

KANSAS.

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MESSAGE

OF

THE PRESIDENT OF THE UNITED STATES,

RELATIVE

*To affairs in the Territory of Kansas.*

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*To the Senate and House of Representatives :*

Circumstances have occurred to disturb the course of governmental organization in the Territory of Kansas, and produce there a condition of things which renders it incumbent on me to call your attention to the subject, and urgently to recommend the adoption, by you, of such measures of legislation as the grave exigencies of the case appear to require.

A brief exposition of the circumstances referred to, and of their causes, will be necessary to the full understanding of the recommendations which it is proposed to submit.

The act to organize the Territories of Nebraska and Kansas was a manifestation of the legislative opinion of Congress on two great points of constitutional construction: one that the designation of the boundaries of a new territory, and provision for its political organization and administration as a territory, are measures which, of right, fall within the powers of the general government; and the other that the inhabitants of any such territory, considered as an inchoate State, are entitled, in the exercise of self-government, to determine for themselves what shall be their own domestic institutions, subject only to the Constitution and the laws duly enacted by Congress under it, and to the power of the existing States to decide, according to the provisions and principles of the Constitution, at what time the territory shall be received as a State into the Union. Such are the great political rights which are solemnly declared and affirmed by that act.

Based upon this theory, the act of Congress defined for each Territory the outlines of republican government, distributing public authority among lawfully created agents, executive, judicial, and legislative, to be appointed either by the general government or by the Territory. The legislative functions were entrusted

to a council and house of representatives duly elected, ——— and empowered to enact all the local laws which they might deem essential to their prosperity, happiness, and good government. Acting in the same spirit, Congress also defined the persons who were in the first instance to be considered as the people of each Territory; enacting that every free white male inhabitant of the same above the age of twenty-one years, being an actual resident thereof, and possessing the qualifications hereafter described, should be entitled to vote at the first election, and be eligible to any office within the Territory; but that the qualification of voters and holding office, at all subsequent elections, should be such as might be prescribed by the legislative assembly: provided, however, that the right of suffrage and of holding office should be exercised only by citizens of the United States, and those who should have declared on oath their intention to become such, and have taken an oath to support the Constitution of the United States and the provisions of the act: and provided, further, that no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in their service, should be allowed to vote or hold office in either Territory by reason of being on service therein.

Such of the public officers of the Territories as, by the provisions of the act, were to be appointed by the general government, including the governors, were appointed and commissioned in due season; the law having been enacted on the 30th of May, 1854, and the commission of the governor of the Territory of Nebraska being dated on the 2d day of August, 1854, and of the Territory of Kansas on the 29th day of June, 1854.

Among the duties imposed by the act on the governor was that of directing and superintending the political organization of the respective Territories.

The governor of Kansas was required to cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as he might designate and appoint; to appoint and direct the time and places of holding the first elections, and the manner of conducting them, both as to the persons to superintend such elections and the returns thereof; to declare the number of the members of the council and the House of Representatives for each county or district; to declare what persons might appear to be duly elected; and to appoint the time and place of the first meeting of the legislative assembly. In substance the same duties were devolved on the governor of Nebraska.

While, by this act, the principle of constitution for each of the Territories was one and the same, and the details of organic legislation regarding both were, as nearly as could be, identical, and while the Territory of Nebraska was tranquilly and successfully organized in the due course of law, and its first legislative assembly met on ———, January 16, 1855, the organization of Kansas was long delayed, and has been attended with serious difficulties and embarrassments, partly the consequence of local maladministration, and partly of the unjustifiable interference of the inhabitants of some of the States, foreign by residence, interests and rights to the Territory.

The governor of the Territory of Kansas, commissioned, as before stated, on June 29, 1854, did not reach the designated seat of his government until the seventh of the ensuing October, and even then failed to make the first step in its legal organization, that of ordering the census or enumeration of its inhabitants, until so late a day, that the election of the members of the legislative assembly did not take place until March 30, 1855, nor its meeting until July 2, 1855. So that, for a year after the Territory was constituted by the act of Congress, and the officers to be appointed by the federal executive had been commissioned, it was without a complete government, without any legislative authority, without local law, and, of course, without the ordinary guaranties of peace and public order.

In other respects, the governor, instead of exercising constant vigilance and putting forth all his energies to prevent or counteract the tendencies to illegality, which are prone to exist in all imperfectly organized and newly associated communities, allowed his attention to be diverted from official obligations by other objects, and himself set an example of the violation of law, in the performance of acts which rendered it my duty in the sequel to remove him from the office of chief executive magistrate of the Territory.

