, making them conform as nearly as he may, in his discretion, to the existing laws of the State; and the civil authorities of that State are to be bound by the rules and regulations of this military commander, and if they do not execute them, he is then to see that they are executed by the military force under his command.

What is it, sir, but vesting first in the discretion

of the President, to be by him detailed to a subaltern military commander, the authority to enter the Commonwealth of Kentucky, to abolish the State, to abolish the Executive, the Legislature, and the judiciary, and to substitute just such rules for the Government of its people as that military commander may choose? Well might the Senator from Delaware [Mr. SAULSBURY] say that this bill contains provisions conferring authority which never was exercised in the worst days of Rome, by the worst of her dictators. I have wondered why the bill was introduced. I have sometimes thought that possibly it was introduced for the purpose of preventing the expression of that reaction which is now evidently going on in the public mind against these procedures so fatal to constitutional liberty. The Army may be thus used, perhaps, to collect the enormous direct taxes for which preparation is now being made by Congress; and if in any part of Illinois, or Indiana, or New York, or any State, North or South, there shall be difficulty, or resistance, the President in his discretion may declare it to be in a state of insurrection, all the civil authorities may be overthrown, and his military commander may make rules and regulations, collect taxes, and execute the laws at his pleasure.

Mr. President, gentlemen talk about the Union as if it was an end instead of a means. They talk about it as if it was the Union of these States which alone had brought into life the principles of public and of personal liberty. Sir, they existed before, and they may survive it. Take care that in pursuing one idea you do not destroy not only the Constitution of your country, but sever what remains of the Federal Union. These eternal and sacred principles of public and of personal liberty, which lived before the Union and will live forever and ever somewhere, must be respected; they cannot with impunity be overthrown; and if you force the people to the issue between any form of government and these priceless principles, that form of government will perish; they will tear it asunder as the irrepressible forces of nature rend whatever opposes them.

Mr. President, I shall not long detain the Senate. I shall not enter now upon an elaborate discussion of all the principles involved in this bill, and all the consequences which, in my opinion, flow from it. A word in regard to what fell from the Senator from Vermont, the substance of which has been uttered by a great many Senators on this floor. What I tried to show some time ago has been substantially admitted. One Senator says that the Constitution is put aside in a struggle like this. Another Senator says that the condition of affairs is altogether abnormal, and that you cannot deal with them on constitutional principles, any more than you can deal by any of the regular operations of the laws of nature with an earthquake. The Senator from Vermont says that all these proceedings are to be conducted according to the laws of war; and he adds that the laws of war require many things to be done which are absolutely forbidden in the Constitution; which Congress is prohibited from doing, and all other departments of the Government are forbidden from doing by the Constitution; but that they are proper under the laws of war, which must alone be the measure of our action now. I desire the country, then, to know this fact; that it is openly avowed upon this floor that constitutional limitations are no longer to be regarded; but that you are acting just as if there were two nations upon this continent, one arrayed against the other; some eighteen or twenty million on one side, and some ten or twelve million on the other, as to whom the Constitution is nought, and the laws of war alone apply.

Sir, let the people, already beginning to pause and reflect upon the origin and nature and the probable consequences of this unhappy strife, get this idea fairly lodged in their minds—and it is a true one—and I will venture to say that the brave words which we now hear every day about crushing, subjugating, treason, and traitors, will not be so uttered the next time the Representatives of the people and the States assemble beneath the dome of this Capitol.

Mr. LANE, of Kansas. With the consent of the Senator from Kentucky, I should like to ask him a question.

Mr. BRECKINRIDGE. I prefer that the Senator from Kansas should not at present interrupt

me. I shall soon close what I have to say, and then he will be entitled to the floor.

Then, sir, if the Constitution is really to be put aside, if the laws of war alone are to govern, and whatever may be done by one independent nation at war with another, is to be done, why not act upon that practically? I do not hold that the clause of the Constitution which authorizes Congress to declare war, applies to any internal difficulties. I do not believe it applies to any of the political communities, bound together under the Constitution, in political association. I regard it as applying to external enemies. Nor do I believe that the Constitution of the United States ever contemplated the preservation of the Union of these States by one half the States warring on the other half. It details particularly how military force shall be employed in this Federal system of Government, and it can be employed properly in no other way; it can be employed in aid of the civil tribunals. If there are no civil tribunals, if there is no mode by which the laws of the United States may be enforced in the manner prescribed by the Constitution, what follows? The remaining States may, if they choose, make war, but they do it outside of the Constitution; and the Federal system, as determined by the principles and terms of that instrument, does not provide for the case. It does provide for putting down insurrections, illegal uprisings of individuals, but it does not provide, in my opinion, either in its spirit or in its terms, for raising armies by one half of the political communities that compose the Confederacy, for the purpose of subjugating the other half; and the very fact that it does not, is shown by the fact that you have to avow on the floor of the Senate the necessity for putting the Constitution aside, and conducting the whole contest without regard to it, and in obedience solely to the laws of war.

