THE FORCE BILL.

ITS MILITARY FEATURES.

In passing the statute popularly known as the Ku-klux Bill, Congress has confessedly entered upon a new field of legislation, in that it has assumed for the first time to take cognizance of and provide for the punishment of acts of violence to the persons and property of private citizens. The bill is artfully drawn, and its intent is veiled in language purposely vague and verbose; but still its design is plain. It means that persons guilty of homicide, robbery, arson, mayhem, assaults, and the like, may be brought within the jurisdiction of United States courts and be punished by United States authorities; it means this or nothing. We are familiar with its historical origin, with the avowed purpose of its authors, and with their diligent care to conceal and yet to accomplish their end by the tricks of language. In the light of these facts, it is our design to examine into the validity of this statute.

Before proceeding to discuss the central idea of the whole legislation, and the essential features in which this idea has been expressed, we must dispose of certain other portions which are rather auxiliary than necessary. The first section is practically of no importance. It is logically the statement of a truism. It substantially enacts that whatever violates the Constitution shall be amenable to certain penalties; but it does not descend to particulars and describe the acts and defaults which shall constitute such violation. If the statute consisted only of this section, it would be equally harmless and valueless. The second section contains two different provisions relating to different subject-matters, and depending upon different principles, although they are grammatically united in one sentence. The first declares that certain enumerated acts of resistance and hostility to the authority of the United States, to its laws, and to its means and measures of administration, shall be crimes, and that the offenders shall be liable to indictment, trial, and punishment in the national courts. This clause is, beyond all question, valid and proper. It is to be ranged in the same class with the statute which makes it an offence to obstruct the transportation of the mail. It has never been doubted that, so far as Congress may legislate, it may enforce its laws and protect the officers of the Government in their administration by penal enactments.

Although the statute under consideration is entitled "An Act to carry into effect and to enforce the Fourteenth Amendment of the Constitution," the third section must be partially, and the fourth section wholly, referred to other portions of that instrument. We here collect all the constitutional provisions to which they can by possibility relate, and which can by possibility be considered as their foundation. "Congress shall have power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions" (Art. I., sec. 8, § 5). The third section under review enacts what the President, under circumstances therein described, in case of "insurrections, domestic violence, unlawful combinations, or conspiracies in a State," which are to be directed against the authority of that State, to suppress the same by the military, or otherwise, as he may deem proper. For all this there is no support in the clause above quoted from the eighth section of Article I. That clause provides in terms for enforcing laws of the United States by the militia, this statute provides for the enforcement of State laws by the military under the direction of the President; the insurrections spoken of is that clause are, from the context and from the express provision found in Article IV., plainly to be those against the United States, while this statute purports to arm the President with power, on his own motion, to suppress insurrections against a State.

But there is a difficulty of far greater magnitude—a violation of the fundamental law far plainer and more dangerous. This third section enables the President to suppress not only "insurrections," but "domestic violence, unlawful combinations, and conspiracies" by means of the military. These latter terms were not inserted without a design. They describe something less than insurrections; they descend in magnitude and criminality until they end in combinations which may perhaps be attended by no overt act, no outbreak of violence. While, therefore, the Constitution only permits a calling out of the militia to suppress insurrections, which are, in fact, incipient wars, Congress has gone to the length of empowering the President to use the military in time of peace in putting down mere domestic violence and in breaking up conspiracies. It is plain that this section of the statute finds no warrant in the clause quoted from the first article of the Constitution, although it is probable that the ingenious author of the bill artfully chose his language, so as to make it appear, by the use of the word "insurrections," that there was a solid basis of validity for his proposed enactment. Nor can this section be rested upon the IVth Article of the Constitution, although that article does not require that an insurrection should be in progress, but makes it the duty of the United States Government, under certain circumstances, to protect a State against mere domestic violence. This duty, however, can only arise upon the happening of one or the other of two contingencies: either the State legislature must apply for aid, or the President, when the legislature cannot be convened, must apply for aid. This parenthetical and conditional clause means something; it is the key to the whole position; it describes the sole occasion on which the National Government may interfere with the function of maintaining domestic quiet which normally belongs to the States.

