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CLAIMS OF SOUTHERN LOYALISTS.

SPEECH

OF

HON. WAITMAN T. WILLEY,  
OF WEST VIRGINIA,

IN THE SENATE OF THE UNITED STATES, MARCH 4, 1870.

On the liability and duty of the United States to pay southern loyalists for private property taken for public use during the late war—

Mr. WILLEY said:

Mr. PRESIDENT: So far as the machinery of this bill is concerned I desire, with every other Senator, to see it made as perfect as it can be to prevent frauds and to secure the ends of justice, and if the discussion had been confined simply to that matter I do not know that I should have felt it my duty to say a word on the subject; but having had occasion to examine the position which the Senator from Illinois, the Senator from New York, and the Senator from Nevada have avowed with so much confidence on this floor, to wit, that there is no obligation on the part of the Government to pay for property taken from a loyal man in an enemy's country, I propose to ask the indulgence of the Senate for a short time while I discuss, as well as I may be able, that proposition.

Now, sir, what does this bill propose to accomplish? What is the object of the bill? It is that "all claims for quartermaster's stores actually furnished to the United States" within certain States, "and receipted for by the proper officers receiving the same, or which may have been taken therein for the use of the United States without giving such receipt, may be submitted to the Quartermaster General, accompanied by such proofs as each claimant can present of the facts in his case," and that on examination the amount of the claims shall be ascertained and submitted to Congress for payment. That is the end and design and purpose of the bill. The allegation on the part of the Senators to whom I have referred is that by the principles of international law there is no obligation resting on the Government to pay for property of such a character.

Now, let it be remembered at the outset that the proposition is not to pay for property destroyed by the enemy; it is not to pay for prop-

erty taken by the enemy; it is not to pay for property seized or destroyed incidentally or accidentally in the process of the war; but the proposition is to pay for property received by the United States and its authorities, and used by the United States and its authorities. It is, in the language of the Constitution, nothing more nor less than to pay for "private property taken for public use." Now, sir, under the law of nations, invoked by the gentlemen who take a different view of this subject, and under the obligations of our Constitution, are we bound to pay for this property?

What, then, Mr. President, are our true obligations in the premises thus briefly stated? How far are Governments, under the law of nations, aside from any special obligation which may apply to us under our own written Constitution, responsible in cases like that now under consideration? I will introduce a few leading authorities on this point. Grotius says:

"We must observe this, that the king may in two ways deprive his subjects of their right, either by way of punishment or by virtue of his eminent power. But if he do so in the latter way it must be for some public advantage, and then the subject ought to receive, if possible, a just satisfaction for the loss he suffers, out of the common stock."

Senators say that is where the property is not taken from a person residing in the enemy territory. I shall come to that proposition presently. Again the same author says:

"Neither shall the State be absolved from this obligation, though for the present not able to satisfy it; but whenever the State is in capacity this suspended obligation shall resume its force."

So Vattel, discussing this question, says:

"The damages under consideration are to be distinguished into two kinds: those done by the State itself, or the sovereign, and those done by the enemy. Of the first kind some are done deliberately and by way of precaution, as when a field, a house, or a garden belonging to a private person is taken for the purpose of erecting on the spot a tower, rampart, or other piece of fortification; or when his standing corn or his storehouses are destroyed to prevent their being of use to the enemy. Such damages are to be made good to the individual, who should only bear his quota of the loss."



A case involving this principle has arisen and been decided in our own courts. It was a case, too, which arose out of a seizure of the property of a loyal American citizen in the territory of Mexico, during the war with Mexico, by an officer of the United States Army, to keep that property from falling into the hands of the enemy. The jury decided that the alleged necessity and exigency on which the seizure was made were not established. The officer was therefore held to be a trespasser, and made responsible for damages. It is the case of *Mitchell vs. Harmony*, 13 Howard. In delivering the opinion of the court Chief Justice Taney says:

"There are occasions in which private property may be lawfully taken or destroyed to prevent it from falling into the hands of the public enemy; also, where a military officer charged with a particular duty may impress private property into the public service or take it for public use. Unhesitatingly in such cases the Government is bound to make full compensation to the owner."

I refer also to Halleck, page 456. He declares that—

"Private property on land is now, as a general rule of war, exempt from seizure or confiscation, and this general exemption extends even to cases of absolute and unqualified conquest."