Then, if we are at war, if it is a case of war, treat it like war. Practically, it is being treated like war. The prisoners whom the United States have taken are not hung as traitors. The prisoners which the other States have taken are not hung as traitors. It is war. The Senator is right in saying it is war; but, in my opinion, it is not only an unhappy but an unconstitutional war. Why, then, all these proceedings upon the part of the Administration, refusing to send or to receive flags of truce; refusing to recognize the actual condition of affairs; refusing to do those acts which, if they do not terminate, may at least ameliorate the unhappy condition in which we find ourselves placed?

So much, then, we know. We know that admitted violations of the Constitution have been made, and are justified. We know that we have conferred by legislation, and are, perhaps, still further by legislation to confer, authority to do acts not warranted by the Constitution of the United States. We have it openly avowed that the Constitution of the Union, which is the bond of association, at least, between those States that still adhere to the Federal Union, is no longer to be regarded. It is not enough to tell me that it has been violated by those communities that have seceded. Other States have not seceded; Kentucky has not seceded; Illinois has not seceded; some twenty States yet compose the Federal Union, nominally under this Constitution. As to them, that instrument, in its terms and in its spirit, is the bond of their connection under the Federal system. They have a right, as between themselves and their co-members of the Confederacy, to insist upon its being respected. If, indeed, it is to be put aside, and we are to go into a great continental struggle, they may pause to inquire what is to become of their liberties, and what their political connections are to be in a contest made without constitutional warrant, and in derogation of all the terms of the instrument. How can this be successfully controverted? Though you may have a right to trample under foot the Constitution, and to make war (as every power has a right to make war) against the States that have seceded, have you a right to violate it as to any of the adhering States, who insist upon fidelity to its provisions? No, sir.

Mr. President, we are on the wrong tack; we have been from the beginning. The people begin to see it. Here we have been hurling gallant fellows on to death, and the blood of Americans has been shed—for what? They have shown their

proress, respectively—that which belongs to the race—and shown it like men. But for what have the United States soldiers, according to the exposition we have heard here to-day, been shedding their blood, and displaying their dauntless courage? It has been to carry out principles that three-fourths of them abhor; for the principles contained in this bill, and continually avowed on the floor of the Senate, are not shared, I venture to say, by one-fourth of the Army.

I have said, sir, that we are on the wrong tack. Nothing but ruin, utter ruin, to the North, to the South, to the East, to the West, will follow the prosecution of this contest. You may look forward to innumerable armies; you may look forward to countless treasures—all spent for the purpose of desolating and ravaging this continent; at the end leaving us just where we are now; or if the forces of the United States are successful in ravaging the whole South, what on earth will be done with it after that is accomplished? Are not gentlemen now perfectly satisfied that they have mistaken a people for a faction? Are they not perfectly satisfied that, to accomplish their object, it is necessary to subjugate, to conquer—ay, to exterminate—nearly ten millions of people? Do you not know it? Does not everybody know it? Does not the world know it? Let us, pause, and let the Congress of the United States respond to the rising feeling all over this land in favor of peace. War is separation; in the language of an eminent gentleman now no more, it is disunion, eternal and final disunion. We have separation now; it is only made worse by war, and an utter extinction of all those sentiments of common interest and feeling which might lead to a political reunion founded upon consent and upon a conviction of its advantages. Let the war go on, however, and soon, in addition to the moans of widows and orphans all over this land, you will hear the cry of distress from those who want food and the comforts of life. The people will be unable to pay the grinding taxes which a fanatical spirit will attempt to impose upon them. Nay, more, sir; you will see further separation. I hope it is not "the sunset of life gives me mystical love," but in my mind's eye I plainly see "coming events cast their shadows before." The Pacific slope now, doubtless, is devoted to the union of States. Let this war go on till they find the burdens of taxation greater than the burdens of a separate condition, and they will assert it. Let the war go on until they see the beautiful features of the old Confederacy beaten out of shape and comeliness by the brutalizing hand of war, and they will turn aside in disgust from the sickening spectacle, and become a separate nation. Fight twelve months longer, and the already opening differences that you see between New England and the great Northwest will develop themselves. You have two confederacies now. Fight twelve months, and you will have three; twelve months longer, and you will have four.

I will not enlarge upon it, sir. I am quite aware that all I say is received with a sneer of incredulity by the gentlemen who represent the far Northeast; but let the future determine who was right and who was wrong. We are making our record here; I, my humble one, amid the sneers and aversion of nearly all who surround me, giving my votes, and uttering my utterances according to my convictions, with but few approving voices, and surrounded by scowls. The time will soon come, Senators, when history will put her final seal upon these proceedings, and if my name shall be recorded there, going along with yours as an actor in these scenes, I am willing to abide, fearlessly, her final judgment.

Mr. BAKER. Mr. President, it has not been my fortune to participate in at any length, indeed, not to hear very much of, the discussion which has been going on—more, I think, in the hands of the Senator from Kentucky than anybody else—upon all the propositions connected with this war; and, as I really feel as sincerely as he can an earnest desire to preserve the Constitution of the United States for everybody, South as well as North, I have listened for some little time past to what he has said, with an earnest desire to apprehend the point of his objection to this particular bill. And now—waiving what I think is the elegant but loose declamation in which he chooses to indulge—I would propose, with my habitual respect for him, (for nobody is more courteous

and more gentlemanly,) to ask him if he will be kind enough to tell me what single particular provision there is in this bill which is in violation of the Constitution of the United States, which I have sworn to support—one distinct, single proposition in the bill.

