

AMERICAN CITIZEN.

"Let us have Faith that Right makes Might; and in that Faith let us, to the end, dare to do our duty as we understand it"—A. LINCOLN.

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RECONSTRUCTION.

Final Report of the Joint Congressional Committee—President Johnson's "Policy" reviewed—The late Rebel States Disorganized—Communities—Reconstruction belongs exclusively to Congress—Guarantee of Security for the Future Necessary—The Rebel States not entitled to Representation in Congress.

The following is the report of the Committee on Reconstruction, submitted in the House and Senate of the 8th inst.

The joint committee of the two houses of Congress, appointed under the concurrent resolution of December 13, 1865, with direction "to inquire into the condition of the States which formed the so-called Confederate States of America, and report whether they or any of them are entitled to be represented in either house of Congress, with leave to report by bill or otherwise," ask leave to report:

That they have attended to the duty assigned them assiduously as other duties would permit, and now submit to Congress as the result of their deliberations a resolution, and two bills, of which they recommend the adoption.

Before proceeding to set forth in detail their reasons for the conclusion to which, after great deliberation, your committee have arrived, they beg leave to advert, briefly, to the course of proceedings they found it necessary to adopt, and to explain the reasons therefor.

The resolution under which your committee was appointed directed them to inquire into the condition of the Confederate States, and report whether they were entitled to representation in Congress. It is obvious that such an investigation, covering so large an extent of territory, and involving so many important considerations, must necessarily require no trifling labor, and consume a very considerable amount of time. It must embrace the condition in which those States were left at the close of the war; the measures which have been taken toward the organization of civil government, and the disposition of the people toward the United States; in a word, their fitness to take an active part in the administration of national affairs.

As to the condition at the close of the rebellion, the evidence is open to all, and admits of no dispute. They were in a state of utter exhaustion. Having protracted their struggle against Federal authority until all hope of successful resistance had ceased, and laid down their arms only because there was no longer any power to use them, the people of those States were left bankrupt in their public finance, and shorn of the private wealth which had before given them power and influence. They were also necessarily in a state of complete anarchy, without governments, except by the permission of those who had been successful in the war. The President of the United States, in the proclamations under which he appointed provisional governors, and in his various communications to them, has, in exact terms, recognized the fact that the people of those States were, when the rebellion was crushed, "deprived of all civil government, and must proceed to organize anew." In this conversation with Mr. Stearns, of Massachusetts, certified by himself, President Johnson said: "The State institutions are prostrated, laid out on the ground, and they must be taken up and adapted to the progress of events."

Finding the Southern States in this condition, and Congress having failed to provide for the contingency, his duty was obvious. As President of the United States he had no power, except to execute the laws of the land as Chief Magistrate. These laws gave him no authority over the subject of reorganization, but by the Constitution he was Commander-in-Chief of the army and the navy of the United States. These Confederates embraced a portion of the people of the Union who had been in a state of revolt, but had been reduced to obedience by force of arms. They were in an abnormal condition, without civil government, without commercial connections, without national or international relations, and subject only to martial law. By withdrawing their representation in Congress, by renouncing the privilege of representation, by organizing a separate government, and by levying war against the United States, they destroyed their State constitution in respect to the vital principle which connected their respective States with the Union, and severed their federal relations; and nothing of those constitutions was left of which the United States were bound to take notice. For four years they had a *de facto* government, but it was usurped and illegal. They chose the tribunal of arms wherein to decide whether or not it should be legalized, and they were defeated. At the

close of the rebellion, therefore, the people of the rebellious States were found, as the President expresses it, deprived of all civil government.

Under this state of affairs it was plainly the duty of the President to enforce existing national laws, and to establish, as far as he could, such a system of government as might be provided for by existing national statutes. As Commander-in-Chief of a victorious army, it was his duty under the law of nations and the army regulations to restore order, to preserve property, and to protect the people against violence from any quarter, until provision should be made by law for their government. He might, as President, assemble Congress and submit the whole matter to the law-making power, or he might continue military supervision and control until Congress should assemble on its regular appointed day. Selecting the latter alternative, he proceeded by virtue of his power as Commander-in-Chief to appoint provisional governors over the revolted States. These were regularly commissioned, and their compensation was paid, as the Secretary of War stated "from the appropriation for army contingencies, because the duties performed by the parties were regarded of a temporary character, auxiliary to the withdrawal of military force, the disbandment of armies, and the reduction of military expenditure, by provisional organizations for the protection of civil rights, the preservation of peace, and to take the place of armed force in the respective States."

