

Abraham Lincoln papers

From Matthew Birchard et al. to Abraham Lincoln¹, July 1, 1863

¹ Matthew Birchard, et al. were a committee appointed by the Ohio State Democratic Convention. On June 25, the committee met with Lincoln and submitted a series of written resolutions on the following day. The resolutions and a draft of Lincoln's June 29 reply are in this collection.

New York City

July 1st 1863

Sir.

Your answer to the application of the Undersigned for a revocation of the order of banishment of Clement L. Vallandigham requires a reply which they proceed, with as little delay as practicable, to make—

They are not able to appreciate the force of the distinction you make, between the Constitution, and the application of the Constitution, whereby you assume, that powers are delegated to the President at the time of invasion or insurrection, in derogation of the plain language of the Constitution. The inherent provisions of the Constitution, remaining the same in time of insurrection or invasion, as in time of peace, the President can have no more right to disregard their positive and imperative requirements, at the former time, than at the latter. Because some “things may be done” by the terms of the Constitution, at a time of invasion or insurrection, which would not be required by the occasion, in time of peace . . . You assume that any thing whatever, even though not expressed by the Constitution, may be done on the occasion of insurrection or invasion, which the President may choose to say is required by the public safety— In plainer terms, because the writ of Habeas corpus may be suspended, at the time of invasion or insurrection, you infer, that all other provisions of the Constitution, having in view the protection of the life, liberty, and property of the Citizen, may be in like manner suspended— The provision relating to the writ of Habeas Corpus, being contained in the first part of the Constitution, the purpose of which, is to define the powers delegated to Congress, has no connection in language, with the declaration of rights, as guaranties of personal liberty contained in the additional, and amendatory articles; and in as much as the provision relating to Habeas Corpus, expressly provides for its suspension, and the other provisions alluded to, do not provide for any such thing, the legal conclusion is that the suspension of the latter is unauthorized. The provision for the writ of Habeas Corpus, is merely intended to furnish a summary remedy,

and not the means, whereby personal security is conserved, in the final resort; while the other provisions are guaranties of personal rights, the suspension of which puts an end to all pretence of free government— It is true Mr. Vallandigham applied for a writ of Habeas Corpus, as a summary remedy against oppression— But the denial of this did not take away his right to a speedy public trial by an impartial Jury, or deprive him of his other rights as an American Citizen— Your assumption of the right to suspend all the Constitutional guaranties of personal liberty, and even of the freedom of Speech and of the press, because the summary remedy of Habeas Corpus, may be suspended is at once startling and alarming, to all persons desirous of preserving free government in this Country.

The inquiry of the undersigned, whether “You hold that the rights of every man throughout this vast Country in time of invasion, or insurrection are subject to be annulled, whenever you may say, that You consider the public safety requires it,” was a plain question, undisguised by circumlocution, and intended simply to elicit information. Your affirmative answer to this question, throws a shade upon the fondest anticipations of the framers of the Constitution who flattered themselves, that they had provided Safeguards, against the dangers, which have ever beset, and overthrown free government in other ages and countries— Your answer is not to be disguised by the phraseology that the question “is simply a question who shall decide, or an affirmation that no body shall decide what the public safety does require in cases of rebellion or invasion.” Our government was designed to be a government of law; settled and defined, and not of the arbitrary will of a single man. As a safeguard, the powers delegated were distributed to the legislative, Executive, and judicial branches of the government, and each made co-ordinate with the others, and supreme within its sphere, and thus a mutual check upon each other, in case of abuse of power— It has been the boast of American people that they had a written Constitution, not only expressly defining, but also limiting the powers of the government, and providing effectual safeguards, for personal liberty, security and property. And to make the matter more positive and explicit, it was provided by the Amendatory articles, nine and ten, that “the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people;” and that “The powers not delegated to the United States by the Constitution, now prohibited by it to the States, are reserved to the States respectively or to the people.” With this care and precaution on the part of our forefathers, who framed our institutions, it was not to be expected that at so early a day as this, a claim of the President to arbitrary power, limited only by his conception of the requirements of the public safety, would have been asserted— In derogation of the Constitutional provisions making the President strictly an executive officer, and vesting all the delegated legislative power in Congress, your position, as we understand it, would make your will the rule of action and your declarations of the requirements of the public safety the law of the land— Our inquiry was not therefore, “simply a question who shall decide, or the affirmation that no body shall decide, what the public safety requires.” Our government is a government of law, and it is the law making power, which accertains what the public

