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## 261. VETO OF THE FIRST RECONSTRUCTION ACT

March 2, 1867

(Richardson, ed. *Messages and Papers*, Vol. VI, p. 498 ff.)

Dunning states that this veto message was drafted by J. S. Black.

WASHINGTON, *March 2, 1867 To the House of Representatives:*

I have examined the bill “to provide for the more efficient government of the rebel States” with the care and anxiety which its transcendent importance is calculated to awaken. I am unable to give it my assent, for reasons so grave that I hope a statement of them may have some influence on the minds of the patriotic and enlightened men with whom the decision must ultimately rest.

The bill places all the people of the ten States therein named under the absolute domination of military rulers; and the preamble undertakes to give the reason upon which the measure is based and the ground upon which it is justified. It declares that there exists in those States no legal governments and no adequate protection for life or property, and asserts the necessity of enforcing peace and good order within their limits. Is this true as matter of fact?

It is not denied that the States in question have each of them an actual government, with all the powers—executive, judicial, and legislative—which properly belong to a free state. They are organized like the other States of the Union, and, like them, they make, administer, and execute the laws which concern their domestic affairs. An existing *de facto* government, exercising such functions as these, is itself the law of the state upon all matters within its jurisdiction. To pronounce the supreme law-making power of an established state illegal is to say that law itself is unlawful.

The provisions which these governments have made for the preservation of order, the suppression of crime, and the redress of private injuries are in substance and principle the same as those which prevail in the Northern States and in other civilized countries. . . .

The bill, however, would seem to show upon its face that the establishment of peace and good order is not its real object. The fifth section declares that the preceding sections shall cease to operate in any State where certain events shall have happened. . . .

All these conditions must be fulfilled before the people of any of these States can be relieved from the bondage of military domination; but when they are fulfilled, then immediately the pains and penalties of the bill are to cease, no matter whether there be peace and order or not, and without any reference to the security of life or property. The excuse given for the bill in the preamble is admitted by the bill itself not to be real. The military rule which it establishes is plainly to be used, not for any purpose of order or for the prevention of crime, but solely as a means of coercing the people into the adoption of principles and measures to which it is known that they are opposed, and upon which they have an undeniable right to exercise their own judgment.

I submit to Congress whether this measure is not in its whole character, scope, and object without precedent and without authority, in palpable conflict with the plainest provisions of the Constitution, and utterly destructive to those great principles of liberty and humanity for which our ancestors on both sides of the Atlantic have shed so much blood and expended so much treasure.

The ten States named in the bill are divided into five districts. For each district an officer of the Army, not below the rank of a brigadier-general, is to be appointed to rule over the people; and he is to be supported with an efficient military force to enable him to perform his duties and enforce his authority. Those duties and that authority, as defined by the third section of the bill, are "to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish or cause to be punished all disturbers of the public peace or criminals." The power thus given to the commanding officer over all the people of each district is that of an absolute monarch. His mere will is to take the place of all law. The law of the States is now the only rule applicable to the subjects placed under his control, and that is completely displaced by the clause which declares all interference of State authority to be null and void. He alone is permitted to determine what are rights of person or property, and he may protect them in such way as in his discretion may seem proper. It places at his free disposal all the lands and goods in his district, and he may distribute them without let or hindrance to whom he pleases. Being bound by no State law, and there being no other law to regulate the subject, he may make a criminal code of his own; and he can make it as bloody as any recorded in history, or he can reserve the privilege of acting upon the impulse of his private passions in each case that arises. He is bound by no rules of evidence; there is, indeed, no provision by which he is authorized or required to take any evidence at all. Everything is a crime which he chooses to call so, and all persons are condemned whom he pronounces to be guilty. He is not bound to keep and record or make any report of his proceedings. He may arrest his victims wherever he finds them, without warrant, accusation, or proof of probable cause. If he gives them a trial before he inflicts the punishment, he gives it of his grace and mercy, not because he is commanded so to do. . . .

It is also provided that “he shall have power to organize military commissions or tribunals;” but this power he is not commanded to exercise. . . . Instead of mitigating the harshness of his single rule, such a tribunal would be used much more probably to divide the responsibility of making it more cruel and unjust.

Several provisions dictated by the humanity of Congress have been inserted in the bill, apparently to restrain the power of the commanding officer; but it seems to me that they are of no avail for that purpose. . . .

