legislature cannot be convened) against domestic violence"

Congress having raised an army, and having provided rules for the government and regulation of the same, it is proper to consider some of the laws under which the army may be called into action.

It is the acknowledged duty of Congress to decide whether or not a state government is republican in form, and its decision is final. Congress also decides upon the means proper to fulfill its guaranty. If Congress sees fit to employ the army for this purpose it is plainly within its constitutional power.

The provision made by Congress for the employment of the militia to repel invasion is found first in the act of February 28th, 1795, wherein it is made lawful for the President to call forth such number of the militia of the state or states most convenient to the place of danger, or scene of action as *he* may judge necessary to repel such invasion. This authority is given him to be exercised in case of invasion or imminent danger of invasion.

The law met with factious opposition during the war of 1812-15. The governor of Massachusetts refused to order out militia ro defend the sea coast in response to a call from the President. Connecticut and Rhode Island also objected on the ground that the state executive could decide whether or not the necessity existed. The question of the relative powers of the general and and state governments over the militia to repel invasion was thus easily brought into bold relief. It was thoroughly debated in congress, and elicited an elaborate report from the military committee of the senate, and also a valuable opinion from the secretary of war, Mr. James Monroe. The supremacy of the general government was maintained. These views have been regarded as the true exposition of the Constitution ever since Further, the Supreme court of the United States has silenced such political heresy in the following words; Chief Justice Storey in delivering the opinion of the court said: "We are all of the opinion that the authority to decide whether the exigency has arisen belongs exclusively to the President, and his decision is conclusive upon all other persons. * * * The law does not provide for any appeal from the judgment of the President."

The law of 1795 also provides for another circumstance under which the militia may be called out, somewhat different from the foregoing, in that the President may not originate the call. "And in the case of an insurrection in any state against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such state, or of the executive (when the legislature cannot be convened,) to call forth such number of the militia of any other state or states, as may be applied for as he deems sufficient to suppress such insurrection."

It will be observed that it is made lawful for the President to take certain action. He is not compelled to call forth the militia even upon the request of the state. It is a matter in his discretion.

The army at the time of the adoption of the Constitution consisted of levies of state quotas under state affairs, and is called militia in the early statutes; but when a standing army was established it became necessary to provide for its use. This was accordingly done by the act of March 3rd, 1807; and certain other powers were conferred upon the President. "In all cases of insurrection or obstruction to the laws, either of the United States or of any individual state or territory, where it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrection or of causing the laws to be duly executed, it shall be lawful for him to employ for the same purpose such part of the land and naval forces as shall be judged necessary."

Under this law the protection of the United States has in practice been commonly invoked by the governors of states. The protection sought is afforded by the President, by ordering a sufficient military force to the disturbed locality with proper instructions for the repression of the existing violence. No military commander or authority inferior to the President can assume to initiate such orders. Paragraph 585, Army Regulations, which gives military commanders authority to act in certain emergencies without waiting for orders, does not apply to domestic violence within and against a state. Even the President cannot interfere without a request as provided for in Article IV, sec. 4, of the Constitution. In the absence of the requisite orders a military commander may not even march or array his troops for the purpose of exerting a moral effect.

When troops are ordered by the President to protect a state against domestic violence as above indicated, the question arises as to the manner of their action, and under whose orders they shall be placed. It would seem that the troops having been called by the state to its aid, they should be under some sort of control by the state authorities This, however, is not true. The force does not act under the orders of the governor or other state official, either civil or military, but under the orders of the President and its own officers.

This question came up in the riots of 1877. Troops sent to West Virginia and some other states, upon request, were ordered to report to the state executives for directions. They were instructed to act under orders of the governors. The idea appeared to prevail in the states concerned, and at Washington, that the troops were to be turned over to the governors. The discussion which followed this novel method proves that the position is untenable, and has been abandoned The opinions on the subject are unanimous. General Otis, in the *United Service Journal*, said: "We cannot discover any authority for this proceeding. Neither the Constitution nor Congress ever expressly authorized the President to turn over troops to the governors of states. The United States in participating does so as the superior or controlling force, not as a subordinate." General Hancock thus expressed himself: "When it (the army) is employed for state protection, the President must employ it, and must either himself be present in person to command it, or place it in charge of one of his duly commissioned officers whom the law has given him for such purposes, and who is obliged to direct it according to general instructions." Winthrop says: "Though employed in a quasi-civil capacity and for a local and temporary object, they are still United States troops, representing the sovereignty of the United States, and can duly act only under command and direction of the President and their own officers. Their action, however, should in general be in concert with the action and views of the state authorities. While they should of course move and operate with promptitude and efficiency, no more military power than is reasonably required should be resorted to, nor the disorderly element be treated like an enemy in war unless the emergency is such as to demand extreme measures. The commanding officer is liable to court-martial for failure to properly support the state officials."

Troops once engaged in such duties should be withdrawn by order of the President, or other competent military commander. It is no more obligatory to withdraw them on demand than it is to furnish them. A lesson on this subject may be learned from the action taken by General McCook in March, 1894. There was, in Denver, a case of domestic violence, and all preparations had been made for a desperate collision of arms between the governor of the state and the sheriff of the county and the police board. The general says that he perceived on the afternoon of March 15th that a conflict was imminent at the city hall, and that the first shot would be the signal for a bloody riot. The mint and Federal buildings which were a few blocks away, were in danger. At 5:20 p. m. that day he received a letter from the governor concluding with these words—"I can enforce the laws but not without great bloodshed. I call upon you, as governor of the state, to assist me in preserving order and preventing bloodshed." In pursuance of this demand, the general ordered five companies from Fort Logan to Denver, and notified the governor that his sole purpose was to preserve the peace, and that he was acting under paragraph 585, Army Regulations. From the published correspondence, I am inclined to believe that the governor expected to command the troops, or, at least, that they should act with his faction. But finding that he was greatly mistaken, and learning the neutral attitude of the troops, he promptly requested their withdrawal. General McCook did not heed the request, but withdrew the troops two days later after peace had been restored without bloodshed.

The imminent danger to the public property saved the legality of the movement of the troops under paragraph 585. But their presence served the double purpose of protecting government property legally, and preventing a bloody riot illegally and incidentally; for we have seen that, it being a domestic disturbance, General McCook could not take the initiative even upon call of the governor. The President alone may respond to the governor's call to suppress domestic violence against a state.

It may be remarked here as a notable fact that the law authorizing the President to furnish troops upon the request of a state in case of domestic violence, does not confer such power in case of a territory. I presume that if there should be violence against a territory it would be construed as against the United States, and would be proceeded with under the act of July 29, 1861:

"Whenever by reason of unlawful obstructions, combinations, or assemblages