safety requires, and prescribes the rule of action; and the duty of the President is simply to execute the laws thus enacted, and not to make or annul laws—

If any exigency shall arise, the president has the power to convene Congress at any time, to provide for it; so that the plea of necessity furnishes no reasonable pretext for any assumption of legislative power—

For a moment, contemplate the consequences of such a claim to power— Not only would the dominion of the President be absolute over the rights of individuals, but equally so over the other departments of the government. If he should claim that the public safety required it, he could arrest and imprison a judge for the conscientious discharge of his duties, paralyze the judicial power, or supercede it, by the substitution of Courts martial subject to his own will, throughout the whole country— If any one of the states, even far removed from the rebellion, should not sustain his plan for prosecuting the War, he could, on this plea of the public safety, annul and set at defiance, the State laws and authorities, arrest and imprison the Governor of the State, or the members of the legislature, while in the faithful discharge of their duties, or he could absolutely control the action, either of Congress or of the Supreme Court, by arresting and imprisoning its members; and upon the same ground he could suspend the elective franchise, postpone the elections, and declare the perpetuity of his high prerogative. And neither the power of impeachment, nor the elections of the people, could be made available against such concentration of power—

Surely it is not necessary to subvert free government in this Country, in order to put down the rebellion; and it cannot be done under the pretence of putting down the rebellion. Indeed, it is plain that your administration has been weakened, greatly weakened by the assumption of power not delegated in the constitution—

In your answer you say to us: “You claim that men may, if they choose, embarrass those whose duty it is to combat a giant rebellion and then be dealt with in turn only as if there were no rebellion.” You will find yourself at fault if you will search our communication to you, for any such idea. The undersigned believe that the Constitution and laws of the land, properly administered furnish ample power to put down any insurrection without the assumption of powers not granted— And if existing legislation be inadequate, it is the duty of Congress to consider what further legislation is necessary, and to make suitable provisions by law— You claim that the military arrests made by your administration, are merely preventive remedies, “as injunctions to stay inquiry, or proceedings to keep the peace and, not for punishment.” The ordinary preventive remedies alluded to are authorized by established laws, but the preventive proceedings you institute have their authority merely in the will of the executive, or that of officers subordinate to his authority— And in this proceeding, a discretion seems to be exercised as to whether the prisoner shall be allowed a trial

or even be permitted to know the nature of the complaint alleged against him or the name of his accuser— If the proceeding be merely preventive, why not allow the prisoner the benefit of a bond to keep the peace? But if no offence had been committed, why was Mr. Vallandigham tried, convicted and sentenced by a Court martial? And why the actual punishment by imprisonment or banishment, without the opportunity of obtaining his liberty in the mode usual in preventive remedies, and yet say it is not for punishment? You still place Mr. Vallandigham's conviction and banishment upon the ground that he had damaged the military service by discouraging the enlistments and encouraging desertions &c and yet you have not even pretended to controvert our position that he was not charged with, tried, or convicted for any such offence, before the Court martial—

