

**REPORT ON THE MERITS OF THE CLAIM OF  
THE STATE OF MASSACHUSETTS, ON THE  
NATIONAL GOVERNMENT, FOR EXPENSES  
OF THE MILITIA, DURING THE LATE WAR,  
TO THE GOVERNOR AND COUNCIL OF THE  
COMMONWEALTH, JANUARY, 1821**

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Report on the Merits of the Claim of the State of Massachusetts, on the National Government, for Expenses of the Militia, during the late war, to the governor and council of the commonwealth, January, 1821 by Various

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# **VARIOUS**

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## Commonwealth of Massachusetts.

COUNCIL CHAMBER, AUGUST 29, 1831.

THE Committee of Council, to whom was referred the subject of the Claim of this State on the General Government, for the Expenses of the Militia during the late war; to consider whether any, and if any, what additional measures may now be taken to procure the settlement thereof; agreeably to a late resolve of the Legislature,

### REPORT:

THAT the delay on the part of the General Government to place this claim in a train for final adjustment, appears not to have been caused by any want of documents to show, that the services of the militia, charged to the account of the United States, were rendered in the common cause against the enemy.

It has not been objected, that the disbursements were in themselves unreasonable, nor that the items were not properly vouched. And it is worthy of remark, that it is now almost three years since a special Committee of Congress, after an elaborate investigation into the merits of the claim, recommended it for immediate settlement.

The long delay, under these circumstances, has the appearance of a denial of justice, not to say, of insensibility to the dignity of the claimant.

This is the claim of one of a number of sovereign states, which have pledged themselves to each other, to apply their common resources for their mutual protection against foreign enemies. By a train of circumstances, in no degree affecting the right of Massachusetts to the benefit of this pledge, the common treasure, to which, during the late war, she contributed her full proportion, was not applied in her defence;—the cost of the protection of her shores was defrayed from her own treasury.

On the occurring of the first war since the union, the General Government might well be expected to exhibit a spirit of forbearance towards the State Governments in cases involving constitutional questions, relating to the powers retained by the latter. And if its protecting resources did not find their way into all the proper channels, owing to obstructions from the novelty of the situation, and the new questions which arose, and might naturally be expected to arise, in relation to the precise limits of the powers of the General Government, it ought to avail itself of the earliest moment to indemnify those states which made advances of money in its behalf; and for the purpose of giving to themselves that protection, which it belonged to the General Government to extend to them.

Until that is done, the individual states cannot feel a confidence free from anxiety, looking to future wars. They cannot be free from apprehension that minor considerations, perhaps party views of some kind or other, will obtain, sooner or later, a permanent ascendancy over great and liberal views, founded in the principles of the government itself.

A million of dollars more or less, is of trifling moment to the people of Massachusetts, compared with the unsettled character which the relations between the General and State Governments must assume, should the expenses in question not be reimbursed.

It would seem to portend a rapid decline of the dignity of the State Governments, that a claim of this nature should remain unregarded on the files of Congress for a series of years; postponed from session to session, to give precedence to the common business of legislation. There may, reasonably, be expected to arise like claims, at the close of future wars. And if there be cause to apprehend in the present case, that other considerations besides what relates, to the justice of the claim, in a constitutional view, have had, and may continue to have, an influence in retarding its adjustment, it may become the states to consider the end, to which a precedent like this, may lead.

In times of great political excitement, opposition to the opinions and measures of the ruling party, however defensible on the principles of republican government, is so offensive as almost unavoidably to be thought criminal; and no power, whether constitutional or not, is thought to be misemployed, which men in authority can avail themselves of, under great irritation, to put down an adverse party. It is therefore obviously of the highest importance, that



the absolute duties imposed on the General Government—such, for example, as that of providing for and defraying the expense of the protection of the country, in time of war, should by no circumstances, in this early stage of our history, lose their proper character; and what is now clearly a right on the part of the states, founded in a written compact, be so embarrassed by irrelevant considerations, as to afford a precedent to parties in future times, for violating the plainest provisions of the Constitution, which they will do, if they have the pretext that other plain provisions in it, have been before construed as controllable by circumstances, of which the dominant political party assumed to be the sole judge.

