

SPIRIT OF THE PRESS.

EDITORIAL OPINIONS OF THE LEADING JOURNALS UPON CURRENT TOPICS—COMPILED WEEKLY BY THE EVENING TELEGRAPH.

The Use of Mr. Johnson's Folly.

It is not worth while to make a minute comparison between the struggle now going on at Washington and that of King Charles I and his Parliament. It would not be worth while, even if the two cases resembled each other in detail more closely than they do; for these elaborate historical parallels only serve to distract the attention from the great points at issue, and amuse more than they instruct. In the real nature of the struggle, however, there is a remarkable resemblance, and one from which we may, if we choose, derive lessons of the greatest value. Fortunately for us—still more fortunately for our Chief Magistrate—they differ widely in some respects. Charles I would hardly have lost his head or James II his crown if there had been a fixed point of time when his term of power would expire by its own limitation.

It is a most fortunate thing for the country that this struggle for power between the Executive and the legislature has been connected with and complicated by a violent dissension upon the political issues immediately before us. So superficially do most people think upon the fundamental principles of politics, so great are the attractions of a strong government such as the war gave us, and so ready are we in general to let things take care of themselves, that probably nothing less intense than a political quarrel could have brought our community either to see in what direction we were drifting, or to desire to withstand the current. As it was, the dispute upon the immediate practical issues went on for months, all the time growing hotter and fiercer, before it began to be generally seen that something more vital even than reconstruction was at stake, and that the President had been exercising a dangerous degree of power, which only his own bad faith and bad temper had at last overthrown.

The question over which we have been contending all these months is one worth the delay, expense, and bad blood which it has occasioned. For it lies at the very foundation of any political system to determine what is the ruling power in the last resort. When our Constitution was established, Montesquieu's theory of the co-ordination of the three departments of government was accepted as a fundamental principle, and incorporated in the new organic law. It was a great step in that day thus to vindicate the independence of the judiciary and the legislature, and by this free the fountains of law and justice from the absolute control of the monarch. But no theory could prevent the three departments from trying their strength against one another, or decide that in that case the weakest should give the wall. If the Supreme Court should not do the will, if the Executive should not do the will, if the Legislature should choose to measure its strength with Congress, it would very soon appear that of the three departments, the legislature possesses the power, and that, possessing the power, it will be master first or last.

The real value of the doctrine of the equality of the departments is two-fold. The first is historical, that it freed, as we have said above, the legislature and the judiciary from the control of the executive, in which, in past ages, they have always been. In the next place, it lays down a rule in accordance with which the powers of government may be best organized. If the functions of the three departments are skilfully and clearly defined, there will be no temptation in ordinary times to overstep the prescribed bounds, and one could hardly decide off-hand that the power which condemns a man to jail or that which pardons him out is not the strongest power in the State. To a superficial view the Legislature appears the weakest of the three; its power is latent, but it is there, ready to be called into actual exercise; and he is either a very brave or a very foolish man who ventures, in the light of historical experience, to provoke it.

The ignominious overthrow of the President by Congress is not, therefore, a political revolution, but the effect of a rapid development of the natural tendencies of the Constitution. It is precisely the change which is going on in England, only that here a weak, shallow, and obstinate President has caused it to be much more violent and rapid than it has been there. Let another George III or IV come upon the throne, and we shall be very likely to see the power of Parliament exalted even more triumphantly than that of Congress has been. Even if it were a revolution, however, we should not for that reason deprecate it. A constitution which does not accommodate itself to the changing needs of those who live under it, had better perish; and if the opinions and necessities of the public have undergone a revolution, the Constitution should do the same. If it is a revolution, we are peculiarly fortunate—all the more so on the heels of a tremendous war—to have it accomplished peacefully.

But the truth is that this victory of Congress does not work a revolution, but prevent one. All through the war the Democratic newspapers were telling us that we were suffering the President to establish a centralized absolutism. They were right; and that would have been a real revolution, not merely destroying the balance of power in the departments of government, but placing them again upon the basis that existed before their independence was acknowledged in theory. That danger is past, and now the same newspapers are making the same outcry at the usurpations of Congress. Are they right now, as they were then? If the peril is a real one, the factiousness of their criticism should not blind us to its truth.