I might multiply authorities to the same effect; but I will not detain the Senate with any more. Surely, if the taking and use of such property as is contemplated in this bill had been made outside of any southern State, and in some State not in rebellion, we could not deny our obligation to make compensation for it. But it is said that all citizens, however loyal in fact, who were residents of the insurgent States during the war of the rebellion, within the lines of the enemy, were *ipso facto*, under the principles and operation of international law, public enemies; and therefore and thereby the United States are absolved from any obligation to pay them for any of their property seized or used by our Army or Government, no matter how seized or used. I deny the proposition. It is a contradiction in terms. It is an absurdity. It is abhorrent to every principle of justice. It is derogatory to the national honor and character. It is repugnant to the spirit and principles of our modern Christian civilization. If it ever had a place among the principles of international law it is now obsolete, or it ought to be obsolete.

International law! International law, Mr. President! Sir, I can by international law justify anything which is contrary to human rights and abhorrent to virtue and decency, if you will permit me to go back a few centuries for my authorities. Sir, what do these authorities on international law teach?

That prisoners of war may be lawfully put to death, after capture, by the executioner.

That the gallant defenders of garrisons refusing to capitulate may, when the garrison is taken, be all put to death indiscriminately; ay, even the women and children of the town garrisoned.

That prisoners of war may be sold into perpetual slavery.

That it is lawful to take the enemy's life by poison and assassination. Yes, sir, these authorities on international law would justify the assassination of the late President of the United States.

Even Vattel, who, inspired with a better spirit, rose up to something like the dignity and elevation of our modern civilization, even so late as his time, says:

"Should a resolute soldier steal into an enemy's camp by night, should he penetrate the general's tent and stab him, in such a case there is nothing contrary to the natural laws of war, nothing even but what is commendable in a just or necessary war."

Perhaps not. Yet I think there is not a Senator here who would not resent a proposition made to him to perpetrate the deed. But what are the authorities relied on to make the loyal citizens of the South during the late war public enemies and constructive traitors? So far as I remember them, as heretofore cited during the discussions which have taken place in the Senate upon this question, they are three, and only three:

1. Vattel.
2. What are called "the prize cases."
3. Mrs. Alexander's cotton case.

The passage in Vattel, relied on by the advocates of this doctrine is as follows:

"A civil war breaks the bonds of society and government, or at least suspends their force and effect. It produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as thenceforward constituting, at least for a time, two separate bodies, two distinct societies. Though one of the parties may have been to blame in breaking the unity of the State and resisting the lawful authority, they are not the less divided in fact. Besides, who shall judge them; who shall pronounce on which side the right or the wrong lies? On earth they have no common superior. They stand, therefore, in precisely the same predicament as two nations who engage in a contest, and being unable to come to an agreement, have recourse to arms."—*Vattel*, pp. 424-25.

Does this passage sustain the conclusion claimed for it? Without considering the question whether under our own written Constitution, later than Vattel, we are not to be bound by its provisions under all circumstances, in war and in peace, I ask does this passage from Vattel sustain those who declare that in a civil war loyal and faithful subjects or citizens, happening to live in the insurrectionary district, are to come under the disabilities of public enemies not only during the existence of the war, but afterward, so far as what they did or suffered during the war is involved, even to the extent of denying their right to claim, and the Government's obligation to pay, for actual means furnished to the Government to prosecute the war? I think not. I do not think that such a construction of this passage would be a fair interpretation of it. That the two parties in civil war must, for certain purposes, be considered as constituting "two separate bodies?"



I admit. The exchange of prisoners and what are called the rights of belligerents, especially so far as may mitigate the horrors of war, must be recognized; but I do not understand that Vattel means to say that when the civil strife ceases and the insurgents are subdued, and the authority of the Government is restored, the loyal citizens among the insurgents, who never rebelled or abandoned their allegiance, and whose private property was taken by the Government or its authorized agents and applied to the public use, were still and forever to be deprived of just compensation for it.

Nay, sir, you will observe that the author makes a reservation, a very significant reservation. He says these distinct and separate bodies are only to be "for a time at least." What is the signification of this reservation? What time is meant? Does he not mean that after it is ascertained which party prevails, and the authority of the Government is reestablished, all the rights of the loyal and faithful subject or citizen are restored with it, as well those present as those past?

Why, sir, this author, when writing of damages done by the enemy, says—and I commend this passage to the consideration of the Senator from Nevada:

"But it is perfectly consonant to the duties of the State and the sovereign, and, of course, perfectly equitable, and even strictly just, to relieve as far as possible those unhappy sufferers who have been ruined by the ravages of war, as likewise to take care of a family whose head and support has lost his life in the service of the State. There are many debts which are considered as sacred by the man who knows his duty, although they do not afford any ground of action against him."—*Vattel*, pp. 402-3.

