Sec. 4—Obligations of United States to States

clearly to have been more than an authorization for the Federal Government to protect states against foreign invasion or internal insurrection,[332] a power seemingly already conferred in any case.[333] No one can now resurrect the full meaning of the clause and intent which moved the Framers to adopt it, but with the exception of the reliance for a brief period during Reconstruction the authority contained within the confines of the clause has been largely unexplored.[334]

In *Luther v. Borden*,[335] the Supreme Court established the doctrine that questions arising under this section are political, not judicial, in character and that "it rests with Congress to decide what government is the established one in a State . . . as well as its republican character."[336] *Texas v. White*[337] held that the action of the President in setting up provisional governments at the conclusion of the war was justified, if at all, only as an exercise of his powers as Commander-in-Chief and that such governments were to be regarded merely as provisional regimes to perform the functions of government pending action by Congress. On the ground that the issues were not justiciable, the Court in the early part of this century refused to pass on a number of challenges to state governmental reforms and thus made the clause in effect noncognizable by the courts in any matter,[338] a status from which the Court's opinion in

---

well as foreign violence," whereas Randolph wanted to add to this the language "and that no State be at liberty to form any other than a Republican Govt." Wilson then moved, "as a better expression of the idea," almost the present language of the section, which was adopted. Id. at 47–49.

[332] Thus, Randolph on June 11, supporting Madison's version pending then, said that "a republican government must be the basis of our national union; and no state in it ought to have it in their power to change its government into a monarchy." 1 id. at 206. Again, on July 18, when Wilson and Mason indicated their understanding that the object of the proposal was "merely" to protect states against violence, Randolph asserted: "The Resoln. has 2 Objects. 1. to secure Republican government. 2. to suppress domestic commotions. He urged the necessity of both these provisions." 2 id. at 47. Following speakers alluded to the dangers of monarchy being created peacefully as necessitating the provision. Id. at 48. *See* W. Wiecek, The Guarantee Clause of the U.S. Constitution ch. 2 (1972).

[333] *See* Article I, § 8, cl. 15.

[334] *See generally* W. Wiecek, The Guarantee Clause of the U.S. Constitution (1972).

[335] 48 U.S. (7 How.) 1 (1849).

[336] 48 U.S. at 42.

[337] 74 U.S. (7 Wall.) 700, 729 (1869). In Georgia v. Stanton, 73 U.S. (6 Wall.) 50 (1868), the state attempted to attack Reconstruction legislation on the premise that it already had a republican form of government and that Congress was thus not authorized to act. The Court viewed the congressional decision as determinative.

[338] Pacific States Tel. Co. v. Oregon, 223 U.S. 118 (1912); Kiernan v. City of Portland, 223 U.S. 151 (1912); Davis v. Ohio, 241 U.S. 565 (1916); Ohio v. Akron Park Dist., 281 U.S. 74 (1930); O'Neill v. Leamer, 239 U.S. 244 (1915); Highland Farms Dairy v. Agnew, 300 U.S. 608 (1937). But in certain earlier cases the Court had disposed of Guarantee Clause questions on the merits. Forsyth v. City of Hammond, 166 U.S. 506 (1897); Minor v. Happersett, 88 U.S. (21 Wall.) 162 (1875).