In the first place, the power which Congress now, as we admit, exercises in an extraordinary degree, is, as we have shown, a real and essential power of a legislature in a free State. The possession of power is certainly no excuse for using it badly; nor does power necessarily imply right; that Congress can override the Executive does not prove that it can do so legally. But legislation is the undoubted right of Congress; and we claim that prescribing the terms and conditions of reconstruction is a purely legislative act, and therefore belongs properly to Congress. If, in doing this, or in the struggle which has grown out of it, Congress has pushed its legitimate authority to an unreasonable extent, or has stretched its power beyond the limits of right, the responsibility rests chiefly with him who began to play at usurpation.

After all, even admitting that Congress has encroached upon the functions of the Executive, legislative usurpation is not, like executive, susceptible of systematic and continuous exercise. A legislative body may, at seasons of great excitement, and under the influence

of strong passion, act for a short time with energy and despatch; but it can only be for a short time. The natural disposition of a large body is to slowness and indolence, and this will surely prevent a continuance of such encroachments for any long time. When the times demand, a legislature will show that it possesses the chief power in the State; but when the exigence has passed, it will very readily let the reins slip out of its hand again. And our American Executive is endowed with such extraordinary authority and such enormous patronage, that we need never fear that it will succeed in the long run in maintaining all the powers which properly belong to it. Our strongest protection against executive usurpation is to recognize distinctly that Congress is the strongest power in the State, and therefore, in the last resort, the first power.

We have opposed with such arguments and with as much earnestness as we had at command the attempts made during the past year to impeach the President. We did so from the belief, which we still retain, that up to this summer he had done nothing to justify a resort to so dangerous a precedent. But we have no hesitation in saying that, should he attempt, as he seems now likely to do, to prolong the conflict between himself and Congress; should he persist in claiming for himself the right either to legislate or to judge what laws are constitutional or expedient, and by that judgment regulate his official conduct; should he, as he has done, either by the kind of men he selects for Cabinet ministers or for military commands, or by the instructions he gives them, show unmistakably that he aimed at nullifying a law of Congress, or executing it in a manner different from that in which the legislature intended it to be executed, it will be the bounden duty of the legislature to remove him, even if he has not proved himself guilty of any technical violations of duty. He might stay within the letter of the law and yet pardon Jefferson Davis and Breckinridge and put them both in his cabinet, and put Robert E. Lee in the War Department, but the country would not tolerate it, come what might. If he now obstinately perseveres in refusing to acknowledge his subordination to Congress, every consideration of safety and duty calls for his removal. The spirit he is displaying is the legitimate result of the extraordinary extension given to the power of the executive during the war. It must be crushed at once, and crushed so sternly and effectually that no future President will ever allow it to take possession of him.

The Issue between the President and the People.

The worst deeds—acts of the most fatal consequence—are often committed in the holiest name. James Buchanan acted on the principle that if one portion of the Union secedes, the other portion has no right of coercion; and he appealed in proof to the object of the people's veneration—the Federal Constitution. Had the people followed his lead, the South would have had her own way. She would have enforced her claim to take her property, including her slave property, into any part of the United States, and to use it there. The American Union would have become a slave empire. The great experiment of self-government in North America would have proved a failure. But the people, whose common sense is too strong for fine-drawn sophistry, said: "We have a right to preserve our Union, peacefully if we can, forcibly if we must." They went to war, in spite of Buchanan's constitutional argument. Senator Andrew Johnson sustained and justified the war. He was very wrong then, or else he is very wrong now. If war is justifiable, as not in violation of the Constitution, so also are its necessary incidents. But the present state of things in the South and the provisions enacted by Congress for its regulation are, in the strictest sense, incidents to the late civil war. Mr. Johnson declared it to be his duty, under his oath of office, to veto these provisions; and ever since his veto was overruled he has done what one man may to defeat their operation. The reason he gives is that they violate the Constitution. That reason would be sound if the people of the Southern States had never levied war against the Government, and never, by that act, become public enemies.