Mr. BRECKINRIDGE. I will state, in general terms, that every one of them is, in my opinion, flagrantly so, unless it may be the last. I will send the Senator the bill, and he may comment on the sections.

Mr. BAKER. Pick out that one which is in your judgment most clearly so.

Mr. BRECKINRIDGE. They are all, in my opinion, so equally atrocious that I dislike to discriminate. I will send the Senator the bill, and I tell him that every section, except the last, in my opinion, violates the Constitution of the United States; and of that last section, I express no opinion.

Mr. BAKER. I had hoped that that respectful suggestion to the Senator would enable him to point out to me one, in his judgment, most clearly so, for they are not all alike—they are not equally atrocious.

Mr. BRECKINRIDGE. Very nearly. There are ten of them. The Senator can select which he pleases.

Mr. BAKER. Let me try then, if I must generalize as the Senator does, to see if I can get the scope and meaning of this bill. It is a bill providing that the President of the United States may declare, by proclamation, in a certain given state of fact, certain territory within the United States to be in a condition of insurrection and war; which proclamation shall be extensively published within the district to which it relates. That is the first proposition. I ask him if that is unconstitutional? That is a plain question. Is it unconstitutional to give power to the President to declare a portion of the territory of the United States in a state of insurrection or rebellion? He will not dare to say it is.

Mr. BRECKINRIDGE. Mr. President, the Senator from Oregon is a very adroit debater, and he discovers, of course, the great advantage he would have if I were to allow him, occupying the floor, to ask me a series of questions, and then have his own criticisms made on them. When he has closed his speech, if I deem it necessary, I may make some reply. At present, however, I will answer that question. The State of Illinois, I believe, is a military district; the State of Kentucky is a military district. In my judgment, the President has no authority, and, in my judgment, Congress has no right to confer upon the President authority, to declare a State in a condition of insurrection or rebellion.

Mr. BAKER. In the first place, the bill does not say a word about States. That is the first answer.

Mr. BRECKINRIDGE. Does not the Senator know, in fact, that those States compose military districts? It might as well have said "States" as to describe what is a State.

Mr. BAKER. I do; and that is the reason why I suggest to the honorable Senator that this criticism about States does not mean anything at all. That is the very point. The objection certainly ought not to be that he can declare a part of a State in insurrection and not the whole of it. In point of fact, the Constitution of the United States, and the Congress of the United States acting upon it, are not treating of States, but of the territory comprising the United States; and I submit once more to his better judgment that it cannot be unconstitutional to allow the President to declare a county or a part of a county, or a town or a part of a town, or part of a State, or the whole of a State, or two States, or five States, in a condition of insurrection, if in his judgment that be the fact. That is not wrong.

In the next place, it provides that that being so, the military commander in that district may make and publish such police rules and regulations as he may deem necessary to suppress the rebellion and restore order and preserve the lives and property of citizens. I submit to him, if the President of the United States has power, or ought to have power, to suppress insurrection and rebellion, is there any better way to do it, or is there any other? The gentleman says, do it by the civil power. Look at the fact. The civil power is utterly overwhelmed; the courts are closed; the

judges banished. Is the President not to execute the law? Is he to do it in person, or by his military commanders? Are they to do it with regulation, or without it? That is the only question.

Mr. President, the honorable Senator says there is a state of war. The Senator from Vermont agrees with him; or rather, he agrees with the Senator from Vermont in that. What then? There is a state of public war; none the less war because it is urged from the other side; not the less war because it is unjust; not the less war because it is a war of insurrection and rebellion. It is still war; and I am willing to say it is public war—public as contradistinguished from private war. What then? Shall we carry that war on? Is it his duty as a Senator to carry it on? If so, how? By armies, under command; by military organization and authority, advancing to suppress insurrection and rebellion. Is that wrong? Is that unconstitutional? Are we not bound to do, with whoever levies war against us, as we would do if he was a foreigner? There is no distinction as to the mode of carrying on war; we carry on war against an advancing army just the same, whether it be from Russia or from South Carolina. Will the honorable Senator tell me it is our duty to stay here, within fifteen miles of the enemy seeking to advance upon us every hour, and talk about nice questions of constitutional construction as to whether it is war or merely insurrection? No, sir. It is our duty to advance, if we can; to suppress insurrection; to put down rebellion; to dissipate the rising; to scatter the enemy; and when we have done so, to preserve, in the terms of the bill, the liberty, lives, and property of the people of the country, by just and fair police regulations. I ask the Senator from Indiana, [Mr. LANE] when we took Monterey, did we not do it there? When we took Mexico, did we not do it there? Is it not a part, a necessary, an indispensable part of war itself, that there shall be military regulations over the country conquered and held? Is that unconstitutional?