Sir, in the Senate of the United States we want nothing of these little technicalities that might pass for sound law in some subordinate piepoudre court.

The prize cases. Mr. President, it is an utter mistake to suppose that the decision of the Supreme Court in these cases determines the point here involved. It was not in issue in those cases. This misapprehension was corrected last winter by the honorable Senator from Wisconsin, [Mr. Howe,] during the debate in the *Sue Murphey* case. I avail myself of the benefit of his better judgment, and simply reproduce the statement which he then furnished of what was really determined by the prize cases. The extract I read is from a review of these cases by Mr. Dana, who was of counsel in them:

"What the court did not decide:

"1. The court did not decide that the passing of the ordinances of secession made the territory of the insurgent States enemy's territory or its inhabitants alien enemies.

"2. The court did not decide that the passing of the secession ordinances terminated, or in any way affected, the legal relations of the insurgent States as bodies-politic with the General Government or with their respective States.

"3. The court decided absolutely nothing as to the effect of the passing of the secession ordinances on the civil or political relations of the inhabitants of the insurgent States with the General Government or with their respective States, or on the relations

of the insurgent States, as bodies-politic, with the General Government.

"4. The court did not decide that the inhabitants of the seceding States are alien enemies at all, or that the territory of those States is enemy's territory.

"What the court did decide:

"1. That in case of domestic war the Government of the United States may, at its option, use the powers and rights known to the international laws of war as blockade and capture of enemy's property at sea.

"2. That to determine whether property found at sea is 'enemy's property,' within the meaning of the law of prize, the same tests may be applied in domestic as in international wars.

"3. One of those tests is that the owner of the property so found has his domicile and residence in a place of which the enemy has a certain kind and degree of possession.

"4. Richmond, Virginia, was, at the time of the capture and condemnation of those vessels, under such possession and control of an organized, hostile, belligerent power as to render it indisputably 'enemy's territory' within the strictest definitions known to the laws of war."

The remaining authority relied on is the *Mrs. Alexander* cotton case. If we are only to receive as authority the principle actually decided in that case, then I have to say it does not apply to the proposition we are now discussing. The issue in that case was whether certain cotton seized was the subject of prize or of capture under the acts of Congress. The court decided that the cotton was not maritime prize, but was lawfully captured and should have been turned over to the Treasury agent and disposed of according to the act of March, 1863. The question was as to the status of the cotton, not of its owner. Nevertheless, Chief Justice Chase, in delivering the opinion of the court, did declare:

"It is said that though remaining in rebel territory Mrs. Alexander has no personal sympathy with the rebel cause, and that her property therefore cannot be regarded as enemy property; but this court cannot inquire into the personal character and dispositions of individual inhabitants of enemy territory. We must be governed by the principle of public law, so often announced from this bench as applicable alike to civil and international wars, that all the people of each State or district in insurrection against the United States must be regarded as enemies until by the action of the Legislature and the Executive, or otherwise, that relation is thoroughly and permanently changed."

He further said in that opinion:

"Were this otherwise the result would not be different, for Mrs. Alexander being now a resident in enemy territory, and in law an enemy, can have no standing in any court of the United States so long as that relation shall exist. Whatever might have been the effect of the amnesty had she removed to a loyal State after taking the oath, it can have none on her relation as enemy voluntarily resumed by continued residence and interest."

These two extracts contain all that can, by any ingenuity, be construed to furnish any support of this doctrine of constructive treason. I submit that they fail at least to the extent of carrying the disabilities of loyal inhabitants of enemy territory beyond the termination of the war, so as to preclude such inhabitants from claiming compensation for private property furnished by them, or seized from them during the war, to the use and benefit of the Government. Mark the limitation of the disability at



the conclusion of the first extract, "until by the action of the Legislature and the Executive, or otherwise, that relation is permanently changed." Was not "that relation" permanently changed in the case of the loyal inhabitants of the South by the suppression of the rebellion, the return of peace, and the reestablishment of the Government of the United States? What did the court mean by this reservation if they did not mean this?

Observe a corresponding reservation in the other extract. The Chief Justice says that—

"Mrs. Alexander being now a resident in enemy territory, and in law an enemy, can have no standing in any court of the United States so long as that relation shall exist."

