

Democrat and Sentinel.

THE BLESSINGS OF GOVERNMENT, LIKE THE DEWS OF HEAVEN, SHOULD BE DISTRIBUTED ALIKE, UPON THE HIGH AND THE LOW, THE RICH AND THE POOR.

NEW SERIES.

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Judge Curtis on Executive Power.

Little & Brown of Boston, have just published a pamphlet on Executive Power and the rights and duties of citizens, which, from its great ability and sound reasoning and irresistible conclusions, says the Boston Post, must exercise a great and healthy influence upon the public mind. We avail ourselves of the extracts and comments made by the Courier, to afford our readers an idea of the valuable service Judge Curtis has rendered his country.

We cite a few paragraphs from the introductory positions, as specimens of the grave and earnest tone—a mixture of deep conviction and unaffected patriotic feeling—which penetrates the whole subject of the discussion:

"No citizen can be insensible to the vast importance of the late proclamations and orders of the President of the United States. Great differences of opinion already exist concerning them. But whatever those differences of opinion may be, upon one point all must agree. They are assertions of transcendent executive power.

"There is nothing in the character or conduct of the Chief Magistrate; there is nothing in his present position in connection with these proclamations, and there is nothing in the state of the country which should prevent a candid and dispassionate discussion, either of their practical tendencies, or the source of power from whence they are supposed to spring.

"It has been attempted by some particular journals to raise the cry of 'disloyalty' against any one who should question these executive acts.

"But the people of the United States know that loyalty is not subserviency to a man, or to a party, or to the opinions of a propagandist, but that it is an honest and unflinching devotion to the safety and welfare of the country, and to the great principles which our constitution of government embodies, by which alone that safety and welfare can be secured. And when those principles are put in jeopardy every truly patriotic man must interpose, according to his ability, as an unfaithful citizen.

"This is not a government of men. It is a government of laws. And the laws required by the people to be in conformity with their will, declared by the Constitution. Our loyalty is due to that Constitution. Our obedience is due to those laws; and he who would induce submission to laws springing from sources of power originating in the people, but in casual and in the mere will of the occupant of places of power, does not exhort to loyalty, but to a desertion of our principles.

"That they whose principles he questions, the conduct of public affairs; that the times are most critical; that publicity is highly necessary; while these facts afford sufficient reasons to resist all opposition upon any personal grounds, they can afford no good reason to oppose a plausible apology—for those who oppose usurpation of power, which is acquiesced in and established, are the fatal to a free government.

"The war in which we are engaged is a just and necessary war. It must be prosecuted with the whole force of this Government till the military power of the rebels is broken and they submit themselves to their duty to obey, and our right to have obeyed, the Constitution of the United States as the supreme law of the land. But with what sense of right can we advise them by arms to obey the Constitution of the United States as the supreme law of the land, if we have ceased to obey it ourselves? To preserve it, as the supreme law of the land, is the duty of every citizen and of every member of no political party.

Duties, inconsistent in my opinion, with the preservation of any attachments to a political party, caused me to withdraw from all such connections, many years ago, and they have never been resumed. I have no occasion to listen to exhortations, now so frequent, to divest myself of party ties, and disregard party objects, and act for my country. I have nothing but my country for which to act, in any public affairs; and solely because I have that yet remaining, and know not that it may be possible, from my studies and reflections, to say something to my countrymen which may aid them to form right conclusions in these dark and dangerous times, I now reluctantly address them."

Judge Curtis then proceeds to define, with that accuracy and precision of statement which all persons who have ever stood in any professional relations to him are well aware are peculiar characteristics of his mind, the enormous powers which are asserted and claimed by the Executive in the two proclamations in question, and we think that every man whose moral and political instincts are not wholly paralyzed by fanatical strychnine will stand perfectly aghast at their portentous magnitude and extent. Here is a summary of what was asserted by force of the second proclamation (the only one which directly concerns the people of the loyal States) and the orders of the Secretary of War:

"The second proclamation, and the orders of the Secretary of War, which follow it, place every citizen of the United States under the direct military command and control of the President. They declare and define new offences, not known to any law of the United States. They subject all citizens to be imprisoned upon a military order, at the pleasure of the President when, where, and so long as he, or whoever is acting for him, may choose. They hold the citizen to trial before a military commission appointed by the President, or his representative, for such acts or omission as the President may think proper to deem to be offences; and they subject him to such punishment as such military commission may be pleased to inflict.

