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Wednesday, Feb. 17, 1864.

D. L. IMBRIE, Editor & Proprietor.

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THE CONSCRIPTION ACT IN THE SUPREME COURT.

Opinion of Judge Agnew.

The following is the able opinion of Judge Agnew upon the motion to dissolve the injunction heretofore granted to restrain the Provost Marshal from taking drafted men under the conscription law:

These bills were presented to Mr. Justice Woodward at Nisi Prius, who called in his brethren to sit with him. The bills were presented on behalf also of all other citizens entitled to the same remedy, and prayed that the defendants as officers of the draft should be restrained—"*from proceeding with or under the enrollment requisition and draft of citizens of this Commonwealth.*"

All of the Judges delivered opinions and a majority directed a preliminary injunction as to the complainants specially. Afterwards the Solicitors of the Draft representing the Government in their behalf, but who had not appeared at the argument, moved the Court of Nisi Prius Mr. Justice Strong occupying the bench, to dissolve the preliminary injunction, on the grounds of a want of jurisdiction; that the bill will not lie for a tort only *in posse*, and that the law for enrolling of the national forces is constitutional; and ought not to have been arrested, and the officers exposed to punishment.—It is objected *in limine*, that the preliminary hearing having been before a full bench, it is incompetent and indecorous in a single Judge at Nisi Prius to entertain the motion to dissolve without new facts arising in the cases.

By the constitution of Nisi Prius, it is a court of but one judge, and he sits singly to hear all cases at law and in equity. It is true the bench is filled by alternation, but the court remains always the same, though the person changes. The motion was made to the same court though to a different individual, and therefore he was competent to receive it. Being made, certainly it was not indecorous to call in all the Judges to hear it.—This only exhibits the deference of the Judge to his brethren. Had Mr. Justice Woodward decided the case alone, as he could have done, certainly it would not have been incompetent or indecorous in him to have rectified his own error, if he had become satisfied he had committed a pernicious mistake. I think I can safely say his [illegible] justice would have caused him to do so at once. I can perceive no reason why the whole bench should [illegible]. Upon what should a [illegible] the sitting Judge cause a [illegible] why should the [illegible] of justice be [illegible] under one judge and closed under another.

The case was then pending, having reached no final judgment. In fact the record shows that the complainants had not given security, and the injunctions have not been issued. No real harm can be done the complainants, while the Government is suffering from a hurtful precedent. The proceeding is in chancery, and allows the largest discretion to reach justice. If the court had summarily interposed between the law and its execution, stopping the machinery of Government with a sudden jar, it was as much the duty of the court to retrace its steps hastily, when convinced of error, as it certainly is a sentiment of patriotism and courtesy to the Federal Government.

It is true as a general rule that a [illegible] will not be moved summarily to dissolve an injunction, without a suggestion of new facts, and will leave the party to an issue formed in the due course of pleading. The learned arguments to prove what is not denied, can scarcely be deemed necessary.—But this is no such case, and cannot be disposed of by such a rule. It touches the vital powers of the Government, arrested violently in their execution by a State tribunal at a time of great peril. The Government was not represented at the preliminary hearing, and ought not to be prejudiced by the fault (if any) of its agents. Government, which acts only through agents quickened by no personal interest, is never to be considered derelict where the default is still open to correction. No new facts need be alleged. The facts of the bill are not denied. It was the conclusion only stated in the bill which was denied. The alleged error was patent upon the face of the bill. The court heard but one side, the opponents of the law. The hearing took place in the midst of an exciting political campaign, when the spirit of party was assailing the law with furious lashes, and vigorously hounding on all its own adherents to the chase, to be in at the death. The decision was by a bare majority, against the earnest dissent of two judges, and partially established non coercion, a doctrine rooted in and half-brother to secession. The late Chief Justice, whose honest mind, I have no doubt, felt penetrated by these surroundings in delivering the opinion of the majority, had expressed some distrust of his own convictions, and conceded that further argument on final hearing might possibly change the result.

