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"PERPETUAL VIGILANCE IS THE PRICE OF LIBERTY." FOR "POWER IS ALWAYS STEALING FROM THE MANY TO THE FEW."

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## WEEKLY ALMANAC.

FEBRUARY, 1848.	Sun	MOON'S PHASES.
24 Thursday	6 28 53	For February, 1848.
25 Friday	6 27 53	
26 Saturday	6 26 53	
27 Sunday	6 25 53	New 4 8 25 eve'g
28 Monday	6 24 53	First 11 2 35 aft'n
29 Tuesday	6 23 53	Full 18 10 36 even'g
1 Wednesday	6 22 53	Last 26 3 1 morn'g

## MR. BADGER'S SPEECH,

In the Senate, January 18th, 1848.

Mr. BADGER said: If I believed, sir, that the duty which I owe to the country and to the State which has sent me here, could be performed by yielding to the requisitions of the Executive of the country such supplies as he may deem requisite for the prosecution of the war, upon plans for prosecuting it which have not been fully made known to Congress—if I believed that I had not a high and controlling obligation to exercise my own best judgment for the benefit of those whom I represent, and for the general welfare of the country, upon every question submitted to the consideration of my body, I might be disposed to vote for the bill upon your table. If, sir, the year and days had not been ordered upon the passage of this bill, I might have been content to permit the measure to pass, as I am concerned, without offering a single word to the Senate upon its merits. But the year and days have been ordered upon this bill. I cannot vote for it. I shall record my vote against it; and, I think it due to the country—I feel that it is due to myself—that the views and principles which will govern my conduct in voting this vote should be plainly and distinctly stated, and should accompany the bill, the vote itself. Sir, I shall endeavor to assign those views and principles in a short compass as is consistent with a full exposition of what I believe to be the truth on this all important subject, and each every consideration obliges me to do before those whom I represent, without any unnecessary digression, without leaving out anything that may be required in full and complete expression of the argument which, in my mind, is conclusive in regard to the measure before you. I shall offer my own opinions, sir, with every respect, and even deferential consideration, to the great minds of this body and throughout the country, whom I know to be arrayed against me. Without intending towards them any disrespect, I shall take the liberty to declare what are the opinions which I entertain with regard to the origin of the war, the manner of its prosecution, the tendency of the measures now proposed, and the schemes that are evidently entertained by the Executive of the country in relation to it. I shall not go as far back, sir, as an honorable Senator from Maryland did a few days ago, (I mean the honorable Senator from that State who first addressed the Senate upon this bill,) but nevertheless, I shall be under the necessity of going a little back for the purpose of making myself fully understood.

First, then, I will lay it down, and endeavor to demonstrate, that the war in which we are now engaged with Mexico, was the immediate result of the unlawful and unconstitutional act of the President of the United States. I suppose, sir, that there is no gentleman on this floor or elsewhere, who supposes or believes that the President of the United States is vested with the war power of this country. It is a power expressly, and in terms, conferred upon the Congress of the United States. And the President would have no control, direct, except from the incidental circumstance of his limited veto of the action of the two Houses, and except, from the fact, that in virtue of his office he is the chief commander, the principal military officer of the United States.

I maintain then, Mr. President, that when the President of the United States moved the troops under Gen. Taylor to the Rio Grande and took possession of the left bank of that stream, he committed a clear and undoubted act of war. "What is war? What do all the writers on the law of nations tell us it is? They all, in substance, define it to be a contest about rights which is carried on or maintained, not by argument, but by force. It can, therefore, admit of no question, that when a nation claiming certain rights, which are disputed by another, undertakes to support those rights by force, she undertakes to support them by war—war as far as she is concerned. It is true, if the act of violence or aggression on her part, be not resisted by the other that suffers it—if it be patiently and tamely submitted to—no war results. To constitute war, it is as essential that there should be two parties, as it is, there should be two parties to a treaty of peace. The act of one nation cannot alone consti-