"They create new offices, in such number, and whose occupants are to receive such compensation as the President may direct; and the holders of these offices, scattered through the States, but with one chief inquisitor at Washington, are to inspect and report upon the loyalty of the citizens, with a view to the above described proceedings against them, when deemed suitable by the central authority."

It is not pretended that the source of these paramount and colossal powers is to be found in any reasonable interpretation of any clause or clauses of the Constitution of the United States. No other source has ever been suggested than the President as Commander-in-Chief in time of war. This was frankly stated by the President himself, in his reply to the address of the Chicago clergymen, when he said, "As Commander-in-Chief of the Army and Navy, in time of war, I suppose I have a right to take any measure which may best subdue the enemy," upon which Judge Curtis pertinently remarks:

"It must be obvious to the meanest capacity that if the President of the United States has an implied constitutional right, as Commander-in-Chief of the Army and Navy in time of war, to disregard any one positive prohibition of the Constitution, or to exercise any one power not delegated to the United States by the Constitution, because, in his judgment, he may thereby 'best subdue the enemy,' he has the same right, for the same reason, to disregard each and every provision of the Constitution, and to exercise all power, needful, in his opinion, to enable him 'best to subdue the enemy.'"

"The necessary result of his interpretation of the Constitution is that in time of war the President has any and all power, which he may deem it necessary to exercise to subdue the enemy; and that every private and personal right of individual security against mere executive control, and every right reserved to the States or the people, rests merely upon the Executive discretion."

Judge Curtis then goes on to show that the President, in his military capacity of General-in-Chief must act in subordination to the laws of his country, including the Constitution of the United States, its paramount law, and that anything beyond this is the usurpation of military despot-

ism. Here we make another quotation: "The time has certainly come when the people of the United States must understand, and must apply those great rules of civil liberty which have been arrived at by the self-devoted efforts of thought and action of their ancestors, during seven hundred years of struggle against arbitrary power. If they fail to understand and apply them, if they fail to hold every branch of their government steadily to them, who can imagine what is to come out of this great and desperate struggle? The military power of eleven of these States being destroyed—what then? What is to be their condition? What is to be our condition?"

"Are the great principles of free government to be used and consumed as means of war?—Are we not wise enough and strong enough to carry on this war to a successful military end, without submitting to the loss of any one great principle of liberty? We are strong enough. We are wise enough, if the people and their servants will but understand and observe the just limits of military power.

"What, then, are those limits? They are these. There is military law; there is martial law. Military law is that system of laws enacted by the legislative power for the government of the army and navy of the United States, and of the militia when called into the actual service of the United States. It has no control whatever over any person or any property of any citizen. It could not even apply to the teamsters of an army, save by force of express provisions of the laws of Congress, making such persons amenable thereto. The persons and property of private citizens of the United States, are as absolutely exempt from the control of military law as they are exempt from the control of the laws of Great Britain.

"But there is also martial law. What is this? It is the will of a military commander, operating without any restraint, save his judgment, upon the lives, upon the property, upon the entire social and individual condition of all over whom this law extends. But, under the Constitution of the United States, over whom does such law extend?"

"Will any one be bold enough to say, in view of the history of our ancestors and ourselves, that the President of the United States can extend such law as that over the entire country, or over any defined geographical part thereof, save in connection with some particular military operations which he is carrying on there? Since Charles I. lost his head, there has been no king in England who could make such laws in that realm. And where is there to be found, in our history, or our constitutions, either State or National, any warrant for saying, that a President of the United States has been empowered by the Constitution to extend martial law over the whole country, and to subject thereby to his military power every right of every citizen? He has no such authority."

