

THE WESTERN PENNSYLVANIA HISTORICAL MAGAZINE

VOLUME 57

JULY 1974

NUMBER 3

JEREMIAH SULLIVAN BLACK AND THE GREAT SECESSION WINTER

JOHN T. HUBBELL

ON November 9, 1860, President James Buchanan convened his cabinet — the first cabinet meeting following the presidential election and, in Buchanan's mind, the most important since his administration had taken office. It was an interesting group of men who answered the president's call. The secretary of state was the superannuated Lewis Cass of Michigan, soon to withdraw from that office. Others who were to withdraw for different reasons were Southern men, disunionists: Howell Cobb of Georgia, secretary of the treasury; Jacob Thompson of Mississippi, secretary of the interior; and John B. Floyd of Virginia, secretary of war. On the opposite side of the coin were: Joseph Holt, postmaster general, a Kentuckian whose anti-secessionist feelings had not yet surfaced, and Isaac Toucey of Connecticut, secretary of the navy, who proved a cipher in the moment of truth. Then there was the one who emerged as the man of steel, who fought the disunionists and urged the physically and morally exhausted president to rise above himself — Pennsylvania's Jeremiah Sullivan Black, attorney general. It was Black who became the key figure in the cabinet during the secession winter of 1860-1861.

The immediate question before these men was South Carolina and the federal forts in Charleston's harbor. Black urged that the forts be strengthened and pressed Buchanan to force Floyd to give the necessary orders. Buchanan, with his sure instinct for the peripheral, expressed annoyance with Black's bad manners in interfering with

Mr. Hubbell is an associate professor of history and editor of *Civil War History* at Kent State University, Kent, Ohio.—Editor

the workings of another department.¹ Black's concern was the need for immediate action. As he wrote later to a friend:

We might have throttled this revolution by taking the right steps to put it down where it first broke out at Charleston. The three forts were manned by only seventy-one men in all, and the danger of their being taken was foreseen by the Cabinet three months before it was realized. Cass, Holt, and I urged the President continually and earnestly to reinforce them while Cobb and Thompson as violently opposed it on the absurd ground that it would be offensive to South Carolina and provoke a civil war. Toucey was noncommittal. Floyd professed to be with us, but was taking the best possible care to see that our views were not carried out.²

The forts were part of a larger question — the state of the Union itself. Buchanan evidently thought in terms of a proclamation stating administration policy, but when Black drew up an advisory report, Cobb and Thompson opposed it as too strong. Thus, Buchanan postponed any statement until his annual message on December 5.

Prior to the message, however, and in reply to a request from Buchanan for legal advice, Black drew up a long statement of policy. The president asked for answers to the following questions:

1. In case of a conflict between the authorities of any state and those of the United States, can there be any doubt that the laws of the federal government, if constitutionally passed, are supreme?

2. What is the extent of my official power to collect duties on imports at a port where the revenue laws are resisted by a force which drives the collector from the customhouse?

3. What right have I to defend the public property (for instance, a port, arsenal, and navy yard), in case it should be assaulted?

4. What are the legal means at my disposal for executing those laws of the United States which are usually administered through the courts and their officers?

5. Can a military force be used for any purpose whatever under the [militia] acts of 1795 and 1807, within the limits of a state where there are no judges, marshals, or other civil officers?³

Three days later, on November 20, Black delivered his reply. Briefly, in answer to the first question, he stated that while in the Union a state must obey the "just and constitutional requirements of

1 Allan Nevins, *The Emergence of Lincoln: Prologue to Civil War, 1859-1861*, 2 vols. (New York, 1950), 2: 342-84, for an assessment of Buchanan and his cabinet.

2 William N. Brigance, *Jeremiah Sullivan Black* (Philadelphia, 1934). This biography contains a number of Black's letters (or portions of them) written during the secession crisis.

3 John B. Moore, ed., *The Works of James Buchanan*, 12 vols. (Philadelphia, 1910), 11: 20-21.

the Central Government." To the second, the president must see to it that import duties are collected. As for public property, the president must defend it and, if the public property is captured, he must see to its recapture.

The Attorney General defined national-state relations in rigid terms:

Within their respective spheres of action, the Federal Government and the government of a state, are both of them independent and supreme, but each is utterly powerless beyond the limits assigned to it by the Constitution. If Congress would attempt to change the law of descents, to make a new rule of personal succession, or to dissolve the family relations existing in any State, the act would be simply void; but not more void than would be a State law to prevent the recapture of fugitives from labor, to forbid the carrying of the mails, or to stop the collection of duties on imports. The will of a State, whether expressed in its constitution or laws, cannot, while it remains in the Confederacy, absolve her people from the duty of obeying the just and constitutional requirements of the Central Government . . . the laws of the United States are supreme and binding only so far as they are passed in *pursuance of the Constitution*. I do not say what might be effected by mere revolutionary force. I am speaking of legal and constitutional rights.

Black approvingly quoted Jefferson to the effect that the continued superiority of the state in domestic relations and that of the national government in foreign policy and national concerns was the surest manner of preserving the nation. Further, while the president was constrained to see that the law was enforced with all the means legally at his disposal, this was a power that "is to be used only in the manner prescribed by the legislative department. He cannot accomplish a legal purpose by illegal means, or break the laws himself to prevent them from being violated by others." The president, in all his acts, must be guided by the Constitution and the laws of Congress.

In the case of import duties, they should be collected as prescribed by law at the proper port of entry and by the designated officer. These duties could be collected, for instance, on a ship in Charleston harbor as well (and as legally) as in the customhouse. Still — and this was of critical importance after secession — the *duly appointed officer* must collect them.