Under these circumstances, and in a case of such momentous importance, the majority planting the decision upon a gross violation of the Constitution by the people's representatives, never was a judge more justifiable by sound discretion, exalted patriotism, high decorum, and purity of purpose, than was the judge ordering this motion to be heard before us all. In this he was virtually approved by all, for none of us refused to sit.

We heard the case, and now it must be decided Shall we refuse to restore the Federal Government to its rightful position on a mere technicality? We know it is only a rule of procedure to protect the Court against the annoyance of defeated suitors. Shall we stick in the bark when we know the only true question raised in the bill itself is the rightful power of Congress to pass the law? The complainant must stand on this ground at last in the final decree. What new fact can be urged? It is admitted the answer cannot deny the facts. The Government relies only on its rightful authority to do the acts alleged in the bill. The issue is the invalidity of the law, and this appears now as fully as it can appear hereafter. Then why this labor upon a point which involves nothing and decides nothing? When we have labored with all our powers, in the and all we can say is *mons laboravit et mus ducurrit.*

But on the other hand, if we permit this unsubstantial technicality to prevail, what is its effect? It leaves the draft officers liable to a penalty in either way. If they disobey the injunction they will be attached. If they obey it they will be displaced.—In either direction they must suffer. If we have fallen into a grievous error shall we not retrace our steps, and relieve the officers from their predicament and the government from injustice?

We make no precedent for ordinary suitors. On the contrary we tell them it cannot be drawn into one; for while we recognise the rule we declare it has no place here, before us as chancellors, in a matter of pure discretion, so vital to the Federal Government, and under the circumstances surrounding the case. If others professing, and doubtless possessing, equal patriotism are willing to permit this merest shadow of a technicality to interpose between the Court and restitution of the rights of the Government, I regret they so magnify art above justice, but I cannot adopt their views.

It is said that the new member of the bench is bound by the rule of *stare decisis*. I bow to this safe maxim wherever it applies, and conceive it would be sad indeed if the reputation of this Court were to suffer by my breach of it.

But it is admitted that on a final hearing I must decide as my views and conscience dictate. And why not now? I find the case before me, and I certainly cannot decide it against all my convictions of law, duty and patriotism. But if it is thought it would be asserting a principle contrary to the genius of the Constitution and the safety of society that causes should not be governed by solemn decision, but the result of election. I question the propriety of introducing the results of the election here, and think that the application of such a test, which leaves us without a judicial mind and makes us the mere registers of popular edicts, savors more of offence than argument.

What mind can for an instant suppose that any bench having a proper self respect, can be governed by the popular upheavings, and reverse a solemn decision to satisfy popular demands? It needs no argument to prove to sane men that such a principle would do violence to public security and judicial propriety. By what authority of position or propriety can any one say that the opinions of any member of the bench are not the result of sound law and pure motives, but the registration only of popular edicts? What has turned the thoughts of any one into such a channel instead of following the obvious open path of decorous inquiry? Is this such a case; do we violate any principle here?

On what principle, therefore, is *stare decisis* quoted to me? Is it merely to sustain the decision of a bare majority against a strong dissent establishing the doctrine that national forces cannot be raised to suppress insurrection, nor indeed used for such purpose, made in a one-sided hearing of the opponents of the law, in a preliminary way during a time of high excitement when partisan rage was previously assailing the law—a decision tending to encourage a general rush into the Court, and to put an end to the levying of troops, and inciting to forcible resistance under a persuasion of the law's invalidity.—The decision has become no rule of right, and has fixed no status of society, while it is founded in my judgment, in the most pernicious error.—Surely this is no case for *stare decisis*

I make no point of the popular verdict in this State. I shall not write it up; and I am sure I am under no necessity to write it down.