We remark, in passing, that it is only by giving full and affirmative force to another and similar parenthetical and conditional clause that Congress acquires the right to suspend the writ of habeas corpus under any circumstances. Congress has utterly ignored this necessary limitation, has treated the constitutional provision as though it did not exist, and as though the article read "the United States shall protect each of the States against domestic violence." There could be no plainer departure from the fundamental principles of the organic law, no clearer violation of its express prohibitory clauses.

The fourth section of the statute is evidently based upon the clause of the Constitution relating to the suspension of the writ of habeas corpus. As there is no pretence of an invasion, Congress has undertaken to define a rebellion. Rebellion is a word well known to all writers upon public law; it has a well-ascertained and precise meaning, and describes a positive fact and not a theory or supposition. Congress, however, has now declared that several different circumstances or conditions, not united but each separately, shall constitute a rebellion—namely (1), when any of the "insurrections, domestic violence, unlawful combinations, or conspiracies" already mentioned shall be so powerful as to be able to set at defiance the authorities of the State or of the United States, or (2) whenever the authorities of the State shall be in complicity with, or shall conspire at, the purposes of such combinations, and the public safety in such State shall thereby become impracticable. In each of these alternatives, the combination, violence, or conspiracy shall be deemed a rebellion against the United States, and the President may suspend the privilege of the writ of habeas corpus. The Constitution uses the word rebellion in the sense recognized by all jurists. Congress cannot change this meaning; it cannot change a fact; it cannot make that a rebellion which is not a rebellion. Rebellion is war—war no longer incipient, but actual; it is a condition in which all civil administration is suspended or overthrown, and the nation must, for the time and in the district infected, employ its military arm alone to overcome the insurgent enemies of the Government. It should be remembered that Congress cannot inaugurate a civil war. That state of hostilities must be commenced by the rebels, and must have developed itself into a war, before the peculiar military powers conferred by the Constitution become operative. But this statute contemplates no such state of active hostilities. It makes, among other alternatives, domestic violence, unlawful combinations, or conspiracies, with the purposes of which the State authorities are in complicity or which they shall conspire, a rebellion against the United States. No war is described here, nor even any resistance to the national authority as such, because the combinations, violence,
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and conspiracies spoken of are to be in opposition to State laws alone. It needs no further analysis of this section to show that it cannot be sustained by the constitutional provision which declares under what circumstances the writ of habeas corpus may be suspended. Congress cannot, by any mere array of words, make that exist which does not exist in fact.

It has been asserted that these several provisions were copied from an early statute, passed in 1785, authorizing the President to call out the militia in certain cases, and that the Supreme Court has decided, in a case arising under it, that the President possesses an unlimited and final discretion over the whole matter of employing the military force. Nothing could be more untrue. The statute of 1785 was carefully drawn, so as to comply with the very letter of the Constitution. It simply declared that "whenever the United States shall be invaded, it shall be lawful for the President to call out the militia," etc.; also, "in case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State or of the executive when the legislature cannot be convened, to call out the militia," etc.; also, "whenever the laws of the United States shall be opposed or the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, it shall be lawful for the President to call out the militia," etc. All this was plain, accurate, and in exact conformity with the organic law. The case referred to was Martin v. Mott (12 Wheaton's R., 19). The President, during the war of 1812, having called out certain portions of the militia, a person subject to the call refused to appear. Being tried by a court-martial and fined, he brought an action against the officer who collected the fine, alleging that there was no necessity for the President's action. The Supreme Court decided that, under the statute, the President alone could determine whether a call of the militia was necessary, and that his discretion over this particular subject was absolute and final. The statute did not assume to define an invasion nor an insurrection, nor did it confer upon the President any such function; much less did it authorize him to decide that to be a rebellion which is no rebellion. The Court went to no such absurd length. It simply and properly held that when the United States shall be invaded, the President alone, by virtue of this particular legislation, must judge whether the use of the militia is necessary. How different from all this is the statute under review.