Before the requisite preparation was accomplished for election of a territorial legislature, an election of delegate to Congress had been held in the Territory, on the 29th day of November, 1854, and the delegate took his seat in the House of Representatives without challenge. If arrangements had been perfected by the governor, so that the election for members of the legislative assembly might be held in the several precincts at the same time as for delegate to Congress, any question appertaining to the qualification of the persons voting as people of the Territory would have passed necessarily and at once under the supervision of Congress, as the judge of the validity of the return of the delegate, and would have been determined before conflicting passions had become inflamed by time, and before opportunity could have been afforded for systematic interference of the people of individual States.

This interference, in so far as concerns its primary causes and its immediate commencement, was one of the incidents of that pernicious agitation on the subject of the condition of the colored persons held to service in some of the States, which has so long disturbed the repose of our country and excited individuals, otherwise patriotic and law-abiding, to toil, with misdirected zeal, in the attempt to propagate their social theories by the perversion and abuse of the powers of Congress.

The persons and the parties whom the tenor of the act to organize the Territories of Nebraska and Kansas thwarted in the endeavor to impose, through the agency of Congress, their particular views of social organization on the people of the future new States, now perceiving that the policy of leaving the inhabitants of each State to judge for themselves in this respect was ineradicably rooted in the convictions of the people of the Union, then had recourse, in the pursuit of their general object, to the extraordinary measure of propagandist colonization of the Territory of Kansas, to prevent the free and natural action of its inhabitants in its internal organization, and

thus to anticipate, or to force, the determination of that question in this inchoate State.

With such views, associations were organized in some of the States, and their purposes were proclaimed, through the press, in language extremely irritating and offensive to those of whom the colonists were to become the neighbors. Those designs and acts had the necessary consequence to awaken emotions of intense indignation in States near to the Territory of Kansas, and especially in the adjoining State of Missouri, whose domestic peace was thus the most directly endangered; but they are far from justifying the illegal and reprehensible counter movements which ensued.

Under these inauspicious circumstances the primary elections for members of the legislative assembly were held in most, if not all, of the precincts, at the time and the places and by the persons designated and appointed by the governor according to law.

Angry accusations that illegal votes had been polled abounded on all sides, and imputations were made both of fraud and violence. But the governor, in the exercise of the power and the discharge of the duty conferred and imposed by law on him alone, officially received and considered the returns; declared a large majority of the members of the council and the house of representatives "duly elected;" withheld certificates from others because of alleged illegality of votes; appointed a new election to supply the place of the persons not certified; and thus, at length, in all the forms of statute, and with his own official authentication, complete legality was given to the first legislative assembly of the Territory.

Those decisions of the returning officers and of the governor are final, except that, by the parliamentary usage of the country applied to the organic law, it may be conceded that each house of the assembly must have been competent to determine in the last resort the qualifications and the election of its members. The subject was, by its nature, one appertaining exclusively to the jurisdiction of the local authorities of the Territory. Whatever irregularities may have occurred in the elections, it seems too late now to raise that question. At all events, it is a question as to which neither now nor at any previous time has the least possible legal authority been possessed by the President of the United States. For all present purposes, the legislative body, thus constituted and elected, was the legitimate legislative assembly of the Territory.

Accordingly the governor, by proclamation, convened the assembly thus elected to meet at a place called Pawnee city; the two houses met and were duly organized in the ordinary parliamentary form; each sent to and received from the governor the official communications usual on such occasions; an elaborate message, opening the session, was communicated by the governor, and the general business of legislation was entered upon by the legislative assembly.

But, after a few days, the assembly resolved to adjourn to another place in the Territory. A law was accordingly passed, against the consent of the governor, but in due form otherwise, to remove the seat of government temporarily to the "Shawnee Manual Labor School," (or Mission,) and thither the assembly proceeded. After this, receiv-

ing a bill for the establishment of a ferry at the town of Kickapoo, the governor refused to sign it, and by special message assigned for reason of refusal, not any thing objectionable in the bill itself, nor any pretence of the illegality or incompetency of the assembly as such, but only the fact that the assembly had by its act transferred the seat of government temporarily from Pawnee city to the Shawnee Mission. For the same reason he continued to refuse to sign other bills, until, in the course of a few days, he by official message communicated to the assembly the fact that he had received notification of the termination of his functions as governor, and that the duties of the office were legally devolved on the secretary of the Territory; thus to the last recognizing the body as a duly elected and constituted legislative assembly.