I think it was a mere play of words that the Senator indulged in when he attempted to answer the Senator from New York. I did not understand the Senator from New York to mean anything else substantially but this, that the Constitution deals generally with a state of peace, and that when war is declared it leaves the condition of public affairs to be determined by the law of war, in the country where the war exists. It is true that the Constitution of the United States does adopt the laws of war as a part of the instrument itself, during the continuance of war. The Constitution does not provide that spies shall be hung. Is it unconstitutional to hang a spy? There is no provision for it in terms in the Constitution; but nobody denies the right, the power, the justice. Why? Because it is part of the law of war. The Constitution does not provide for the exchange of prisoners; yet it may be done under the law of war. Indeed the Constitution does not provide that a prisoner may be taken at all; yet his captivity is perfectly just and constitutional. It seems to me that the Senator does not, will not, take that view of the subject.

Again, sir, when a military commander advances, as I trust, if there are no more unexpected great reverses, he will advance, through Virginia and occupies the country, there, perhaps, as here, the civil law may be silent; there perhaps the civil officers may flee as ours have been compelled to flee. What then? If the civil law is silent, who shall control and regulate the conquered district—who but the military commander? As the Senator from Illinois has well said, shall it be done by regulation or without regulation? Shall the general, or the colonel, or the captain, be supreme, or shall he be regulated and ordered by the President of the United States? That is the sole question. The Senator has put it well.

I agree that we ought to do all we can to limit, to restrain, to fetter the abuse of military power. Bayonets are at best illogical arguments. I am not willing, except as a case of sheerest necessity, ever to permit a military commander to exercise authority over life, liberty, and property. But, sir, it is part of the law of war; you cannot carry in the rear of your army your courts; you cannot organize juries; you cannot have trials according to the forms and ceremonial of the common law amid the clangor of arms, and somebody must enforce police regulations in a conquered or

occupied district. I ask the Senator from Kentucky again respectfully, is that unconstitutional, or if in the nature of war it must exist, even if there be no law passed by us to allow it, is it unconstitutional to regulate it? That is the question, to which I do not think he will make a clear and distinct reply.

Now, sir, I have shown him two sections of the bill, which I do not think he will repeat earnestly are unconstitutional. I do not think that he will seriously deny that it is perfectly constitutional to limit, to regulate, to control, at the same time to confer and restrain authority in the hands of military commanders. I think it is wise and judicious to regulate it by virtue of powers to be placed in the hands of the President by law.

Now, a few words, and a few only, as to the Senator's predictions. The Senator from Kentucky stands up here in a manly way in opposition to what he sees is the overwhelming sentiment of the Senate, and utters reproof, malediction, and prediction combined. Well, sir, it is not every prediction that is prophecy. It is the easiest thing in the world to do; there is nothing easier, except to be mistaken when we have predicted. I confess, Mr. President, that I would not have predicted three weeks ago the disasters which have overtaken our arms; and I do not think (if I were to predict now) that six months hence the Senator will indulge in the same tone of prediction which is his favorite key now. I would ask him what would you have us do now—a confederate army within twenty miles us, advancing, or threatening to advance, to overwhelm your Government; to shake the pillars of the Union; to bring it around your head, if you stay here, in ruins? Are we to stop and talk about an uprising sentiment in the North against the war? Are we to predict evil, and retire from what we predict? Is it not the manly part to go on as we have begun, to raise money, and levy armies, to organize them, to prepare to advance; when we do advance, to regulate that advance by all the laws and regulations that civilization and humanity will allow in time of battle? Can we do anything more? To talk to us about stopping, is idle; we will never stop. Will the Senator yield to rebellion? Will he shrink from armed insurrection? Will his State justify it? Will its better public opinion allow it? Shall we send a flag of truce? What would he have? Or would he conduct this war so feebly, that the whole world would smile at us in derision? What would he have? These speeches of his, sown broadcast over the land, what clear distinct meaning have they? Are they not intended for disorganization in our very midst? Are they not intended to dull our weapons? Are they not intended to destroy our zeal? Are they not intended to animate our enemies? Sir, are they not words of brilliant, polished treason, even in the very Capitol of the Confederacy? [Manifestations of applause in the galleries.]

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) Order!

Mr. BAKER. What would have been thought if, in another Capitol, in another Republic, in a yet more martial age, a senator as grave, not more eloquent or dignified than the Senator from Kentucky, yet with the Roman purple flowing over his shoulders, had risen in his place, surrounded by all the illustrations of Roman glory, and declared that advancing Hannibal was just, and that Carthage ought to be dealt with in terms of peace? What would have been thought if, after the battle of Cannæ, a senator there had risen in his place and denounced every levy of the Roman people, every expenditure of its treasure, and every appeal to the old recollections and the old glories? Sir, a Senator, himself learned far more than myself in such lore, [Mr. FESSENDEN] tells me, in a voice that I am glad is audible, that he would have been hurled from the Tarpeian rock. It is a grand commentary upon the American Constitution that we permit these words to be uttered. I ask the Senator to recollect, too, what, save to send aid and comfort to the enemy, do these predictions of his amount to? Every word thus uttered falls as a note of inspiration upon every confederate ear. Every sound thus uttered is a word (and falling from his lips, a mighty word) of kindling and triumph to a foe that determines to advance. For me, I have no such word as a Senator to utter. For me, amid temporary defeat, disaster, disgrace, it seems that my duty calls me to utter another word, and that

word is, bold, sudden, forward, determined war, according to the laws of war, by armies, by military commanders clothed with full power, advancing with all the past glories of the Republic urging them on to conquest.