But war gives new rights. War imposes new duties. War annuls all previous treaties, conventions, agreements, how solemn soever. The rights which these secured during peace are lost when war is waged to those who levy it. The ordinary rights of war alone remain; and these, during a civil war like ours, do not include protection under a Constitution which it was the object of those who commenced that war to destroy. By our Constitution the home and effects of the citizen are inviolate, except after warrant issued, upon probable cause and under oath, specially describing the premises. Does this apply to the house of a Rebel in an insurrectionary State? The Constitution declares that the citizen shall not be deprived of life, liberty, or property, without due process of law. But what process of law did we serve on the Confederates at Antietam or Gettysburg before we opened a battery on their ranks? What process of law preceded the confinement of our prisoners of war, or our appropriation of the enemy's ammunition or commissary stores? The Constitution is admirable in its place, but it does not embrace all subjects. It has no article treating of the rights of war. Its framers well knew that the nation might engage in war, foreign or civil; but they knew, also, that for such a contingency there were rules provided outside of the Constitution. They knew that we were not only a nation whose organic law was embodied in a written Constitution, but also one of the society of civilized nations, the laws governing which spring from the common consent and usage of that society. They knew that we were bound by these laws, but they did not think it necessary or proper to insert them in the Constitution.

Mr. Johnson alleges, in justification of the exertions he has made, and is making, to defeat the will of Congress, that the constitutional rights of Southern citizens, suspended only during war, revive as soon as the enemy lays down his arms. That is bad law. A treaty, or any other compact, made during peace and cancelled by war, does not revive with the cessation of hostilities. The matter is then as open to negotiation as if no treaty or compact had been made. A treaty in the same words, or with different conditions, may be entered into; but this depends on the concurrence of the parties who may contract. It is, therefore, nothing to tell us that the Constitution provides that each State shall be represented in the Lower House, that no State shall, without its consent, be deprived of its equal suffrage in the Senate; and that inasmuch as Congress withhold from the insurrectionary States representation in the House and the Senate, the Constitution suffers violation. It suffers violation just as much as it did during the Rebellion, when the enemy was deprived of his life, liberty, and property, without due process of civil law—just as much, and no more. The incidents of war do not cease as soon as the sword is

sheathed. A just war is waged, not for the purpose of destruction, but of security. The war over, important duties press upon the victor. Every publicist of repute has set forth (what common sense suggests) that a victorious nation ought to protect itself, not only against immediate, but against prospective danger. Vattel says:—"When a conqueror has subdued a hostile nation, he may, if prudence so require, render her incapable of doing mischief by the same arms for future. If the safety of the State lies at stake, our precaution and foresight cannot be extended too far. Must we delay to avert our ruin till it has become inevitable?"

At a jury given a right to provide for our future safety by depriving the unjust aggressor of the means of injuring us? It is the right less clear or the duty less imperative because these are set forth in the Law of Nations and not in our organic law? Does patriotism, according to Mr. Johnson, consist in ignoring International Law? "The Constitution, the whole Constitution," that is well; but "nothing but the Constitution," is that the Presidential doctrine? It is related, as our readers may remember, of a certain Moslem Vandal, conqueror of Alexandria, that when the fate of its celebrated library was referred to him, he consigned it to the flames, declaring:—"If these Greek writings agree with the Koran they are useless, and need not be preserved; if they disagree, they are pernicious, and ought to be destroyed." Are the pages of Grotius and Vattel good for nothing better than that they may be used as fuel for the baths of the White House? Is President Johnson, in the nineteenth century, but as far advanced in liberality of sentiment as Caliph Omar was in the seventh? At all events, we consider his position to-day less tenable than that of Buchanan in 1860. Buchanan appealed to the Constitution against what he foresaw would be a terrible war, marked with incalculable bloodshed, to be followed by sectional heart-burnings after its close. The war is fought through; there are half a million of dead; three thousand millions are expended. Johnson, approving the sacrifice, and the manner in which it is set himself to render her past sacrifices futile and unavailing, to defeat the efforts of her prudence and foresight, to drumm her endeavors to provide for her future safety. He thinks we have a right to destroy, but not to save; a right to fight the battle, but no right to secure the best fruits of victory.