The power of unlimited taxation, confided to the General Government, is inseparable from the obligation to provide for the common defence. They are reciprocal, and the duty is absolute. It is then a question of vital concern to the states, whether, upon any pretence whatever, the General Government can absolve itself from any portion of the necessary expense for defensive measures, and throw the burden upon a state. If a state is thus liable, there is no limit to the mischief, as there is, in the nature of things, no preventive of occasional collision between the General and State Governments, arising from transient causes. If it be discretionary with the former, in what measure it will contribute to the defence of a state in time of war; a state which shall render itself obnoxious by a prevalence of sentiments, at variance with those of the General Government on the character of public measures, may be abandoned to its own resources, and its chance of an indemnity for its expenses, be hopeless, while the same party shall continue in power. In this way, a punishment will be inflicted for the political crime of discussing with freedom the measures of government. It may be a fine of one million, or of twenty millions of dollars. It is of little consequence what the sum is, so far as the principle is concerned.

The dissensions, and the angry feelings of parties, will sooner or later, subside with the temporary causes which inflamed them; but it will always be a subject of anxious inquiry, whether they have left no permanent stains upon the Constitution—whether there has not been some innovation, which may be drawn into precedent, and afterwards by force of its authority, as such, become part of the Constitution itself. Thus, the stipulation among the States of the Union, that the monies to be raised under the power of unlimited taxation in the General Government, shall

be applied to the effectual defence of all the states against foreign enemies, may come at last in practice to be modified and qualified by conditions which never entered into the contemplation of the framers of the Constitution.— Thus the claim of a state to protection in war, at the expense of the national fund, may be made to depend, not so much upon what its necessities require, as upon a variety of subordinate and irrelevant considerations, growing out of ambitious views.

In connexion with these suggestions, which the Committee hope will not be thought out of place, it may be interesting to the other States of the Union to inquire, in what position Massachusetts now stands in relation to the General Government, in regard to her claim for an indemnity for expenses, necessarily incurred by her, during the last war.

Because a difference of opinion existed at the commencement of the late war, between the Supreme Executive of this Commonwealth and the General Government, as to the construction of that part of the Constitution which relates to the calling forth of the militia, that of itself could not be held to justify the General Government in a suspension of any practicable and suitable measures, for the defence of the state against the enemy. Or, in other words, because the Governor of the State declined to acquiesce in a requisition for a militia force, demanded by the President,— (neither of the emergencies having arisen, in the opinion of the Governor, on the existence of which, it was his duty to comply,) it would not therefore, be competent to the General Government, to refuse to the state the aid of the national resources, and to consider itself as discharged from the obligation imposed by the Constitution to provide the proper means for her protection.

Were consequences of this extreme nature expected to follow on every occasion of a State's manifesting an honest desire to preserve unimpaired the powers not delegated to the General Government, but reserved to the States, it would require more firmness than the Governors of the States would be found always to possess, to resist even the most palpable encroachments. With what propriety could the General Government consider a State in the light of an independent belligerent, while, at the same moment, it was exercising over the people of the same community its power of taxation, and levying monies, as the statute book of the General Government would inform us, for the very

purpose professedly of defending such State from the common enemy? If a State may be considered as an alien, by the Government of the Union, only to disqualify it from partaking of the benefits of the confederacy, and only held in the relation of a member of the Union, to bear a portion of its burdens, it may, at no distant period, become a serious question, among the States, how far it is expedient to continue to the General Government its present power of revenue: And, whether it were not better, by an amendment of the Constitution, to reduce it to the form of the old confederacy—than which, nothing could be more unpropitious to the welfare of the country, unless it were a state of things, in which the existing powers should be continued in the General Government, but with no reason on the part of the States to expect, that the benefits, designed to flow from them, would ever be realized.

The States are left by the Constitution in the enjoyment of sovereign and independent jurisdiction in all cases, except those expressly enumerated, as being transferred to the General Government.

As respects the militia.—Power is given to Congress “to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections and repel invasion.” All other powers, which are incident to these general powers, and without which they could not be carried into effect, are implicitly given. But whether, under this class of implied powers, the militia may be called into the field, on the sole ground that a state of war exists, and kept for that cause in the field, when there is no invasion impending, and no immediate use for such a force, was a question, concerning which the Governor of Massachusetts entertained serious doubts, at the commencement of the war. And the Judges of the Supreme Judicial Court were of opinion, that this was not within the limit of the incidental powers given to the Government, nor fairly to be inferred from the Constitution.

Whether this opinion were correct or not, is not a question so material, as whether the constituted authorities of a State may not, of right, claim to judge of the constitutionality of any measure of the General Government, in which they are called upon to take part officially—and which may be, or not, an encroachment on the powers reserved to the States?

Before stating what occurs to the Committee in support of this right, it may be proper to remark, that, although the Governor of Massachusetts declined complying with the