In answer to our position that Mr. Vallandigham was entitled to a trial in the civil tribunals, by virtue of the late acts of Congress you say "I certainly do not know that Mr. Vallandigham has specifically and by direct language advised against enlistments and in favor of desertions and resistance to drafting," &c and yet in a subsequent part of your answer after speaking of certain disturbances, which are alleged to have occurred, in resistance of the arrest of deserters and of the enrollment preparatory to the draft, and which you attribute mainly to the course of Mr. Vallandigham has pursued, you say that he has made speeches against the War in the midst of resistance to it, that "he has never been known in any instance, to counsel against such resistance, and that "it is next to impossible to repel the influence that he has counseled directly in favor of it," Permit us to say, that your information is most grievously at fault— The undersigned have been in the habit of hearing Mr. Vallandigham speak before popular assemblages and they appeal with confidence to every truthful person who has ever heard him, for the accuracy of the declaration that he has never made a speech before the people of Ohio, in which, he has not counseled submission and obedience to the laws of and the Constitution and advised the peaceful remedies of the judicial tribunals and of the ballotbox for the redress of grievances and for the evils, which afflict our bleeding and suffering Country. And were it not foreign to the purposes of this communication, we would undertake to establish to the satisfaction of any candid person, that the disturbances among the people, to which you allude, in opposition to the arrest of deserters and the draft, have been occasioned mainly by the measures, policy, and conduct of your administration and the course of its political friends. But if the circumstantial evidence exists, to which you allude, which makes "it next to impossible to repel the inference, that Mr. Vallandigham has counselled directly in favor" of this resistance, and that the same has been mainly attributable to his conduct, why was he not turned over to the civil authorities to be tried under the late act of Congress? If there be any foundation in fact for your statement, implicating him in resistance to the constituted authorities, he is liable to such prosecution, And we, as a mere act of justice to him, we now demand and investigation of this matter before a jury of his country; and respectfully insist, that fairness requires, either that you retract these charges, which

you make against him, or that, you revoke your order of banishment, and allow him the opportunity of an investigation before an impartial Jury—

The Committee do not deem it necessary to repel at length the imputation, that the attitude of themselves, or the democratic Party in Ohio, “encourage desertions, resistance to the draft, and the like,” or tends to the breach of any law of the land. Suggestions of that kind are not unusual weapons in our ordinary political contests— They rise readily in the minds of politicians, heated with excitement of partizan strife— During the two years in which the Democratic party of Ohio has been constrained to oppose the policy of the administration, and to stand up in defence of the Constitution and of personal rights, this charge has been repeatedly made.— It has fallen harmless, however, at the feet of those whom it was intended to injure— The Committee believe it will do so again— It if were proper to do so in this paper, they might suggest that the measures of the administration, and its changes of policy in the prosecution of the War, have been the fruitful sources of discouraging enlistments, and inducing desertions, and furnish a reason for the undeniable fact, that the first call for volunteers was answered by very many more than were demanded; and that the next call for soldiers will probably be responded to by drafted men alone— The observation of the President in this connection, that neither the convention, in its resolutions, nor the Committee, in its communication, intimate that they are conscious of an existing rebellion being in progress with the avowed objet of destroying that very union,” needs perhaps no reply— The Democratic party of Ohio has felt so keenly the condition of the country, and been so stricken to the heart by the misfortunes and sorrows, which have be befallen it, that they hardly deemed it necessary, by solemn resolution; when their very state exhibited every where the sad evidences of War, to remind the President that they were aware of its existence—

In the conclusion of your communication, you propose, that, if a majority of the Committee shall affix their signatures to a duplicate copy of it, which you have furnished, they shall stand committed to three propositions, therein at length set forth; that he will publish the names thus signed, and that this publication shall operate as a revocation of the order of banishment—

The Committee cannot refrain from the expression of their surprise, that the President should make the fate of Mr. Vallandigham depend upon the opinion of this Committee, upon these propositions. If the arrest and banishment were legal and were deserved, — if the President exercised a power clearly delegated, clearly under the circumstances, which, warranted its exercise, the order ought not to be revoked, merely because the Committee hold or express opinions accordant, with those of the President— If the arrest and banishment were not legal, or were not deserved by Mr. Vallandigham, then surely he is entitled to an immediate and unconditional discharge— The People of Ohio were not so deeply moved by the action of the President, merely because they were