tute a war; it is like the act of an individual striking a blow, if it be not resisted, no contest, no battle, no fight is the result. The blow is an act of aggression; it is an act commencing a contest, but it does not amount to a perfect contest. Whether this act on the part of the President was an act of war, of hostility, of aggression, depends not at all upon the question, whether we had a right to the territory of which he took forcible possession. War, between nations, pre-supposes a contest about rights. The publicists, who speak of contests between nations, never suppose them to contend except about rights. War is a contest about rights. Public war is a contest between nations about rights, carried on by force and not by argument. If, therefore, it were assumed as clear and unquestionable that the title of Texas and the United States extended to the Rio Grande, it is still beyond all doubt, that Mexico possessing the left bank of that stream, having a settlement there, having officers there, and exercising jurisdiction there—any movement to dispossess Mexico, to occupy what she thus occupied and what she claimed to be her own, is an act of war. It is an act of war, just and rightful if territory be ours—just and rightful if the territory be unjustly and improperly withheld—just and rightful, if, also, the act of war be directed by those who represent the sovereignty of the nation. Well, sir, this act was directed by the President of the U. States. He ordered the troops to the Rio Grande. They advanced. When they came into the Mexican settlement, the inhabitants fled before them in dismay; the officers abandoned the public buildings and set fire to them, and under such circumstances, our forces under the command of officers of the United States, took from Mexico that which she was in possession of, and by force kept possession of the territory and placed it under the jurisdiction of the U. States.

Now, sir, on this subject I had the honor at the last session to bring to the attention of the Senate, the case of the action of Mr. Jefferson, during his administration of this government, under circumstances of a very similar character, with this difference, that the title of the territory withheld from us was truly and clearly ours. In every other respect the case was like this. The territory was withheld by another power, and a disposition manifested by that power to deprive us of what we held. Under these circumstances, Mr. Jefferson conceived that he had no right to use the military forces of the country to obtain possession of that which was withheld from us. But, he states as a reason for referring the subject to the determination of Congress, that matters relating to peace and war belong exclusively to Congress; and as this movement might change the relation of the two countries from peace to war, therefore, it belonged to Congress to determine whether the movement should be made or not.

But, Mr. President, I have other authority. I certainly shall not say that it is more respectable in itself, than the authority of Mr. Jefferson. I doubt very much whether with a large portion of the American people, and of the Senate, it would be thought quite equal to Mr. Jefferson's. But upon this question, with respect to the President of the United States, the authority is conclusive and overpowering. It creates an *estoppel* upon him, what lawyers call an *estoppel*, for I am able to show that the President of the United States has himself recognized that such an act as this is an act of hostility—of aggression—of war. On the 11th of July, 1845, the Secretary of the Navy writes a confidential communication to Com. Conner, an officer in the U. S. service, then in the Gulf of Mexico. He says:

"The unanimous vote of the Texas Congress for annexation leaves no doubt of the consummation of that measure. When you ascertain, satisfactorily, that the Texas convention, which assembled on the 4th has also acceded to annexation, you will regard Texas as a part of your country—to be defended like any other part of it."

"At the same time, every honorable effort is to be made to preserve peace with all nations. The restoration of our boundary on the southwest, by the consent and choice of the people of Texas, is due to the strong attraction of the principles of liberty, which endear America to every one of its sons, and is a tribute before the world to the policy of peace, of political freedom, and of union on the principles of freedom. It is the President's desire that this great event should be consummated without the effusion of blood, and without the exercise of force; believing that free institutions, in their own right, will achieve all that can be desired."

I read this part of the communication, sir, for the purpose of calling distinctly to the attention of the Senate to the fact, that though this paper was written on the 11th of July—some months prior to the actual consummation of the act of annexation—yet the instructions to which I propose to call the attention of the Senate, are given prospectively—cautiously—and with a view to the actual completion of that measure, when, as appears from the instructions themselves, the officer to whom they were directed was required to consider Texas as a part of this country. The letter proceeds:

"To secure this end most effectually, you are charged to commit no act of aggression; and, at the same time, you are invested with the command of a force sufficient to take from others a disposition to hostile acts."

