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THE UNCONSTITUTIONAL ACTS OF THE PRESENT GOVERNMENT.

THE Proclamation of Abraham Lincoln, issued on the first of January, caps the climax of the arbitrary and unconstitutional acts of his Administration. The war has now become, instead of a war to maintain the Union and execute the laws, a war to overthrow the Constitution and the laws, and to render the restoration of the Union impossible.

It has ever been the glory of the American people, since they won their independence by arms in a seven years' war, and formed a Union of States for their mutual protection, that they had a written Constitution drawn up with the greatest care by the heroes and sages of the Revolution—a fundamental, organic law by which are clearly defined the rights and powers of the Federal Government, the rights and powers of the several States, and the rights and immunities of the individual citizen, a perfectly harmonious machine, with wheels within wheels, all depending upon each other. This *Magna Charta* of America is described in the instrument itself to be the supreme law of the land, to which all other laws must be referred, and pronounced valid or null and void, just as they harmonize with or are in antagonism to its provisions. And by the same standard must be judged the acts of the Executive, which are illegal and of no effect without its authority. The Constitution was designed to apply to war as well as to peace, and it does cover the whole ground. The radicals and abolitionists, finding no warrant in the Constitution for their legislation in Congress, or the proclamations of the President, or the proceedings of his Secretaries, fall back upon some indefinable despotic authority, which they call 'the war power.' In virtue of this,

they contend that the President can override the Constitution, and that his will and order are the supreme law of the land—*sic jubeo; pro ratione stet mea voluntas*; so that if he thought proper to seize the entire property of the people of the State of New-York, or even to chop off the heads of every man, woman, and child within its limits, he would have a right to do so in time of war. And by the same principle, he might prolong war for the whole term of his natural life, and prevent the assembling of Congress and State Legislatures or the holding of Presidential elections during the same period. Such is the legitimate conclusion to which the monstrous and absurd doctrine put forward by the abolition monomaniacs inevitably leads.

In point of fact, the President, the Secretary of State, the Secretary of War, and the Postmaster-General, since the present bloody strife was inaugurated, have committed numerous acts as illegal and as unjustifiable as any of these. In the loyal States of the North they have suppressed freedom of speech and of the press, having crushed newspapers by arresting their editors and proprietors and sending them to prison, by seizing the issues as published, and by refusing to transmit them through the mails, contrary to the laws of Congress. Thus was private property confiscated and destroyed by arbitrary power. In Philadelphia, in the State of Ohio, and even in New-England, men have been arrested and imprisoned for merely expressing their opinions in public, as they had a right to do, upon the course of the Government; and some have been dragged out of their beds at dead of night and immured in dungeons for mere private

conversation perfectly legitimate, while others, who neither by word nor deed had offended the tyrants at Washington, were consigned to the same quarters because somebody had merely suspected them, or lest hereafter they might possibly say or do something offensive or dangerous to despotism. Among the other unconstitutional acts of the President is his suspension of the *habeas corpus*, a power expressly reserved for Congress,* and not for the Executive; and only to Congress is the power given in certain contingencies, and in rebellious districts. To suspend it in New-York or Ohio is beyond even the power of Congress. We have borrowed the privilege of *habeas corpus* from England, and in that country it is never suspended by the monarch, but by Act of Parliament. But Mr. Lincoln usurps powers such as no monarch in modern times would dare to exercise.

What says the Constitution? 'Congress shall make no law abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, or to petition the Government for a redress of grievances.†' 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation.‡' 'No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; . . . nor be deprived of life, liberty, or property without due process of law.§' 'In all criminal prosecutions, the accused shall enjoy the right

to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.* 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.†