To prevent misconstruction, I desire to say, I refer to the pressure of the late political canvas upon the former decision, only to indicate the unconscious influence of preconceived opinions. These predispositions seem to operate, as if by a law of our nature; and are exemplified even in religion, which descends from father to son, and often controls the judgment, rendering it blind to the most palpable errors. A like influence is also to be found in the prevalence of national prejudices and errors.

Believing that law, duty, patriotism and justice require the preliminary order to be rescinded, I proceed to the grounds which, in my judgment, place the power of the Government above successful disproof.

The bills before us pray for relief against the act of Congress, of the 3d of March, 1863, "for enrolling and calling out the National forces," politically known as the conscription law. The ground of relief is its alleged unconstitutionality.

The essential features of the law are these: It ascertains who shall be liable to military duty, and provides for their enrollment. It authorizes a draft by lot of the number required by the President to be called into service, and provides for enforcing the call, and it empowers the President to assign them to service as he shall determine.

Is this mode of raising a national military force to suppress the existing rebellion, unconstitutional?

The presumption is that Congress has acted within the scope of its powers, and as said by C. J. Marshall, in Fletcher vs. Peck, 6th Cranch, 87, "it is not on slight implication or vague conjecture, the legislature is to be supposed to have transcended its powers, and its acts considered void. The opposition between the constitution and the law, should be such that the judge feels a clear and strong conviction of their incompatibility with each other."

It is conceded that the power of Congress is two-fold; first, to raise national forces in the clause "to raise and support armies;" secondly, to call forth the militia "to execute the laws of the Union, suppress insurrections and repel invasions." But the constitutionality of the law is denied on the grounds that national armies can be raised only by voluntary enlistment, and not by draft; and that this law is not an exercise of the power to call forth the militia, but comes into conflict with the clauses in the Constitution relating to the militia. The grounds of conflict alleged, are: That national forces cannot be raised to suppress insurrections, but the militia must be called forth; that this law covers the whole ground of the militia, exhausting it entirely and is therefore an authorized substitute for the militia of the States, annulling the remedy provided by the Constitution for insurrection.

Can the national armies be raised or recruited by draft?

That the United States are a nation, and sovereign in the powers granted them, is not denied. Their national characteristics are seen in the powers themselves, and their supremacy provided for in the instrument. They possess all the functions of a nation in the law making, executing, and judging powers.

We cannot conceive of a nation without the inherent power to carry on war. The defence of person and property is a right belonging by nature to the individual and every individual, and is not taken away by association. It therefore belongs to individuals in their collective capacity, whenever thus threatened or assailed. The Constitution, following the natural right, vests the power to declare war in Congress—the representatives of the people. It is noticeable that the Constitution recognizes this right as pre-existing; for, it says, to *declare* war, which pre-supposes the right to *make* war. The power to declare war necessarily involves the power to carry it on; and this implies the means; saying nothing *now* of the express power "to raise and support armies" as the proviso means.

Vattel (book 1, chap 2, sec 18) after proving the national duty of self-preservation, growing out of the nature and obligations of association, says: "Since, then, a nation is obliged to preserve itself, it has a right to *everything* necessary for its preservation. For the law of nature gives us a right to everything, without which we cannot fulfil an obligation; otherwise it would oblige us to do impossibilities, or rather would contradict itself, in prescribing us a duty and at the same time debarring us of the only means of fulfilling it."

Burlemaqui, in his Politic law, (part 4, chap. 1, sec. 11) also says: "The law of God no less enjoins a whole nation to take care of their preservation than it does private men."

Again, in section 12: "Herein it is certain that the sovereign, in whose hands the interest of the whole society is lodged, has the right to make war. But if it be so, we must of course allow him the right of employing the *several means* necessary for that end. In a word, we must grant him the power of *levying troops* and obliging them to perform the most dangerous duties, even at the peril of their lives. And this is one branch of the right of life and death which manifestly belongs to the sovereign."

The right to the means carries all the means in possession of the nation. Every able bodied man is at the call of the Government, for assuredly in making war, as there is no limit to the necessity, there can be no limit to the force to be used to meet it. Therefore, if the emergency requires it, the entire military force [illegible] may be called into [illegible].