And what is the limit of his lawful and constitutional authority as General-in-Chief.—Judge Curtis answers this question as follows:

"What, then, is his authority over the persons and property of citizens? I answer, that over all persons enlisted in his forces he has military power and command; that over all persons and property within the sphere of his actual operations in the field, he may lawfully exercise such restraint and control as the successful prosecution of his particular military enterprise may, in his honest judgment, absolutely require; and upon such persons as have committed offences against any article of war, he may, through appropriate military tribunals, inflict the punishment prescribed by law. And there his lawful authority ends.

"The military power over citizens and their property is a power to act, not a power to prescribe rules for future action. It springs from present pressing emergencies, and is limited by them. It cannot assume the functions of the statesman or legislator, and make provisions for future or distant arrangements by which persons or property may be made subservient to military uses. It is the physical force of an army in the field, and may control whatever is so near as to be actually reached by that force, in order to remove obstructions to its exercise.

"But when the military commander controls the persons or property of citizens who are beyond the sphere of his actual operations in the field, when he makes laws to govern their conduct, he becomes a legislator. Those laws may be made actually operative; obedience to them may be enforced by military power; their purpose and effect may be solely to recruit or support his armies, or to weaken the power of the enemy with whom he is

contending. But he is a legislator still; and whether his edicts, are clothed in the form of proclamations, or of military orders, by whatever name they may be called, they are laws. If he have the legislative power conferred on him by the people, it is well. If not, he usurps it.

"He has no more lawful authority to hold all the citizens of the entire country, outside of the sphere of his actual operations in the field, amenable to his military edicts, than he has to hold all the property of the country subject to his military requisitions. He is not the military commander of the citizens of the United States, but of its soldiers."

As to our duties in this solemn crisis of our country's history, Judge Curtis speaks in a strain of manly, deep-toned, stirring eloquence, worthy of the best State papers of the revolutionary struggle:

"A leading and influential newspaper, while expressing entire devotion to the President, and approbation of his Proclamation of emancipation, says:

"The Democrats talk about 'unconstitutional acts.' Nobody pretends that this act is constitutional, and nobody cares whether it is or not."

"I think too well of the President to believe he has done an act involving the lives and fortunes of millions of human beings, and the entire social condition of a great people, without caring whether it is comfortable to that Constitution which he has, many times, sworn to support.

"Among all the causes of alarm, which now distress the public mind, there are few more terrible to reflecting men than the tendency to lawlessness which is manifesting itself in so many directions. No stronger evidence of this could be afforded than the open declaration of a respectable and widely circulated journal, that 'nobody cares' whether a great public act of the President of the United States is in conformity with, or is subversive of, the law of the land—the only basis upon which the Government rests; that our public affairs have become so desperate, and our ability to retrieve them by the use of honest means is so distracted, and our willingness to use other means may themselves break the fundamental laws of the country, and become usurpers of vast powers not entrusted to them, in violation of their solemn oaths of office; and 'nobody cares.'"

"It is not to be believed that this is just to the people of the United States. They do care, and the President cares, that he and all other public servants should obey the constitution. Partisan journals, their own honest and proper desire to support the President—on whose wisdom and firmness they rely to relieve their country from its evils and dangers, and the difficulties which the mass of the people encounter in forming opinions of constitutional law, may prevent them, for a limited time, from arriving at a just judgment of such questions, or of the vast practical effects dependant on them.

"But the people of the United States do not expect national concord to spring from usurpations of power; or national security from the violation of those great principles of public liberty, which are the only foundation, in this country, of private safety and of public order. Their instincts demand a purer and more comprehensive statesmanship than that which seizes upon unlawful expedients, because they may possibly avert for the moment some threatening danger, at the expense of the violation of great principles of free government; or of the destruction of some necessary safeguard of individual security.

