

# THE COURIER.

TUESDAY, AUGUST 27, 1867

J. W. JOHNSON, EDITOR.

*It is the undoubted right of this people to canvass public measures and the merits of public men.*—WEBSTER.

*Our idea of Journalism is, he who dare not tell the truth is a coward, and he who will not is a knave.*

*It is by this shallow "policy" of suppressing the truth that a whole generation has been taught to believe a lie.*

C. CHAUNCEY BURR.

## Senator Williams and "Reconstruction."

If, in reasoning, ones premises be false, the more correct the reasoning, the greater is the falsity of the conclusion. To prove the correctness of the position of the Republican party on "Reconstruction," Senator Williams in his great speech to the citizens of Lafayette and vicinity, assumed as his premises: That Andrew Johnson found the South without governments and created governments for eleven States and that he is sustained by the Democracy. While the Senator denies the right of Johnson to make a law, he reasons, that Congress may make laws upon some subjects; therefore that body has a better right to make a law upon any subject, or, for any people, than one having no right, the Democracy sustaining Johnson (and they must be right you know) therefore Congress has a better right than Johnson, who has no right, therefore Congress has the right to Reconstruct the States.

Does it follow, because the President has no right to make governments for the people, that Congress may do so?

Because the President and Congress are quarreling as to "which is the United States," (to take the Senator's word for it,) does it follow that whichever should prove to be the heir of the "flesh and blood of Abraham Lincoln," may make and unmake States at its option?

To be charitable, the Senator mistakes the position of both Johnson and the Democracy; for neither of them profess, and the Democracy does not believe any such dogma. The Senator's speech, of two hours to prove that Congress has as good right to "Reconstruct" as the President avails him nothing, for nobody of any sense claims for the President the right to create a government. If the President have no right to "Reconstruct," will the Senator tell the people why Congress has? The provisions of the Constitution of the United States apply alike to all. If, then, Virginia, Oregon and other States are in the Union, they are alike entitled to the benefit of an act limited by all constitutional provisions.

Art. I. Sec. 2. "The House of Representatives shall be composed of members chosen every second year by the people of the several States and the electors in each State shall have the qualification requisite for electors of the most numerous branch of the State Legislature.

Clause 3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative.

Sec. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote."

And by Art. V. it is provided, that "no amendment shall ever be made depriving a State without its consent of its equal suffrage in the Senate."

Any State therefore in the Union is entitled to two Senators and at least one Representative.

The United States Government is one of limited power derived solely from the Constitution. The tenth amendment says: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Now, as there is nothing in the Constitution that gives to Congress the right to regulate the internal policy of the States, directly, or by remote inference, save that the State must be a Republic, (i. e. must not have a king,) if Virginia and other States are in the Union the military Despotism established over their people is in violation of law, for the guaranty of a Republic does not authorize the establishment of a Despotism.

A State is a corporation, intangible, invisible and existing only in contemplation

of law. A land does not constitute a State, nor a people occupying that land. But when that people organize themselves into a society and make certain rules for the government of all and create machinery by which those rules may be enforced those rules and the powers conferred for their execution constitute the State, the Government. And as no rules will enforce themselves are nothing, there must be a people to enforce and be enforced upon, and those people must have a habitation; and as that habitation is of course marked by meets and bounds, the unthinking mind is very liable to confuse the one with the other; and from a defect of our language, the word State being used as well for the Physical as the Political, this distinction may at times become obliterated even in the thoughts of the thoughtful.

But upon due consideration it will be apparent that the Government itself, the political State, the living essence, the *vis viva*, the acting, moving person is not the land, nor the people, but the great fundamental rules laid down by statute and custom and the machinery for carrying them into effect. That this is as it were the soul and living mind, while the people are the brain, heart and body of that great soul and mind, and the land but the sphere of its operation. The power exercised in pursuance of law by agents appointed under and by virtue of the law, is the visible effect of the action of the State; the State being the law itself authorizing that action.