Then after enumerating the forces at the officer's command, the Secretary says:

"That you may precisely understand

what is meant by the aggression which you are instructed to avoid, I will add, that while the annexation of Texas extends our boundary to the Del Norte, the President reserves the vindication of our boundary, if possible, to methods of peace. You will, therefore, not employ force to dislodge Mexican troops from any post east of the Del Norte which was in the actual possession of the Mexicans at the time of annexation."

"Should Mexico declare war, you will at once dislodge her troops from any post which may have east of the mouth of the Del Norte; take possession of Tampico; and if your force is sufficient, will take the castle of San Juan d'Ulloa, it being the determination of the President to preserve peace if possible, and, if war comes, to recover peace by adopting the most prompt and energetic measures."

Again, sir, the Secretary of War writes to General Taylor under date of July 8, 1845:

"Sir. This department is informed that Mexico has some military establishments on the east side of the Rio Grande, which are, and for some time have been, in the actual occupancy of her troops. In carrying out the instructions heretofore received, you will be careful to avoid any act of aggression unless an actual state of war should exist. The Mexican forces at the posts in their possession, and which have been so, will not be disturbed as long as the relations of peace between the United States and Mexico continue."

Now, sir, here we have from the representatives of the President in the two Departments, War and Navy, a clear and distinct recognition of this proposition, that although the President held that our true boundary was the Del Norte, yet that it would be an act of aggression, a hostile act, an act which would not be justifiable except in a state of war, to dispossess Mexico from any portion of that territory—as she held the possession at the time of the annexation. When, therefore, orders were issued to General Taylor, on the 13th of January, '46, which directed him to advance and occupy a position on the left bank of the Rio Grande, the President ordered what he then, undoubtedly, understood to be an act of war. He ordered what he intended, and what he supposed would be regarded on the part of Mexico, as an act of hostility. For, sir, you will observe, that when General Taylor, in the execution of this order, advanced to the Rio Grande, and drove the Mexicans from their possessions—when he occupied what had before been occupied by the Mexicans—and the inhabitants were flying before him, and these facts were reported to the President, there was not the slightest intimation that General Taylor had exceeded orders which had been given to him, and had thus been the means of precipitating the country into a war, which, by a prudent regard to those orders, might have been avoided. On the contrary, up to this very moment, all that was done in pursuance of that order, has been recognized by the President as having been rightfully done, as having been done in accordance with the purposes which the Executive had in view when the orders were given.

But, sir, if the act was not an act of war, it was plainly and manifestly an act which was likely to produce a state of war. It was an act the tendency of which was to change the relations of Mexico and this country from a state of peace to a state of war. Can there be any doubt of this? It is impossible to doubt it, when we recollect the unhappy and angry state of feeling which existed between the two countries. When we recollect the position which our army held at Corpus Christi for so many months, and the disputes existing between the two countries—the mutual charges of insincerity, and breaches of faith—when we recollect all this, it must be manifest that such an act as moving an armed force to the Rio Grande was, in itself, if not an act of war, at least one which wore the appearance of aggression, and one which was calculated to rouse the feelings of the Mexicans, and to provoke retaliation. Thus much must be conceded; and, if so, sir, whence did the President of the U. States derive his power to do this without the consent of Congress?

According to Mr. Jefferson, an act which in its execution may change the relations of a country from peace to war, is an act beyond the competence of the Executive, and to be passed upon only by Congress. The Constitution has undergone no change, the people have made no amendment to it. It stands now as it stood in the time of Mr. Jefferson. Whence, then, has Mr. Polk derived his authority to precipitate measures which must lead directly to war—Congress being in session, and without even deigning to inform them of what he proposed to do? But, sir, at all events there is not the slightest reason to doubt, as I apprehend, that the movement of the troops to the Rio Grande was the act which produced war. There had been, previously, threatenings on the part of Mexico. There had been exactly that state of feeling which was likely to result in war. But there had been no war, and my conviction is, sir, that if our troops had remained quiet at Corpus Christi, where they had a right to remain on the ground so strongly put by the Senator from Maryland, (Mr. Poore,) that it belonged to Texas by virtue of her revolution, and was then in her possession, there would have been no war. But at all events suppose that war would have been produced by some other cause, though our troops had not been moved, which is mere matter of speculation, yet it cannot be denied, that in point of fact—this war was the result of the movements of our troops upon the Del

Norte. That movement was an act of war. It was at all events an act tending to change the relations of the two countries from peace to war; and an act which the President could not lawfully or constitutionally perform.