It is plain that the authority here given to the military officer amounts to absolute despotism. But to make it still more unendurable, the bill provides that it may be delegated to as many subordinates as he chooses to appoint, for it declares that he shall “punish or cause to be punished.” Such a power has not been wielded by any monarch in England for more than five hundred years. In all that time no people who speak the English language have borne such servitude. It reduces the whole population of the ten States—all persons, of every color, sex, and condition, and every stranger within their limits—to the most abject and degrading slavery. No master ever had a control so absolute over the slaves as this bill gives to the military officers over both white and colored persons. . . .

I come now to a question which is, if possible, still more important. Have we the power to establish and carry into execution a measure like this? I answer, Certainly not, if we derive our authority from the Constitution and if we are bound by the limitations which it imposes.

This proposition is perfectly clear, that no branch of the Federal Government—executive, legislative, or judicial—can have any just powers except those which it derives through and exercises under the organic law of the Union. Outside of the Constitution we have no legal authority more than private citizens, and within it we have only so much as that instrument gives us. This broad principle limits all our functions and applies to all subjects. It protects not only the citizens of States which are within the Union, but it shields every human being who comes or is brought under our jurisdiction. We have no right to do in one place more than in another that which the Constitution says we shall not do at all. If, therefore, the Southern States were in truth out of the Union, we could not treat their people in a way which the fundamental law forbids.

Some persons assume that the success of our arms in crushing the opposition which was made in some of the States to the execution of the Federal laws reduced those States and all their people—the innocent as well as the guilty—to the condition of vassalage and gave us a power over them which the Constitution does not bestow or define or limit. No fallacy can be more transparent than this. Our victories subjected the insurgents to legal obedience, not to the yoke of an arbitrary despotism. . . .

Invasion, insurrection, rebellion, and domestic violence were anticipated when the Government was framed, and the means of repelling and suppressing them were wisely provided for in the Constitution; but it was not thought necessary to declare that the States in which they might occur should be expelled from the Union. Rebelions, which were invariably suppressed, occurred prior to that out of which these questions grow; but the States continued to exist and the Union remained unbroken. In Massachusetts, in Pennsylvania, in Rhode Island, and in New York, at different periods in our history, violent and armed opposition to the United States was carried on; but the relations of those States with the Federal Government were not supposed to be interrupted or changed thereby after the rebellious portions of their population were defeated and put down. It is true that in these earlier cases there was no formal expression of a determination to withdraw from the Union, but it is also true that in the Southern States the ordinances of secession were treated by all the friends of the Union as mere nullities and are now acknowledged to be so by the States themselves. If we admit that they had any force or validity or that they did in fact take the States in which they were passed out of the Union, we sweep from under our feet all the grounds upon which we stand in justifying the use of Federal force to maintain the integrity of the Government.

This is a bill passed by Congress in time of peace. There is not in any one of the States brought under its operation either war or insurrection. The laws of the States and of the Federal Government are all in undisturbed and harmonious operation. The courts, State and Federal, are open and in the full exercise of their proper authority. Over every State comprised in these five military districts, life, liberty, and property are secured by State laws and Federal laws, and the National Constitution is everywhere in force and everywhere obeyed. What, then, is the ground on which this bill proceeds? The title of the bill announces that it is intended “for the more efficient government” of these ten States. It is recited by way of preamble that no legal State governments “nor adequate protection for life or property” exist in those States, and that peace and good order should be thus enforced. The first thing which arrests attention upon these recitals, which prepare the way for martial law, is this, that the only foundation upon which martial law can exist under our form of government is not stated or so much as pretended. Actual war, foreign invasion, domestic insurrection—none of these appear; and none of these, in fact, exist. It is not even recited that any sort of war or insurrection is threatened. Let us pause here to consider, upon this question of constitutional law and the power of Congress, a recent decision of the Supreme Court of the United States in *ex parte* Milligan. . . .

