GEORGE H. WILLIAMS. RECONSTRUCTION.

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SPEECH

OF

HON. GEORGE H. WILLIAMS,

OF OREGON,

ON

RECONSTRUCTION;

DELIVERED

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RECONSTRUCTION.

The Senate having under consideration the bill (H. R. No. 439) additional and supplementary to an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867, and the acts supplementary thereto, the pending question being on the motion of Mr. DOOLITTLE, to refer the bill with instructions to the Committee on the Judiciary—

Mr. WILLIAMS said:

Mr. PRESIDENT: On the 4th day of last February I introduced into the Senate the so-called military reconstruction bill, and although I had charge of the bill while it was pending here I did not say one word in favor of its passage, because expeditious action by Congress at that time was deemed necessary. I hope, therefore, that I may be pardoned if I now tax the patience of the Senate with a brief discussion of the constitutionality of the reconstruction acts of Congress.

People everywhere are divided upon this question. Some denounce these acts as wholly unwarranted by the Constitution, while others claim with equal confidence and zeal that they are necessary and rightful legislation. No argument unfavorable to the validity of these acts can be derived from this difference of opinion, for it is a difference that has existed as to all the measures of Congress for the suppression of the rebellion from the beginning of the war down to the present time. When the rebellion was organized there was a large number of persons in the country who took the ground that the General Government had no constitutional power to coerce a State into submission to its authority, and they filled the land with a clamor to that effect. Buchanan's Attorney General advised the Administration to which he belonged that the Constitution conferred upon Congress no power to coerce a State; and the same distinguished individual is now conspicuous in advising the executive and judicial departments of the Government that the reconstruction acts of Congress are unconstitutional. The popular clamor, therefore, that is poured into our ears as to the unconstitutionality of the reconstruction acts, proves no more than the same sort of clamor did as to the unconstitutionality of these acts that were adopted for the suppression of the rebellion. Indeed, sir, the present is but a continuation of the clamor that was raised when the rebel guns were turned upon Fort Sumter, and with some exceptions it is made by identically the same men. The men whose opinions, if they had been adopted, would confessedly have proved the destruction of this nation, as it seems to me, are not now very safe guides to follow.

I assume, what I suppose no Senator will controvert, that the Constitution confers upon Congress the power to suppress a rebellion, and that it also confers upon Congress the right to use those means that are necessary and proper to execute that power. When eleven of the slaveholding States combined to divide and destroy the Union they certainly did constitute a rebellion. To give that rebellion success each one of these States formed a government independent of the Constitution of the United States, and over these they placed a confederate government in open hostility to the Government of the Union. Is it not perfectly clear that the purpose of these States was to create within the original jurisdiction of the United States a nationality as foreign to and distinct from the American Union as France is distinct from the empire of Great Britain?

What were the purposes of the General Government? One was to overthrow and remove these rebel State governments, and the other was to replace them with governments that were in harmony with and in subordination to the Constitution of the United States. Both of these objects were equally necessary to insure complete success to the Government of the Union, and both were equally constitutional. War accomplished the one purpose; war demolished and removed the rebel State governments; and the object of the reconstruction acts of Congress is to put in the place of the rebel governments so removed governments

that are loyal to the Union and republican in form. I affirm that it was the constitutional and inevitable effect of the success of the Union cause in the late struggle to reduce those States that were arrayed in hostility to the Federal Union to the condition of conquered States, and that in such condition they had no claims whatever, constitutional or otherwise, that did not appeal to the magnanimity and moderation of the conquerors.

Let it not be forgotten, Mr. President, that this rebellion was no combination of individuals, each one acting upon his own responsibility; it was no unlawful assembly of maddened and excited men; no mere mob; but it was a combination of States. When this nation was convulsed from its center to its circumference by the convulsions of civil war it was because great political bodies were in motion, shot madly from their spheres, and came together in armed collision. Sir, these rebel communities went into the rebellion as States, they fought as States, they were defeated as States, and as States they became and are prostrate and powerless in the hands of those by whom they were conquered; and the only claims which they have are upon the clemency and kindness of those who triumphed in that struggle. When discussion arose at the breaking out of the rebellion it was objected by Buchanan's Administration that the Federal Government had no power to act because States were arrayed against the Federal Government; but now it suits the convenience and purposes of the same individuals to claim that this gigantic rebellion was a conflict between individuals, to be followed by no other consequences, political or legal, except that each person concerned may be brought before a court of justice and prosecuted and punished as an individual criminal. To show that this view of the subject is sustained by authority I invite the attention of the Senate to the decision of the Supreme Court made in the case of the Brilliante, reported in the second volume of Black's Reports, page 672, in which the court say:

"Hence, in organizing this rebellion they have acted as States, claiming to be sovereign over all persons and property within their respective limits, and asserting their right to absolve their citizens from their allegiance to the Federal Government. Several of these States have combined to form a new confederacy, claiming to be acknowledged by the world as a sovereign State."

So that the Supreme Court of the United States have affirmed the doctrine which I maintain and declared that the South went into the late struggle as States. Independent of any precedents or authorities, it would seem to be the dictate of common sense that when a State repudiates the Constitution and denies its jurisdiction and obligations, such a State could not at the same time claim the privileges and benefits conferred by the Constitution. Taking the ground of the ultra States rights men, that the Constitution is a mere compact between sovereign States, and according to the admitted principles of law it would follow that if one State violated the compact it thereby forfeits all claim to the advantage or benefit under the broken and rejected compact. Is it not unreasonable to say that the State of South Carolina, after it had declared itself absolved from all allegiance to the Constitution of the United States and expended its utmost energies to maintain that declaration, has precisely the same rights under the Constitution that the State of New York has, that not only maintained its allegiance but poured out its blood and treasure like water to maintain the rightful jurisdiction of the Union? Sir, is there any law of God or man that sanctions such an absurdity?

Much bitter denunciation is heaped upon the reconstruction acts of Congress, because, as it is alleged, they ignore the constitutional rights of the revolted States, and because, as it is said, they assume that those States are not entitled to the great rights of Magna Charta, to the right of trial by jury, and the privilege of the writ of *habeas corpus*.