The next proposition which I lay down is, that this war thus resulting from an act of the President, has been prosecuted by him from the commencement with a view to the conquest—the permanent conquest—of at least New Mexico and Upper and Lower California. I beg the attention of the Senate while I shall attempt to demonstrate this proposition from public documents. First, sir, I will call the attention of the Senate to the instructions given by the Secretary of War on the 3d of June, '46, to Gen. Kearney:

"Should you conquer and take possession of New Mexico and Upper California, or considerable places in either, you will establish temporary civil government; therein—abolishing all arbitrary restrictions that may exist, so far as it may be done with safety. In performing this duty it would be wise and prudent to continue in their employment all such of the existing officers as are known to be friendly to the U. States, and will take the oath of allegiance to them. The duties at the custom houses ought, at once, to be reduced to such a rate as may be barely sufficient to maintain the necessary officers without yielding any revenue to the government. You may assure the people of those provinces that it is the wish and design of the U. States to provide for them a free government, with the least possible delay, similar to that which exist in our Territories. They will then be called on to exercise the rights of freemen in electing their own representatives to the territorial legislature. It is foreseen that what relates to the civil government will be a difficult and unpleasant part of your duty, and much must necessarily be left to your own discretion."

In further proof of this, sir, I read the instruction given by the Navy Department to Com. Sloat, 12th July, 1846:

"The object of the United States is, under its rights as a belligerent nation, to possess itself entirely of Upper California."

"The object of the United States has reference to ultimate peace with Mexico; and if, at that peace, the basis of the *uti possidetis* shall be established, the government expects, through your forces, to be found in actual possession of Upper California."

"This will bring with it the necessity of a civil administration. Such a government should be established under your protection; and, in selecting persons to hold office, due respect should be had to the wishes of the people of California, as well as to the actual possessors of authority in that province. It may be proper to require an oath of allegiance to the U. S. from those who are entrusted with authority. You will also assure the people of California of the protection of the United States."

"After you shall have secured Upper California, if your force is sufficient, you will take possession, and keep, the harbors on the Gulf of California, as far down, at least, as Guaymas. But this is not to interfere with the permanent occupation of Upper California."

Then, sir, on the 13th of August, we have instructions from the Navy Department to Com. Stockton, or whoever might be the commanding officer in the Pacific.

Now, sir, in order to understand the scope and bearing of these orders still more clearly, let us see what was done under them by the officers to whom they were addressed. In a letter of Gen. Kearney to the Adjutant General of the 24th August, 1846, written from Santa Fe, he says:

"On the 22d I issued a proclamation, claiming the whole of New Mexico, with its then boundaries, as a territory of the U. States of America, and taking it under our protection."

In another part of the same letter he says:

"On my return (which will be in two or three weeks) a civil government shall be organized, and the officers appointed for it; after which, I will be ready to start for Upper California, which I hope may be by the latter end of next month; and in such case, I shall expect to have possession of that department by the close of November."

Then we have Gen. Kearney's proclamation, in which he announced his intention to hold New Mexico as a part of the United States, under the name of the territory of New Mexico.

"And he requires of those who have left their homes and taken up arms against the troops of the U. States to return forthwith to them, or else they will be considered as enemies and traitors, subjecting their persons to punishment, and their property to seizure and confiscation for the benefit of the public treasury."

"It is the wish and intention of the U. S. to provide for New Mexico a free government, with the least possible delay, similar to those in the U. States; and the people of New Mexico will then be called on to exercise the rights of freemen in electing their own representatives to the territorial legislature. But until this can be done, the laws hitherto in existence will be continued until changed or modified by competent authority; and those persons holding office will continue in the same for the present, provided they will consider themselves good citizens and are willing to take the oath of allegiance to the U. S."

"The U. S. hereby absolves all persons residing within the boundaries of New Mexico from any further allegiance to the Republic of Mexico and hereby claims them as citizens of the U. S. Those who re-

main quiet and peaceful will be considered good citizens and receive protection—those who are found in arms, or instigating others against the U. S., will be considered as traitors, and treated accordingly."