It may be, however—let us put upon the President's warfare against Congress the most charitable interpretation we can—it may be that he approves the object of the Reconstruction acts, desires to see the South deprived of power to injure us in that sense, but he disapproves the manner in which this is done. Under this, the most favorable supposition, how stands the case? The people, through their Representatives, have decided that, to secure the public safety, reconstruction shall be effected in one way; the President is determined it shall be brought about in another. Who has a right to decide, Andrew Johnson or the people? They who fought the battle and have to pay the score, or a man never voted for as President, whom the people neither love nor trust?

The issue, be it remembered, is not whether the plan of reconstruction as devised by the people through their representatives, and passed by overwhelming majorities, is the best and wisest that could have been contrived. The real issue is much simpler than this. It turns on the question, Who had a right to devise and to pass it? Who had a right to judge how carefully guarded it should be? How stringent should be its several enactments? There is but one answer possible to these questions; and, for that reason, there can be but one solution of the present difficulties. We do not want a king here, nor any existing upon her right to recover Duppel and Alsace from Prussia. It is hardly possible that these repeated humiliations can lead to any result but open war. The pride of France has been wounded in a way which would force a challenge to Prussia, even if the policy of the imperial dynasty dictated peace. The outbreak, when it comes, moreover, will not be in one quarter alone. The speech of Lord Derby on the Eastern question, which we published Thursday—strictly guarded as it was—shows how small a spark would light up a conflagration along the shores of the Bosphorus. In the demand made by the leading powers upon the Government of the Sultan for a more liberal policy in regard to his Christian subjects, England has refused to join Prussia, and France has joined with Russia in urging reforms. The indifferent attitude of England, as the closest ally of Turkey, will itself tend to make the Sultan indifferent to remonstrances from other quarters; and France, with her hands full of the Prussian business, would not have the time or the ability—if she had the inclination—to renew the profligate contract which gave the allied armies a few days' possession of Sebastopol. On every hand the situation is gloomy, and hopes of a long continuance of peace can hardly be other than delusive.

The Revolutionary Muddle at Washington—Are We to Have a Change of Government? From the N. Y. Herald.

The revolution presses rapidly to a focus. At the mad pace we are now driving it is evident that the people may soon be called upon to determine whether they will support the President and uphold the republic, or merge the three branches of power into a military dictatorship. The difficulties which threaten to destroy harmony of action in the Executive Department are to be attributed not to Mr. Johnson nor yet to General Grant—they are the fault of neither. The former takes the Constitution of the United States, which is placed in his hands as his political guide, and reads:—"The President shall be Commander-in-Chief of the Army and Navy of the United States." Under this he issues his orders, and his General-in-Chief, who has been taught by Congress, in the Army Appropriation act, that "all orders and instructions relating to military operations, issued by the President or Secretary of War, shall be issued through the General of the Army, and in case of his inability, through the next in rank. The General of the Army shall not be removed, or suspended, or relieved from command, or assigned to duty elsewhere than at said headquarters, except at his own request, without the previous approval of the Senate; and any previous approval relating to military operations or instructions contrary to the requirements of this section shall be null and void, and any officers who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office, and any officer of the army who shall transmit, convey, or obey any orders or instructions so issued, contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction."

This act was approved by the President under protest, the section we have quoted being the one to which he objected. It will be noticed that the language is more explicit than that of the Tenure of Office bill, under which civil officers are protected. By evasion and indirect maneuvering Mr. Johnson got Mr. Stanton out of the Cabinet; but the head of the army is beyond his reach—the President is positively forbidden to remove that officer without the consent of the Senate. Still further to protect the District Commanders from the meddling of the President, the law compels Mr. Johnson to transmit his orders and directions through the General, and declares void any order not so transmitted. Mr. Johnson's war paper is not negotiable until it has the indorsement of General Grant.