But the power to [illegible] to call the requisite [illegible] inherently carries with it the power to coerce or draft. [illegible] without the power to draw [illegible] into the field, in fact would [illegible] the power to carry on [illegible] of war without the [illegible] means is really no power—[illegible] solecism.—Voluntary enlistment [illegible] founded in contract. A power [illegible] command differs essentially from [illegible] to contract. The former [illegible] from authority, the latter [illegible] assent. The power to command [illegible] a duty to obey, but the [illegible] ment of contract is freedom [illegible] or dissent. It is clear, [illegible] that the power to make war without the power to command troops into the field is impotent; in point [illegible] is no governmental power, because it lacks the authority to execute itself.

So much can be [illegible] conclusively, from the fact that the Union is a government of national powers and has the express authority to declare war and to provide for the common defence and general welfare.

But when we [illegible] the express grant of the means of making war, we find it a general grant of the power "to raise and support armies," without any exception as to the extent, the mode, or the means; only that appropriation for the purpose shall not be made for more than two years; which strengthens the grant in every other respect.

Here then is a grant, in the broadest language, to raise armies, and the purposes (of which I shall say more, presently) are vital and fundamental. What is the rule of interpretation to be applied as settled by the Federal judiciary?

In Gibbon vs. Ogden, 9 Wheaton 188, C. J. Marshall says: "We know of no rule for construing the extent of such powers other than is given by the *language* of the instrument which confers them, taken in connection with the *purposes* for which they were conferred." Then, speaking of the misapplication of the doctrine of strict construction [illegible] language which seems as if written [illegible] this time and occasion, he says: [illegible] contend for that narrow con[illegible] support of some [illegible] in the Constitution [illegible] the Government [illegible] the words of the grant [illegible] derstood, import, and which are consistent with the general views and objects of the instrument—for that narrow construction which would cripple the Government and render it unequal for the objects for which it was declared to be instituted, and to which the powers given, as fairly understood, render it competent—then we cannot perceive the propriety of the strict construction, nor adopt it as the rule by which the Constitution is to be expounded."

In Martin vs. Hunter, 1 Wheaton 304, Mr. Justice Story said, "This instrument, (the Constitution,) like any other grant, is to have a reasonable construction, according to the import of its terms: and when a power is expressly given in general terms, it is not to be restrained to particular cases, unless that construction grows out of the context expressly or by necessary implication."

It is conceded that in construing the Constitution we must take it as a whole, and not confine the question to a single isolated grant of power.—But where a general power is vested in plain and absolute language, with one exception or proviso for high, vital and imperative purposes, which will be crippled by interpolating a limitation, the advocate of the restriction must be able to point out somewhere in the Constitution a clause which declares the restriction, or a higher purpose which demands it. But by so much more as the life of a nation is greater than the life of an individual, which may be taken to preserve it, by so much greater is the high purpose of raising an army to preserve the nation than the protection of the rights of the individual. The minor purpose, when urged as a reason for the limitation, cannot therefore be allowed to control the meaning of the plain language used for the major purpose.

Then the inherent powers of a nation to make war for self-presertion, carrying with them all the means of making war effective, the express power to declare war and to raise and support armies, coupled with the express power to pass all laws necessary and proper to carry these powers into effect, all unite in sustaining the powers to raise armies by coercion, and these are in turn sustained by the high, vital and essential purposes of the grant. In addition, the considerations derived from the constitutional duties of the government, and the constitutional restrictions upon the States enforce this conclusion.

If, as inferred only, the Constitution denies coercion, what is its purpose in this?