I do not stop to consider whether it is subjugation or not. It is compulsory obedience, not to my will; not to yours, sir; not to the will of any one man; not to the will of any one State; but compulsory obedience to the Constitution of the whole country. The Senator chose the other day again and again to animadvert on a single expression in a little speech which I delivered before the Senate, in which I took occasion to say that if the people of the rebellious States would not govern themselves as States, they ought to be governed as Territories. The Senator knew full well then, for I explained it twice—he knows full well now—that on this side of the Chamber; nay, in this whole Chamber; nay, in this whole North and West; nay, in all the loyal States in all their breadth, there is not a man among us all who dreams of causing any man in the South to submit to any rule, either as to life, liberty, or property, that we ourselves do not willingly agree to yield to. Did he ever think of that? Subjugation for what? When we subjugate South Carolina, what shall we do? We shall compel its obedience to the Constitution of the United States; that is all. Why play upon words? We do not mean, we have never said, any more. If it be slavery that men should obey the Constitution their fathers fought for, let it be so. If it be freedom, it is freedom equally for them and for us: We propose to subjugate rebellion into loyalty; we propose to subjugate insurrection into peace; we propose to subjugate confederate anarchy into constitutional Union liberty. The Senator well knows that we propose no more. I ask him, I appeal to his better judgment now, what does he imagine we intend to do, if fortunately we conquer Tennessee or South Carolina—call it “conquer,” if you will, sir—what do we propose to do? They will have their courts still; they will have their ballot-boxes still; they will have their elections still; they will have their representatives upon this floor still; they will have taxation and representation still; they will have the writ of *habeas corpus* still; they will have every privilege they ever had and all we desire. When the confederate armies are scattered; when their leaders are banished from power; when the people return to a late repentant sense of the wrong they have done to a Government they never felt but in benignancy and blessing, then the Constitution made for all will be felt by all, like the descending rains from heaven which bless all alike. Is that subjugation? To restore what was, as it was, for the benefit of the whole country and of the whole human race, is all we desire and all we can have.

Gentlemen talk about the Northeast. I appeal to Senators from the Northeast, is there a man in all your States who advances upon the South with any other idea but to restore the Constitution of the United States in its spirit and its unity? I never heard that one. I believe no man indulges in any dream of inflicting there any wrong to public liberty; and I respectfully tell the Senator from Kentucky that he persistently, earnestly, I will not say willfully, misrepresents the sentiment of the North and West when he attempts to teach these doctrines to the confederates of the South.

Sir, while I am predicting, I will tell you another thing. This threat about money and men amounts to nothing. Some of the States which have been named in that connection, I know well. I know, as my friend from Illinois will bear me witness, his own State, very well. I am sure that no temporary defeat, no momentary disaster, will swerve that State either from its allegiance to the Union, or from its determination to preserve it. It is not with us a question of money or of blood; it is a question involving considerations higher than these. When the Senator from Kentucky speaks of the Pacific, I see another distinguished friend from Illinois, now worthily representing one of the States on the Pacific, [Mr. McDougall,] who will bear me witness that I know that State too, well. I take the liberty—I know I but utter his sentiments in advance—joining with him, to say that that State, quoting from the passage the gentleman himself has quoted, will be true to the Union to the last of her blood and her treasure. There may be there some disaffected; there may

be some few men there who would “rather rule in hell than serve in heaven.” There are such men everywhere. There are a few men there who have left the South for the good of the South; who are perverse, violent, destructive, revolutionary, and opposed to social order. A few, but a very few, thus formed and thus nurtured, in California and in Oregon, both persistently endeavor to create and maintain mischief; but the great portion of our population are loyal to the core and in every chord of their hearts. They are offering through me—more to their own Senators every day from California, and indeed from Oregon—to add to the legions of this country, by the hundred and the thousand. They are willing to come thousands of miles with their arms on their shoulders, at their own expense, to share with the best offering of their heart's blood in the great struggle of constitutional liberty. I tell the Senator that his predictions, sometimes for the South, sometimes for the middle States, sometimes for the Northeast, and then wandering away in airy visions out to the far Pacific, about the dread of our people, as for loss of blood and treasure, provoking them to disloyalty, are false in sentiment, false in fact, and false in loyalty. The Senator from Kentucky is mistaken in them all. Five hundred million dollars! What then? Great Britain gave more than two thousand million in the great battle for constitutional liberty which she led at one time almost single-handed against the world. Five hundred thousand men! What then? We have them; they are ours; they are the children of the country. They belong to the whole country; they are our sons; our kinsmen; and there are many of us who will give them all up before we will abate one word of our just demand, or will retreat one inch from the line which divides right from wrong.