It says, "at which matters have arrived, after the awakening of public opinion—after the Mexican disaster, after the struggle of last session, after the hopes which the letter of the 19th of January gave life, and which at present scarcely remain hopes—after all this, there is no exaggeration in saying that our Government finds itself between the horns of this dilemma—either to satisfy the legitimate demands of liberal opinion or to impose silence upon it by the loud brutal roar of the cannon." Chafing under this thrust, which is but a condensed expression of the Opposition speeches in the Legislature during the last weeks of the session, the Emperor replies at Arras, as reported by the cable. Weak Governments, he thinks, may conjure up the phantom of a foreign war in order to divert attention from home troubles. But a Government like his own, based on the will of the people, will do nothing of the sort. It will only keep itself prepared to fight when the national honor is compromised.

The scope and gist of the utterance, as foreshadowing an open quarrel with the leading German power, would be better interpreted if the Emperor's views of what constitutes national honor were less liable to misinterpretation. In the Mexican enterprise the national honor, as estimated by the French people themselves—inside and outside of the Legislative body—was indifferently consulted. In the premature attempt to patch up a peace between the rival German powers, immediately before the decisive battle of Sadowa, the honor of France was surely more or less compromised; and the authority of France as an arbiter in the reconstruction of Central Europe was surely called in question with an abruptness which a powerful and sensitive nation could not but deeply feel. The demand for territorial compensation on the Rhine, made hastily, and withdrawn almost as soon as made, may not have involved the honor of France, but the firm refusal of Prussia gave King William's Minister a prestige in the eyes of Europe and the world, probably greater than that which he had won in overtaking the leadership of Federal Germany. When M. Bismarck presented his master with half a dozen principalities and brought four million new subjects under the dominion of Prussia, he carried into effect a political purpose for which nearly all the communities concerned had been for years preparing themselves. It was a great task, doubtless, and its accomplishment naturally placed the Minister of Prussia in the front rank of European statesmen. But it was, after all, but an expansion of the idea which led to the Holstein raid on Denmark. The principalities were prepared for the change. Political opinion had ripened; and the process of unification began almost in the high latitude of Duppel, or the extreme northwestern boundary of German colonization. But great as was the credit gained for the Prussian Minister, when he took advantage at the proper time of the common sentiment of nationality in the separate provinces, he did vastly more to establish the power and authority of Prussia in Europe when he declined to consent to any rectification of the Polish boundary line. If the demand for such a rectification was honestly conceived, the honor of France, it might have been proposed, would have required that the demand should be satisfied. It was hardly a compensation for the abrupt rejection of the claims of France, one would think, that, under the provisions of the treaty of London, Luxembourg has ceased to be a federal fortress. The accomplishment of it was the work of the neutral powers. In like manner, the appeal of the Emperor's Government for a settlement of the Schleswig question which should be in conformity with the stipulations of the treaty of Prague, is treated with an indifference at Berlin which is almost contemptuous. The only rejoinder to it seems to come in the shape of the merciless lashings of the North-German press. These, the cable informs us, indicate each day a more savage feeling of resentment among the people of Prussia. And only Thursday we had a despatch saying that France and Austria have so far backed out of their pretensions to regulate the Schleswig question, as to unite in disavowing Denmark for insisting upon her right to recover Duppel and Alsace from Prussia.

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The Powers of the General.

There is a fear in the minds of some people that President Johnson may remove Grant from the head of the army. Congress foresaw the possibility of such a thing, and prevented it at the last session by adding to the Army Appropriation bill a clause providing that—1. The headquarters of the army shall be in the city of Washington. 2. All orders and instructions relating to military operations, issued by the President or Secretary of War, shall be issued through the General of the Army, and in case of his disability, through the next in rank. 3. The General of the Army shall not be removed, suspended, or relieved from command, or assigned to duty elsewhere than at said headquarters, except at his own request, without the previous approval of the Senate; and "any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void, and any officers who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office, and any officer of the army who shall transmit, convey, or obey any orders or instructions so issued, contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction."

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