"It is a subject of discussion in the public journals, whether it is the intention of the Executive to use the powers asserted in the last proclamation, and in the Secretary of War, to suppress free discussion of political subjects. I have confidence in the purity and patriotism both of the President and the Secretary of War. I fear no such present application of this proclamation and these orders by them. But the execution of such powers must be entrusted to subordinate agents, and it is of the very essence of arbitrary power that it should be in the hands which can act promptly and efficiently and unchecked by forms. These great powers must be confided to persons actuated by party, or local or personal feelings and prejudices; or what would often prove as ruinous to the citizen, actuated by a desire to commend their vigilance to their employers, and by a blundering and stupid zeal in their service.

"But it is not this or that particular application of power which is to be considered. It is the existence of the power itself, and the uses of which it is susceptible, while following out the principle on which it has been assumed.

"The uses of power, even in despotic monarchies, are more or less controlled by usages and customs, or, in other words, by public opinion. In good hands, and in favorable times, despotic power is not commonly allowed to be felt to be oppressive; and, always, the forms of a free government, which has once existed, so far as is practicable, are carefully and speciously preserved. But a wise people does not trust its condition and rights to the happy accident of favorable times of good hands. It is jealous of power. It knows that of all earthly things, it is that thing most likely to be abused; and when it effects a nation, most destructive by its abuse. They will raise themselves to consider what is the power claimed; what is its origin; what is its extent; what uses may be made of it in dangerous times, and by men likely to be produced in such times; and while they will trust their public servants, and will pour out their dearest blood like water to sustain them in their honest measures for their country's salvation, they will demand of those servants obedience to their will, as expressed in the fundamental laws of the Government, to the end that there shall not be added to all the sufferings and losses they have uncomplainingly borne, that most irreparable of all earthly losses—the ruin of the principles of their free Government.

"What then is to be done? Are we to cease our utmost efforts to save our country, because its Chief Magistrate seems to have fallen, for the time being, into what we believe would be fatal errors if persisted in by him and acquiesced in by ourselves? Certainly not. Let the people be right, and no President can long be wrong; nor can he effect any fatal mischief if he should be.

"The sober second thought of the people has yet a controlling power. Let this gigantic shadow, which has been evoked out of the powers of the Commander-in-Chief, once be placed before the people, so that they can see clearly its proportions and its mean, and it will dissolve and disappear like the morning cloud before the rising sun.

"The people yet can and will take care, by legitimate means, without disturbing any principle of the Constitution, or violating any law, or relaxing any of their utmost efforts for their country's salvation, that their will, embodied in the Constitution, shall be obeyed. If it needs amendment, they will amend it themselves. They will suffer nothing to be added to it, or taken from it, by any other power than their own. If they should, neither the government itself, nor any right under it, will any longer be theirs."

A Million and a Billion.
A correspondent sent the following to a New York paper:
We are perpetually hearing of millions, and how many millions it will take to do this or that. We have a good idea what a million of dollars will do, but I very much doubt whether one person in a thousand has a correct idea of the quantity or number contained in a million. For instance if you would ask a person how soon or long it would occupy him to put down a million dots with a pen upon a sheet of paper, he will generally tell you something so far from the fact as to be laughable.

Permit me, therefore, to say—for I have tried the experiment more than once—it would occupy an expert penman about fourteen days, supposing him to work bank hours, (that is six,) incessantly doing nothing but putting dots on a paper or dipping his pen into the ink. This will give your readers some idea of the quantity or number contained in a million. Let any one try it, by laying his watch on the table, close to the paper, and work for ten or twenty minutes, then add and multiply. But what is a million compared to a billion? It is a mere nothing. What then is a billion?