Sir, it is not a question of men or of money in that sense. All the money, all the men, are, in our judgment, well bestowed in such a cause. When we give them, we know their value. Knowing their value well, we give them with the more pride and the more joy. Sir, how can we retreat? Sir, how can we make peace? Who shall treat? What commissioners? Who would go? Upon what terms? Where is to be your boundary line? Where the end of the principles we shall have to give up? What will become of constitutional government? What will become of public liberty? What of past glories? What of future hopes? Shall we sink into the insignificance of the grave—a degraded, defeated, emasculated people, frightened by the results of one battle, and scared at the visions raised by the imagination of the Senator from Kentucky upon this floor? No, sir; a thousand times, no, sir! We will rally—if, indeed, our words be necessary—we will rally the people, the loyal people, of the whole country. Their will pour forth their treasure, their money, their men, without stint, without measure. The most peaceable man in this body may stamp his foot upon this Senate Chamber floor, as of old a warrior and a senator did, and from that single tramp there will spring forth armed legions. Shall one battle determine the fate of empire, or a dozen? The loss of one thousand men or twenty thousand, or \$100,000,000 or \$500,000,000? In a year's peace, in ten years, at most, of peaceful progress, we can restore them all. There will be some graves reeking with blood, watered by the tears of affection. There will be some privation; there will be some loss of luxury; their will be somewhat more need for labor to procure the necessities of life. When that is said, all is said. If we have the country, the whole country, the Union, the Constitution, free government—with these there will return all the blessings of well-ordered civilization; the path of the country will be a career of greatness and of glory such as, in the olden time, our fathers saw in the dim visions of years yet to come, and such as would have been ours now, to-day, if it had not been for the treason for which the Senator too often seeks to apologize.

Mr. BRECKINRIDGE. I shall detain the Senate, sir, but a few moments in answer to one or two of the observations that fell from the Senator from California—

Mr. BAKER. Oregon.

Mr. BRECKINRIDGE. The Senator seems to have charge of the whole Pacific coast, though I do not mean to intimate that the Senators from

California are not entirely able and willing to take care of their own State. They are. The Senator from Oregon, then.

Mr. President, I have tried on more than one occasion in the Senate, in parliamentary and respectful language, to express my opinions in regard to the character of our Federal system, the relations of the States to the Federal Government, to the Constitution, the bond of the Federal political system. They differ utterly from those entertained by the Senator from Oregon. Evidently, by his line of argument, he regards this as an original, not a delegated Government, and he regards it as clothed with all those powers which belong to an original nation, not only with those powers which are delegated by the different political communities that compose it, and limited by the written Constitution that forms the bond of Union. I have tried to show that, in the view that I take of our Government, this war is an unconstitutional war. I do not think the Senator from Oregon has answered my argument. He asks, what must we do? As we progress southward and invade the country, must we not, said he, carry with us all the laws of war? I would not progress southward and invade the country.

The President of the United States, as I again repeat, in my judgment only has the power to call out the military to assist the civil authority in executing the laws; and when the question assumes the magnitude and takes the form of a great political severance, and nearly half the members of the Confederacy withdraw themselves from it, what then? I have never held that one State or a number of States have a right without cause to break the compact of the Constitution. But what I mean to say is that you cannot then undertake to make war in the name of the Constitution. In my opinion they are out. You may conquer them; but do not attempt to do it under what I consider false political pretenses. However, sir, I will not enlarge upon that. I have developed these ideas again and again, and I do not care to reargue them. Hence the Senator and I start from entirely different stand-points, and his pretended replies are no replies at all.

The Senator asks me, “what would you have us do?” I have already intimated what I would have us do. I would have us stop the war. We can do it. I have tried to show that there is none of that inexorable necessity to continue this war which the Senator seems to suppose. I do not hold that constitutional liberty on this continent is bound up in this fratricidal, devastating, horrible contest. Upon the contrary, I fear it will find its grave in it. The Senator is mistaken in supposing that we can reunite these States by war. He is mistaken in supposing that eighteen or twenty million upon the one side can subjugate ten or twelve million upon the other; or, if they do subjugate them, that you can restore constitutional government as our fathers made it. You will have to govern them as Territories, as suggested by the Senator, if ever they are reduced to the dominion of the United States, or, as the Senator from Vermont called them, “those rebellious provinces of this Union,” in his speech to-day. Sir, I would prefer to see these States all reunited upon true constitutional principles to any other object that could be offered me in life; and to restore, upon the principles of our fathers, the Union of these States, to me the sacrifice of one unimportant life would be nothing; nothing, sir. But I infinitely prefer to see a peaceful separation of these States, than to see endless, aimless, devastating war, at the end of which I see the grave of public liberty and of personal freedom.

The Senator asked if a senator of Rome had uttered these things in the war between Carthage and that Power, how would he have been treated? Sir, the war between Carthage and Rome was altogether different from the war now waged between the United States and the confederate States. I would have said—rather than avow the principle that one or the other must be subjugated, or perhaps both destroyed—let Carthage live and let Rome live, each pursuing its own course of policy and civilization.