It cannot, we think, be contended that these governors possessed or could exercise any but military authority. They had no power to organize civil governments, nor to exercise any authority, except that which inhered in their own persons under their commissions. Neither had the President, as Commander-in-Chief, any other than military authority. It was for him to decide how far he would exercise it, how far he would relax it, and on what terms he would withdraw it. He might properly permit the people to assemble, and to initiate local governments, and to execute such local laws as they might choose to frame, not inconsistent with, or in opposition to the laws of the United States. And, if satisfied that they might safely be left to themselves, he might withdraw the military forces altogether, and leave the people of any or all these States to govern themselves without his interference. In the language of the Secretary of State, in his telegram to the provisional governor of Georgia, dated October 28, 1865, he might "recognize the people of any State as having resumed the relations of loyalty to the Union," and act, in his military capacity, on this hypothesis. All this was within his own discretion, as military commander. But it was not for him to decide upon the nature or effect of any system of government which the people of these might see fit to adopt. This power is lodged by the Constitution in the Congress of the United States—that branch of the Government in which is vested the authority to fix the political relations of the States to the Union, whose duty it is to guarantee to each State a republican form of government, and to protect each and all of them against foreign or domestic violence, and against each other. We cannot, therefore, regard the various acts of the President in relation to the formation of local governments in the insurrectionary States, and the conditions imposed by him upon their action, in any other light than as intimations to the people that, as Commander-in-Chief of the army, he would consent to withdraw military rule just in proportion as they should, by their acts, manifest a disposition to preserve order among themselves, establish governments denoting loyalty to the Union, and exhibit a settled determination to return to their allegiance—leaving with the law-making power to fix the terms of their final restoration to all the rights and privileges as States of the Union. That this was the view of his power taken by the President is evident from expressions to that effect in the communications of the Secretary of State to the various provisional governors and the repeated declarations of the President himself. Any other supposition inconsistent with it would impute to the President designs of encroachments upon a co-ordinate branch of the Government, which should not be highly attributed to the Chief Magistrate of the nation.

When Congress assembled in December last, the people of most of the States lately in rebellion had, under the advice of the President, organized local governments, and some of them had acceded to the terms proposed by him. In his annual message, he stated in general terms what had been done, but he did not see

fit to communicate the details for information of Congress. While in this and in a subsequent message the President urged the speedy restoration of these States, and expressed the opinion that their condition was such as to justify their restoration, yet it is quite obvious that Congress must either have acted blindly on that opinion of the President or proceeded to obtain the information requisite for intelligent action on the subject. The impropriety of proceeding wholly on the judgment of any one man, however exalted his station, in a matter involving the welfare of the Republic in all future time, or of adopting any plan, coming from any source, without fully understanding all its bearings and comprehending its full effect, was apparent. The first step, therefore, was to obtain the required information. A call was accordingly made on the President for the information in his possession as to what had been done, in order that Congress might judge for itself as to the grounds of the belief expressed by him in the fitness of States recently in rebellion to participate fully in the conduct of national affairs. This information was not immediately communicated. When the response was finally made, some six weeks after your committee had been in actual session, it was found that the evidence upon which the President seems to have based his suggestions was incomplete and unsatisfactory. Authenticated copies of the constitutions and ordinances adopted by the conventions in three of the States had been submitted; extracts from newspapers furnished scanty information as to the action of one other State, and nothing appears to have been communicated as to the remainder. There was no evidence of the loyalty of those who participated in these conventions, and in one State alone was any proposition made to submit the action of the convention to the final judgment of the people.

Failing to obtain the desired information, and left to grope for light wherever it might be found, your committee did not deem it either advisable or safe to adopt, without further examination, the suggestions of the President, more especially as he had not deemed it expedient to remove the military force, to suspend martial law, or to restore the writ of *habeas corpus*, but still thought it necessary to exercise over the people of the rebellious States his military power and jurisdiction. This conclusion derived greater force from the fact, undisputed, that in all those States, except Tennessee, and perhaps Arkansas, the elections which were held for State officers and members of Congress had resulted almost universally in the defeat of candidates who had been true to the Union, and in the election of notorious and unpardoned rebels, men who could not take the prescribed oath of office, and who made no secret of their hostility to the Government and the people of the United States. Under these circumstances anything like hasty action would have been as dangerous as it was obviously unwise. It appeared to your committee that but one course remained, viz: to investigate carefully and thoroughly the state of feeling and opinion existing among the people of these States; to ascertain how far their pretended loyalty could be relied upon, and thence to infer whether it would be safe to admit them at once to a full participation in the Government they had fought for four years to destroy. It was an equally important inquiry whether their restoration to their former relations with the United States should only be granted upon certain conditions and guarantees, which would effectually secure the nation against a recurrence of evils so disastrous as those which it had escaped at so enormous a sacrifice.

