

WAR POWERS.

PREFACE TO THE FORTY-THIRD EDITION.

OF previous editions of this work, thirty-two have been published in New York, and ten in Boston. In 1864 the Essays on "Military Arrests," "Reconstruction," and "Military Government" were reprinted in one volume with the "War Powers," as they treated of kindred subjects, and were intended to illustrate and apply to our national affairs the principles of constitutional law advocated in the earliest of these publications. A brief Essay has been added on "Claims against the United States to Compensation for injuries inflicted by our military or naval forces upon aliens who came into or resided in this country during the rebellion." It was originally prepared in its present form, at the request of the Secretary of the State Department, and was subsequently (1866) printed. Since that time it has been used in the War, State, and Navy Departments. New notes have been added for the purpose of giving the reader convenient reference to some of the proceedings of those departments relating to the war powers treated of in this work.

Several recent acts of Congress, decisions of the departments, and opinions, judgments, or official acts of officers and courts of the United States are also cited or referred to in the Notes or printed in the Appendix to this edition, marking our progress in military jurisprudence, or limiting, defining, and establishing the war powers of the government.

This comparatively novel and important branch of public law, developed in our recent civil war, ought not to be overlooked by jurists or statesmen. It should be made a subject of special instruction in schools for the education of lawyers. The neglect of it has proved a national calamity. If southern rebels, with all their treasonable notions on the subject of State rights, had recognized and appreciated the war powers of the Union, it is not probable that they would have attempted armed rebellion. Had the loyal people of the country and the administration promptly assumed and with energy employed those powers, treason might have been strangled at its birth; and if the judicial department, unbiassed by political proclivities of individual judges, shall ultimately sanction a liberal and statesman-like construction of the sovereign and belligerent rights of the people under our Constitution, it will, by so doing, strengthen the power of our government to defend itself against rebellion; it will increase our confidence in the stability of the republic, and it will become a new safeguard against the dangers of civil war.

To maintain the right of the majority to govern, to guard against future attempts at rebellion, to secure the supremacy of republican institutions in all parts of a country which contains so large a foreign population, and includes so vast a territory as ours, liable as it is to be disturbed by sectional jealousies and interests, the people must, hereafter, be always prepared to use promptly, when the occasion imperatively demands it, the war powers of their government. They must, therefore, not forget them in time of peace. Our recent civil war has, unfortunately, forced us to become familiar with them, and to recognize them as the only means by which the right to continue our existence as a nation under constitutional government may, and in the last resort must, be defended. By them the overthrow of rebel governments, the return of public enemies to the Union, the restoration of disloyal States, have been effected and controlled. By

them the civil and political rights of eleven millions of our citizens have been regulated and established. Upon them the basis of the reconstructed Union stands. Yet every civil, judicial, or military act of the government which rests for justification upon the constitutional validity of the war power, will probably continue to be a subject of discussion for years to come — so long as the present generation of secessionists shall last. They have everything to gain, and nothing to lose, by repudiating the power which has conquered them. Though compelled to lay down their arms, they may continue their efforts to destroy the Union. Hence the vindication of the rights of the people against their enemies is still one of the duties of patriotic citizens, and is the only means of securing to our posterity the inestimable benefits derived from our civil war. For these reasons, lawyers, judges, statesmen, and the people of the United States ought never to lose sight of the war powers of the government under our Constitution.

W. W.

BOSTON, November 10, 1870.