The officers and not the *officers* constitute the Government. The officer but holds the powers, performs the duties and exercises the functions of the office and those powers, duties and functions, are fixed by law and continue until legally changed. An act then of an officer in contravention of law, is not the act of the State, but of the individual person committing the act, for which he is individually responsible.

It clearly appears therefore that a vacancy created by one person and filled by another, cannot in any manner change the legal status of a State, or office. And that a vacancy in any office does not destroy the office, for it may be filled by another incumbent. The difference between artificial and natural persons being, the one is immortal and has perpetual succession, the other is mortal and death sooner or later closes his earthly career forever. The one is a migratory soul if you please that exists in different bodies of more or less power, yet, ever unchanged except by the great author of its existence. It is like the spirit of God moving in the bosom of the Christian world, prompting only to those acts of its own exalted nature, but in no wise responsible for the perverted acts of the house in which it has taken its abode. Its tenement of clay may pass from earth, still, that ever living spirit blooms, buds and blossoms and can never, never, never die but by perpetual decent into anarchy, or successful revolution against its authority. If then, the agent of the State vacate his office, the same power that placed him there, may place another in his stead. John Doe may be a Justice of the Peace in the precinct of Pleasant Town. A vacancy created by him leaves, not the Justice's office dead, but room for Richard Roe, or some other gentleman to be appointed in his stead, to exercise the office of Justice. Nor is the principle changed if every office in the State become vacant at the same time. The law which created and is the life of the office, yet remains, and while it is still in existence, those places may be filled as therein prescribed and those who fill them occupy precisely the legal status of their predecessors.

True, the law may be changed by competent authority. The legal Legislature may change the statute if it do not violate constitutional law, and the Constitution of a State may be changed by prescribed mode, provided it do not conflict with the Constitution of the United States. But the law cannot change itself, neither can it be changed by one without legal authority, except by revolution, or an innovation acquiesced in, until the law becomes a dead letter; that is, no one will ever again attempt its enforcement, and this is a mild form of revolution.

I cannot repeal a law of Oregon, even should I procure the assistance of a village, county, or even the entire State, except in the way prescribed by law. And should Reuben P. Boise sustain my acts by the weight of his opinion, he would become a revolutionist with myself; and should we, obtaining in any manner, the control of the land and people and act contrary to law, the Supreme Court of the United States and all United States authorities as well as the legal authorities of Oregon, should we leave any, would be bound to regard our acts and laws as illegal and void,—simply mob force, and setting up a government as I have supposed, hostile to Oregon and the United States, it becomes the duty of the President to protect the State of Oregon that she may enforce her law, subdue me and leave the State as it was prior to my illegal act. Nor would it alter the plain duty of every legal officer, should I and my confederates call our new mob government, THE STATE OF OREGON. And here we may say many become confused concerning the status of the States, the larger portion of whose people were in rebellion, because the *illegal*, or mob government, assumed and took upon themselves the old and time honored names by which the legitimate governments had ever been known. Had the new government in the District of South Carolina, by its ordinance of secession assumed to set up a government, and call it *Columbia*, and the new government in Virginia been styled *Vespuccius*, it might have been readily evident, even to the unthinking, that when the new governments of *Columbia* and *Vespuccius* were subdued, South Carolina and Virginia would have

but to elect their officers and move on, under the protection of the General Government, whose duty it is to protect all the States, assuming that the Governments of *Columbia* and *Vespuccius* are monarchies that John Doe and Richard Roe are setting up, the United States of course comes to the rescue of itself and the States of South Carolina and Virginia. Would there be less alacrity, or would there be a difference, should those gentlemen be pleased to call their creatures by the old names? Does it make a difference in law, or in reason, what kind of an illegal and hostile government is proposed to be established? The effect upon our States of South Carolina and Virginia is the same, no matter what the new government be called, who are its officers or what, is its kind; a stoppage of its machinery, a suppression of its action until the incubus be removed. But when that monarchy of John Doe, or hostile government of *Vespuccius*, or *Virginia No. 2*, if you please, is destroyed, so that the old State of Virginia may move on, certainly her laws remain unchanged, unless they have been legally changed by some one having authority. They are still in existence unless they have been repealed. Neither could John Doe repeal them, for he held the tenure of his office under and by virtue of the Secession Ordinance, which we for the present assume was contrary to the Constitution of the United States, and therefore null and void and of course could confer no legal authority.