To obtain the necessary information, recourse could only be had to the examination of witnesses whose position had given them the best means of forming an accurate judgment, who could state facts from their own observation, and whose character and standing afforded the best evidence of their truthfulness and impartiality. A work like this, covering so large an extent of territory, and embracing such complicated and extensive inquiries, necessarily required much time and labor. To shorten the time as much as possible, the work was subdivided and placed in the hands of four sub-committees, who have been diligently employed in its accomplishment. The result of their labors has been heretofore submitted, and the country will judge how far they sustain the President's views, and how far they justify the conclusions to which your committee have finally arrived.

A claim for the immediate admission of Senators and Representatives from the so-called Confederate States has been urged, which seems to your committee

not to be founded either in reason or in law, and which cannot be passed without comment. Stated in a few words, it amounts to this: that, inasmuch as the lately insurgent States had no legal right to separate themselves from the Union, they still retain their positions as States, and consequently the people thereof have a right to immediate representation in Congress, without the imposition of any conditions whatever; and further, that until such admission, Congress has no right to tax them for the support of the Government. It has even been contended that, until such admission, all legislation affecting their interests is, if not unconstitutional, at least unjustifiable and oppressive.

It is believed by your committee that all these propositions are not only wholly untenable, but, if admitted, would tend to the destruction of the Government.

It must not be forgotten that the people of these States, without jurisdiction or excuse, rose in insurrection against the United States. They deliberately abolished their State governments, as far as the same connected them politically with the Union as members thereof, and renounced their allegiance to the Federal Government, and proceeded to establish an independent government for themselves. In the prosecution of this enterprise they seized the national forts, arsenals, dock-yards, and other public property within their borders, drove out from among them those who remained true to the Union, and heaped every imaginable insult and injury upon the United States and its citizens. Finally they opened hostilities and levied war against the Government. They continued this war for four years with the most determined and malignant spirit, killing in battle and otherwise, large numbers of loyal people, destroying the property of loyal citizens on the sea and on the land, and entailing on the government an enormous debt incurred to sustain its rightful authority. Whether legally and constitutionally or not they did in fact withdraw from the Union, and made themselves subjects of another government of their own creation; and they only yielded when, after a long, bloody, and wasting war, they were compelled by utter exhaustion to lay down their arms; and this they did not willingly, but declaring that they yielded because they could no longer resist, affording no evidence whatever of repentance for their crime, and expressing no regret except that they had no longer the power to continue the desperate struggle.

It cannot be denied by any one having a tolerable acquaintance with a public law, that the war thus waged was a civil war of the greatest magnitude. The people waging it were necessarily subject to all the rules which by the laws of nations control a contest of that character, and to all the legitimate consequences that, within the limits prescribed by humanity, the conquered rebels were at the mercy of the conquerors. That a government thus outraged has a most perfect right to exact indemnity for the injuries done and security against the recurrence of such outrages in the future would seem too clear for dispute. What the nature of that security should be, what proof should be required as a return to allegiance, what time should elapse before a people thus demoralized should be restored in full to the enjoyment of political rights and privileges, are questions for the law-making power to decide, and that decision must depend on grave considerations of the public safety and the general welfare.

It is, moreover, contended, and with apparent gravity, that from the peculiar nature and character of our Government no such right on the part of the conqueror can exist; and from the moment when rebellion lays down its arms, and actual hostilities cease, all political rights of rebellious communities are at once restored; that because the people of a State of the Union were once an organized community within the Union, they necessarily so remain, and their right to be represented in Congress at any and all times, and to participate in the government of the country under all circumstances, admits of neither question nor dispute. If this is indeed true, then is the government of the United States powerless for its own protection, and flagrant rebellion carried to the extreme of civil war is a pass time which any State may play at, not only certain that it can lose nothing in any event, but may be the gainer by defeat. If rebellion succeeds, it accomplishes its purposes, and destroys the Government. If it fails, the war has been barren of results, and the battle may be fought out in the legislative halls of the country. Treason, defeated in the field,

has only to take possession of Congress and the Cabinet.