Numerous acts of Congress may be cited to show that the legislative department of the Government assumed at the beginning of the rebellion and since that time has adhered to the assumption that, in consequence of the war waged upon the Federal Union by the rebel States, they lost or forfeited their constitutional rights. Sir, to send an army into those States to devastate the country, to destroy property, and to kill the people is an act which utterly ignores their right to any protection of life, liberty, or property under the Constitution of the United States. Take the confiscation act as an example. A law is enacted by which the property of a certain class of individuals is subjected to seizure by the public authorities without any right of trial by jury; and of course that law proceeds upon the ground that those upon whom it is to operate have no right to protection under the Constitution. I refer upon this question to the deliberate judgment of the Senate, as indicated by a resolution to which the Senator from Indiana referred the other day, and I will read that resolution and the vote upon it. On the 1st day of July, 1864, the Senate of the United States adopted this resolution:

"That when the inhabitants of any State have been declared in a state of insurrection against the United States by proclamation of the President by force and virtue of the act entitled 'An act further to provide for the collection of duties on imports, and for other purposes,' approved July 13, 1861, they shall be, and are hereby, declared to be incapable of casting any vote for electors of President or Vice President of the United States, or of electing Senators or Represent-

atives in Congress until said insurrection in said State is suppressed or abandoned, and said inhabitants have returned to their obedience to the Government of the United States, nor until such return to obedience shall be declared by proclamation of the President, issued by virtue of an act of Congress hereafter to be passed, authorizing the same."

And all the Senators, including the Senator from Indiana [Mr. HENDRICKS] and the Senator from Wisconsin, [Mr. DOOLITTLE,] voted in favor of the passage of that resolution. There were only three nays recorded against its passage.

Now, sir, this resolution declares that these States at that day had no right of representation in Congress. I desire to ask the honorable Senator from Indiana what constitutional rights, in his judgment, these States had when he voted to declare that they had no right of representation in Congress? I ask what constitutional rights, in his judgment, these States had when he voted not only that they had no right of representation in Congress, but that they could not exercise any such right in consequence of their rebellion until Congress should pass a law to that effect? The honorable Senator the other day made a very remarkable representation in reference to the passage of this resolution. I will read what he said upon the subject:

"It is my duty to notice as I am passing along, to use the language of the President, the reference that my colleague made to a vote given by the distinguished Senator from Wisconsin; and as I voted with the Senator from Wisconsin I think my name is kept back simply with a view of bringing that up in judgment against me. Senators will recollect that my colleague read from the Journal the action of the Senate on what was known as the Winter Davis bill. When that bill came into this body Mr. Brown, then a Senator from Missouri, offered an amendment changing it very much. I was opposed to both bills; first, to the House bill, because I then held, as I now hold, that the Congress of the United States cannot clothe the people of a State with the power to make a State government. That authority is with the people themselves after the State has been once admitted into the Union. Mr. Brown offered an amendment, and the question with me and the Senator from Wisconsin was the ordinary question of deciding between the original proposition, which you are opposed to, and an amendment which you also oppose. So I voted for the amendment, as the Senator from Wisconsin and many others voted for it, and it carried."

The statement which the honorable Senator made is altogether true; but he did not state the whole history of that proposition; and I beg to read to the Senate what occurred at the time that resolution was passed. True, when the amendment was proposed by the Senator from Missouri, Mr. Brown, the honorable Senator from Indiana did vote for the amendment, and the Senate was about equally divided upon its adoption, seventeen voting for it and sixteen against it; but, sir, after the amendment was adopted the following occurred in the Senate:

"So the amendment was concurred in.

"The amendment was ordered to be engrossed, and the bill to be read a third time. The bill was read the third time.

"Mr. TRUMBULL. I desire to have the yeas and nays on the passage of the bill. I want to have a distinct vote on the proposition itself, not antagonized with anything else, and see what the sense of the Senate is on the proposition.

"Mr. BROWN. We have just had it on the same proposition.

"Mr. TRUMBULL. Then it was antagonized to the original bill as an amendment. I want it by itself to see what the sense of the Senate is in reference to the measure, and not as a substitute for anything else. I ask for the yeas and nays.

"The yeas and nays were ordered; and being taken, resulted—yeas 26, nays 3; as follows:

"YEAS—Messrs. Brown, Chandler, Conness, Doolittle, Grimes, Hale, Harlan, Harris, Henderson, Johnson, Lane of Indiana, Lane of Kansas, McDougall, Morgan, Pomeroy, Ramsey, Riddle, Sherman, Sprague, Sumner, Ten Eyck, Trumbull, Van Winkle, Wade, Wilkinson, and Wilson—26.

"NAYS—Messrs. Davis, Powell, and Saulsbury—3."

Mr. HENDRICKS. As the Senator is making a statement of the position I assumed on that question, I desire to call his attention to the fact that he omits a part of the view I took the other day. I not only said that while the measure was antagonized by the amendment of the Senator from Missouri (Mr. Brown) to the bill of the House, I had the right, although not in favor of the amendment, to vote for it as an antagonistic measure to the bill that I opposed, but also when the amendment should be adopted by the Senate we would have had a right strictly to vote for the amendment as agreed to by the Senate as still a measure in antagonism to the bill of the House; and I will read what I said. After quoting the language of the Senator from Ohio [Mr. WADE] on that occasion, I said:

"That 'miserable dodge,' 'that negation,' is what I voted for. I would vote to dodge any such bill as that which came from the House of Representatives, and so might the Senator from Wisconsin; and when the bill was thus amended it would have been proper for us to vote for the amendment as a measure antagonistic to the measure from the House, being opposed to the House bill."

I will say to the Senator that if he will look further into this record he will see that when the amendment of the Senate went to the House of Representatives the House disagreed to the Senate amendment, and then it came

back into this body, and I voted with the Senate still. He will find my vote affirmatively to stand by the amendment of the Senate as opposed to the House bill, because I regarded it as antagonistic.