The Senator says that these opinions which I thus expressed, and have heretofore expressed, are but brilliant treason; and that it is a tribute to the character of our institutions that I am allowed to utter them upon the Senate floor. Mr. President, if I am speaking treason, I am not aware

of it. I am speaking what I believe to be for the good of my country. If I am speaking treason, I am speaking it in my place in the Senate. By whose indulgence am I speaking? Not by any man's indulgence. I am speaking by the guarantees of that Constitution which seems to be here now so little respected. And, sir, when he asked what would have been done with a Roman senator who had uttered such words, a certain Senator on this floor, whose courage has much risen of late, replies in audible tones, "he would have been hurled from the Tarpeian rock." Sir, if ever we find an American Tarpeian rock, and a suitable victim is to be selected, the people will turn, not to me, but to that Senator who, according to the measure of his intellect and his heart, has been the chief author of the public misfortunes. He, and men like him, have brought the country to its present condition. Let him remember, too, sir, that while in ancient Rome the defenders of the public liberty were sometimes torn to pieces by the people, yet their memories were cherished in grateful remembrance; while to be hurled from the Tarpeian rock was ever the fate of usurpers and tyrants. I reply with the just indignation I ought to feel at such an insult offered on the floor of the Senate Chamber to a Senator who is speaking in his place.

Mr. President, I shall not longer detain the Senate. My opinions are my own. They are honestly entertained. I do not believe that I have uttered one opinion here, in regard to this contest, that does not reflect the judgment of the people I have the honor to represent. If they do, I shall find my reward in the fearless utterance of their opinions; if they do not, I am not a man to cling to the forms of office and to the emoluments of public life against my convictions and my principles; and I repeat what I uttered the other day, that if indeed the Commonwealth of Kentucky, instead of attempting to mediate in this unfortunate struggle, shall throw her energies into the strife, and approve the conduct and sustain the policy of the Federal Administration in what I believe to be a war of subjugation, and which is being proved every day to be a war of subjugation and annihilation, she may take her course. I am her son, and will share her destiny, but she will be represented by some other man on the floor of this Senate.

Mr. BAKER. Mr. President, I rose a few minutes ago to endeavor to demonstrate to the honorable Senator from Kentucky that all these imaginations of his as to the unconstitutional character of the provisions of this bill were baseless and idle. I think every member of the Senate must be convinced, from the manner of his reply, that that conviction is beginning to get into his own mind; and I shall therefore leave him to settle the account with the people of Kentucky, about which he seems to have some predictions, which, I trust, with great personal respect to him, may, different from his usual predictions, become prophecy after the first Monday of August next.

Mr. DOOLITTLE. Mr. President, in the heat and excitement of this debate, there are one or two ideas that ought not to be lost sight of. The Senator from Kentucky seems to forget, while he speaks of the delegated powers of this Government under the Constitution, that one of the powers which is delegated is that we shall guaranty to every State of this Union a republican form of government; that when South Carolina seeks to set up a military despotism, the constitutional power with which we are clothed and the duty which is enjoined upon us is to guaranty to South Carolina a republican form of government.

There is another idea that seems to be lost sight of in the talk about subjugation, and I hope that my friends on this side of the Chamber will not also lose sight of it in the excitement of the debate. I undertake to say that it is not the purpose of this war, or of this Administration, to subjugate any State of the Union, or the people of any State of the Union. What is the policy? It is, as I said the other day, to enable the loyal people of the several States of this Union to reconstruct themselves upon the Constitution of the United States. Virginia has led the way; Virginia, in her sovereign capacity, by the assembled loyal people of that State in convention, has organized herself upon the Constitution of the United States, and they have taken into their own hands the government of that State. Virginia

has her judges, her marshals, her public officers; and to the courts of Virginia, and to the marshals and executive officers of Virginia we can intrust the enforcement of the laws the moment that the state of civil war shall have ceased in the eastern or any other portion of the State. It is not therefore the purpose of this Government to subjugate the people of Virginia, or of any other State, and subject them to the control of our armies. It is simply that we will rally to the support of the loyal people of Virginia and of Tennessee and of North Carolina and of Texas, ay, and of the Gulf States too when they are prepared for it; we will rally to the support of the loyal people of these States and enable them to take their government into their own hands, by wresting it out of the hands of those military usurpers who now hold it, for they are nothing more and nothing less. That is all that is involved in this contest, and I hope on this side of the Chamber we shall never again hear one of our friends talking about subjugating either a State or the people of any State of this Union, but that we shall go on aiding them to do just precisely what the loyal people of Virginia are doing, what the loyal people of Tennessee are preparing to do, what the loyal people of North Carolina stand ready to do, and what the loyal people in Georgia and Alabama and Louisiana, and last perhaps of all, the loyal people of South Carolina will do in reconstructing themselves upon the Constitution of the United States.

Mr. President, I have heard the Senator from Kentucky to-day, and I have heard it again and again, denounce the President of the United States for the usurpation of unconstitutional power. I undertake to say that without any foundation he makes such a charge of usurpation of unconstitutional power, unless it be in a mere matter of form. He has not, in substance; and the case I put to the Senator the other day, he has not answered, and I defy him to answer. I undertake to say, that, as there are fifty thousand men, perhaps, in arms against the United States in Virginia, within thirty miles of this capital, I, as an individual, though I am not President, though I am clothed with no official authority, may ask one hundred thousand of my fellow men to volunteer to go with me, with arms in our hands, to take every one of them, and if it be necessary, to take their lives. Why do not some of these gentlemen who talk about usurpation and trampling the Constitution under foot, stand up here and answer that position, or forever shut their mouths?