When that relation ceases to exist, what then? What is the inference? Is it not that when that relation ceased to exist she would have a standing in court for her cotton? And may not the loyal inhabitants of the South, when their fictitious and assumed technical relation of public enemy has ceased to exist by the termination of the war, lawfully, rightfully, justly claim compensation for their private property seized to the use of the Government during the war? Mark especially the concluding language of that extract:

"Whatever might have been the effect of the amnesty, had she removed to a loyal State after taking the oath," &c.

What is the implication here? Now, if Mrs. Alexander might possibly have been entitled to a standing in court by removing to a loyal State even while the war was raging, can it be said, now that all the States are loyal and these southern loyal claimants are all now, therefore, in loyal States, that they shall still be debarred from preferring their claims because they were once under the operation of this legal fiction of public enemies?

But, sir, it is evident that the moral sense of our courts and of all enlightened mankind revolts against this iniquitous technicality. The courts and our Christian publicists are extricating, if they have not already extricated themselves from the shackles of this degrading assumption of international law. Chief Justice Chase, in this very case, so strenuously relied on by the Senators, enunciates the modern doctrine on the subject as follows:

"Being enemy's property the cotton was liable to capture and confiscation by the adverse party. It is true that this rule as to property on land has received very important qualifications from usage, from the reasonings of enlightened publicists, and from judicial decisions. It may now be regarded as substantially restricted to special cases dictated by the necessary operations of the war, and as excluding in general the seizure of the private property of pacific persons for the sake of gain." The commanding general may determine in what special cases its more stringent application is required by military emergencies; while considerations of public policy and positive provisions of law, and the general spirit of legislation, must indicate the cases in which its application may be properly denied to the property of non-combatant enemies."

Sir, that has the ring of true metal. That is worthy of our Christian civilization. Sir,

this miserable fiction will soon be assigned to its appropriate fellowship with those abominable doctrines of the Dark Ages, when publicists taught the lawfulness of poison and assassination as authorized instrumentalities of war. I fortify these views by the high authority of that great ornament of the bench, Chancellor Kent:

"The general usage now is not to touch private property upon land without making compensation, unless in special cases, dictated by the necessary operations of war, or when captured in places carried by storm and which repelled all overtures for a capitulation. Contributions are sometimes levied upon a conquered country in lieu of confiscation of property and as some indemnity for the expense of maintaining order and affording protection. If the conqueror goes beyond these limits wantonly, or when it is not clearly indispensable to the just purposes of war, and seizes private property of pacific persons for the sake of gain, and destroys private dwellings or public edifices devoted to civil purposes only, or makes war upon monuments of art and models of taste, he violates the modern usages of war, and is sure to meet with indignant resentment and to be held up to the general scorn and detestation of the world."—*Kent's Commentaries*, pages 93, 99.

Something of the same enlightened and just sentiments must have been in the mind of Chief Justice Taney while delivering the opinion of the court in the case of *Mitchell vs. Harmony*, already referred to, when, speaking of the discretion as to the seizure of private property by officers of the Army, he said:

"But it must be remembered that the question here is, not as to the discretion he may exercise in his military operations, or in relation to those under his command. His distance from home, and the duties in which he is engaged, cannot enlarge his power over the property of a citizen, nor give him, in this respect, any authority which he would not, under similar circumstances, possess at home. And when the owner has done nothing to forfeit his rights, every public officer is bound to respect them, whether he finds the property in a foreign or a hostile country, or in his own."

And here, Mr. President, I desire to refer to a case decided in the Court of Claims after the war of the rebellion commenced, and growing out of the rebellion, in 1863. It is the case of *Grant vs. The United States*; reported in 1 *Huntington*. It is a case where the plaintiff's property, consisting of flouring-mills, dwelling-houses, storehouses, shops, and corrals in Arizona, was destroyed on the 15th of July, 1861, by order of Captain J. N. Moore, commanding United States troops in the vicinity of Tucson, to prevent its falling into the hands of the rebels who had control of that section of country at that time, so that it was, in fact, enemy country to all intents and purposes. Judge Wilmot delivered the opinion of the court. I will read his summing up of his opinion:

"Private property must not, only be taken upon urgent necessity, but for public use, in order to fix the liability of the Government to make compensation. Was the destruction of this property a taking of it for public use? It is almost of equal public importance that military supplies be kept from the use of the enemy as that they minister to the support of our own armies. Writers on public law do not discriminate between property destroyed to prevent it from falling into the hands of an enemy, and property taken for the actual sustenance of our own military forces. In both cases it is treated as a tak-



ing for public use. In the case of *The American Print Works vs. Lawrence*, (Zabriskie,) the supreme court of New Jersey affirm that "the destruction of private property for public use is a taking of it within the meaning of the Constitution."