Mr. WILLIAMS. When an amendment is proposed in the Senate, it seems to me that a Senator can choose between the proposed amendment and the original bill without committing himself as to the question involved; but when the amendment is adopted and the bill is put upon its final passage I suppose that the record of the yeas exhibits the opinion of those who are in favor of the passage of the bill. That is the ordinary construction of such a record, and that is the way in which it will be understood by people not acquainted with the tactics of parliamentary proceeding. But, sir, I beg to invite the attention of the Senate to another record which is not susceptible of misconstruction. On the 8th day of February, 1865, the Congress of the United States adopted the following resolution:

"Whereas the inhabitants and local authorities of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississipi, Louisiana, Texas, Arkansas, and Tennessee rebelled against the Government of the United States, and were in such condition on the 8th day of November, 1864, that no valid election for electors of President and Vice President of the United States, according to the Constitution and laws thereof, was held therein on said day: Therefore,

"*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the States mentioned in the preamble to this joint resolution are not entitled to representation in the Electoral College for the choice of President and Vice President of the United States for the term of office commencing on the 4th day of March, 1865; and no electoral votes shall be received or counted from said States concerning the choice of President and Vice President for said term of office."

I find, by referring to page 595 of Part I. of The Congressional Globe of the second session of the Thirty-Eighth Congress, that upon the adoption of that joint resolution the vote stood as follows:

"YEAS—Messrs. Anthony, Brown, Buckalew, Chandler, Clark, Collamer, Conness, Davis, Dixon, Farwell, Foster, Grimes, Hale, Harlan, Henderson, Hendricks, Howard, Johnson, Morgan, Morrill, Nye, Powell, Ramsey, Sherman, Trumbull, Wade, and Wright—27.

"NAYS—Messrs. Cowan, Doolittle, Harris, Howe, Lane of Kansas, Nesmith, Saulsbury, Ten Eyck, Van Winkle, and Willey—10."

On the 8th day of February, 1865, near the termination of hostilities in this country, the honorable Senator from Indiana and the honorable Senator from Pennsylvania both voted that those States had no right of representation in the Electoral College. Now, I ask the honorable Senator from Indiana what constitutional rights in his judgment those States had when he voted that they were not entitled under the Constitution to any representation in the Electoral College? Sir, does not the Constitution in express terms confer the right upon every State to vote for President and Vice President of the United States? If in consequence of this rebellion those States forfeited that right, I will ask if they did not necessarily forfeit other express and implied rights under the Constitution?

The honorable Senator from Indiana the other day, in commenting upon the speech of his colleague, [Mr. MORTON,] inquired, referring to what he had said upon the education of the people, how can the people of the country be educated upon a constitutional question? What is constitutional, said he, at one time is constitutional at another; what was constitutional last year is constitutional at this time. Now, sir, as a legal proposition, these States either had or had not a right to representation in the Electoral College. If they had that right under the Constitution then that vote was unconstitutional; but if they had not that right, then they had forfeited it by rebellion, and the Republican party is only claiming that to be constitutional now as to those States which the Senator in the most solemn manner affirmed was constitutional in 1865.

Mr. BUCKALEW. I should like to say a word on this point, with the Senator's permission.

Mr. WILLIAMS. Certainly.

Mr. BUCKALEW. The resolution to which the Senator refers was passed as a declaratory act. It was intended to give direction to the proceedings of the two Houses of Congress when convened in joint convention for the purpose of counting the votes for President and Vice President of the United States. I and others voted for that resolution with the design of preserving the order of that assembly, establishing beforehand the opinion which ought to prevail in that body when it came to perform its appropriate duty. I voted for what that measure declared, namely, that at that time the States in question were in such condition that electoral votes for President and Vice President from them ought not to be counted and received in order to influence the result of the presidential election; and that was all. The measure itself did not express any opinion upon the abstract right of the States; it simply expressed an opinion upon the fact which existed at that time. If the Senator will go back to that debate he will find the reason which influenced me and others. It was that we were indisposed to count the electoral votes from those imperfect State organizations set up by Mr. Lincoln in Louisiana, in Arkansas, and in Tennessee. One was

attempted also in Virginia, and there was an immature attempt in Florida. I was opposed throughout to the counting of the electoral votes that were taken under the authority of governments which I think, so far as this question was concerned, were bogus. That was all. There was no expression of opinion at that time as to the right of a State to participate in the proceedings of the Federal Government, but simply a declaration of opinion that under the circumstances which then existed electoral votes from those States could not be received.

Mr. MORTON. With the permission of the Senator from Oregon I should like to make one suggestion to the Senator from Pennsylvania. That resolution contained a distinct recognition that at that time those States were not entitled to representation in Congress; and it would have been well for the Senator to show at what time since, by what act since, they have come into possession of that right.

Mr. BUCKALEW. The Senator simply restates the very point which I intended to explain; and that was that the resolution did not declare an unqualified absence of right in those States, but that under the circumstances which then existed they should not exercise it.

Mr. WILLIAMS. Mr. President, I am not concerned with the reasons which influence Senators when they vote upon a proposition to interpret or construe the Constitution of the United States. I shall proceed in due time to apply the argument which I derive from the adoption of this resolution to the position which those honorable Senators have taken that the State governments of the rebel States continued to exist during the war, that their constitutions and laws were unaffected by the rebellion, and that they were and have been all the time perfect States in the Union. Does not the Senator say that the right of a State to representation does not depend upon the Constitution, but a certain state of facts, the political or social condition of the State? Now, sir, in my judgment the condition of the rebel States at this time is such as not to entitle them to representation in Congress, but does that satisfy the honorable Senator from Pennsylvania? Does he not maintain that by such a vote I violate the Constitution because I have no right so to decide upon the facts? When I show a record here which proves that he asserted the jurisdictional power of Congress to exclude the rebel States from representation, and show, too, that he voted two or three years ago to exercise that power as to the electoral votes of those States, he undertakes to evade the force of this record by giving his peculiar reasons for the vote which he gave. Now, sir, I am willing to let that record stand and speak for itself. I say that these States, if they had a constitutional right to representation, could not be deprived of that right by any resolution of Congress, and if they had no such constitutional right it was because they had been in rebellion against the Federal Government, and so had lost it; and from the vote of the two Senators the latter must have been their position, a position which they now say is a clear violation of the Constitution, but which the Union men of this country now as then consistently occupy.