Would there be a difference, we may ask, in the legal effect of our acts in the cases above supposed, whether I was an officer of Oregon, or John Doe of Virginia, prior to our illegal acts in setting hostile governments, or whether we obtained and held offices under the new, of the same power and name, or how we illegally obtained those offices? Here again many allow themselves to be misled, because John Doe who was Governor of Virginia, exercised the same powers under a new government which he is pleased to call Virginia and attempt to set up and maintain.

True, revolution and force may destroy all government and any change except in accordance with law of the then existing form, is revolution. But, while the act of a government is in the exercise of the powers, duties and functions of an office of the government, he cannot recognize as legal and in any way binding, any revolutionary act of another, except by becoming a revolutionist himself. There is no principle of law more clearly settled by jurists, than that if an agent transcend the power conferred upon him, he does not bind his principal. And as an officer is an agent of the government, with the law regulating his office as his letter of attorney, which is due notice to all the world of the full extent of his authority, any violation of that letter, becomes and is his own personal and individual act and is not in any manner legally official.

A State then, of the United States cannot rebel, though individual persons in any locality may. If the act complained of be in accordance with the Constitution of the United States and the laws made in pursuance thereof, it is not rebellion. But if there be anything in our form of government which render such act illegal, it ceases to be official and becomes personal, and that individual whoever he be is personally liable to the law for its violation. For if the supposed law authorizing him to do an act, is law, his act is not an offense, but if it is not law, the law does not forgive; much less justify him for his ignorance.

Should Governor Wood violate the law of the United States he is no more and no less a criminal than if he were a private citizen. As a citizen will be he punished if punished at all but not as the Governor of Oregon. And if he commit treason and with him other individuals, whether they be members of the Legislature, or other office holders, or private citizens, the act is not an official one unless the law authorizes them to commit treason. If treason then be authorized by law, treason is no longer a crime against the law, for the law does not authorize its own violation.

We conclude, therefore, as the Constitution of the United States is the supreme law of the land and any law contrary to it is "null and void from its passage," and as the Constitution operates not upon officers of States as such, but as private citizens, therefore, whatever has been done in accordance with law is legally right and wherein the Constitution has been violated the person committing the act took the responsibility and must stand the consequences. If then the Secession Ordinance of Virginia be contrary to the Constitution and therefore null and void, the Governor, Legislature and other officers held in pursuance of it are equally illegal, and the acceptance of an office under the Secession new Virginia, was a resignation of office under old Virginia; therefore when the proposed governments were crushed, the old State governments, the laws and institutions were *viva*,—alive. But as all offices were vacant, some one must call an election of the people to fill the vacancies, (as they would not probably spontaneously come to the polls) who is there more appropriate than the President of the United States to make this recommendation, through a man appointed for that purpose. Though the office of Military Governor was not legal nor his recommendation law, yet the people act in pursuance thereof; and this is all Johnson claims, or the Democracy and others in the premises.

## ATTENTION DEMOCRATS!

There will be a Mass Meeting of the Democracy of Polk County, at Dallas, on Sept. 14, 1867. The Democracy of adjoining counties are invited to attend. Ben. Hayden and other Democrats will address the people. H. N. V. HOLMES, Chairman Polk County Democratic Central Committee.

**MEDICAL.**—Read advertisement of Dr. Doherty, San Francisco, on 4th page. Dr. Doherty ranks as one of our most distinguished physicians, and also one of the most successful, which is now the criterion by which the medical practitioner is judged. His address is Dr. Doherty, Private Medical and Surgical Institute, San Francisco, Sacramento street, below Montgomery, opposite Pacific Steamship Co's Office. Private entrance, Leidenhorff street. y

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