Every provision in this great bill of rights has been flagrantly violated by the present Government. Citizens have been deprived of both liberty and property not only without due process of law, but without any color or pretence of law at all, or any accusation whatever against them. The arrest and imprisonment of Mrs. Brinsmade is a case in point. Proprietors of newspapers have been deprived of both liberty and property without any process of law. The accused 'have not enjoyed the right to a speedy and public trial.' Many have been imprisoned in forts for upwards of a year without ever having learned the cause of their arrest or the nature of the accusation against them. They have not been confronted with any witnesses, and so far from having a trial by jury in their own State and district, they have been kidnapped at night and carried off to other States. For example, Dr. Olds, of Ohio, taken out of his bed by three armed men, with pistols to his head, who produced no warrant, and whom he believed to be robbers and murderers, whom he says he would have shot had he been armed. It is held by Blackstone and all other jurists, that to kill such persons is justifiable homicide. Thus seized, he was conveyed away secretly out of the State, and brought to Fort Lafayette in this State. It is the boast of an Englishman under

* See Constitution, Art. I. Sec. 9, clauses 1st and 2d, where its suspension is enumerated among other things which Congress has the right to do under certain conditions.

† Article I. Amendments to the Constitution.

‡ Article IV. Amendments to the Constitution.

§ Article V. Amendments to the Constitution.

* Amendments, Art. VI. † Idem, Art. VIII.

a monarchy, that his house is his castle. What is left to us any longer to boast of under a republic? Dr. Olds was released without a charge against him, and without trial, just as arbitrarily as he was arrested and imprisoned. And as for the 'cruelty' suffered by him and the other prisoners, it was so 'unusual' that it was sufficient to deprive them of reason, and one man did actually become insane, and another died from its effects. In most cases the relatives were not permitted even to know where the prisoners were incarcerated. So far from obeying the injunction 'not to require excessive bail,' the Government would not permit the liberation of the prisoners on any amount of bail in cases where there was no crime known to the laws; and the demand to 'have the assistance of counsel,' was in all cases not only refused, but became the cause of aggravating the hardships and increasing the duration of the imprisonment. The case of Mrs. Brinsmade, when brought to light, was so atrocious, that every one, from the Secretary of War down to Fouché Kennedy, shifted the responsibility from his own shoulders to somebody else. Yet the President did not remove one of the culprits from office. In the case of General Butler, whose outrages to men and women at New-Orleans drew upon his head the condemnation of the civilized world, Mr. Lincoln has virtually indorsed his acts, and thus made himself responsible.

Let us Americans never talk again of the tortures of the Spanish Inquisition, the Bastille of Paris, the dungeons of Spielberg, of Naples, and of Venice, with its 'Bridge of Sighs,' or those of Chillon, 'deep and old,' in which the prisoners were left to rot one by one, till the only survivor 'lay living by the side' of his last brother who had 'drooped and died,' and so protracted was his solitary confinement, that his very chains and he grew friends, and he so 'learned to love despair,' that it was the same to him 'fettered or fetterless to be.'

'CHILLON! thy prison is a holy place,
And thy sad floor an altar—for 't was trod,
Until his very steps have left a trace,
Worn, as if thy cold pavement were a sod,
By Bonnivard! May none those marks efface,
For they appeal from tyranny to God.'

These are notorious as the prisons of despots in countries which knew no Constitution. In America, 'the land of the free,' where in theory at least a written Constitution is the supreme law, the fort which is honored with the name of Lafayette, a name so identified with our glorious struggle for freedom nearly a century ago, is disgraced and polluted by being turned into a political prison, rivalling the horrors of the foulest den ever set apart by tyrants to torture human beings for their opinions. Prisoners were kept there so long, that their very existence was forgotten by the authorities at Washington, who denied all knowledge of them. Dr. Olds, whom the people of his native place in Ohio carried on their shoulders after his release, proclaims to the world that he was stripped of every thing, his money, the medicines he had brought with him, and even his spectacles. He was denied the use of a Bible in his solitary cell. He was not furnished even with a towel or a light. He was compelled to drink the filthy water of one cistern rendered foul by the impurities from the soldiers' barracks, while other cisterns contained clean water, which he was not permitted to touch. So damp was the brick pavement, that articles left on it for a short time became blue-molded. This den was infested with rats and other vermin. He became so ill that he was almost in a dying state. Medicine was sent to him which he believed to be poison. Despair and a determination not to die rallied him at last. After being twenty-two days in that cell, he was put with eleven others, making twelve in all, into an apartment fifteen feet by twenty-five, where they had all to sleep and cook, and find place for tables, chairs, cooking utensils, trunks, and such like. In a similar room de-