concerned for the personal safety or convenience of Mr. Vallandigham, but because they saw in his arrest and banishment, an attack upon their own personal rights, and they attach value to his discharge chiefly, as it will indicate an abandonment of the claim to the power of such arrests and banishments. However just the undersigned might regard the principles contained in the several propositions, submitted by the President, or how muchsoever they might under other circumstances feel inclined to indorse the sentiments contained therein, yet they assure him, that they have not been authorized to enter into any bargains, terms, contracts, or conditions with the President of the United States, to procure the release of Mr. Vallandigham. The opinions of the undersigned, touching the questions involved in these propositions, are well known, have been many times publicly expressed, and are sufficiently manifested in the resolutions of the Convention, which they represent; and they cannot suppose that the President expects, that they will seek the discharge of Mr. Vallandigham, by a pledge, implying not only an imputation upon their own sincerity and fidelity as Citizens of the United States, but also carrying with it by implication a concession of the legality of his arrest, trial and banishment, — against which, they, and the convention they represent, have solemnly protested— And while they have asked the revocation of the order of banishment, not as a favor, but as a right due to the people of Ohio, and with a view to avoid the possibility of conflict or disturbance of the public tranquility, they do not do this, nor does Mr. Vallandigham desire it, at any sacrifice of their dignity and self respect. The idea, that such a pledge, as that asked from the undersigned, would secure the public safety sufficiently to compensate for any mistake of the President in discharging Mr. Vallandigham, is, in their opinion, a mere evasion of the grave questions involved in this discussion, and of a direct answer to their demand. And this is made especially apparent by the fact, that this pledge is asked in communication, which concludes with an intimation of a disposition on the part of the President to repeat the acts complained of.

The undersigned, therefore, having fully discharged the duty enjoined upon them, leave the responsibility with the President.—

M. Birchard 19 Dist

Chairman

David A. Houk, Secy. 3d Dist.

Geo. Bliss² 14 Dist

² George Bliss was a Democratic member of the U. S. House (1853-55, 1863-65) from Ohio.

T. W. Bartley 8th Dist.

W J Gordon 18th Dist

Jno O'Neill³ 13th Dist

3 O'Neill was a Democratic member of the Thirty-eighth Congress (1863-65) from Ohio.

C. A. White,⁴ 6th Dist

4 Chilton A. White was a Democratic member of Congress (1861-65) from Ohio.

W E Finck⁵ 12th Dist

5 William E. Finck was a Democratic member of Congress (1863-67, 1874-75) from Ohio.

Alexander Long⁶ 2d

6 Long, a Democratic member of the Thirty-eighth Congress (1863-65) from Ohio, was censured by the House on April 9, 1864 for treasonable utterances.

Jas. R. Morris,⁷ 15th D.

7 Morris, an Ohio attorney and newspaper editor, served as a Democrat in Congress (1861-65) during the Civil War.

Geo. L. Converse⁸ 7th D.

8 Converse was an Ohio attorney and member of the state legislature who later served as a Democrat in Congress (1879-85).

Geo. H. Pendleton 1st D.

W. A. Hutchins⁹ 11th D.

9 Wells A. Hutchins, an Ohio politician and lawyer, was a Democratic member of the Thirty-eighth Congress (1863-65).

A L Backus 10 Dist.

J A McKinney¹⁰ 4th Dist

10 John F. McKinney, an Ohio politician and attorney, was elected to two terms in Congress (1863-65, 1871-73) as a Democrat.

J. W. White¹¹ 16th Dist.

11 Joseph W. White was a Democratic member of the Thirty-eighth Congress (1863-65) from Ohio.

F. C. Le Blond¹² 5th D

12 Francis C. Le Blond, an Ohio politician and lawyer, served two terms in Congress (1863-67) as a Democrat.

Louis Schaefer 17th Dist.

Warren P. Noble¹³ 9th Dist.

13 Noble, an Ohio politician and lawyer, served as a Democrat in Congress (1861-65) during the Civil War.