The defense of public property stems from the "proprietary rights of the Government as owner of the forts, arsenals, magazines, dockyards, navyyards, custom-houses, public ships, and other property which the United States have bought, built, and paid for." This cannot be contravened by a state. The national government, then, not only owned the buildings and had the right to defend them, but this right included the right of recapture when public officers had been

driven from the national establishments. The most recent example was the recapture of the national arsenal at Harper's Ferry. All this, the foregoing, was agreed to, said Black.

But regarding questions four and five, he remarked, "I come now to the point in your letter, which is probably of the greatest practical importance." The militia, by the law of 1795, may be called "whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any State by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals." That the decision to use this force lies within the province of the president is all the more reason why he must use the power judiciously. This seems simple enough; when the laws break down within a state, the president may use the military to enforce national laws and protect national property. Still, the proper agency for enforcing obedience is the judiciary, through the use of marshals and deputies. "These are the ordinary means provided for the execution of the laws; and the whole spirit of our system is opposed to the employment of any other except in cases of extreme necessity arising out of great and unusual combinations against them." If this is clearly the case, the military force may be invoked. "Even then," however, "its operations must be purely defensive." And, it must be in "strict subordination to the civil authority, since it is only in the aid of the latter that the former [military] can act at all."

Now Black reached the essence of the situation in South Carolina. Consider, he said, the possibility that the federal officers within a state had resigned their places — as they had in South Carolina on November 7. The first and obvious step would be to appoint others, even if this would in all likelihood prove impossible — that is, find other individuals willing to serve in a federal office in South Carolina. At this point, Black's legalism was breathtaking. "We are therefore obliged to consider what can be done in case we have no courts to issue judicial process, and no ministerial officers to execute it. In that event, troops would certainly be out of place, and their use wholly illegal." In fact, the dispatch of troops in the absence of a legal call for aid would be tantamount to a declaration of war against a state and its people. Thus the quandary in which Buchanan found himself. According to his primary legal advisor, he had the right to protect public property in South Carolina but not unless a federal official in that state first asked for aid. And for two weeks there had been no

federal officials in South Carolina. So long as the South Carolinians did not actually attack federal property, no federal force could be sent into the state. This interpretation guided Buchanan and, it might be recalled, governed Lincoln as well.

If a state should "retire" from the Union, the president would have no right to recognize the independence of that state or to absolve the state from its obligations within the Union. "Congress, or the other states in convention assembled, must take such measures as may be necessary and proper." In this event, said Black to the president, "I see no course for you but to go straight onward in the path you have hitherto trodden — that is, execute the laws to the extent of the defensive means placed in your hands, and act generally upon the assumption that the present constitutional regulations between the States and the Federal Government continue to exist, until a new mode of things shall be established either by law or force."

At that juncture, the power to coerce a state by federal force must be decided by the Congress, as this power is not given or implied in the Constitution. For the national government to carry the war into a state is in fact a declaration that the state is out of the Union; thus Congress would have aided in destroying the Union. "The right of the General Government to preserve itself in its whole constitutional vigor by repelling a direct and positive aggression upon its property or its officers cannot be denied. But this is a totally different thing from an offensive war to punish the people for the political misdeeds of their State government, or to enforce an acknowledgment that the Government of the United States is supreme." If this view is correct, said Black, then the moment that Congress armed a portion of the country to fight another portion beyond the instances cited, the "Union must utterly perish." ⁴

Black's memorandum, amplified by another some two weeks later, was the basis for Buchanan's statement on secession in his annual message. It was, according to Black's biographer, William N. Brigance, a legal opinion (given political overtones by Buchanan) and was in keeping with constitutional doctrine. Further, said Brigance, it was the high point of Black's public service, even if misunderstood and misinterpreted by political enemies.⁵ The weight of the legal argument was enhanced by the fact that Black was a staunch

4 George Ticknor Curtis, *Life of James Buchanan*, 2 vols. (New York, 1883), 2: 319-24, for complete text.

5 Brigance, 84-89, for a discussion of the memorandum.

Unionist, wholly opposed to appeasing the secessionists. He urged the defense of the forts and the dismissal of disunionists from the cabinet. Yet his advice to Buchanan left the impression of tying the hands of the executive in the Republic's greatest hour of crisis.

Caleb Cushing, who had been attorney general from 1853-1857, told Black that he had read the opinion "with great pleasure, as much for the excellence of its composition as for its truth and force of exposition." Some of the newspapers which had supported John Bell of Tennessee as presidential candidate for the Constitutional Union party regretted its publication (Cass had leaked the story to the press, over the wishes of Black), but Cushing doubted that the opinion of the attorney general would encourage the South Carolinians to secede, while the "foolish threats of Mr. Hale, Mr. Cassius Clay, the New York Tribune and Post, and Mr. Lincoln's Chicago Tribune may promote the [secession?] tendencies of S. Carolina and some of the States, as indicating the animus of the President elect and his administration. One of the ways to check secession at the South is to knock down coercionism at the North." ⁶

G. W. Woodward, Philadelphia jurist and Black's close friend, was similarly laudatory. "I have this afternoon read with great satisfaction your clear and able letter to the President on the law of the present crisis. I have no doubt it is right in all particulars. The point that impresses me most is one that you make very clear — that Congress has no power to arm the Executive to coerce [?] war on a state. Bayonets can't keep a state in the Union. I believe that. I rejoice to believe it. Your opinion will be a halter round the neck of the abolition administration that is coming in. If Mr. Buchanan can't be permitted to coerce a state, let not the miserable Pretender from Illinois try it." ⁷