The power to raise armies by draft lies somewhere—if not in the Union, it belongs to the States. But if it abide in the latter only, how is it to be used at all? They cannot declare war, for this power clearly belongs to the nation alone. They cannot make treaties, contract alliances for mutual assistance, make peace, or do any act requiring forces to answer such stipulated duties, for those powers belong to the Federal Government and are forbidden to the States. They cannot "grant letters of marque or reprisal," "keep troops or ships of war in time of peace; enter into any agreement or compact with another State or with a foreign power, or engage in war, unless when actually invaded, or in such imminent danger as will not admit of delay."

It does not belong to the States to provide for executing the laws of the Union, or for suppressing insurrections. Nor does it belong to one State to defend others against invasion. Of what use, then, is the compulsory power to raise armies, to the States as such?

But it does belong to the United States to provide for the common defence and general welfare; to execute the laws of the Union; to suppress insurrections and rebel invasions; to protect the States themselves against invasions and domestic violence, and to guarantee to them a republican form of government. If we deny the Union the means of raising armies by draft and leave coercion to the State, how are all these high Federal duties to be performed?

When it is said that Congress shall have power to call forth the militia for *three* purposes, is clear this is not a clear this is not a call by the *States* of their own militia. Congress organizes armies and disciplines, while it is left to the States to officer and train only. The State cannot constitutionally know when and for what purpose to call out the militia. This belongs to Congress, which was legislated, vesting the power in the President and prescribing the terms of its exercise. See acts of 28th Feb. 1795, and 3d March, 1807; Brightly's Dig., 430. He is to designated the States from which the militia shall come and direct whither they shall go. The whole affair is national, not State.

The three purposes alluded to, indicate this. By what State authority will Pennsylvania draft her militia to resist an invasion of Louisiana, suppress insurrection in Florida, or execute the Federal laws in Texas? She cannot bind herself by treaty or alliance to furnish troops. She cannot throw herself back upon her powers as an independent sovereign State, for she is, under the Constitution, and this vests the power over the militia [illegible] *Federal* purposes in the Union. [illegible] the requisition of the President under the law. She cannot say I will draft so many, or any proportion only. Indeed she can say nothing, for if it rested with the State alone to call out her militia to execute the Fedral duties, even on the call of the President, the Union would be at the will of the State, and in no better condition than under the Articles of Confederation. If the Executive of the State refused to draft, supported as he might be by his own people, what remedy has the Federal Government? Not even impeachment, for that would depend on the State Legislature.

Then what becomes of this power to draft as residing in the State only—this *parens patriæ* power so much referred to? It is of no value to the Union, for the State is *neither permitted nor commanded* in the Constitution to use it for national purposes. It is of little value to the State, for the Federal Government must protect her against invasion, and against domestic violence if her *posse comitatus* fail. Thus we have reached a point where an admitted sovereign power is sunk somehow between the two Governments, and neither can exercise it for any national or valuable purpose.

It is, therefore, a strong fact in the Constitution itself, that correlative to the power of the Union to raise armies, and to organize arm and discipline the militia and call them forth, is the omission of all authority in the States to raise forces for national purposes; and coinciding with this, that there are constitutional restrictions incompatible with the exercise of any such power.

It is thought the drafting power is incompatible with the provision for the process of law. It would be a sufficient answer to say, this being true, that the State itself could not draft; for the ninth section of the ninth article of the State Constitution has a provision precisely equivalent, as shown by Mr. Justice Curtis in Murray's Lesse vs. Hoboken Land Company, 18 Howard 276; the expression "law of the land," being tantamount to "due process of law."

But it is not denied that wherever technical phrases were used, or expressions having a fixed meaning when the Constitution was ratified, we should adopt their technical or received sense. Hence we interpret "*habeas corpus*," "bill of attainder," "levying war," "trial by jury," by their known meaning at the time.—But the language "to raise and support armies" was neither technical nor fixed in meaning as to any particular mode or means ascertained at the time, and was composed of words of ordinary import. They have no special history bearing upon their use.—The power to draft is admitted in the State. When the States parted with powers contained in language apt to carry the draft, no exception was made, and due process of law was not prescribed in any particular form. On the other hand, as we have already shown, the inherent power of a nation and duty of self preservation the expressed grant of the power to make war, with the means of carrying it on, the duties to the nation and the State imposed upon the National Government, and the duty to individuals to protect their rights guaranteed by the Federal Constitution, all give to the words their natural, general and obvious scope.