scribed by Governor Morehead, of Kentucky, there were thirty prisoners together; and such was the inhumanity of the jailers, that they would not permit a light when they knew that one of the prisoners was dying, and the groans of his last agony made this dreary den tenfold more hideous. And who were those thrown without even the color of law into this loathsome prison? Some of the first men of the country — men against whom no crime was even alleged. How long they would have remained there but for the potent voice of the people expressed through the ballot-box in the elections of Ohio, Illinois, Indiana, Pennsylvania, New-Jersey, and New-York, can never be known. In this case the voice of the people was the voice of God calling them forth from the tomb where they were buried, as the voice of CHRIST brought Lazarus from the grave eighteen hundred years ago. More than two thousand arbitrary arrests have been made during the last eighteen months. The day is not far distant when the tyrants and their minions will have to answer for their crimes to the outraged laws. No *ex post facto* bill of indemnity passed by Congress can save them from punishment, for the judges will pronounce all such acts unconstitutional and void.

Equally unconstitutional and void are the confiscation acts of Congress, upon which the proclamation of the President is founded. Congress has no power to make a law to confiscate, by wholesale, the property of the people of a State. Slaves, according to the annual message of Mr. Lincoln, are as much lawful property as any other species of property under the Constitution. But the Constitution says no man can be deprived of his property without due process of law. He must be first tried by a jury of his peers, and legally convicted. It is only in the infernal regions that men are punished first and tried afterwards.

GNOSTIUS HÆC RHADAMANTHUS HABET DURISSIMA
regna,
Castigatque, auditque dolos.*

In cases of treason, which 'consists in taking up arms against the United States, or adhering to their enemies, giving aid and comfort,' the Constitution declares that 'no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court;' and that 'the Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.' It will not answer to pronounce, by an edict, the whole people of a State guilty of treason. Each man must be tried separately in a civil court of justice, and by an impartial jury, in his own State and district. The forfeiture of his property can only follow on his conviction, but even then it is only for his lifetime. His children cannot be deprived of the reversion; for, contrary to the precedents established under monarchical institutions in Europe, the humane founders of the American Government ordained that there should be no bills of attainder to 'work corruption of blood,' and disinherit the children of a traitor. Again, it must be taken into consideration that no man can be really guilty of treason where he is not protected by the government *de jure*, and is coerced by the government *de facto*. All jurists hold that protection and allegiance are reciprocal. What protection can the United States Government afford to men in Alabama or South-Carolina, who, if they are not compelled to take up rebellious arms by the Confederate Government, are at least compelled to 'adhere' to the latter, and to 'give it aid and comfort'? But even if they are not in any sense traitors, and afford no aid nor comfort to the rebellion, their property is equally swept away by the proclamation of Mr. Lincoln, who makes no exception in their favor. It is thus of no advantage to a citizen to be loyal to the Federal Government in any State which Mr. Lincoln declares to be in rebellion. To the innocent and the

* Virgil's *Æneid*.