Fully half of Buchanan's message, on December 5, was devoted to points raised in the exchange with Black. He blamed the disruption of the country on the "long continued and intemperate interference of the northern people with the question of slavery," and called to mind fearsome images of Southern families in terror of their lives at the hands of slaves aroused by abolitionist intrigue. The situation could not be permitted to endure; continued agitation could only sever the Union. Still, Buchanan urged forbearance and recommended that the people exercise good sense and good will and by so doing greatly

6 Cushing to Black, Dec. 11, 1860, Black Papers (Univ. of Iowa, Iowa City, microfilm).

7 Woodward to Black, Dec. 10, 1860.

strengthen the power of the executive to maintain the laws. He also denied that the election of Lincoln (not calling Lincoln by name) was grounds for revolution. No revolutionary action could be sanctioned in the absence of some act against the constitutional rights of the states. If the president-elect's past record was cause for fear among Southerners, was this in itself cause for precipitous action? "From the very nature of his office and its high responsibilities, he must necessarily be conservative. The stern duty of administering the vast and complicated concerns of this government affords in itself a guarantee that he will not attempt any violation of a clear constitutional right."

Buchanan dismissed popular sovereignty as unsound and then went on to say that the "most palpable violations of constitutional duty" had been committed by the Northern states in the guise of personal liberty bills. Should the states not repeal their "unconstitutional and obnoxious" laws without delay, "it is impossible for any human power to save the Union." This action — repeal — would be only justice for the Southern states. If refused, and after all peaceable redress was exhausted, then "revolutionary resistance" to the national government would be justified.

The president purposefully emphasized the right of revolution in anticipation of remarks on secession, something altogether different. If secession could be admitted, then the nation was a mere collection of states, to be dissolved at the "pleasure of any one of the contracting parties. If this be so, the Confederacy is a rope of sand, to be penetrated and dissolved by the first adverse wave of public opinion in any of the States." Nothing in the history of the country or in its traditions or Constitution could substantiate such a theory. The Union was meant to be perpetual. The right of revolution, by contrast, is above constitutions and laws. Secession is not a constitutional right; it is revolution. "It may or it may not be a justifiable revolution; but still it is revolution."

At that point Buchanan considered the specific case of South Carolina. All federal officials in that state, "through whose agency alone these laws can be carried into execution," had resigned. The entire federal structure in South Carolina was destroyed, and to replace it would be "difficult, if not impossible." Here, Buchanan followed Black's exposition of the law and concluded, as had Black, that the president could not exercise the military arm in the absence of federal or civil authorities in the state. Then he handed the question to Congress. "The bare enumeration of these provisions proves how inad-

quate they are without further legislation to overcome a united opposition in a single State, not to speak of other States who may place themselves in a similar attitude." At the same time, other customs officials could be appointed.

In regard to the forts, any attack on them would be met. "In such a contingency the responsibility for consequences would rightfully rest upon the heads of the assailants." The basic question thus evolved was could Congress, constitutionally, coerce a state that was attempting to secede, or which had seceded from the Union. Buchanan, "after much serious reflection," had decided that no such power existed within the national government. Such a step, coercion, would destroy the state and make captives of its people. The object, however honorable (the preservation of the Union), would end in the destruction of the Union. "The fact is," said the president, "that our Union rests upon public opinion, and can never be cemented by the blood of its citizens shed in civil war. If it cannot live in the affections of the people it must one day perish. Congress possesses many means of preserving it by conciliation; but the sword was not placed in their hand to preserve it by force." Buchanan then turned to the South and offered a heartfelt plea for patience; that they not destroy the country; that an act of secession would open the door to unspeakable horrors — war, suffering, and despotism.

In the period of delay, as suggested by Buchanan, Congress could contribute much to the peace of the country. It could call for a convention of states to settle the slavery question forever. An "explanatory amendment" that would secure the rights of the slave owners would by its effect preserve the political union of the states. Even if this plan were not effective, it must necessarily be tried before the final step of dissolution was taken. With this, Buchanan passed on to other topics. He had placed the question before the country and the Congress. He would defend federal property, and he would execute the laws as far as he was empowered. He would not invade a state to prevent secession. He asked that Congress redress the balance of the sections through legislation and through the medium of a national convention.⁸