"We hold, in this case, that the property was destroyed by the rightful order of the commanding officer, and upon an urgent and pressing necessity, and to prevent it from falling into the hands of the public enemy and those hostile to the United States; that it was a taking for public use; and that the Government is bound under the Constitution to make just compensation to the owner. The legal duty to make compensation raises an implied promise to do so; and here is found the jurisdiction of this court to entertain this proceeding."

And, sir, where, I ask, is there any reason or justice in the law of *postliminium* which does not equally support, indeed more forcibly support the claim of loyal and true citizens, although they may have been inhabitants of enemy country, to be paid for their private property taken and used by their own Government. What is this law of *postliminium*? I think I have but to read it, as laid down by Vattel, to make an unanswerable argument in favor of the claims under consideration.

Vattel says:

"The sovereign is bound to protect the persons and property of his subjects, and to defend them against the enemy. When, therefore, a subject or any part of his property has fallen into the enemy's possession, should any fortunate event bring them again into the sovereign's power, it is undoubtedly his duty to restore them to their former condition; to establish their persons in all their rights and obligations; to give back the effects to the owners; in a word, to replace everything on the same footing on which it stood previous to the enemy's capture."

On this point I will content myself with the citation of one more authority. It is that of the late Mr. Stevens, than whom, I suppose, there were few men more competent to speak on questions of international law. In speaking to a bill introduced by him in the House of Representatives in 1867, entitled "A bill relative to damages done to loyal men, and for other purposes," he said:

"By the usages of nations the property of the citizens of the belligerent Power taken or destroyed as a military necessity is paid by the Government. But property taken or destroyed by the enemy is not paid by the Government. Strictly speaking, the property of citizens of the hostile Government, though friendly to the conqueror, cannot be charged to the victor. But in civil wars it seems to me that a distinction should be made, and those who had suffered for their adherence to the parent Government should be taken care of in adjusting the conditions of peace."

"If the war had been between two regular Governments, both of which survived the war, the victor in the treaty of peace would require the vanquished to pay all such damages as well as all the expenses of the war. If neither had conquered the other, they would probably be silent and each bear his own loss. Congress is dictating the terms of peace. If she does not provide for these meritorious claimants she will be bound in honor to pay them out of the national Treasury. If she does not, individuals will be wronged and the nation dishonored."

I repeat, sir, that there is no more reason why we should restore to the loyal citizen of Pennsylvania the property belonging to him which we recaptured from the enemy than there is that we should pay the loyal citizen of Virginia or any other rebel State for his property which

our armies seized and applied to public use. The obligation of the United States under the Constitution is as strong to protect the person and property of the loyal citizen of Virginia as it is to protect the person and property of the citizen of New York.

Mr. President, to enforce this barbarous dogma of constructive treason, filched up from the rubbish of the past, would be to reverse the practice and policy of our own Government during the whole time of the war. We are estopped from avowing any such dishonoring doctrine now by our own wiser and more enlightened precedents in repeated instances and in a variety of forms. Let me refer to some of them; and first, observe section six of act of July 17, 1862, Statutes-at-Large, volume twelve, page 591:

"That if any person within any State or Territory of the United States, other than those named as aforesaid, after the passage of this act, being engaged in armed rebellion against the Government of the United States, or aiding or abetting such rebellion, shall not, within sixty days after public warning and proclamation duly given and made by the President of the United States, cease to aid, countenance, and abet such rebellion and return to his allegiance to the United States, all the estate and property, moneys, stocks, and credits of such person shall be liable to seizure as aforesaid; and it shall be the duty of the President to seize and use them as aforesaid, or the proceeds thereof. And all sales, transfers, or conveyances of any such property, after the expiration of the said sixty days from the date of such warning and proclamation, shall be null and void; and it shall be a sufficient bar to any suit brought by such person for the possession or the use of such property, or any of it, to allege and prove that he is one of the persons described in this section."

There is a plain and palpable distinction between the loyal and the disloyal. It was only those who refused to testify their loyalty whose property was to be confiscated. But I beg the special attention of the honorable Senator from Massachusetts [Mr. SUMNER] to section ten of the same act:

"That no slave escaping into any State, Territory, or the District of Columbia, from any other State, shall be delivered up, or in any way impeded or hindered of his liberty, except for crime, or some offense against the laws, unless the person claiming said fugitive shall first make oath that the person to whom the labor or service of such fugitive is alleged to be due is his lawful owner, and has not borne arms against the United States in the present rebellion, nor in any way given aid and comfort thereto."