What was the action of Com. Sloat?—How did he interpret and understand the orders he had received? Well, we have distinct information upon this point, communicated in the proclamation of Com. Sloat to the people of California. He says:

"Henceforward California will be a portion of the U. States and its peaceable inhabitants will enjoy the same rights and privileges they now enjoy, together with the privilege of choosing their own magistrates and other officers, for administration of justice among themselves, and the same protection will be extended to them as to any other State in the Union. They will also enjoy a permanent government."

Again Com. Stockton says:

"The territory of California now belongs to the U. S., and will be governed, as soon as circumstances will permit, by officers and laws similar to those by which the other territories of the U. States are regulated and protected."

Now, sir, it is impossible, I think, to read what was done—what was reported by our officers to the President as having been done by them—without seeing that they understood and acted on his instructions, as designed to make a permanent conquest of such portions of Mexican territory as they were instructed to take possession of.—There is not one word said in the instructions—nothing declared in the actions of the officers obeying those instructions—which referred or appeared to refer to a military occupation of those territories, for the purpose of compelling Mexico to do us justice for the wrongs we had sustained; at her hands. These officers clearly understood that they were to take possession of, and hold, those territories as a portion of the U. States. What says Com. Stockton:

"I, Robert F. Stockton, commander-in-chief of the U. S. forces in the Pacific ocean, and governor of the territory of California, and commander-in-chief of the army of the same, do hereby make known to all men, that having by right of conquest taken possession of that territory known by the name of Upper and Lower California, do now declare it to be a territory of the U. States, under the name of the territory of California."

They took possession. They organized governments—and they acted in all respects as if from that time forward these territories became to be the property of Mexico, and became the property of the U. States. Well, now did they understand their instruction right? Why, sir, in the Message of the President of the U. States, communicating those documents to us, there is something said which implies a disavowal of what was done, an intimation that in some respects the instructions had been exceeded. "These documents," says the President, "contain all, &c."

It appears then, upon the statement of the President of the U. S. and the Report of the Secretary of War, that the organic law established by Gen. Kearney for the government of the territory of New Mexico, in consequence of its late arrival—late with reference to the then succeeding session—had not been read by him and submitted to the President and his orders taken with respect to it. Well, now that is the only one of the documents of which it is intimated that the contents were not known to the proper department and communicated to the President and approved and sanctioned by him. Therefore it is a reasonable, just and necessary conclusion that every one of the other documents, except the one thus specifically taken out by the exception, has been admitted, sanctioned and approved.—And further, even in reference to General Kearney's organic law nothing is excepted to by the President but that: that he has undertaken to prescribe the form of a permanent territorial government. No exception was taken by the President to General Kearney's proclamation of the 24th August, declaring his intention to hold New Mexico "as a part of the U. States,"—none to his requiring all the inhabitants to return to their homes on pain of being considered traitors, and subject their persons to punishment, and their property to confiscation—none to his intention of providing a civil government for New Mexico with a territorial legislature—none to his absolving in the name of the U. States the inhabitants of that country from their allegiance to the Republic of Mexico—and finally, none to his claiming all persons residing within that territory as citizens of the U. States, and denouncing the doom of traitors against all of them who should be found in arms against us. To nothing that was done, by either Com. Sloat or Com. Stockton, in regard to these matters is any exception taken; yet, Com. Sloat proclaimed to the inhabitants of California—as early as July, 1846—that henceforward, California would be a portion of the U. States, and would enjoy a permanent government. And, in his general orders, issued July 7th, he says to the troops who were about to be landed on the coast, that it was their duty not only to take California, but to preserve it afterwards as a part of the U. States at all hazards. And Com. Stockton by his proclamation makes known to all men, that he has by right of conquest taken possession of the territory known as Upper and Lower California, and declares it to be the territory of the United States; under the name of the territory of California. And again, on the 17th of August, he declares that the territory of California now belongs to the U. States, and will be governed, as soon as circumstances permit, by officers and laws similar to those