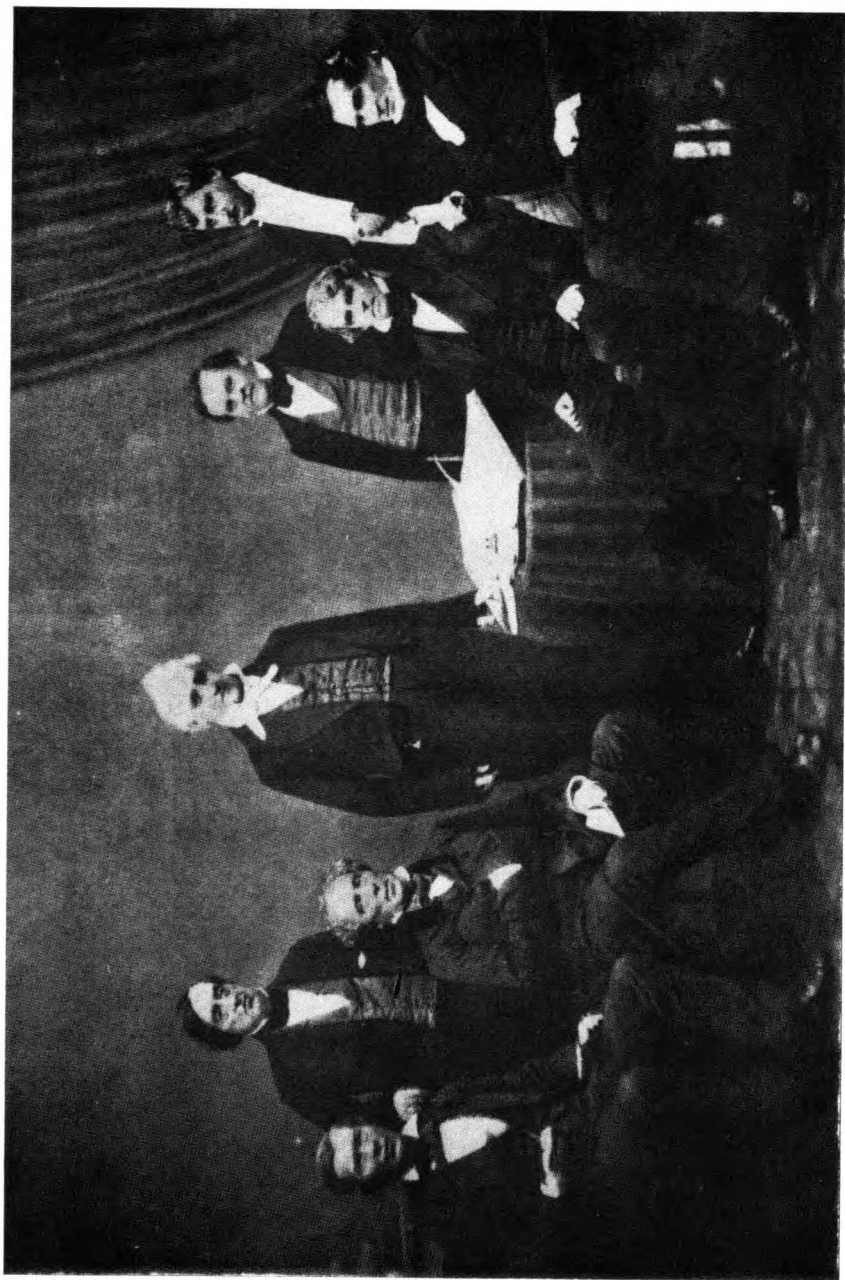
The reaction to the message in the North was puzzlement in some quarters, approval among Buchanan supporters, and much criticism. Buchanan insisted that there was no contradiction in denying the right of secession and accompanying this with a denial of the power to

⁸ Moore, 12: 7-43, contains the entire message.



JEREMIAH S. BLACK.

from Chauncey F. Black's *Essays and Speeches of Jeremiah S. Black* (1885).



PRESIDENT BUCHANAN AND HIS CABINET.

from Philip Gerald Auchampaugh's *James Buchanan and His Cabinet* (1926).
Beginning at the left the men are: Jacob Thompson, Lewis Cass, John B. Floyd, President Buchanan, Howell Cobb, Isaac Toucey, Joseph Holt, and Jeremiah S. Black.

compel a state to remain in the Union. The president, he said, must execute the laws so long as he had the power — as outlined by his attorney general. When this power was denied him, the Congress would have to decide the question of war.⁹

Buchanan's message was not a deliberate sidestepping of responsibility, but a statement that followed the reasoning of the most staunch unionist in his cabinet. For all Black's preoccupation with the letter of the law, he, above all the others, was prepared to defend the forts in South Carolina and to purge the administration of disunionists. At the same time, Buchanan, while calling upon Congress to pass, or attempt to pass, legislation and to call for a constitutional amendment, stood prepared to defend the forts if they were attacked. Thus, after his message and after the secession of South Carolina, the matter stood checkmated. Other questions preoccupied the administration, namely the situation within the cabinet and within the capital.

Shortly after the message to Congress, the first changes came in the cabinet. On December 8, Howell Cobb resigned his treasury post. Cobb had determined to remain in the cabinet as a buffer against strong executive action, and the primary reason for his withdrawal was that he could not dominate Buchanan or the cabinet. Four days after Cobb resigned, Lewis Cass left his post as secretary of state, no great loss to the cabinet or, at that juncture, to the country. Black became secretary of state and John Adams Dix replaced Cobb. Edwin M. Stanton, on the recommendation of Black, became attorney general. With Black and Stanton securely in the cabinet and Cobb out, there could be no doubt of the direction of the administration. There would be no war — and no surrender.¹⁰

While the cabinet was undergoing its first reshuffle, a sidelight, but not unimportant, was transpiring in the capital. Much to the chagrin of Buchanan's unionist friends, the administration's organ, the *Constitution*, was following a distinctly secessionist course. On December 1, one of Black's correspondents commented:

⁹ Ibid., 55; Roy F. Nichols, *Disruption of American Democracy* (New York, 1948), 391, terms the message a legalistic device designed to remove responsibility from the president and place it on the Congress. He also implies that it was a delaying tactic; if war came let it come under a Republican administration. Some of Black's friends urged just this course, but Black rejected it.

¹⁰ Nevins, 2: 361; Brigrance, 90-91; Nichols, 410-11. On Nov. 13, 1860, the Douglasite newspaper, the *Cincinnati Enquirer*, had criticized Buchanan for retaining Cobb: "Mr. Buchanan turned traitor to the Democratic Party, and does he now mean to turn traitor to the Union?"