Thus during the war we had this distinction, going even to the extent that where a slave had escaped from his master in the South to the northern and loyal States, the slave might be surrendered to the master if the master could establish his loyalty.

Mr. STEWART. I ask the Senator from West Virginia if he is in favor of paying those claims?

Mr. WILLEY. Well, sir, I would pay every honest claim. I do not know that at that time I would have paid such a claim. Would the Senator from Nevada?

Mr. STEWART. No.

Mr. WILLEY. Then the Senator and I agree; and so we shall have no controversy.

This section was a subject of consideration



by the Supreme Court in the Mrs. Alexander cotton case. The following is an extract from the reporter's syllabus of that case:

"Our Government, by its acts of Congress of March 12, 1863, (12 Statutes-at-Large, 591,) to provide for the collection of abandoned property, &c., does make distinction between those whom the rule of international law would class as enemies; and, through forms which it prescribes, protects the rights of property of all persons in rebel regions who, during the rebellion, have in fact maintained a loyal adhesion to the Government; the general policy of our legislation during the rebellion having been to preserve for loyal owners obliged by circumstances to remain in rebel States, all property or its proceeds which has come to the possession of the Government or its officers."

There, too, is the proclamation, earlier than those statutes of August, 1861, excepting from its operation parts of certain States in rebellion because the inhabitants were loyal.

Sir, we have carried this fact I am avowing into the national Constitution, the fourteenth amendment. We there make a fundamental discrimination in favor of those who were loyal during the war. You do there practically deny that the loyalists of the South were ever public enemies. By this process of constructive treason, by this principle of making people public enemies who happened to live in insurrectionary districts, you made more than three hundred thousand slaves of the South public enemies. And yet you extended to these public enemies the blessings of emancipation; and you have appropriated millions of dollars to feed, clothe, and educate these constructive traitors and public enemies. But when the white loyalist asks you to pay him for the horse he furnished for our armies, or the food he furnished to our soldiers, he is repelled with the rebuke that he was a public enemy. And the President of the United States rebuked this odious doctrine of constructive treason, and placed himself upon the modern platform of our Christian civilization, when he instructed his generals in the field that—

"The United States acknowledge and protect, in hostile countries occupied by them, religion and morality, strictly private property, &c. Offenses to the contrary shall be rigorously punished."

We all know that our generals habitually afforded safeguards to protect the property of loyalists in the South during the war. On this hypothesis of loyal public enemies how can you reconcile the fact that you continued two of them, Justices Wayne and Catron, on the bench of the Supreme Court of the United States, not only permitting them to act in the high and responsible position of judges, but regularly paying them for their services? How of the forty-seven thousand soldiers enrolled from Tennessee to swell the ranks of your armies and to carry the standard of the Republic? You paid them also for their services. How of those other thousands collected from every State engaged in the rebellion to fight the battles of the country? All these were paid for their services.

And throughout our whole reconstruction

policy, in every act of Congress in that behalf, almost in every section and sentence, we have repudiated this horrible pretension of constructive treason and discriminated in favor of the loyal citizens of the South. So that I repeat, that the whole practice and policy of the Government until very recently has been averse to this fiction by which actual friends and faithful citizens are transformed into public enemies.

Mr. President, while the war was actually raging, and the event of it uncertain and undetermined, there might have been, perhaps, some color of propriety in this legal fiction; because it could not be certainly known that the enemy might not triumph, and the people and property and territory all might be included in another and independent nationality, and be permanently separated and exempted from the authority and jurisdiction of the United States. Their fealty as citizens and the obligation of protection on the part of the United States might be dissolved and destroyed by the result of the war. They might against their will become foreigners, citizens or subjects of a foreign Government; but when the rebellion failed, and the authority of the Constitution was practically reestablished over the property, person, and territory of the loyal citizen of the South, how can it be logically, lawfully, or honorably said that such a citizen, who had never betrayed his trust or forfeited his allegiance by word or deed, must be still held subject to the disabilities of an actual enemy?