Our President is not now called upon, during the existence of facts patent to all men and which cannot be controverted, to determine simply whether the employment of the military force is necessary, or the use of the writ of habeas corpus expedient; he is to pronounce upon the nature and effects of the domestic violence, combinations, or conspiracies, and to decide whether the State authorities are unable or have failed to protect the people, and whether they are in complicity with or conniving at the unlawful purposes; he is to pass judgment upon the acts and defaults of State governors, judges, sheriffs, and juries, and find them to be abetters and abettors of violence, directed not against the authority of the United States, but against their own local laws; by his fiat, he is to raise this domestic violence to the dignity of an insurrection or a rebellion against the nation; he is to make that a war which is no war, and to follow up his decision by the extreme measures only designed for the suppression of actual hostilities; he is, in fact, to be a dictator. Never in the political history of the country has so direct a blow been aimed, under color of legal authority, at the supremacy of the Constitution, or a precedent been established so dangerous to free institutions.

**Its Civil Features.**

We are now prepared to examine the central idea of the whole legislation, and the essential features in which that idea has been expressed, to which the portions already described, however important and startling, are auxiliary rather than necessary. This central idea develops itself into a plan by which the United States courts may exercise full criminal and civil jurisdiction over any and all acts of violence to the persons and property of private citizens; by which, in short, Congress and the national tribunals may assume and wield a complete police power throughout the States. This is evident from all the remaining clauses of the statute. They all provide, under many artful involutions of language, that conspiracies and combinations for the purpose of depriving persons of their rights and privileges, or of the equal protection of the laws, shall be crimes against the United States punishable by its tribunals; and that, when any violence or injury is done to person or property in the furtherance of such a conspiracy, the offender may be sued for damages in the United States courts. The third section, in terms, enacts that in all cases of such conspiracies or combinations, if the State authorities shall be unable, or shall refuse, to protect the people in their rights, "such facts shall be deemed a denial by such State of the equal protection of the laws," and the President may thereafter employ the military, and the offenders arrested shall be delivered to the civil authorities of the United States, to be dealt with according to law. All this can only mean that the ordinary crimes of violence committed throughout the States, and the ordinary trespasses to person or property, are justiciable in the national tribunals. The extreme care with which the word conspiracy is everywhere used does not change this result. A conspiracy is in no way essentially different from an offense done by one, or by many, without concert. A conspiracy to murder, if consummated, is only murder; it simply involves more than one guilty person, and, after the union in criminal purposes has been established, makes each participant responsible for the overt acts of the others. There is no legal magic in the word conspiracy, no power to confer jurisdiction, and no strength is added to the statute by its use. If valid now, it would have been equally valid had its penalties been applied in terms to acts of violence done by single persons.