You wrote to me the other day to be trustful and believing, and I have been so in spite of rumors of Southern Secretaries and the alleged necessity of Cabinet unity — but — I confess today's "Constitution" frightens me. An Editorial against coercion which means against asserting the authority of the government — a speech of Mr. Cushing and a letter from General Pierce to the same end! I confess all this — the day before the Message, startles me — If the President falls one hairs breadth below the Jackson line — if by silence he seems to abdicate the authority of the Government — of the Union, his character in history is gone.¹¹

Two weeks later the energetic Horatio King of the Post Office Department wrote Black that not only was the *Constitution* a disunionist paper but that everyone associated it with the administration. "It was the organ to which the message was confidentially entrusted, and its columns are daily filled with advertisements, which it receives and *can receive only by the favor of the President . . .*" Immediately after the election, said King, it was obvious that the administration's organ was disunionist. He could sympathize with the president and favored all conciliatory measures designed to give the South its rights within the Union and to "consign to infamy the leaders of Black Republicanism at the north." Still, as a true friend of the president and his cabinet, King could only express "astonishment and mortification that the government should for one moment allow itself to occupy such a position as to afford even its enemies a pretext to charge it with giving the slightest countenance either directly or indirectly to Secession or Secessionists." Was it not possible, he asked, to detach the administration from the *Constitution* and to discharge all administration officers who were avowed disunionists? "For God's sake, let us see the Government placed squarely and unequivocally on the side of the Union."¹²

Buchanan, for whatever reasons, temporized, but on Christmas Day wrote a letter of rebuke to William M. Brown, the editor of the *Constitution*. "I have read with deep mortification your editorial this morning in which you take open ground against my message on the right of secession. I have defended you as long as I can against numerous complaints. You have a perfect right to be in favor of secession, and for this I have no just reason to complain. [!] The difficulty is that the 'Constitution' is considered my organ, and its articles subject me to the charge of insincerity and double dealing. I am deeply sorry to say that I must in some authentic form declare that the 'Constitution' is not the organ of the administration."¹³

11 Wm. G. Reed to Black, Dec. 1, 1860.

12 King to Black, Dec. 14, 1860.

13 Buchanan to Brown, in Moore, 11 : 75.

This clear rebuke was not made public, however, and five days later King wrote to Secretary of the Navy Toucey that he had from the beginning warned Buchanan about the *Constitution* and that he would be blamed for its contents regardless of the disavowals of the editor. On that very day the paper was saying that Lincoln's inaugural would be stopped by force. "Can the Government give such a paper patronage and escape the charge of treason?" Even if belated, Buchanan's rejection of that paper enhanced his position with Union men.¹⁴

The end of the year was the nadir of the Buchanan administration. Secession was a reality. His administration stood accused of treason. Tremendous pressures were pushing in on him from all sides. At this time, also, the most serious cabinet conflict took place. Again, it was in connection with the South Carolina forts.

On December 16, Buchanan had written a friend: "I have no word of encouragement to give you in regard to Southern secession. I still hope the storm may blow over; but there are no indications of it at present." Two days after South Carolina seceded, he stated that many of the cotton states would leave the Union before anything could be done about it.¹⁵ The possibilities outlined in his annual message were now fact, and he could temporize no longer. It was fortunate for the country that at this point his cabinet sustained, even led, him. During the two weeks that spanned the turn of the year 1860-1861 the armed forces of the national government and of South Carolina confronted each other. Self-styled delegates from South Carolina visited the president to make demands on behalf of their self-styled independent nation. Within the cabinet, unionists and secessionists faced one another and the latter gave way. If there was a denouement in the secession winter, it was at this time.

The focal point of the cabinet crisis was Secretary of War Floyd. While not an outright secessionist, he had continually dragged his feet as regards the strengthening of the South Carolina forts. Then, on December 20, he ordered arms sent from Pittsburgh to certain Southern states. Even if this was in order (that is to say, if the South did have coming a quota of arms for the state militias), this action was most ill timed and impolitic. When word of Floyd's order reached Black he immediately protested to Buchanan, stressing that this was

14 King to Toucey, in Horatio King, *Turning on the Light* (Philadelphia, 1895), 37-38.

15 Moore, 11: 60.

a pivotal issue and the "*arms will not be shipped*"; in all likelihood the people of Pittsburgh would not allow it. Buchanan quashed the order, and the arms remained in Pittsburgh.¹⁶

While this strange interchange transpired, two other events muddied the water. South Carolina sent delegates to confer with Buchanan over the delivering up of federal property in South Carolina and for an "apportionment of the public debt." On the very night they arrived in Washington, Major Robert Anderson moved his small detachment from Fort Moultrie to Fort Sumter. Black was exultant, Buchanan dismayed. Floyd was confused, the Southern delegates outraged. Floyd claimed that Anderson had acted without orders, although, as became clear, he had had discretionary orders to move when he thought the safety of his troops demanded it. Floyd, already asked to vacate his office because of financial inconsistencies, seized this occasion to resign on a note of righteous indignation. He read a paper to the cabinet and the president in which he stated that the transfer of troops was in bad faith, that the South Carolinians could no longer depend on the word of the government, and that Buchanan should order the troops out of Sumter. The outraged Black told Floyd that had a minister of England ever made such a suggestion, that a military post be surrendered when it could otherwise be defended, his next meeting would be with the executioner. Floyd did in fact resign, and Black, weeks later, told Buchanan that one of their primary mistakes had been "overkindness to Floyd"¹⁷ — indeed, overkindness to all the disunionists in the administration.