It will be perceived that if any constitutional defect attached to the legislative acts of the assembly, it is not pretended to consist in irregularity of election, or want of qualification of the members, but only in the change of its place of session. However trivial this objection may seem to be, it requires to be considered because upon it is founded all that superstructure of acts, plainly against law, which now threaten the peace not only of the Territory of Kansas, but of the Union.

Such an objection to the proceedings of the legislative assembly was of exceptionable origin, for the reason that, by the express terms of the organic law, the seat of government of the Territory was "located temporarily at Fort Leavenworth," and yet the governor himself remained there less than two months, and of his own discretion transferred the seat of government to the Shawnee Mission, where it in fact was at the time the assembly were called to meet at Pawnee city.

If the governor had any such right to change temporarily the seat of government, still more had the legislative assembly.

The objections are of exceptionable origin for the further reason that the place indicated by the governor, without having any exclusive claim of preference in itself, was a proposed town site only, which he and others were attempting to locate unlawfully upon land within a military reservation, and for participation in which illegal act the commandant of the post, a superior officer in the army, has been dismissed by sentence of court martial.

Nor is it easy to see why the legislative assembly might not with propriety pass the territorial act transferring its sittings to the Shawnee Mission. If it could not, that must be on account of some prohibitory or incompatible provision of act of Congress. But no such provision exists. The organic act, as already quoted, says, "the seat of government is hereby located temporarily at Fort Leavenworth," and it then provides that certain of the public buildings there "may be occupied and used under the direction of the governor and legislative assembly." These expressions might possibly be construed to imply, that when, in a previous section of the act, it was enacted that "the first legislative assembly shall meet at such place and on such day as the governor shall appoint," the word "place" means place at Fort Leavenworth, not place anywhere in the Territory. If so, the governor would have been the first to err in this matter, not only in him-



self having removed the seat of government to the Shawnee Mission, but in again removing it to Pawnee city. If there was any departure from the letter of the law, therefore it was his in both instances.

But however this may be, it is most unreasonable to suppose that by the terms of the organic act Congress intended to do impliedly what it has not done expressly; that is, to forbid to the legislative assembly the power to choose any place it might see fit as the temporary seat of its deliberations. That is proved by the significant language of one of the subsequent acts of Congress on the subject, that of March 3, 1855, which, in making appropriation for public buildings of the Territory, enacts that the same shall not be expended "until the legislature of said Territory shall have fixed by law the permanent seat of government." Congress, in these expressions, does not profess to be granting the power to fix the permanent seat of government, but recognizes the power as one already granted. But how? Undoubtedly by the comprehensive provision of the organic act itself, which declares that "the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act." If, in view of this act, the legislative assembly had the large power to fix the permanent seat of government at any place in its discretion, of course, by the same enactment, it had the less and the included power to fix it temporarily.

Nevertheless, the allegation that the acts of the legislative assembly were illegal, by reason of this removal of its place of session, was brought forward to justify the first great movement in disregard of law within the Territory. One of the acts of the legislative assembly provided for the election of a delegate to the present Congress, and a delegate was elected under that law. But, subsequently to this, a portion of the people of the Territory proceeded without authority of law to elect another delegate.

Following upon this movement was another and more important one of the same general character. Persons confessedly not constituting the body politic, or all the inhabitants, but merely a party of the inhabitants, and without law, have undertaken to summon a convention for the purpose of transforming the Territory into a State, and have framed a constitution, adopted it, and under it elected a governor and other officers and a representative to Congress. In extenuation of these illegal acts, it is alleged that the States of California, Michigan, and others, were self-organized, and, as such, were admitted into the Union without a previous enabling act of Congress. It is true that while, in a majority of cases, a previous act of Congress has been passed to authorize the Territory to present itself as a State, and that this is deemed the most regular course, yet such an act has not been held to be indispensable, and in some cases the Territory has proceeded without it, and has nevertheless been admitted into the Union as a State. It lies with Congress to authorize beforehand, or to confirm afterwards, in its discretion. But in no instance has a State been admitted upon the application of persons acting against authorities duly constituted by act of Congress. In every case it is the people of the Territory, not a party among them who have the power to form a constitution, and ask for admission as