The main argument which has been employed in support of the measure is the following: The supreme government in every nation must be assumed to have full authority to protect its own citizens in their lives, persons, and property, for that is the final object of all good government. The United States is no exception to this rule. Even if the Constitution contains no express grant of power, such power must be implied in the very existence of the nation and its government, and can only be wielded by the national legislature. It would be a contradiction in terms to say that while the United States may legally use all measures to protect its citizens abroad, it is powerless to afford them any protection at home. It is now conceded that the very idea of a nation involves the power to use, and the necessity of using, all means for self-preservation, and for the same reason, and to the same degree, does it involve the power and necessity of using all means for the protection of citizens at home. The statute is based upon all this, and is fully supported by these political truths. We have thus fairly given the point in issue, and have certainly not diminished its force by our statement. The premise upon which it rests we fully concede. It is an axiom of political jurisprudence, that the government which exercises sovereignty in a nation must have authority to protect the citizens at home and abroad, and the United States is no exception to this rule. But the difficulty in the argument—a difficulty which cannot be eluded, and which destroys its entire force—is that, by the Constitution of our own country, no single government is clothed with the complete functions of legislation or of administration; none exercises the complete sovereignty which the people alone as an organic whole possess, and which they alone can delegate. The exercise of a large part of this sovereignty, and, so far as national purposes are concerned, the most important part, has been exclusively vested in the national government. The exercise of another large part, which particularly relates to all domestic matters, the rights of person and property, has been in like manner exclusively committed to the governments of the separate States. Within their respective spheres, these two classes of governments are as independent as though they represented different nations. The Supreme Court has repeatedly affirmed this doctrine in the most solemn and effective manner, and only within the past few weeks has reiterated it with an emphasis which cannot be mistaken, and applied it to abridge the national attribute of taxation. It makes no difference with the truth or the application of this principle what theory we adopt as to the origin of the Constitution and of the nation: whether we consider the nation as a union between originally independent States, and the organic law as an assemblage of powers delegated by them; or whether we consider the people as from
of legal language and legal thought to maintain, as this statute does, that any violence or wrong done by private citizens, either singly or in numbers, either with or without concert, can constitute the denial of the equal protection of the laws contemplated by the Fourteenth Amendment. Every crime done to person or property is, so far as an injury is committed, a denial to the party molested of the protection which the laws afford. If, therefore, the position assumed in this statute be correct, Congress and the national courts may, with equal propriety, draw to themselves jurisdiction over all crimes, and become the sole guardians of order, the single depositaries of the police authority. Nay, they, according to well-settled rules of constitutional construction, oust the State governments and State tribunals of all jurisdiction over the subject-matter, and thus establish a centralized administration. In fact, such is the logical and necessary tendency and result of the statute. It is no less monstrous to impute to a State in its organic character the defaults or incapacities of any of its executive or judicial officers, and to enact the falsehood that such defaults shall be a positive denial by the State of equal protection. Constitutional authority and jurisdiction cannot be thus acquired by a lying quibble. The foregoing careful analysis was necessary to demonstrate in a clear manner the invalidity of all the important and practical provisions of this new measure. To sum up the results: The statute violates the letter of the Constitution by declaring that to be a rebellion against the United States which is nothing more than violence to individuals, and by permitting the writ of habeas corpus to be suspended in time of peace; by authorizing the President to employ the military forces in executing any of the various State laws without any application from State authorities; by extending the prohibitions of the Fourteenth Amendment to cases of private wrong; and by clothing the national courts with jurisdiction over ordinary crimes and with the function of ordinary police repression. It violates the entire spirit of the Constitution by conferring upon the President in time of peace a military discretion which belongs to him only as Commander-in-chief in time of actual war; and by destroying the separate—although subordinate—Independence of the States within their appropriate spheres, which was firmly established in the Constitution as an essential feature of our institutions.

SEX IN POLITICS.

Owing to the interest excited by the condition of the city and State of New York, and the condition of the South, and by the condition of France, all of these countries being nominally governed by a numerical majority, and all badly governed, the foundations on which democratic government rests are receiving a probably more serious and thoughtful examination than they have ever received before, much talk as has been expended on them in various ages. There is this enormous difference between the discussion of democracy which is now raging and all discussions of it which have been carried on hitherto, viz., that the debaters have their subject before them. Hitherto, democracy has been discussed in very much the frame of mind in which men speculated on the form and habits of dragons or the scenery of the Hesperides. All propositions laid down about pure democracy were strictly a priori, and one was, consequently, about as defensible as another, and the argument furnished an admirable means of sharpening one’s wit, there was no earthly means of bringing it to a conclusion. Now, however, we have at last got the thing itself under our very eyes, and the debate has—and one might almost say suddenly—assumed a gravity, and even a solemnity, it has never before had. It used to be a pleasant exercise for clubs and speculative philosophers; it is now shaking society to its centre. We used to wonder what its effect would be on manners and clothes and public conveyances and literature. We are now considering what effect it is likely to have on property and marriage, or, in other words, on the two things which are to every man and woman the most serious interests of this mortal life.

The time of rest and tranquillity which the more ardent spirits are constantly promising themselves as the result of this or that change in the government or in the social organization is either never to come, or its coming is so far off that for us it has no more practical