Congress at various times enacted laws declaring the revolted States in a state of insurrection against the Federal Government. Congress unquestionably has jurisdiction over that question, for it is expressly conferred by the Constitution of the United States; and when Congress declared by a law, which has not since been modified or repealed, that these States were in a state of insurrection, I will ask if the legal status of those States is not defined; and has the President or any court power to change such legal status contrary to an existing law of Congress? Suppose the President should be of opinion that those States were not in insurrection when they were declared so to be by a law of Congress; is his opinion of any more consequence upon the subject than the opinion of a private citizen? Suppose the Supreme Court should differ with Congress upon the question of fact as to whether these States were or were not in insurrection; has the Supreme Court a right to say that Congress was mistaken as to the fact, and, therefore, the law was invalid and without any effect? Congress has decided that these States were in insurrection, and has never modified or reversed that decision except as to the State of Tennessee when her Senators and Representatives were admitted to Congress; and I affirm that the legal status of those States, from the day these laws were enacted up to this time, is fixed by law, and neither President nor court has the right to say that the condition of those States is otherwise than it is declared to be by the law of the land.

Sir, if this position be correct, and Congress upon declaring these States in insurrection had a right to proceed and adopt measures for the suppression of the rebellion, then I say that Congress has a right to continue the exercise of this power, until in its own good judgment the peace and safety of this country demand or permit a change of that declaration, and a change in the legal status of the rebel States.

I justify, therefore, upon this ground, the legislation of Congress which commenced as soon as the rebellion broke out and has been continued down to this day. Sir, it does not follow that because the organized armies of the confederacy have been overcome and dispersed that the insurrection is ended, because there may be such a combination of individuals in those States, there may be such a disposition to disorder, violence, and crime, to disobedience of law and disregard of public

authority, as to make it just as necessary now for the future peace of the country to hold that the insurrection continues as it was necessary to hold that it existed when Lee was in the field at the head of his army.

I submit, sir, that I have proved that, in the judgment of the legislative department of the country, the rebel States, in consequence of the rebellion, have forfeited their constitutional rights. Now, sir, what is the opinion of the judicial department upon that subject. In the case of the Brilliante, to which I have before referred, the Supreme Court say:

"When the party in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; have cast off their allegiance; have organized armies; have commenced hostilities against their former sovereign, the world acknowledges them as belligerents."

I call attention to this—

"The world acknowledges them as belligerents and the contest a war."—2 *Black*, pages 666-667.

Again, the court say—

"All persons residing within this territory whose property may be used to increase the revenues of the hostile power are, in this contest, liable to be treated as enemies, though not foreigners. They have cast off their allegiance and made war on their Government, and are none the less enemies because they are traitors."—*Ibid.*, page 674.

Now, sir, I ask the honorable Senator from Pennsylvania or the honorable Senator from Indiana what constitutional rights had the people of these States when they were held to be public enemies of the nation; when it was solemnly adjudicated by the Supreme Court that any person within the insurrectionary region, no matter what might be his personal views or inclinations, was liable to be treated as an enemy of the Government, that his property was subject to seizure and confiscation without trial by judge or jury? Talk about the constitutional rights of the enemies of the country!

More than this, the Supreme Court decided that the parties to the war, notwithstanding it is usually called a civil war, were belligerents. I think that many men fall into a mistake in considering this question, because they only look at these people as traitors and do not regard them as belligerents. The United States of America in this war occupied one ground, maintained one side of the struggle. The so-called confederate States of America occupied the other ground and maintained the struggle on the other side, and they were pronounced by the Supreme Court as belligerent Powers and were so recognized in Europe. If they were belligerent Powers, what were the rights of the belligerent party which triumphed in the struggle? Is there any doubt upon any law applicable to the case, that when one belligerent party conquers the other, there is no limitation whatever upon the power of the conqueror but those laws of humanity and moderation that govern all civilized and Christian nations?

Take the decision of the Supreme Court as authority, and it is demonstrably clear that the United States, when they succeeded in this struggle, had an unlimited right to dictate the terms upon which peace should be made, without any restrictions by the Constitution or law of any country. No one will question that the executive department of the Government was in harmony with the legislative and judiciary upon this question. That was indicated in the numerous proclamations of the President, and particularly in his proclamation of emancipation. Slavery was protected in the southern States before the rebellion by the Constitution, but in consequence of the revolt of the slave-holding States against the Government their constitutional right to slaves surceased and the sovereign right of the nation was interposed to take and destroy the property of its enemies as the exigencies of its threatened and imperiled existence might demand. When Lee surrendered to Grant did not both parties recognize the absolute right of the commander of the victorious army to dictate terms of peace? Did Lee pretend that he or his men or the rebel States had any constitutional rights to be considered in that adjustment? When the arrangement was made between Sherman and Johnston, in which there was some sort of recognition of right in the rebel States, that arrangement was promptly repudiated by the Administration, and it was held that no rights of rebel States or rebels were to be recognized at all; but they were to be regarded as wholly dependent on the clemency and kindness of the victors.

I have, therefore, Mr. President, I think, proved beyond all controversy that in the judgment of the executive, legislative, and judicial departments of the Government the effect of the rebellion was to deprive these States of their constitutitional rights. I care not what phraseology you may employ. One form of expression seems to suit one class of persons, another form another class; but the solid, immovable fact is, as was once agreed to by all Departments of the Government and all loyal people, that the rebellion had deprived the States rebelling of their constitutional rights.

When the winter was over and the spring time of 1865 came, with its birds and its flowers, there was a change in our national affairs. God in his goodness gave us the victory, and our brave soldiers returned to receive the congratulations of a grateful country, and the rebel soldiery dispersed to their unhappy homes; and the noisy, smoky field of battle gave place to the silent bivouac of the dead. The war had accomplished its purpose. The rebel State governments had been overthrown and re-

moved, and now the duty of the civil authorities arose. Now it became the duty of the civil authorities to replace the rebel governments by others that were loyal to the Constitution and the Union. When organized hostilities ceased everywhere in the insurrectionary districts there was a political void. Like the world in the beginning, that whole country was without form and void. This may be proved by a very brief argument.