a State. No principle of public law, no practice or precedent under the Constitution of the United States, no rule of reason, right, or common sense confers any such power as that now claimed by a mere party in the Territory. In fact, what has been done is of revolutionary character. It is avowedly so in motive and in aim as respects the local law of the Territory. It will become treasonable insurrection if it reach the length of organized resistance by force to the fundamental, or any other federal law, and to the authority of the general government. In such an event, the path of duty for the Executive is plain. The Constitution requiring him to take care that the laws of the United States be faithfully executed, if they be opposed in the Territory of Kansas, he may, and should, place at the disposal of the marshal any public force of the United States which happens to be within the jurisdiction, to be used as a portion of the *posse comitatus*; and if that do not suffice to maintain order, then he may call forth the militia of one or more States for that object, or employ for the same object any part of the land or naval force of the United States. So, also, if the obstruction be to the laws of the Territory, and it be duly presented to him as a case of insurrection, he may employ, for its suppression, the militia of any State, or the land or naval force of the United States. And if the Territory be invaded by the citizens of other States, whether for the purpose of deciding elections, or for any other, and the local authorities find themselves unable to repel or withstand it, they will be entitled to, and upon the fact being fully ascertained, they shall most certainly receive the aid of the general government.

But it is not the duty of the President of the United States to volunteer interposition by force to preserve the purity of elections either in a State or Territory. To do so would be subversive of public freedom. And whether a law be wise or unwise, just or unjust, is not a question for him to judge. If it be constitutional, that is, if it be the law of the land, it is his duty to cause it to be executed, or to sustain the authorities of any State or Territory in executing it in opposition to all insurrectionary movements.

Our system affords no justification of revolutionary acts; for the constitutional means of relieving the people of unjust administration and laws, by a change of public agents and by repeal, are ample, and more prompt and effective than illegal violence. These means must be scrupulously guarded; this great prerogative of popular sovereignty sacredly respected.

It is the undoubted right of the peaceable and orderly people of the Territory of Kansas to elect their own legislative body, make their own laws, and regulate their own social institutions, without foreign or domestic molestation. Interference on the one hand to procure the abolition or prohibition of slave labor in the Territory has produced mischievous interference on the other for its maintenance or introduction. One wrong begets another. Statements entirely unfounded, or grossly exaggerated, concerning events within the Territory, are sedulously diffused through remote States to feed the flame of sectional animosity there; and the agitators there exert themselves indefatigably, in return, to encourage and stimulate strife within the Territory.

The inflammatory agitation, of which the present is but a part, has, for twenty years, produced nothing save unmitigated evil, north and south. But for it the character of the domestic institutions of the future new State would have been a matter of too little interest to the inhabitants of the contiguous States, personally or collectively, to produce among them any political emotion. Climate, soil, production, hopes of rapid advancement, and the pursuit of happiness on the part of the settlers themselves, with good wishes, but with no interference from without, would have quietly determined the question which is at this time of such disturbing character.

But we are constrained to turn our attention to the circumstances of embarrassment as they now exist. It is the duty of the people of Kansas to discountenance every act or purpose of resistance to its laws. Above all, the emergency appeals to the citizens of the States, and especially to those contiguous to the Territory, neither by intervention of non-residents in elections nor by unauthorized military force, to attempt to encroach upon or usurp the authority of the inhabitants of the Territory.

No citizen of our country should permit himself to forget that he is a part of its government, and entitled to be heard in the determination of its policy and its measures, and that therefore the highest considerations of personal honor and patriotism require him to maintain, by whatever of power or influence he may possess, the integrity of the laws of the republic.

Entertaining these views, it will be my imperative duty to exert the whole power of the Federal Executive to support public order in the Territory; to vindicate its laws, whether federal or local, against all attempts of organized resistance, and so to protect its people in the establishment of their own institutions, undisturbed by encroachment from without, and in the full enjoyment of the rights of self government, assured to them by the Constitution and the organic act of Congress.

Although serious and threatening disturbances in the Territory of Kansas, announced to me by the governor in December last, were speedily quieted without the effusion of blood and in a satisfactory manner, there is, I regret to say, reason to apprehend that disorders will continue to occur there with increasing tendency to violence, until some decisive measure be taken to dispose of the question itself which constitutes the inducement or occasion of internal agitation and of external interference.

This, it seems to me, can best be accomplished by providing that when the inhabitants of Kansas may desire it, and shall be of sufficient number to constitute a State, a convention of delegates, duly elected by the qualified voters, shall assemble to frame a constitution, and thus to prepare, through regular and lawful means, for its admission into the Union as a State.

I respectfully recommend the enactment of a law to that effect.

I recommend, also, that a special appropriation be made to defray any expense which may become requisite in the execution of the laws or the maintenance of public order in the Territory of Kansas.

FRANKLIN PIERCE.

WASHINGTON, *January 24, 1856.*