The few days that followed were critical for the Buchanan cabinet, yet the administration emerged stronger for the crisis and more solidly unionist than theretofore. While Floyd was leaving under a cloud of disgrace, the commissioners from South Carolina were demanding that Buchanan countermand the movement of Anderson from Moultrie to Sumter. The answer prepared by the president is unknown in its specifics, but it angered both factions in the cabinet — the disunionists deeming it too strong, the unionists deeming it too weak. That it granted much to the wishes of South Carolina we may infer from the fact that Black, perhaps the most loyal of Buchanan's subordinates, determined to resign unless the message was changed — and others were to follow his lead.¹⁸ Horatio King, convinced that Toucey and

16 Brigance, 92-93.

17 Ibid., 94-96; Nichols, 428-31.

18 Nichols, 431-32; Brigance, 97-98.

Buchanan had gone over to the disunionists, wrote to John A. Dix that if the cabinet did not sustain Major Anderson, "you may expect to see the resignations of Holt and Stanton."¹⁹ The climax came in an interview with the president on the thirtieth, when Black emotionally told him of his decision: either Buchanan be more forceful with the commissioners or Black would resign. Faced with the disintegration of his cabinet, Buchanan acquiesced and told Black to modify the reply. This Black did, in company with Stanton.

The point that Black stressed first was that Buchanan must not even imply that South Carolina was in any way independent or had any power to negotiate with the United States government. "Above all things," said Black, "it is objectionable to intimate a willingness to negotiate with the State of South Carolina about the possession of a military post which belongs to the United States The forts in Charleston Harbor belong to this Government — are its own, and can not be given up"

Black also attempted to distinguish between coercion used in protecting public property and coercion in forcing a state toward a certain political end, a distinction spelled out in his memoranda of November 20 and December 31. In one sense, he said, defending public property is coercion, but it is distinct from the right of Congress to "make offensive war upon a State of the Union as such might be made upon a foreign government." The president should further deny any agreement to not defend the forts. Similarly, and this is heroic language, he should not allow himself the "remotest expression of a doubt about Major Anderson's perfect propriety of behavior" in moving his troops. Anderson could not be termed "merely a gallant and meritorious officer"; he had saved the country by his move. "He has done everything that mortal man could do to repair the fatal error which the Administration have committed in not sending down troops to hold all the forts. He has kept the strongest one. He still commands the harbor. We may still execute the laws if we try"

In the same vein, Black said there should be not even the hint of an apology for the movement of the troops. The government was under no obligation to remain in a weak position. The onus was on South Carolina. If they did not harm the forts, "no human being will be injured" These were the main points that Black urged. But he went further and begged the president to dispatch the warships *Brooklyn* and *Macedonian* to Charleston "without the least delay";

¹⁹ King, 38.

send a message of firm support to Anderson; and send additional troops to support him. The alternative to forceful action was "disaster and ruin to the country."²⁰

Under the pressure of events, Black had risen above the legalism of his November memorandum. In November there had been no secession; no threats against federal forces; no insolent demands upon the president. By the end of the year all these and more had transpired, and the life of the country was clearly at stake.

Buchanan agreed with Black, and the message to the commissioners on December 31 was the reversal of his former position. The language was less direct than the Black memorandum but the meaning was clear. Buchanan would not countermand Anderson, and the government would defend the forts. Buchanan would not receive the delegates as from another country but as distinguished private gentlemen whose words he would relay to Congress, just as he might do for other distinguished gentlemen. Most importantly, the apologetic tone of previous messages and exchanges was absent. Buchanan's firmness was not evanescent. When the commissioners replied with the arrogance that had come to mark the messages of South Carolina, the president properly declined to receive their note. The change of front was apparent to all, even if the general public was not aware of the reasons back of the change. Indeed, the complete story remained a secret for twenty years.²¹

Within the cabinet the new course won unanimous support. Dix wrote on January 3 that "the first time we began to breathe freely was when Mr. Holt took Governor Floyd's place in the War Department. The feeling here is strong and undivided in regard to sustaining the administration in its determination to stand by Major Anderson, to protect public property, and to enforce the revenue laws. On these points the people of the Northern States are as one man; and I am satisfied the President will have with him the conservative men of all sections of the country." Horatio King, writing a week later, agreed that signs looked better, although the stronger steps were two months late.²²

One of Black's correspondents, in assessing the situation as it stood in the first days of the new year, hit upon Buchanan's primary weakness as a national leader. Not the weakness of a fearful or un-

20 Brigance, 88-101; Harold M. Hyman, *Stanton: The Life and Times of Lincoln's Secretary of War* (New York, 1962), 100-103; Nichols, 432.

21 Brigance, 100-102.

22 King, 40-42.

patriotic man, but a weakness born of his concept of the presidency; indeed, the concept of the presidency held by many of his predecessors and for a time by his successor, who was silent to an exasperating degree during the secession crisis. Wrote Black's friend: "The President of the U.S. at this time is the only person belonging to them who can speak with the certainty of having an audience from all the citizens of the country. It is the fact that he enjoys this peculiar situation that renders every word that comes from him at this time of such vast importance. He has not spoken heretofore so as to meet the demands of the public mind and for that reason, perhaps among others, there is so much anarchy in the land."²³

Now that Buchanan had spoken, there could be no doubt, North or South, as to the position of the government. And, at this juncture, aid was sent to Major Anderson in the form of the *Star of the West*, a merchant steamer, which left New York on January 5, 1861, with some two hundred men and with a supply of munitions. Ostensibly a secret mission, it was known to the Charleston secessionists a full day before the ship's arrival on the morning of the ninth. It was fired upon from Fort Moultrie and forced into a humiliating retreat. Buchanan accepted the rebuff and ordered no further effort to force the harbor.²⁴ Black, however, continued to urge that another attempt be made as he was convinced that incompetence on the part of General Winfield Scott had prevented a stronger force from being sent in the first place. And, while he was querying Scott on the military situation, one of his correspondents told him that the mission should be accomplished, even if it required the full power of the government; that if the president would act forcefully, he would be sustained by the entire country.²⁵ Instead, because Anderson said he needed no additional forces and because Scott was convinced that the harbor could not be forced, the effort of the *Star of the West* was not repeated.