Your committee does not deem it either necessary or proper to discuss the question whether the late Confederate States are still States of this Union, or can ever be otherwise. Granting this profligate abstraction, about which so many words have been wasted, it by no means follows that the people of those States may not place themselves in a condition to abrogate the powers and privileges incident to a State of the Union, and deprive themselves of all pretence of right to exercise those powers and enjoy those privileges. A State within the Union has obligations to discharge as a member of the Union. It must submit to Federal laws and uphold Federal authority. It must have a government, republican in form, under and by which it is connected with the General Government, and through which it can discharge its obligations.—It is more than idle, it is mockery, to contend that a people who have thrown off their allegiance, destroyed the local government which bound these States to the Union as members thereof, or defied its authority, refused to execute its laws, and abrogated every provision which gave them political rights within the Union, still retain through all, the perfect and entire right to resume at their own will and pleasure all their privileges within the Union, and especially to participate in its government, and to control the conduct of its affairs. To admit such principles for one moment would be to declare that treason is always master and loyalty a blunder. Such a principle is void by its very nature and essence, because inconsistent with the theory of government and fatal to its existence.

On the contrary, we assert that no portion of the people of this country, whether in State or Territory, have the right while remaining on its soil to withdraw from or neglect the authority of the United States. They must obey its laws as paramount, and acknowledge its jurisdiction. They have no right to secede; and while they can destroy their State governments and place themselves beyond the pale of the Union, so far as the exercise of State privileges is concerned, they cannot escape the obligations imposed upon them by the Constitution and the laws, nor impair the exercise of national authority. The Constitution, it will be observed, does not act upon the States, as such, but upon the people. While, therefore, the people cannot escape its authority, the States may, through the act of their people, cease to exist in an organized form, and thus dissolve their political relations with the United States. That taxation should be only with the consent of the people, through their own representatives, is a cardinal principle of all free governments, but it is not true that taxation and representation must go together under all circumstances and at every moment of time. The people of the District of Columbia and of the Territories are taxed, although not represented in Congress. If it be true that the people of the so-called Confederate States have no right to throw off the authority of the United States, it is equally true that they are bound at all times to share the burdens of the government. They cannot either legally or equitably refuse to bear their just proportion of these burdens by voluntarily abdicating their rights and privileges as States of the Union and refusing to be represented in the councils of the nation, much less rebellion against national authority and levying war. To hold that by so doing they could escape taxation, would be to offer a premium for insurrection. To reward instead of punishing treason. To hold that as soon as Government is restored to its full authority, it can be allowed no time to secure itself against similar wrongs in the future, or else to omit the ordinary exercise of its constitutional power to compel equal contribution from all toward the expenses of the Government, would be unreasonable in itself and unjust to the nation. It is sufficient to reply that the loss of representation by the people of the insurrectionary States was their own voluntary choice. They might abandon their privileges, but they could not escape their obligations. And surely they had no right to complain, if before resuming their privileges, and while the people of the United States are devising means for the public safety, rendered necessary by the act of those who thus disfranchised themselves, they are compelled to contribute their just proportion of the general burden of taxation incurred by their wickedness and folly.

Equally absurd is the pretense that the legislative authority of the nation must be inoperative, so far as they are concerned, while they, by their own act, have lost the right to take part in it.—

Such a proposition carries its own refutation on its face.

While thus exposing fallacies, which, as your committee believe, are resorted to for the purpose of misleading the people, and distracting their attention from the questions at issue, we freely admit that such a condition of things should be brought, if possible, to a speedy termination. It is most desirable that the union of all the States should become perfect at the earliest moment consistent with the peace and welfare of the nation, that all these States should become fully represented in the national councils, and take their share in the legislation of the country. The possession and exercise of more than its just share of power by any section is injurious, as well to that section as to all others. Its tendency is distracting and demoralizing, and such a state of affairs is only to be tolerated on the ground of a necessary regard to the public safety. As soon as that safety is secured it should terminate.