traitor the same punishment is meted out. Nor is it easy to see upon what principle Mr. Lincoln declares some States to be all in rebellion, and others to be not in rebellion, while parts of others are in rebellion and parts not. Thus he exempts the whole of Missouri, Kentucky, and Tennessee from the proclamation, as if no part of them were in rebellion, whereas the contrary is notorious; while, on the other hand, he treats North-Carolina as if it were all in rebellion, when the reverse is true, at the same time that he exempts portions of Virginia and Louisiana from the operation of the proclamation. In fact, the only point in which he exhibits a uniform policy, is that where he has the power to free the slaves, he keeps them in bondage, and where he has not the power he declares them free—on paper! Had the President, for instance, in virtue of his alleged 'war power,' by which he pretends he has a right to arrest, without cause, any citizen of Maryland he pleases, liberated all the slaves in that State, he would have done something practical. He holds that slavery is the cause of the war. Then why may not hostilities yet break out in Maryland? On the same principle, why not abolish slavery in Kentucky and Missouri, lest it draw those States again into the rebellion, and also in Tennessee, lest it make that State, if possible, more rebellious than it is at present? If Mr. Lincoln, standing on 'the higher law,' which was long since pronounced by Mr. Seward and himself to be paramount to the Constitution and laws of the United States, proclaimed all slaves throughout the Southern States, from the Delaware to Rio Grande, to be forever and unconditionally free, then, according to his own logic, he would get totally rid of the cause of present and future rebellion, he would obey the higher law thoroughly and consistently, and he would perform a sublime though despotic act, which the old world, as well as the new, could understand if not admire; while he

would not violate one iota more than he does now the law. He took at his inauguration, which was in the following words:

'I do solemnly swear that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.'

The knaves and fanatics who surround Mr. Lincoln have persuaded their unfortunate victim that he fills a double office, each distinct from the other—the one that of President, the other that of Commander-in-Chief, and that the latter is the highest, and swallows up the other at pleasure, as if it were a nullity. Hence, in his proclamation, he makes the distinction that he issues the proclamation, not as President, but as Commander-in-Chief. We should like to know if, as President, he were impeached, convicted of treason against the Constitution, and brought to execution like Charles I., of England, and Louis XVI., of France, what would become of him as Commander-in-Chief? Mr. Lincoln was not elected Commander-in-Chief, but President, and he is Commander-in-Chief only in virtue of his being President. The greater includes the less, and the military power is subordinate to the civil. He did not take an oath to execute faithfully the office of Commander-in-Chief, but of President of the United States. He did not take an oath to exercise arbitrary power, but to stand by the Constitution.

Western Virginia, according to his own proclamation, was not in rebellion on the first of January. There is no shadow of excuse, therefore, for the exercise of a 'war power' in that case. He can only act in his civil capacity, and as chief magistrate, when he signs a bill. Yet he signed the bill separating Western from Eastern Virginia, and constituting it a State. He might as lawfully sign a bill constituting Staten Island, Long Island, or Manhattan Island a new State, without the consent

of the State of New-York. There is no pretence that the State of Virginia ever consented to such a division, and the Constitution is clear and emphatic on this point. It declares that 'no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States *without the consent of the Legislatures of the States concerned.*'* Even Dr. Brownson, who has become so sudden and so zealous a convert to Republicanism, denounces the President's act in signing this bill as most revolutionary and dangerous. It is stated, too, that at least a majority of the Cabinet pronounced it unconstitutional. 'Congress,' says Dr. Brownson, in the last number of his *Quarterly Review*, 'should never have recognized even for an instant the revolutionary government at Wheeling as the State of Virginia. It is notoriously not Virginia.' He goes on to say:

'The violation of the Constitution we complain of is in the manner the President is reorganizing State authority in the seceded States. This he is doing by means of a few friends of the Government, principled or unprincipled, got together in a seceded State under a military Governor appointed by the Executive. . . . Already the President has created two Senators for Virginia, and we hear it rumored that Texas is to be divided into four States, and that will be a creation of ten additional Senators. The same process may be carried on in all the seceded States, and the President create for himself, or endow creatures of his own, with nearly one half of the electoral and representative power of the United States. . . . Against this we protest in the name of the Constitution, of legal government, of social order, common honesty, and common sense. But our protest will avail nothing.'