Sir, it is derogatory to the Constitution to admit that the loyal citizen's rights, even temporarily, were suspended; that ever there was a moment when he might not everywhere claim its beneficent protection. Sir, was there ever a moment during the war when the Constitution was not the rightful supreme law of the land over every inch of the Republic? Was there ever a moment when every citizen of the United States, loyal or disloyal, did not owe his rightful allegiance to the Constitution? If there was, where else did his allegiance belong? If loyal persons within enemy territory were not still citizens of the United States, under the Constitution of the United States, and entitled to the protection of the United States, what were they? Who were they? Were they ever absolved from their allegiance? Were they foreigners? No, sir; they were not only citizens of the United States, but were entitled to all the rights and immunities of faithful citizens, and those who were disloyal, those who had levied war against the United States, were citizens also, subject to the penalties of the violated laws. Else how could they be traitors? Else how could you denounce penalties against them as traitors? Else how can you reconcile your legislation against them as rebels? Sir, on this hypothesis, that loyal men of the South were public enemies, not entitled to the protection of the Constitution, the insurgents were not



rebels at all; the States at war were, indeed, out of the Union; and instead of rehabilitating them by what is called the removal of political disabilities by act of Congress from the people there, we ought to require them, as foreigners, to be naturalized in due form of law.

Mr. President, this theory of *inter arma silent leges* can have no place here in this age and under our form of government, if it ever had a place anywhere. We live under a constitutional Government, under a written Constitution; and, sir, it is never silent; its "still, small voice" reaches every shore in the Republic. It fell upon the ear of every soldier on either side of every battle of the rebellion, and was not to be drowned by the thunder either of the eloquence or the artillery of the traitor. It was mightier than the sword. Its prevalence could not be circumscribed by lines of bayonets. Wherever there was treason it was there to punish. Wherever the heart beat loyally, whether in rebel dungeons or in the hiding-places of mountain or morass, there the Constitution promised the faithful citizen rescue and redress. And now, that its authority is unresisted and undisputed, we shall prove ourselves far less worthy than he if we fail to redeem that promise.

No, sir; the true theory is this: the citizen owes allegiance, fealty. In consideration of this the Government guaranties protection. One party cannot disregard the compact while the other remains faithful to it, either in time of war or peace. The terms of this compact respecting the matter now under consideration is, "Nor shall private property be taken for public use without just compensation." This is later than Vattel or Bynkershoek. It is explicit, too. It is not a mere deduction from the varying and uncertain usages of nations, ancient or modern. For us, for this country, for the American people, it is paramount to all international law. It is our written bond, and there is no reservation in it, of time, place, or circumstances. It is as binding in civil war as in foreign war. It makes no exception. It admits of no exception. There it is—one of the most precious securities of the American citizen.

Mr. President, the truth or fallacy of a proposition is often most readily ascertained by making a practical application of it. A simple illustration is sometimes an unanswerable argument. Allow me to suggest one or two.

Here, sir, is a man from the city of New York, or Chicago, or any other city of a loyal State—it matters not what city or locality in the loyal States. For convenience I will call him Shoddy. The only interest he took in the late war was the opportunity it afforded to speculate upon his country's misfortunes and to accumulate wealth by speculation and fraud. He watched the ever-varying vicissitudes of the terrible conflict, eager only to turn its defeats and triumphs alike to his personal pecuniary profit. His eye never kindled when he

looked upon the flag. No pang ever smote his heart when there came tidings of defeat; no joys swelled his bosom when victory perched on our standards; but money, money, was the god of his idolatry, at whose shrine he worshiped with a devotion so deep that no cry of woe, no spectacle of sorrow, ever disturbed it. He virtually coined gold out of the calamities of his country.

Sir, you know that I am presenting no fancy sketch. You have seen this man a thousand times. He may be seen any day walking our streets; and he succeeded in his purpose. Hundreds of thousands of ill-gotten gains flowed into his coffers; and now his money, converted into bonds, payable in gold—he drives to the Treasury and presents his gold-commanding coupons, and they are paid, punctually, scrupulously paid. Does anybody threaten repudiation? A thousand honest voices denounce the unworthy menace, properly denounce it. Shoddy must be paid. No Portia can be retained to circumvent this Shylock. The honor of the Government stands pledged for its obligations. They must be redeemed. Yes, sir, Shoddy must be paid, paid to the last farthing.

But here stands the poor southern loyalist who did love his country. He did all he could to preserve it; did so at the peril of his life, amid obloquy and persecution. Perhaps it was but little he had the power to do. Peradventure he furnished a horse, or a mule, or a wagon, or food and forage for our troops, as they passed down to give battle to the enemy, or as they fled from some disastrous field. And now he modestly presses his prayer for just compensation from the Government he loved next to his Maker, and to which he adhered with a fidelity which no violence could overcome or allurements corrupt. What is the answer which Senators propose to give him? Why, sir; they propose to tell him that he was a public enemy, and is not entitled to our consideration. He must stand aside as unworthy of the protection of this great Government. International law is invoked to interpose the dogmas of the Dark Ages between him and the behests of justice. But as for Shoddy, why, sir, our honor and credit as a nation require that Shoddy shall be paid! Shoddy was loyal! Shoddy was not a public enemy!