Rebel State governments supplanted those loyal governments that existed before the breaking out of the war, and then these rebel State governments in turn were overthrown and destroyed by the armies of the United States, and so there were no governments in that region. If two and two make four that argument proves that Andrew Johnson was correct, and Congress, too, in concurring with him, that the rebellion destroyed all civil government in the rebel States. All the Departments of the Government, so far as I know, acquiesced in that position. President Johnson in his proclamation appointing a provisional Governor for the State of North Carolina uses this language:

"And whereas the rebellion which has been waged by a portion of the people of the United States against the properly-constituted authorities of the Government thereof, in the most violent and revolting form, but whose organized and revolting forces have now been almost entirely overcome, has in its revolutionary progress deprived the people of the State of North Carolina of all civil government."

That was the position assumed by President Johnson, and Congress occupied at that time and now occupies the same position. To stop all controversy upon this point, it may be proper to say that the honorable Senator from Indiana [Mr. HENDRICKS] in his speech the other day indorsed the proceedings of President Johnson from the beginning to the end, and therefore indorsed the position which he then took, that the rebellion had deprived these States of all civil government; and the Democratic conventions which have lately been held in the States of Indiana, Ohio, and Connecticut all concur in indorsing and eulogizing the policy of Andrew Johnson. That policy could not exist unless it proceeded upon the ground that the rebellion had destroyed all civil government in the South, and the Democratic party, if they have made any record as to any question, have made a record that irrevocably commits them to that position.

I assume then, Mr. President, to start with the argument, that all departments of the Government and all political parties in this nation are committed to the doctrine that the rebellion destroyed all civil government in the rebel States. I inquire now whose prerogative was it under the Constitution to inaugurate civil government in these States? President Johnson and his supporters claim that it was the exclusive right of the Executive of the United States to organize civil governments in those insurrectionary States, and that Congress had no right to say or do anything in reference to the matter. Congress, on the other hand, claims that by the Constitution the power to organize governments is in its nature a legislative act, and therefore belongs to Congress. This is the issue between the executive and the legislative departments of the nation; and out of that issue has grown this great controversy, with all its unhappy consequences. Let us look for one moment to the position which President Johnson and his supporters occupy as to the constitutional rights of the rebel States.

President Johnson appointed a provisional governor for the State of North Carolina. Could President Johnson appoint a provisional governor for the State of New Jersey? Will anybody pretend that he could? If not, why not? Clearly because the State of New Jersey has the constitutional right to regulate its own affairs, while that right as to North Carolina had been lost by the rebellion. President Johnson orders a convention to make a constitution or to alter and amend the existing constitution in the State of North Carolina. Could he order a convention in the State of New Jersey? Will anybody pretend that he has any such power? If not, why not? Because New Jersey has her constitutional rights and North Carolina has none, President Johnson defined the eligibility of members to the convention and regulated the elective franchise in the State of North Carolina. Can President Johnson issue a proclamation and say who shall be eligible to a convention in the State of New Jersey, or who shall exercise the elective franchise in that State? Nobody will pretend that he has any such power. The difference certainly grows out of something; and it cannot grow out of any other fact than that the constitutional rights of New Jersey in this Union have remained unimpaired, and the constitutional rights of North Carolina have been paralyzed or destroyed by the rebellion.

President Johnson dictated what they should put into their constitutions, and he declared that he would not consent to recognize the rebel States unless they made constitutions to suit his wishes. Recognize the State! What did Johnson mean when he said he would not recognize the State? Did he mean to say that the States were out of the Union, and that he would not recognize them as in the Union until they made a constitution in conformity with his dictation? Did he mean to say that he would not recognize their right to representation in Congress until they made such a constitution as should suit him? What did he mean? Those who support Johnson in his policy denounce Congress because it refuses to recognize these States unless they adopt the terms and conditions prescribed by law, and at the same time

they approve of Johnson's policy in which he declared that he would not recognize these States unless they acted in accordance with his individual wishes!

This exercise of extraordinary power, legislative, judicial, and executive, by the President, has been affirmed and reaffirmed by Democratic presses, speakers, and conventions, and the Ajax and Achilles of the Democratic party in the Senate advocate and support his policy. Let it be remembered, sir, and recorded that the Democratic party has affirmed the right of Andrew Johnson to set up and put in operation State governments in ten States of this Union, independent of the power or control of Congress, and they must proceed upon the ground that these States had no constitutional right to make their own governments, unless they claim that Johnson in every one of the thirty-seven States can make a constitution and establish a government irrespective of the will of Congress or of the wishes of the people.

President Johnson in his proclamations disfranchised hundreds of thousands of men, and the honorable Senators acquiesce in and approve of that policy; but Congress, on the other hand, enfranchises hundreds of thousands of men, and it is claimed that it is usurpation for the legislative department of the country to extend the elective franchise while it is perfectly proper for the executive department to disfranchise by one fiat hundreds of thousands of American citizens.

Sir, there never was a proposition more unfounded in law than that the power which Johnson has exercised as to the rebel States constitutionally belongs to the executive department of the Government. The Executive was created to execute and not to make law. Johnson has no power to make or unmake a statute; and the sheriff of a court might as well undertake to reverse the judgment of the tribunal of which he is a ministerial officer as for Andrew Johnson, as President, to undertake to exercise this extraordinary and purely legislative authority.

Let us look at this subject in the light of other provisions of the Constitution. Take, for instance, the admission of Territories into the Union as new States. When the people of a Territory form a constitution, that constitution is submitted to Congress, and Congress approves it and admits the State, or Congress rejects the constitution and the State is not made. Congress has the exclusive jurisdiction over that question, and the President has nothing more to do with it than a private citizen.

I beg here to notice the argument that was made by the Senator from Indiana, and I think the same course of reasoning was pursued by the Senator from Pennsylvania, that Congress has no power over a State constitution, and that the jurisdiction of the people of the State is absolute and exclusive on that question even in the admission of Territories as States. For what purpose is the constitution of a State seeking admission submitted to Congress if not for its approval or rejection? Is Congress to exercise no judgment over the provisions of a constitution submitted to it to determine whether its features are or are not objectionable, whether its provisions are or are not acceptable? Suppose the people of the Territory of Utah should form a State constitution making polygamy in that State lawful and constitutional, and should submit that constitution to the Senate, would the Senator from Pennsylvania vote to admit Utah with polygamy established in her constitution, upon the principle that the people of a Territory have an absolute right to form their own constitution?