by which other territories of the U. States are regulated and governed. Here, then, we see officers acting under the authority of the President, without rebuke from him, claiming and establishing civil governments in Mexico and California, as the permanent territories of the U. States; claiming their inhabitants as our citizens, promising them a permanent form of government, and denouncing them as traitors if they should take up arms against the U. States. What is this but conquest? What is it but seizure and permanent annexation by force of arms? This, then, sir, I presume the President designed to do at the very time when he called upon the country for a recognition of this war, and placing at his disposal means of men and money to prosecute it. No intimation is given to us in any of his correspondence—if he did not then entertain the design—at what time the change took place, in the Presidential mind. In June, July and August, from the Navy and the War Departments to all officers charged with carrying into execution the wishes of the President in the prosecution of the war—we have the same general tone of instructions, secure these territories, and see we have all these officers seizing the territories and treating them as a permanent part of the U. States. And to these proceedings the President takes no exception! He does not intimate, by the slightest breath of disapprobation, that the zeal of these commanders has exceeded the purposes of the Executive!

I must suppose then, sir, that this was the object for which the President prosecuted the war from the beginning, and that indemnity was not the purpose for which he carried on the war. Why, sir, is it not a singular mode of securing indemnity if such had been his purpose. At the commencement of the war, what did he want indemnity for? Mexico, it is true, owed to our citizens money. If the object had been to seize the Mexican territory and supply to hold it by military occupation in order to compel Mexico to recognize and discharge her debts to us, why is nothing of this kind mentioned in these instructions? Why did these officers treat the territories of which they obtained possession as a conquest, which was to become a portion of the United States? Why is it that no intimation was given to them or to us that the object had been misunderstood—that the possession which they held of these territories was as a sort of mortgage, or in the nature of a security to be held until the payment of the debts due to us by Mexico?

But this view of the subject, I think, becomes still stronger when we consider the mode in which the President carried on his negotiations. Mr. Sidel, sent to Mexico, in the month of November, I believe that his credentials bear date on the 10th of that month. Well, when he went to Mexico he was not received. Why was he not? The President tells you that Mexico, in spite of her plighted word, insultingly refused to receive our minister. Well, now it is plain to me—it is evident, that when adverting to the correspondence which took place between our consul at Mexico and Senor Pena y Pena,—it is plain it never was the design of the then executive government of Mexico to receive a minister resident from the United States. The expression used I think, on the 15th of October, 1845—"The Mexican government will receive a commissioner to settle the present dispute," and two months thereafter, on the 15th of December, 1845, when our representative insisted upon it that he understood that the person who was to be sent from this government was to settle all the differences between the two nations—both the indemnity for spoils and the question of boundary—the Mexican minister replies in substance, "not a word is said in the credentials of this person about settling any differences. He is sent here as resident minister plenipotentiary, as if friendly diplomatic relations between the two countries had never for a moment been interrupted."

It is impossible to read the correspondence without seeing that the persons administering the government of Mexico were exceedingly anxious to settle the question of boundary, and that in order to enable them to do this, nothing might be done further to arouse or irritate the jealous feelings of the Mexican nation, and that therefore we should send them a commissioner, with power to settle the pending dispute. Well, we were not satisfied with that. They had promised to receive a commissioner; the President tendered them a minister resident. To that minister they objected, because he could not be received without arousing excited feelings and endangering the government of the country. But that is not all. Long before Mr. Sidel's mission was set on foot, on the 15th June, 1846, the acting Secretary of War writes to Gen. Taylor in these terms:

"The point of your ultimate destination is the western frontier of Texas, where you will select and occupy, on or near the Rio Grande del Norte, such a site as will consist with the health of the troops, and will be best adapted to repel invasion, and to protect what, in the event of annexation, will be our western border."

Now, sir, here is an order as early as the 15th of June, 1845, in which Gen. Taylor is directed to select a position on or near the Rio del Norte, claimed as the western frontier of Texas, which should have these conditions—it should consist with the health of the troops and be the point best adapted to repel invasion, and to protect, in the event of invasion, what was to be our western border. Now, it will be sufficiently obvious from these documents, I think, that it was the intention of the