But, sir, there is another personage to whom I wish to ask your attention. I may appropriately call him Mr. F. He will hardly need an introduction; all will recognize him. For years prior to the outbreaking of the rebellion he used his influence to inflame the southern heart and precipitate the conflict of arms; and when the war commenced he was among the first to unsheathe the sword and turn it against the hearts of his countrymen and the life of the nation. On a score of battle-fields he trampled the flag of the Republic beneath his feet as an unhallowed thing. A hundred times he imbrued his hands in the blood of



our sons and brothers. He ravaged our fields; he pillaged our houses; he burnt our towns; he sacked our cities. He did all that skill and courage and the most malignant hatred of our Government could accomplish to destroy the nation. According to well-attested facts he murdered our soldiers in cold blood after capture and surrender, and burnt others, wounded, bleeding, and helpless, in the houses where they had crept to die.

And yet, sir, that man lives to-day; lives at liberty, lives in the perfect enjoyment of every civil right of the American citizen. Sir, where in all the annals of history can you find the parallel of such forbearance? It rises up to the full measure of the sublime charities of our Christian civilization. It more than fills the vision of England's great poet, and transcends his immortal definition of the quality of mercy:

"The quality of mercy is not strained;  
It droppeth, as the gentle rain from heaven  
Upon the place beneath; it is twice blessed;  
It blesseth him that gives, and him that takes;  
'Tis mightiest in the mightiest; it becomes  
The throned monarch better than his crown;  
His scepter shows the force of temporal power,  
The attribute to awe and majesty,  
Wherein doth sit the dread and fear of kings;  
But mercy is above this scepter'd sway,  
It is enthroned in the heart of kings,  
It is an attribute to God himself;  
And earthly power doth then show likest God's,  
When mercy seasons justice."

Thus, sir, we have treated our actual enemies. How do we propose to treat our actual friends? May I be permitted to present one of these latter to your notice? I do so with some hesitation; for I fear from indications quite apparent that he may not be well received. Yet I will venture to do so. I know him well. In the light in which I regard him he possesses a nobility of character which challenges my highest respect and admiration. It was in 1861 I became more intimately acquainted with him; in those dark days when in the locality where he lived he was forced to decide between his section and his country; between his State and his nation; between the prejudices and prepossessions of his education and the principles of an enlarged patriotism; between the ties of kindred and long cherished social relations, and practical banishment from both; between fidelity to his flag and denunciation, confiscation, and the dungeon. But, sir, he never faltered. I have seen

him dragged from the bosom of his family and carried away in chains to the military bastiles of the traitor because he would not renounce his allegiance to his Government. I have seen him hunted like a wild beast and driven to the mountains for a refuge from the fury of his neighbors because he would not acknowledge the insurrectionary authorities of the rebellion. I have seen him standing by the grave of his noble boy who had fallen in battle beneath our own starry banner, and heard him mingling with the utterances of a father's grief thanksgiving to God that he had been permitted to give a son to die for his country. I have seen all this and more. It was he who divided with the weary soldier of the Republic who knocked at his door the scanty subsistence which the rapacity of the enemy had suffered to remain. It was he who guided the fugitive prisoner who had escaped from the prison pens of the South around the sentinels of the foe and passed him safely on to his family and home.

Sir, how can you call such a man a public enemy? After you have remitted to the active, cruel, and bloody traitor his forfeited life, his forfeited property, his forfeited civil rights, and to a large extent equal political rights, how can this great, just, and beneficent Government withhold from such a citizen just compensation for his private property taken for public use upon the miserable plea that although personally loyal and true, yet happening to live among the disloyal and untrue he was technically a public enemy? What sophistry can torture such a citizen into any enemy to his country in any sense of the word?

And I beg leave to say, moreover, that there is an important principle of policy involved in this question. The utter want of justification of the late war of the rebellion, to say nothing of the lessons of history and our knowledge of human nature, admonishes us that we may reasonably expect future civil wars. What we do to-day will pass into history. Loyalists in the districts of these future revolts will read it. Need I tell Senators what its effect on them will be if we determine now that they are to be regarded as public enemies, not entitled to the benefit and protection of the guarantees of the Constitution? But I will not detain the Senate.