I cannot imagine for what purpose new States submit their constitutions to Congress, unless it is for the purpose of examination; and if a provision is found to be objectionable, has not Congress a right to say that it will not approve that provision, but that when the people of the Territory remove it the constitution will be approved?

If you look at the other provisions of the Constitution it will appear that whatever control there is in the Federal Government over a State is vested in Congress. Take, if you please, section ten of article one. According to that section any State may lay any imposts or duties on imports or exports with the consent and not without the consent of Congress. Any State may lay any duty of tonnage, keep troops or ships of war in time of peace, with but not without the consent of Congress. Any State may enter into an agreement or compact with another State or with a foreign Power, or engage in war, with but not without the consent of Congress.

I do not claim that these provisions show that Congress has the constitutional right to legislate for these rebel States; but I argue from all the analogies of the Constitution that whatever control the Federal Government has over any State or Territory is vested in Congress.

To make this position wholly impregnable, I beg leave to refer to the decision of the Supreme Court in the celebrated case of Luther *vs.* Borden, (7 Howard, page 1.) I wish to ask the honorable Senator from Indiana what impression he intended to convey to the country about that decision when he used this language:

"Mr. President, frequent reference has been made to the case of Luther *vs.* Borden, in 7 Howard, an important case decided by the Supreme Court of the United States, and my colleague felt himself justified, instead of stating what was the force and meaning of the decision, in reading the dictum of one of the judges."

One would suppose that some judge in deliv-

ering an individual or dissenting opinion had said what was cited by the Senator from Indiana, [Mr. MORTON,] when, in point of fact, what he read was the deliberate judgment of eight judges, delivered by Chief Justice Taney, Justice Woodbury alone dissenting, and it was upon the identical question involved in that case as to the right of the Federal Government to interfere in the affairs of a State.

Mr. CONKLING. Will the Senator allow me just here to remark that Mr. Justice Woodbury in dissenting said expressly that the only point upon which he dissented was a question with regard to martial law, which did not touch the point the Senator is discussing at all, so that the decision in that respect was the unanimous judgment of the court.

Mr. WILLIAMS. I am much obliged to the Senator; I believe that is entirely a correct view of the dissenting opinion. Now, I wish to read what the Supreme Court said upon this question. It would be regarded as a little disrespectful for Republicans or Radicals to assail a decision of the Supreme Court in that sort of way, to characterize the deliberate opinion of the court as a dictum of one of the judges. That is as bad as anything that was ever said by the Republicans about the Dred Scott decision. Chief Justice Taney—and he ought to be good authority with Senators on the other side upon constitutional questions—said, in giving the opinion of the court in Luther *vs.* Borden:

"The fourth section of the fourth article of the Constitution of the United States provides that the United States shall guaranty to every State in the Union a republican form of government, and shall protect each of them against invasion; and on the application of the Legislature or of the executive (when the Legislature cannot be convened) against domestic violence.

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guaranty to each State a republican government, Congress must necessarily decide which government is established in the State before it can determine whether it is republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the Government, and could not be questioned in a judicial tribunal."

In that decision the jurisdiction of Congress over this question as to whether a State has or has not a republican form of government is recognized; and it is also decided that when Congress pronounces its judgment upon that question Presidents and courts, all tribunals and every private citizen in the land, are concluded.

I think, therefore, Mr. President, that the arguments which I have adduced and the authorities which I have cited show, or ought to show, to every reasonable man that the exclusive control of this reconstruction question is in the hands of Congress. If this be so, the next inquiry is, how does Congress derive the power under the Constitution to enact the laws now in question? I have already indicated the ground which I occupy, that the legal status of these States once defined by Congress continues until Congress in its judgment shall otherwise declare; and I maintain that Congress has to-day as much constitutional right to enact a reconstruction law as it had to enact a law to provide for raising and supplying armies in order to put down the rebellion. The power may be derived, too, under the guarantee clause of the Constitution, and I desire to invite the attention of the Senate and particularly of the Senator from Indiana [Mr. HENDRICKS] to what I have to say about his argument upon that question. Among the first things uttered by that Senator in his argument was this:

"First, I deny that at the close of the war there were no State governments in the southern States."

That declaration does not consist very well with his vote that these States had no right of representation in the Electoral College. If they had State governments, why had they not a right to choose electors of President and Vice President and have them vote in the Electoral College? He further says:

"I maintain that during all the years of the rebellion every single act of a southern State intended to promote the cause of the rebellion was void; that it had no effect to destroy State institutions."

* * * * * * *

"Practically the relations were disturbed; practically the State was not in harmony with the Federal Government; but its existence as a State, its organization as a State, its constitution, which was the bond of its organization, continued all the way through the war; and when peace came it found the State with its constitution and laws unrepealed and in full force, holding that State to the Federal Union, except all laws enacted in aid of the rebellion."

Now, the Senator from Indiana affirms that the State organization of each of these rebel States was perfect throughout the war, that each of them had a State government, that its constitution and laws were unaffected by the rebellion, and yet he deliberately voted to deny to those States, perfect States in the Union, any right of representation in the Electoral College. It was necessary for the Senator from Indiana to take that position in order to assail the reconstruction acts of Congress. All the effect which he intends to give to that part of his argument is that no case has arisen in the rebel States where it is necessary

to execute the guarantee clause of the Constitution, and therefore the legislation of Congress is unnecessary and unconstitutional. Congress, he says in effect, is claiming to guaranty by the reconstruction acts State governments to States that had perfect State organizations, constitutions, and laws at the time they were enacted. When it becomes necessary for the honorable Senator from Indiana to advocate the policy of Johnson, as it is the duty of every good Democrat to do, he changes his base of operations, and then it is essential, in order to justify the policy of the President, to assume that a case has arisen in the rebel States where it is necessary to execute the guarantee clause of the Constitution, and that the President of the United States is the only department of the Government that can do it. He says further:

"Then, Mr. President, I assume that the power and duty of guarantying to the States republican forms of government is with and rests upon the Executive in any and every case where the Executive is called upon to deal with the question, and that when the war closed the President was called upon to deal with the question, for it became his duty to see that the laws of the United States were executed in the southern States, and that they were in proper practical relations with the United States."