A very short answer will suffice for a very long story. It is a million times a million. But who could count it? No man! A quick bank teller can count out 160 or 170 a minute, but let us suppose he could go as far as 200. Then one hour will produce 12,000, a day 267,000, and a year, or 365 days, 105,150,000. Let us suppose now, that Adam, at the beginning of his existence, had begun to count; and had continued to do so, and was counting still; he would not now, according to the usually supposed age of our globe, have counted near enough. For to count a billion, he would require 9,520 years, 60 days, 5 hours and 29 minutes. Now, supposing we were to allow poor Adam 12 hours daily for rest, eating and sleeping, he would need 19,024 years, 60 days, 10 hours and 49 minutes.

Prospective Intervention on the Part of European Powers.
France and England to Demand an Armistice.—Specific Instructions to Lord Lyons.—The Rebels to be Recognized if Mediation is Rejected.
Reliable information has been received in this city, from semi-official sources in Europe, that England and France are of entire accord in regard to their line of conduct towards this Government. Lord Lyons, who was to have returned to the United States in the Austrian steamer, was detained at the last moment by order of Lord John Russell (Her Majesty's Secretary for Foreign Affairs), to await further instructions in consequence of the President's Abolition Proclamation. His Lordship's departure was then fixed for October 25. (last Saturday), and on his arrival at Washington he will positively inform Mr. Seward of the programme decided upon by the European powers. Instructions similar to those of the British Minister will be forwarded to Count Mercier, the French Minister at Washington, by the same steamer which will bring the English Minister back to this country.

We are also given to understand that our Government will soon be informed that England and France have decided upon the recognition of the Southern Confederacy, if the joint offers of mediation and armistice to be proposed to Mr. Seward are not accepted. At any rate this Government will be duly notified of the intentions of England and France in this respect, and as these powers are fully aware that any offer of mediation on the basis of separation will not for an instant even be listened to by our Government, united endeavors will then be made by all the European ambassadors at Washington to obtain an armistice of four or six months between North and South. These foreign Governments are under the impression that if once a cessation of hostilities can be effected a calmer spirit will succeed, which will enable the two sections to negotiate.

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The utmost endeavors will be made shortly after Lord Lyons, return to Washington, by the whole corps diplomatique at Washington, to bring about such an armistice. Only then, when all these offers of mediation and armistice shall have proved of no avail, will the South be recognized simultaneously by England and France. Aside from the fact that these powers would now look upon the South as a de facto Government, they fear that an insurrection of the slaves in the South, as a consequence of the late Emancipation Proclamation, will take place after the 1st of January, and hence, in order to afford protection to their own citizens residing there, are compelled to grant protecting power to their agents in the rebel Southern cities, which, as things stand just now they do not possess.

They fear that the Confederate Government, unrecognized as it is, may at any time tell their Consuls in Charleston, Richmond, Savannah, and elsewhere, that there is no diplomatic relation existing between the confederacy and Europe, and they can therefore not permit to act in a Consular capacity. It is to guard against such an emergency, and to afford their own citizens residing in the South regular protection under the aegis of their regular appointed agents, that England and France will claim the necessity of recognizing the new Confederacy.

GENERAL CASS AND THE PROCLAMATION.—The Abolition press have been circulating, for some time past, what they call General Cass's endorsement of the President's Emancipation Proclamation. We felt sure that there must be some mistake about it, or that it was a willful falsehood, circulated for political effect, but, having no authority we could not deny it. The Detroit Free Press, however, comes to the rescue of the General and settles the question by a flat denial. The sound old Democrat not only does not endorse the proclamation, but declares that "there is no power in the Executive, under the Constitution, to decree the emancipation of slaves." Of course there is not, and the Abolitionists know it as well as the General, but they have persuaded the President that he is above the Constitution, and he is weak or wicked enough to play the usurper to please them.

THEY DARE NOT BETRAY THEIR TRUST.—It is intimated that the opposition will attempt to buy a Democratic vote for the next U. S. Senator, and in this way have the State represented for six years by a radical. We do not believe they have money enough to do it, and if they had, an indignant and outraged people would not suffer the miserable wretch to live. In these times of constitutional liberty have too much at stake to witness such a scene without inflicting summary punishment.—West Branch Democrat.