No 'military necessity' can justify this; and, indeed, the plea of military

necessity in the case of the slave-emancipation edict is equally absurd. By 'military necessity,' a general, while on his march, may, if essential to his success, take private property to be accounted and paid for by his Government. But after he has succeeded, no such necessity exists. A general, for example, might seize slaves within his lines and compel them to work on his fortifications, but their labor must afterwards be paid for, and they cannot be emancipated unless their freedom is purchased by the Government. A proclamation, emancipating slaves within the lines of the enemy, and not in the power of the President or his generals, can, in no sense, aid in conquering the enemy; for, till he is conquered, it is a *brutum fulmen*, and amounts to nothing. As a military measure, it is therefore sheer nonsense. But it is worse than this. It is a threat which is calculated to thoroughly unite the foe, and nerve him to unconquerable and desperate resolve. If it should have the effect of leading to servile insurrection and a war of races, as Mr. Lincoln seems to expect in his proclamation, the blacks, upon whom so much philanthropy is expended, would be speedily exterminated after scenes of horror, which would give the civilized world a right to interfere in our quarrel.

But neither by the Constitution of the United States, nor by the laws of nations, can the property of a whole people be confiscated. The Confederates are either United States citizens or they are foreign enemies. If they are the former, they must be dealt with according to the provisions of the Constitution. Their property in slaves is secured to them by that instrument. If they are foreign enemies, they must be treated according to the law of nations and the usages of modern warfare, which prohibits the capture of the private property of the enemy. So says Vattel, and so it was admitted in 1856 by one of our Ministers in a diplomatic correspondence between the United States and England, in which it was proposed to abolish

* Article IV. Sec. 3.

the capture of private property at sea, and make the rule of maritime warfare correspondent with the rule already established on the land. In any view, therefore, the proclamation of Mr. Lincoln is an anomaly and a blunder, and hereafter it will be declared null and void by the judicial authorities of the country.

With good reason does Brownson call on our foolish President to 'resign and return into private life,' 'his burden being too great and his ability unequal

to the demands upon it.' The prospects of the restoration of our once glorious Union grow every day more dim. While the war languishes and fails, we are threatened with foreign intervention, national bankruptcy, and it may be bloody anarchy at the North. We are not without hope that the Message of Governor Seymour, of this State, will inaugurate a movement which may result in an armistice and a convention of the States, by which final peace and the dismembered Union may be restored together.

ASHES FROM THE PIPE OF AN OLD SMOKER.

I.

HERE I am, good friends, stretched out before my glowing fire, this cool January evening — with the curtains drawn, the doors closed, and the glaring gas-light subdued by a softly-tinted shade; feeling exceedingly companionable, and comfortable, and cosy, in the *negligé* of study-gown, smoking-cap and slippers; with my port-folio on my knees, my feet at an angle of forty-five, and to crown all, my pipe — *the* pipe — for a sole companion and confident. A formidable affair it is, too, with its capacious red-clay bowl, its yard-long wooden stem, and golden-amber mouth-piece. There is a bit of historical interest connected with it, too, for it was purchased in Cairo, and has travelled over the greater part of the world — not with its present owner, alas! but with a certain German friend, who speaks more languages than a learned professor. *En passant*, how these bits of history cling to every thing we gather about us, making them more valuable and precious year after year — even as the dust and cobwebs of age add to the sparkle and flavor of rare wines. We all have a museum in our own homes, only that the curiosities are lying loose all around us, instead of being hung up

in glass-cases, ticketed and labelled; and the descriptive catalogue does not need to be printed, for we learned it by heart long ago. Those velvet slippers up there, on my feet, suggested this idea; they are very delicate slippers, lined and quilted with rose-colored satin, and elegantly embroidered with gold cord, which winds in and out in mazy figures, curving at last on each heel into a careless but graceful 'E.' And Eva — that's the name — is a bright-faced, dark-eyed, blithesome little maiden, who lives many a mile away, whom I have never seen, save as a shadow on glass, and whose voice I have never heard, save as it came to me from the mystic pen-characters her little hand had traced! Then there is the smoking-cap on my head, deftly crocheted with chinchilla worsted, by a pair of soft white hands; how vividly it calls to mind a round fair face, with cheeks just faintly tinged with the freshness of youth; calm blue eyes, deep and lustrous as two miniature seas of overflowing love; dimpled chin, curving in soft lines from a pair of full, red-ripe lips, to the snowy neck; and a white, wide forehead, shaded by silken waves of amber hair, that float back over two little ears, delicately