I, as an individual, can do all this, though I am not President, and am clothed with no legal authority whatever, simply because I am a loyal citizen of the United States. I have a right to ask one hundred thousand men to volunteer to go with me and capture the whole of the rebels, and if it be necessary to their capture, to kill half of them while I am doing it. No man can deny the correctness of the proposition. Away then, with all this stuff, and this splitting of hairs and pettifoggery here, when we are within the very sound of the guns of these traitors and rebels, who threaten to march upon the capital and subjugate the Government.

Mr. President, there is some contrariety of opinion as to the propriety of acting upon the bill pending before the Senate to-day, or as to whether we shall defer action upon it until the next session of Congress. Many of our friends deem it advisable that it should be postponed until then; some of them think it should be acted on now. For myself, I believe, as was maintained by the honorable Senator from Vermont, that where civil war actually exists, where men are actually in arms, in combat, of necessity the laws of war must go with them, and the laws of war are unwritten laws. At the same time, I agree with the honorable Senator from Illinois, that the Constitution of the United States clothes Congress with the power to make rules and regulations respecting the armies of the United States, and that we may extend or we may limit the ordinary rules of war. But, sir, as has been suggested, it is a very important question to what extent they should be limited. Whether it should be done now or at the next session of Congress is not, in my judgment, so very material; but as many of my friends around me are disposed to allow it to pass over until the next session, when the whole subject can be considered and may be matured, I shall join

with them in support of that motion, and shall vote for the postponement of the bill; not for the reasons that have been stated by the Senator from Kentucky in denouncing the measure, but because by that time this whole subject may be considered, and whatever rules may be necessary to be adopted in those districts where the civil war is to be carried on, can be adopted at that time. In the mean time, it is true that where war in fact shall exist, of necessity these rules will depend upon the Commander-in-Chief.

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) The motion is to postpone this bill until the second Monday in December next.

The question being taken by yeas and nays, resulted—yeas 16, nays 28; as follows:

YEAS—Messrs. Bayard, Breckinridge, Bright, Collamer, Cowan, Doolittle, Harris, Howe, Johnson of Missouri, Kennedy, Latham, Polk, Powell, Rice, Saulsbury, and Thomson—16.

NAYS—Messrs. Anthony, Baker, Bingham, Browning, Carlile, Chandler, Clark, Dixon, Fessenden, Foot, Foster, Grimes, Hale, Harlan, Johnson of Tennessee, King, Lane of Indiana, Lane of Kansas, McDougall, Morrill, Sherman, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Willmot, and Wilson—28.

So the Senate refused to postpone the bill.

The PRESIDING OFFICER. The question now is on the amendment proposed by the Senator from Virginia [Mr. CARLILE] to strike out the eighth section.

Mr. McDUGALL. I think the chairman of the Judiciary Committee has intimated that perhaps the bill is imperfect; and as some objections have been made to its details, I ask if it be not better to recommit the bill. I should like to know if he has any objection to that course.

Mr. TRUMBULL. I think there is no object in that. We had it before us in the Judiciary Committee once; and to recommit it now amounts to a postponement of it.

Mr. McDUGALL. Very well.

The PRESIDING OFFICER. The question is on striking out the eighth section of the substitute.

Mr. SAULSBURY. The whole bill, so far as it applies to the States that are now in the Union, is so abhorrent to me that I shall decline to vote on any question of striking out. As far as it applies to the seceded States, I have nothing to do with it. I do not belong to them, never expect to belong to them, never expect to follow their flag, or live under their government; but if this bill passes, it makes a slave of me and every other freeman. Its provisions are so abhorrent to me that I shall not vote for any of it.

Mr. SUMNER. I move that the Senate now proceed to the consideration of executive business.

Several SENATORS. Finish this bill.

Mr. SUMNER. We cannot.

Mr. TRUMBULL. Let us vote.

Mr. SUMNER. There are others who wish to speak, and we must attend to executive business. I move that the Senate proceed to the consideration of executive business.

HOUSE BILLS REFERRED.

The PRESIDING OFFICER. Before putting the question on the motion that the Senate proceed to the consideration of executive business, the Chair desires to lay before the Senate some bills from the House of Representatives, for the purpose of having them referred to the appropriate committees. ["Agreed!"]

The following bills were severally read twice by their titles, and referred as indicated below:

A bill (No. 87) authorizing additional enlistments in the Navy of the United States—to the Committee on Naval Affairs.

A bill (No. 96) making further appropriations for the support of the naval service for the year ending June 30, 1862, and for other purposes—to the Committee on Finance.

A bill (No. 98) making an appropriation for field fortifications for the defenses of the city of Washington, and elsewhere—to the Committee on Military Affairs and the Militia.

A bill (No. 99) making appropriation to pay the expenses of the investigating committees of the House of Representatives and Senate, appointed the first session of the Thirty-Seventh Congress, and of the commission authorized to examine and report as to the compensation of all officers of the Government—to the Committee on Finance.