On January 8, Buchanan sent to Congress a special message concerning his correspondence with the South Carolina commissioners. Again, much of the tone and even the language was Black's. In his urgent call to Congress to alleviate the sectional crisis, the president emphasized that he could only execute the laws, not make them. For once, in unmistakable language, he stated the right, duty, and power of the government, through the executive, to use military force in de-

²³ J. A. Campbell to Black, Jan. 4, 1861. Campbell particularly wanted Buchanan to rally "conservative" men, North and South.

²⁴ Nichols, 435-37; Brigrance, 103-4.

²⁵ Brigrance, 103-6; H. P. Laird to Black, Jan. 16, 1861.

fending the property of the nation and in answer to those who would "resist federal officers in the execution of their legal functions." In so stating the case, there can be no doubt that he meant it. The question, then and now, is to what extent South Carolina would have had to go before Buchanan would resort to force. The repulsion of the *Star of the West* was not sufficient grounds; a full-scale attack on Fort Sumter would likely have been.

This aside, Buchanan once again placed responsibility for solving the conflict on Congress — the responsibility not only for war, but the responsibility for removing conditions that might make war mandatory. Time, he said, was the "great conservative power." Let the people of the nation have time for sober second thoughts; let the appeal be to the ballot and to constitutional means. "I most earnestly recommend that you devote yourselves, exclusively, to the question how this can be accomplished in peace. All other questions, when compared with this, sink into insignificance. The present is no time for palliations; action, prompt action, is required." A delay in Congress would likely prove fatal. Generally speaking, the action that Buchanan asked for was the extension of the Missouri Compromise line, an act not fully satisfactory to all, but satisfactory when the alternative, civil war, was considered. He concluded by subtly shifting the blame for the situation in South Carolina to the South Carolinians; that Anderson was clearly within his rights in shifting his troops to a better position.²⁶ But even with Buchanan's plea before it, the Congress did no more than debate, dissemble, and delay. The avalanche of secession was gaining speed. On January 21, the Southern congressmen took their leave with high emotion. To some, the temple of the Republic was crumbling before their eyes.

If all this was not worry enough, many thought that an attempt to seize the capital was in the making. This fear, probably not unfounded, points to a feature of the 1860-1861 crisis that is sometimes noted but not properly emphasized. This is the fact that Washington was (and is) a Southern city, surrounded by Southern states, and in the midst of an area hospitable to secessionist sentiment. Even in the galleries of the congressional chambers we find that secessionist speeches, speeches couched in terms of hatred for the North and the Union, were applauded by Southern crowds. This situation was similar to the Democratic national convention at Charleston — and the effect was also similar. The secessionist congressmen could only have been en-

26 Moore, 11: 94-99, for the entire message.

couraged by their reception in Washington. Even on the public streets men felt free to wear symbols of secession; treason was equated with patriotism — patriotism that placed loyalty to state and section above loyalty to the nation.

Black, a man not easily panicked, sounded the most serious note. On January 22, he wrote Buchanan a striking letter, one that put the case in perspective.

You must be aware that the possession of this city is absolutely essential to the ultimate designs of the secessionists. They can establish a Southern Confederacy with the Capital of the Union in their hands, and without it, all the more important parts of their scheme is bound to fail. If they *can* take it and *do not* take it they are fools. Knowing them as I do to be men of ability and practical good sense not likely to omit that which is necessary to forward the ends which they are aiming at, I take it for granted that they have their eye fixed on Washington. To prove their desire to take it requires no evidence at all beyond the intrinsic probability of the fact itself. The affirmative presumption is so strong that he who denies it is bound to establish the negative. But there are additional and very numerous circumstances tending to show that a conspiracy to that effect has been actually formed and that large numbers of persons are deeply and busily engaged in bringing the plot to a head at what they conceive to be the proper time.²⁷

Black said that he realized that Buchanan did not share this fear, that he had been assured that no plot was in the making — assured of this by private individuals. Yet, if these people had no information their assurances counted for nothing; if they were privy to the inner circle of the secessionists, they could be trusted not to convey information to the president. In short, "fidelity to their fellows makes treachery to you a sort of moral necessity." In any case, said Black, the duty of the administration was to prepare for the worst; to protect the capital against the possibility of attack. If the attack did not come, then no harm would be done.

In the same letter Black returned to the subject of South Carolina and Fort Sumter, urging the president to arrive at a policy decision before the Southerners could make their position defensible militarily. His concluding statement fairly summed up the dilemma of the administration.

In the forty days and forty nights yet remaining to this administration responsibilities may be crowded greater than those which are usually incident to four years in a more quiet time. I solemnly believe that you can hold this revolution in check, and so completely put the calculations of its leaders out of joint that it will subside after a time into peace and harmony. On the other hand by leaving the government an easy prey, the spoilers will be tempted beyond their power of resistance and they will get such an advantage as will bring upon the country a whole Illiad of woes.

