

government was founded, and so sure to involve the destruction of that government, let the fortune of war be what it might—could not but excite almost to frenzy every feeling of those who sympathized with the people against whom it was fulminated. Independently, too, of its wantonness and inhumanity, it was felt and known to be a gross violation of the Constitution, and without color of lawful authority. The people of the seceded States, whether constitutionally or unconstitutionally, had separated themselves from this government, and established a federal government of their own, with all the forms of a constitution, and all the substantial attributes of actual independence. Through their constituted authorities and in their collective capacity, as communities, they had withdrawn themselves from the Union—repudiated its laws and excluded its officers, of all sorts, from the exercise of all functions and jurisdiction. The United States Government no longer had among them either courts to issue, or marshals to execute process. They had substituted their own courts and their own processes, to which they yielded cheerful obedience. The authority of the Federal Government was in fact dead within their limits. They were in an attitude towards it, not only of independence, but of forcible resistance, for they had repelled the assertion of its authority over any portion of their soil, and had subdued for their own protection, one of its fortifications within their borders. The Confederate Government and that of the United States were, in fine, belligerents, engaged in actual, though undeclared war, and with all the rights and responsibilities which it gives and entails. This last is none the less true, because of their being engaged in civil war, for that is like any other war, when waged among civilized people. Vattel defines the relations which exist in such cases in terms too clear to be misunderstood, and too well recognized to be disputed.

“A civil war,” he says, “breaks the bands 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. These 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, Book 3, ch. 18, sec. 293.) To attempt to apply, under such circumstances, to a belligerent people, an Act of Congress, which was meant as a domestic remedy, in aid of civil process and to secure obedience to the laws under judicial proceeding—in States still recognizing