Here he affirms that it was the duty of the President at the close of the war to execute this guarantee, because the question was presented to him, namely, that these States had not republican forms of government as required by the Constitution.

He says, again:

"Two years ago—and I then had the assent to my proposition by the uod of the distinguished Senator from Ohio, [Mr. WADE]—I expressed as my opinion, which I hold yet, that by virtue of this constitutional obligation to guaranty a republican form of government, it is competent for the United States through the proper department to do what will enable the people to exercise their sovereignty of amending their constitution, and bringing it into practical relations to the United States. The President proclaimed that when the people themselves have thus amended their constitution and placed it in harmony with the Government of the United States it will be recognized by the executive department.

"His purpose, then, was to aid the people, to give them the support of an organization, just as Congress, without any constitutional provision on the subject, gives the people of a Territory an enabling act, not because Congress has the power as an original thing to establish a territorial government, but because Congress has the power to admit new States into the Union. Congress may do that which will enable the people to form State governments. So the Executive in this case, in my judgment, very properly did that which would enable the people to bring their State into practical relations with the Government."

Now, when it becomes necessary for the Senator to support the policy of the Administration he affirms that the circumstances of the rebel States demand the execution of this guarantee at the hands of the Executive, and he assimilates the proclamation of the President to an enabling act of Congress. He says that as Congress enacts enabling acts for the Territories so the President by proclamation may proceed to enable these States to resume their practical relations to the Union. The Senator has affirmed more than once that the object of the President in providing these conventions was to enable the people to alter and amend their constitutions; but the President himself said in his proclamations that the primary object of the proclamations was to enable those people "to form State governments." I give his exact language:

"Now, therefore, in obedience to the high and solemn duties imposed upon me by the Constitution of the United States, and for the purpose of enabling the loyal people of said State to organize a State government," &c.

The Senator from Indiana upon this subject, it seemed to me, made some very fine distinctions. He justified Johnson because his proclamation, as he says, only empowered the conventions to alter and amend the old constitutions, and he condemned Congress because the laws of Congress authorized the people to form new constitutions. Does not the Senator know that the power in a convention to alter and amend a constitution is equivalent to a power to make a new constitution? Every provision and feature of the old constitution may be abolished and new ones put in their places and so the change may be completely made; and yet according to the Senator's argument it is constitutional and proper for the President to provide for such a convention by proclamation, but it is usurpation and tyranny for Congress to provide by law for a convention to form a State constitution.

I maintain that under the guarantee clause of the Constitution these reconstruction acts can be fully vindicated. Congress is required to execute a certain power described in the Constitution; and the Senator will not deny that Congress may employ all the means necessary and proper to execute that particular power. May not Congress use the military arm of the United States to execute that power if in its judgment such means are necessary? Cannot Congress enforce any law which it may enact by the use of the military power of the country? Suppose a combination of persons should resist the collection of the customs at New York, could not the military power of the United States be employed to enforce the laws? Nobody, it seems to me, can controvert that position; and so, for the purpose of

executing this power, Congress may employ the military force of the United States. That is one of the objects for which this war was prosecuted, as I think I can very readily show. I refer to the twelfth volume of the United States Statutes-at-Large, page 731, where will be found an act entitled "An act for enrolling and calling out the national forces, and for other purposes." The preamble of that act is as follows:

"Whereas there now exists in the United States an insurrection and rebellion against the authority thereof, and it is, under the Constitution of the United States, the duty of the Government to suppress insurrection and rebellion, to guaranty to each State a republican form of government, and to preserve the public tranquillity; and whereas for these high purposes a military force is indispensable, to raise and support which all persons ought willingly to contribute; and whereas no service can be more praiseworthy and honorable than that which is rendered for the maintenance of the Constitution and Union and the consequent preservation of free government."

In March, 1863, in the act providing for enrolling and calling out the national forces of the United States, it was declared that one purpose of raising a military force was to guaranty to each one of these States a republican form of government. Armies were to be raised not only to suppress the rebellion but to follow up that act by guarantying to each of the rebel States a republican form of government; and so at that early day Congress made this declaration and committed itself to this policy, and to-day Congress, in using the military power of the country to execute that provision of the Constitution, is only following out the plan which it adopted at an early day in the war.

I ought, perhaps, to proceed and show what President Johnson has done to indicate that these reconstruction acts of Congress are only organizing by law a military power that was exercised in these States up to the day these laws were enacted, at the will and pleasure of President Johnson. Has anybody forgotten that when under the laws of the Johnson governments Monroe was elected mayor of New Orleans the President arbitrarily ejected him from office? Has anybody forgotten that when Semmes was elected judge in Mobile Andrew Johnson summarily and arbitrarily ejected him from office? Has anybody forgotten the military orders of the executive department that were issued and put in force in the rebel States long after it was pretended that the States were fully organized under the Johnson governments? The President, as Commander-in-Chief, is responsible for these orders, and they show that the pretended civil governments which Johnson had set up in the rebel States were subordinate to and controlled by the military decrees of the President. I will read them:

[General Order, No. 3.]

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON *January* 12, 1866.

To protect persons against improper civil suits and penalties in late rebellious States:

Military division and department commanders whose commands embrace or are composed of any of the late rebellious States, and who have not already done so, will at once issue and enforce orders protecting from prosecution or suits in the State or municipal courts of such State all officers and soldiers of the armies of the United States and all persons thereto attached, or in any wise thereto belonging, subject to military authority, charged with offenses for acts done in their military capacity or pursuant to orders from proper military authority; and to protect from suit or prosecution all loyal citizens or persons charged with offenses done against the rebel forces, directly or indirectly, during the existence of the rebellion; and all persons, their agents and employés, charged with the occupancy of abandoned lands or plantations or the possession or custody of any kind of property whatever who occupied, used, possessed, or controlled the same pursuant to the order of the President or any of the civil or military departments of the Government, and to protect them from any penalties or damages that may have been or may be pronounced or adjudged in said courts in any of such cases; and also protecting colored persons from prosecutions in any of said States charged with offenses for which white persons are not prosecuted or punished in the same manner and degree.