²⁷ Black to Buchanan, Jan. 22, 1861.

Obviously Buchanan gave less credence to the danger of a coup d'état than did Black. But when Black wrote again, this time supported by Holt, Stanton, and General Scott, the president ordered some 650 men into Washington. A House committee demanded an explanation from Buchanan as to the entry of the troops and as to the probability of an armed conspiracy against the capital. Buchanan said the troops were a precaution and in full subordination to civil authority. Further, even if he did not have definite proof of a conspiracy, the high emotion of the hour demanded unusual precautions. Indeed, as he pointed out, the furor subsided only after the troops arrived, and a comparative quiet reigned at the time of the writing, March 1. He concluded, "Had I refused to adopt this precautionary measure, and evil consequences, which many good men at the time apprehended, had followed, I should never have forgiven myself."²⁸ The language of Buchanan's reply to the committee is strongly reminiscent of Black's letters of January 22 and 26. It was unfortunate that Buchanan once again approached the subject obliquely. He did not, at the time he ordered the troops to Washington, publicly give the reason, namely the safety of the capital and the insurance of the peaceful inauguration of Lincoln. Instead he waited until the House committee demanded an explanation.

The last weeks of the Buchanan administration dragged out without incident or accomplishment. The Congress refused to enact the compromise measures pleaded for by the president. The secessionists remained intransigent and by March had formed an independent government. If war had not yet come, the lines of battle were drawn as surely as if uniformed armies had faced one another across a geographical boundary. Buchanan, worn and abused, felt that he had done all within his power to prevent war. Yet, the avoidance of war was not the crux of his policy. He did want to avoid war but not at the expense of the destruction of the Union. He drew the line at Sumter, however waveringly. Behind the oblique speeches and references to fine points of constitutional theory he would exercise armed force if the secessionists pushed the issue to its limit, as they did six weeks after he left office.

The administration's alternatives can be understood in an exchange of letters between Black and a Philadelphia correspondent,

²⁸ Moore, 11: 152-55. On Apr. 21, 1861, Buchanan told King that he had no serious fears but, "the stake was so vast I yielded to members of the Cabinet and ordered troops to Washington." King, 94-95. King, for his part, continued to believe that the secessionists meant to take Washington, *ibid.*, 69.

A. V. Parsons, on January 15 and 17. Parsons wrote:

Do not permit the President to suffer the shedding of *blood* during his administration. It is far better that no revenue should be collected at South Carolina, than that one drop of blood should be shed by this administration. If the government remains passive and does not attempt coercion the democratic party will sustain Mr. Buchanan. And if no war is begun before the 4th of March, no hostile measures adopted before then our troubles will be settled and peace restored. But if there must be Civil War — let the Black Republicans begin it on their Inauguration into the government.

Their policy in repressing all just compromises is apparent. If they can induce a democratic administration to commence by use of force, then they have an excuse for prosecuting a Civil War and will tell us your party began it.

Buchanan's supporters in Pennsylvania, said Parsons, would not support coercion. They would support defense of the capital and the defense of a peaceful exchange of government on March 4. At the same time, the president was obliged to restrain all officers of his administration from committing aggressive acts. "If the Republicans desire a Civil War let them commence it. But do not suffer our party to begin it."

A note of impatience can be detected in Black's reply, a tone no doubt engendered by weeks of witnessing the "overkindness" towards Floyd, the insolent talk of the secessionists, the intransigence of the Republicans, and the general criticism of the administration — by self seekers and men who were genuinely concerned. It was also the reply of a man of strong party ties and sentiments who was devoted to the government and all it represented. In his actions and words, had they been more widely publicized, the South might have seen a warning of severe retribution. Wrote Black:

It would undoubtedly be a great party move as between Democrats and Black Republicans to let the latter have a civil war of their own making. It would also be practical as well as political justice to let them reap the whirlwind which must grow out of the storm they have sowed. But can we avoid doing something? Is not the business altogether beyond party considerations? For South Carolinians compel us to choose between the destruction of the Government and some kind of defence. They have smitten us on one cheek — shall we give them our cloak also? The gospel commands this in private affairs, but the rule is not understood I think as applying to public property held by a Government in trust for its people. I am not in favor of war but I cannot resist the conviction that when war is made against us a moderate self-defense is righteous and proper. Coercion — well I would not care about coercing S. C. if she would agree not to coerce us. But she kicks, cuffs, abuses, spits upon us — commits all kind of outrages against our rights — and then cries out that she is coerced if we propose to hide our diminished heads under a shelter which may protect us a little better for the future. I agree with you that we ought not to make a civil war. But do you disagree with me in the opinion that we are bound to defend ourselves from an unjust and illegal attack?²⁹

²⁹ Parsons to Black, Jan. 15, 1861; Black to Parsons, Jan. 17, 1861.

If this argument had no appreciable effect on Parsons, we can infer that it made its mark on Buchanan. For if Buchanan wavered to a maddening degree, and his own partisans were most exasperated at these moments, there never was a time when he would have accepted an attack on the federal troops in the harbor at Charleston.

And if Buchanan's conduct during his last months in office remained a matter for debate among historians, there can be no doubt that Black proved his worth as a cabinet official, indeed as a patriot. He rose above crass partisan interest to be an ardent defender of the Union, even when this entailed a bitter struggle against one-time political friends. And from the crabbed legalism of November he freed himself to become the eloquent defender of the requisites of responsible government.