I need not say to the representatives of the American people that their Constitution forbids the exercise of judicial power in any way but one—that is, by the ordained and established courts. It is equally well known that in all criminal cases a trial by jury is made indispensable by the express words of that instrument. I will not enlarge on the inestimable value of the right thus secured to every freeman or speak of the danger to public liberty in all parts of the country which must ensue from a denial of it

anywhere or upon any pretense. A very recent decision of the Supreme Court has traced the history, vindicated the dignity, and made known the value of this great privilege so clearly that nothing more is needed. To what extent a violation of it might be excused in time of war or public danger may admit of discussion, but we are providing now for a time of profound peace, when there is not an armed soldier within our borders except those who are in the service of the Government. It is in such a condition of things that an act of Congress is proposed which, if carried out, would deny a trial by the lawful courts and juries to 9,000,000 American citizens and to their posterity for an indefinite period. It seems to be scarcely possible that anyone should seriously believe this consistent with a Constitution which declares in simple, plain, and unambiguous language that all persons shall have that right and that no person shall ever in any case be deprived of it. The Constitution also forbids the arrest of the citizen without judicial warrant, founded on probable cause. This bill authorizes an arrest without warrant, at the pleasure of a military commander. The Constitution declares that "no person shall be held to answer for a capital or otherwise infamous crime unless on presentment by a grand jury." This bill holds every person not a soldier answerable for all crimes and all charges without any presentment. The Constitution declares that "no person shall be deprived of life, liberty, or property without due process of law." This bill sets aside all process of law, and makes the citizen answerable in his person and property to the will of one man, and as to his life to the will of two. Finally, the Constitution declares that "the privilege of the writ of *habeas corpus* shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it;" whereas this bill declares martial law (which of itself suspends this great writ) in time of peace, and authorizes the military to make the arrest, and gives to the prisoner only one privilege, and that is a trial "without unnecessary delay." He has no hope of release from custody, except the hope, such as it is, of release by acquittal before a military commission.

The United States are bound to guarantee to each State a republican form of government. Can it be pretended that this obligation is not probably broken if we carry out a measure like this, which wipes away every vestige of republican government in ten States and puts the life, property, liberty, and honor of all the people in each of them under the domination of a single person clothed with unlimited authority?

The purpose and object of the bill—the general intent which pervades it from beginning to end—is to change the entire structure and character of the State governments and to compel them by force to the adoption of organic laws and regulations which they are unwilling to accept if left to themselves. The negroes have not asked for the privilege of voting; the vast majority of them have no idea what it means. This bill not only thrusts it into their hands, but compels them, as well as the whites, to use it in a particular way. If they do not form a constitution with prescribed articles in it and afterwards elect a legislature which will act upon certain measures in a prescribed way, neither blacks nor whites can be relieved from the slavery which the bill imposes upon them. Without pausing here to consider the policy or impolicy of Af-

ricanizing the southern part of our territory, I would simply ask the attention of Congress to that manifest, well-known, and universally acknowledged rule of constitutional law which declares that the Federal Government has no jurisdiction, authority, or power to regulate such subjects for any State. To force the right of suffrage out of the hands of the white people and into the hands of the negroes is an arbitrary violation of this principle. . . .

The bill also denies the legality of the governments of ten of the States which participated in the ratification of the amendment to the Federal Constitution abolishing slavery forever within the jurisdiction of the United States and practically excludes them from the Union. If this assumption of the bill be correct, their concurrence can not be considered as having been legally given, and the important fact is made to appear that the consent of three-fourths of the States—the requisite number—has not been constitutionally obtained to the ratification of that amendment, thus leaving the question of slavery where it stood before the amendment was officially declared to have become a part of the Constitution.

That the measure proposed by this bill does violate the Constitution in the particulars mentioned and in many other ways which I forbear to enumerate is too clear to admit of the least doubt. . . .

It is a part of our public history which can never be forgotten that both Houses of Congress, in July, 1861, declared in the form of a solemn resolution that the war was and should be carried on for no purpose of subjugation, but solely to enforce the Constitution and laws, and that when this was yielded by the parties in rebellion the contest should cease, with the constitutional rights of the States and of individuals unimpaired. This resolution was adopted and sent forth to the world unanimously by the Senate and with only two dissenting voices in the House. It was accepted by the friends of the Union in the South as well as in the North as expressing honestly and truly the object of the war. On the faith of it many thousands of persons in both sections gave their lives and their fortunes to the cause. To repudiate it now by refusing to the States and to the individuals within them the rights which the Constitution and laws of the Union would secure to them is a breach of our plighted honor for which I can imagine no excuse and to which I can not voluntarily become a party. . . .

ANDREW JOHNSON.