Then how can it be said the prase "to raise and support armies" cannot mean to include a draft, because this would not be by due process of law?

What is the due process of law?—Does it mean when a power is given in plain language, it shall not be exercised, because no exact precedent of due process of law can be found in some antecedent form of government? Does it mean that Congress is incompetent to declare the due process of law, by prescribing a reasonable legal form of procedure through which the power is to be exercised? If so, that will become of the Fugitive Slave Law and all laws under those peculiar powers conferred on the General Government, having (at the ratification of the Constitution(no precedent, perhaps in the annals of any country or period? The argument which would construe the meaning of the words "to raise and support armies" by the provision for due process of law, to exclude coercion, it seems to me is unfounded in an any just interpretation of the instrument.

The sum of the argument is simply this, that no mode can be used but one known before to Great Britain or the United States under the Articles of the Confederation.

As to the historical argument, though charmed with the richness, fullness and classical elegance of the effort as a contribution to legal literature, I must say the history itself leaves no impression on my mind, for several reasons. There is no special history bearing directly on the clause in question, to help us out. The historian admits the power of the "conscription" in the State, which therefore could impart it to the Union.—The history of Great Brittain is equivocal, and the distinction between conscription and impressment known at the formation of the Constitution, is the strongest reason why the latter, at least, should have been provided against. Colonial history furnishes no argument; for impressment was a complaint against the King, to be found in the Declaration of Independence, and and yet no provision was introduced. The history under the Articles of Confederation proves nothing, for the weakness of the Confederation was one of the very reasons for forming the Constitution. The history, since its adoption, is no better; for, since 1789 until now, a conscription has never been necessary. The war of 1812 is no exception. So far as our territory was involved, it was a war of invasion by a distant, ocean-divided country, incapable (owing to the state of naval affairs) of throwing a large force upon our shores, as compared with the magnitude and power of this rebellion. It was a period when the proportion of the population to the number needed was vastly greater, and when the spirit of union and patriotism was easily invoked against a common foe; while now the country is a prey to rebellion, irruption, disloyalty, want of sympathy, and all the ills of an insurrection within its own bosom. The whole current of history, therefore, proves the most incomprehensible dullness in a body of men heretofore renowned for their wisdom, in not providing against a tyranny, alleged to be so gross, yet within their view; or it speaks trumpet-tongued against the very interpretation it is invoked to support.

I have alluded to, but not developed, the Federal duty of protection to the personal rights of individuals. The right of war is at the foundation of all govermental protection. If the rights of citizens be invaded by foreign powers, a resort to arms is the only answer to justice denied. If their rights be denied by States against the declared provision of the Constitution securing equality of privilege, military force is the final remedy. Turn to Article 1, Section 9, Article 4th, and to the Amendments, and see how many and important are these rights. If State privileges be denied, contracts impaired, *ex post facto* laws enforced, personal liberty abridged, the trial by jury infringed, or any other right thus secured denied, this fact brings us into the Federal Courts, whose judgments become law, and therefore entitled to the aid of the military arm of the nation to compel their exection. Let bitter inter-States controversy arise and the people become blind to justice and insensible to reason, and value this sovereign controlling power immediately rises to view.

Yet, with the Federal Constitution before our eyes, securing to the citizen all his great and fundamental rights of personal and civil liberty, and pledge each branch of the Government, by the solemn sanctions of oaths and the penalty of impeachment, to the execution of its laws, it is argued that the military necessary to the final and complete protection of these liberties, cannot be given to it, but must be vested in separate States sovereignties, wanting in power beyond their own boundaries, incapable of contract by treaty or alliance, inferior in means, unpledged to Federal duty, and discordant in purpose and in action.