By command of Lieutenant General Grant:

E. D. TOWNSEND,
Assistant Adjutant General.

As late as July, 1866, this order was issued:

[General Orders, No. 44.]

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *July* 16, 1866.

Department, district, and post commanders in the States lately in rebellion are hereby directed to arrest all persons who have been or may hereafter be charged with the commission of crimes and offenses against officers, agents, citizens, and inhabitants of the United States, irrespective of color, in cases where the civil authorities have failed, neglected, or are unable to arrest and bring such parties to trial, and to detain them in military confinement until such time as a proper judicial tribunal may be ready and willing to try them.

A strict and prompt enforcement of this order is required.

By command of Lieutenant General Grant:

E. D. TOWNSEND,
Assistant Adjutant General.

But, sir, besides all this, President Johnson expressly revoked the suspension of the writ of

habeas corpus in the loyal States of the Union; but he has never made any proclamation expressly revoking the suspension of the writ of *habeas corpus* in the rebellious States. True, he has issued proclamations of peace, which he has flourished before the world; but while he esteemed it necessary expressly to revoke the suspension of the writ of *habeas corpus* in the loyal States, he has been careful to issue no such proclamation as to the rebel States. When he issued his proclamation of peace a letter was addressed to him asking him if that restored the writ of *habeas corpus* in the southern States, and the answer was that it did not have that effect.

Much has been said as to the meaning of the guarantee clause of the Constitution. I shall not undertake upon this occasion elaborately to define the meaning of that clause. Common men know in common parlance what it means to guaranty the payment of a debt. It means that if the debtor does not pay, the guarantor will, and this clause of the Constitution simply means that if the people of a State do not establish and maintain a republican form of government, the United States will do it. There are two ideas prominent in this clause. One is that the State government must be in subordination to the Constitution of the United States, and the other that it must be such as to give the people of the State substantial representation in and control over the State government. Can a State government be republican in form according to the meaning of the Constitution and not be subordinate to and in harmony with the Constitution? No matter how perfect the forms of government in the rebel States, if they were in open hostility to the Constitution and laws of the country they were not republican in form in the sense of the Constitution, and it therefore became the duty of the United States to execute the guarantee and make those governments what the framers of the Constitution intended they should be—integral and inseparable parts of the Federal Union.

These State governments, too, must be such as entitle the people to full and fair representation in them. I know there is no absolute standard by which to determine what is or is not a republican form of government. All we can do is to consult history, particularly the history of our own Government, and then, according to our best judgment, determine whether the government of a State is or is not republican in form. I will not undertake to say that a State government which tolerates slavery is not republican in form, for such governments were recognized by the fathers of the Republic; but I undertake to say that history does not produce a case where one half, or a majority, or even one third of the free male citizens of a State have been excluded from all political power under a republican form of government.

The question in the rebel States is not as to the rights of slaves, but it is as to the rights of free male citizens of the United States. Tell me, if you can, of a single example in history where a great proportion of the free male citizens of a State have been excluded from all political power under a republican form of government. Judging from history we should be justified in interfering with the governments in the rebel States, because in some of them one half of the male citizens and in the others more than a third are excluded from the right of suffrage and from any representation in the government. I cannot see how any government founded upon that basis is consistent with just ideas of a republican form of government.

Congress must decide this question. I know it may be said that Congress may abuse the power, but the same argument applies to any power conferred upon Congress. Congress has power to declare war. That power may be abused; Congress may plunge the nation into a wanton and fruitless war and imperil the life and property of every man, woman, and child in the nation; but is that any argument to prove that the power does not exist? The United States are to guaranty to each State a republican form of government, and Congress has the unlimited power to say what is or what is not a republican form of government under its responsibility to the people. The Supreme Court of the United States has affirmed that doctrine. Take what the court says in reference to a possible government in Rhode Island. In Luther *vs.* Borden Chief Justice Taney says:

"Unquestionably a military government established as the permanent government of the State would not be a republican government, and it would be the duty of Congress to overthrow it."

The right of Congress to enter a State and overthrow a government which the people have adopted is clearly recognized in this decision. In the twelfth volume of Wheaton's Reports, in the case of Marton *vs.* Mott, the Supreme Court, in discussing a kindred question, said:

"Whenever a statute gives discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts."

Congress is required by the Constitution to determine the fact—it may be a mixed question of law and of fact—whether the State of Louisiana, for example, has or has not a republican form of government, and Congress being invested with that power its judgment is conclusive. Congress is made the sole and exclusive judge of the fact. It is not necessary to assume that these States are out of the Union in order to justify the exercise of this

power on the part of Congress. Have Senators noticed the phraseology of the guarantee clause of the Constitution?

"The United States shall guaranty to every State in this Union a republican form of government."

Does not the Constitution clearly recognize the right of Congress to control in this respect the government of a State in the Union? Nothing is said about the power of Congress as to a State out of the Union. The great argument of the Democratic party on this question is that the Republicans assume, by the exercise of these powers, that these States are out of the Union. I never heard any man who belonged to that party say that these States were out of the Union, notwithstanding those opposed to us continually reiterate that accusation. I say—and so far as I know those with whom I act all say—that those States are in the Union, and that the United States has a right to exercise this power upon them as States in the Union.

Mr. President, I did propose to say more, but the time allotted to me by the vote of the Senate is about exhausted. ["Go on."] I shall not undertake to argue the necessity of this legislation or its expediency at this time. If it be necessary to organize governments that will give equal protection to the poor and weak as to the rich and the strong—if it be necessary to organize and maintain governments that will countenance obedience to law and loyalty to the Government and frown upon disloyalty, treason, and crime—then I say there is a necessity for this legislation. Sir, if it be expedient to do right and be just, then it is expedient to enact these laws.

I will simply say, in conclusion, that in my judgment it is not within the constitutional power of the executive or judicial departments of the Government to determine when an insurrection does or does not exist contrary to the decision of Congress; that it is the exclusive right of the legislative department of the Government to decide upon the form of a State government and its relations to the Federal Union, and that under all the circumstances the course adopted by Congress for the rehabilitation of the rebel States is the only efficient and practicable one to restore general tranquillity, to maintain justice, to protect the Constitution, and perpetuate the Union.