And on what plea is this? Forsooth on the plea that the States are the only true representatives of popular rights—a position founded in a total disregard of the fact that in respect to the powers and duties vested by the Constitution (which, by its own terms, is the supreme law and the security of these rights,) the Federal Government is the first and highest representative of the popular will, as well as the strongest bulwark of popular rights. Is not the Executive elected by the people, and directly responsible to them? And are not the members of the House the representatives of the people, elected by them, and holding the purse strings of the nation, thereby controlling both army and Executive? Thus the people themselves control both State and Federal Governments, with this advantage too, in favor of the nation, that a majority of the whole people control it for the benefit of all, while the States are controlled by jarring and discordant interests. This argument, which thus saps the vital powers of the nation at their centre, has, it seems to me no illustration more fitting than the fable of Æsop, in which the members are represented as rebelling against the stomach, the source of their strength.

There are strong considerations in support of the power to draft, arising in the character of that voluntary enlistment which lies at the bottom of the opposite argument.

Courtiers may whisper in the ear of royalty, the King can do no wrong. Demagogues may sound the praises of the people. But Courts of justice, as well as human nature, can found nothing on the mere willingness of men to perform legal duties in the absence of the sanction of law. What is true foundation of civil liberty?—Why are laws and constitutions formed? For what are penalties and criminal jurisprudence established? Why are governmental powers given to protect society against sedition and insurrection? Clearly to defend man against himself.

Why does the Constitution guarantee to the States a republican from of government? Does not this import that a majority, or some large portion of the people, is potent to destroy their own liberties? Why protect the States against domestic violence, enforce the execution of the laws, and suppress insurrection by the arm of military power? Do not all these imply commotion and disorder at variance with the theory of unreserved submission to the general good, and therefore at variance with popular willingness to enlist?

Then no matter how grateful the flattering incense to the pride of popular vanity, mere willingness is no substitute for authority, and no foundation for governmental power. In the name of civil liberty and a nation's welfare, are the security and prosperity of this Government to be rested on the changing passions of mankind, unsupported by a power of command?

Who are the people? Were they those who, according to the forms of the Constitution, in 1860 chose a President? He wields the lawful authority of the nation, yet it may be said he represents minority views, and popular willingness will thereupon refuse to enlist. Were they those who in 1862 revolutionized the popular voice of the great States of New York, Pennsylvania, Indiana and Illinois? Or were they those who produced a counter revolution in 1863 in the same States, thereby reinstating popular willingness? And remember this is no unmeaning question, when you consider the power of State.

Can it be that this heaven ordained Union the light of the nations, the hope of the world, the protector of States, the defender of personal rights, the guarantee of free government, shall depend for its own safety and for the performance of all its high duties on the ever-changing hues of popular opinion, or the varying moods of State Executives.

When the voice of the people through the forms of the Constitution speaks from the ballot-box, we listen to it as the great rule of government, and submit to what it decides. But, like every other act of power, it is potent only within the scope of its authority. Then surely the interests of a nation have not been made dependent on the discordant tones of local divisions.—If their voices speak to us from the ever-changing spots on the chess board of States, how shall we learn this lesson of willingness in national affairs? Is it the intention of the Constitution that every great popular rising founded itself upon the extremes of popular opinion, shall depend for its suppression on the unstable willingness of men to enlist? Yet this is the doctrine which scouts the power to enforce war by arms, and rest it upon the sheer impulses of the people. I speak of national forces, not forgetting the militia, as we shall presently see.

I deny, then, that interpretation of the Constitution which would by mere implication, destroy its language, its consistency, its wisdom, its duty, its power and its protection; and for myself I would protest against this suicide of national life, in the name of patriotism and civil liberty, of my country's welfare, its honor and renown.

Must we forget all history and our own, short recollections? Must we ignore that conduct of States which brought the Constitution into existence, "in order to form a more prefect Union, establish justic, *insure domestic*