Your committee came to the consideration of the subject referred to them with the most anxious desire to ascertain what was the condition of the people of the States recently in insurrection, and what, if anything, was necessary to be done before restoring them to the full enjoyment of all their original privileges. It was undeniable that the war into which they had plunged the country had materially changed their relations to the people of the loyal States. Slavery has been abolished by constitutional amendment. A large proportion of the population has become, instead of mere chattels, free men and citizens. Through all the past struggle these had remained true and loyal, and had in large numbers fought on the side of the Union. It was impossible to abandon these without securing them their rights as free men and citizens. The whole civilized world have cried out against such base ingratitude, and the bare idea is offensive to all right-thinking men. Hence it becomes important to inquire what could be done to secure their rights, civil and political.—It was evident to your committee that adequate security would only be found in appropriate constitutional provision. By an original provision of the Constitution, representation is based on the whole number of free persons in each State, and three-fifths of all other persons. When all became free, representation of all necessarily follows. As a consequence the inevitable effect of the rebellion would be to increase the political power of the insurrectionary States, whenever they should be allowed to resume their position as States of the Union. As representation is, by the Constitution, based upon population, your committee did not think advisable to recommend a change of that basis. The exercise of representation necessarily resulting from the abolition of slavery was considered the most important element in the questions arising out of the changed conditions of affairs, and the necessity for some fundamental action in this regard seemed imperative. It appeared to your committee that the rights of these persons, by whom the basis of representation had been thus increased, should be recognized by the General Government. While slaves they were not considered as having any rights, civil or political. It did not seem just or proper that all the political advantages derived from their becoming free should be confined to their former masters, who had fought against the Union, and withheld from themselves, who had always been loyal. Slavery, by building up a ruling and dominant class, had produced a spirit of oligarchy adverse to republican institutions, which finally inaugurated civil war. The tendency of continuing the domination of such a class by leaving it in the exclusive possession of political power would be to encourage the same spirit and lead to a similar result. Doubts were entertained whether Congress had power even under the amended Constitution to prescribe the qualifications of voters in a State, or could act directly on the subject. It was doubtful in the opinion of your committee whether the States would consent to surrender a power they had always exercised, and to which they were attached. As the best, not the only method of surmounting all difficulty, and as eminently just and proper in itself, your committee comes to the conclusion that political power should be possessed in all the States exactly in proportion as the right of suffrage should be granted without distinction to color or race. This, it was thought, would leave the whole question with the people of each State, holding out to all the advantage of increased political power as an inducement to allow all to participate in its exercise. Such a proposition would be in its nature gentle and persuasive, and would lead, it was hoped, to no distant

day, to an equal participation of all, without distinction, in all the rights and privileges of citizenship, thus affording a full and adequate protection to all classes of citizens, since we would have, through the ballot-box, the power of self-protection.

Holding these views, your committee prepared an amendment to the Constitution to carry out this idea, and submitted the same to Congress. Unfortunately as we think, it did not receive the necessary constitutional support in the Senate, and therefore could not be proposed for adoption by the States. The principle involved in that amendment is, however, believed to be sound, and your committee have again proposed it in another form, hoping that it may receive the approbation of Congress.

Your committee have been unable to find in the evidence submitted to Congress by the President under date of March 6, 1866, in compliance with the resolutions of January 5 and February 27, 1866, any satisfactory proof that either of the insurrectionary States, except perhaps the State of Tennessee, has placed itself in a condition to resume its political relations to the Union. The first step toward that end would necessarily be the establishment of a republican form of government by the people. It has been before remarked that the provisional governors appointed by the President in the exercise of his military authority could do nothing by virtue of the power thus conferred toward the establishment of a State government. They were acting under the War Department, and were paid out of its funds. They were simply bridging over the chasm of rebellion and restoration. And yet we find them calling conventions and convening Legislatures. Not only this, but we find the conventions and Legislatures thus convened acting under executive direction as to the provisions required to be embodied in their constitutions and ordinances, as conditions precedent to their reorganization, by the President. The inducement held out by the President for compliance with the conditions imposed was directly in one instance and presumably thereafter in others, the immediate admission of Senators and Representatives to Congress. The characters of the conventions and Legislatures thus assembled was not such as to inspire confidence in the good faith of their members.—Governor Perry, of South Carolina, dissolved the convention assembled in that State before the suggestion had reached Columbia from Washington that the rebel war debt should be repudiated, and gave as a reason that it was a "revolutionary body." There is no evidence of the loyalty or disloyalty of the members of these conventions and Legislatures except the fact of pardons being asked for on their account. Some of these States now claiming representation refused to adopt the conditions imposed. No reliable information is found in these papers as to the constitutional provisions of several of these States, while in not one of them is the slightest evidence to show that these "amended constitutions," as they are called, have ever been submitted to the people for their adoption. In North Carolina alone an ordinance was passed to that effect, but it does not appear to have been acted on. Not one of them, therefore, has been ratified. Whether with President Johnson we adopt the theory that the old constitutions were abrogated and destroyed and the people "deprived of all government," or whether we adopt the alternative doctrine that they were only suspended and were revived by the suppression of the rebellion, the new provision must be considered as equally destitute of validity before adoption by the people. If the conventions were called for the sole purpose of putting the State government into operation, they had no power either to adopt a new constitution or to amend an old one without consent of the people. Nor could either a convention or Legislature change the fundamental law without power previously conferred. In the view of your committee it follows, therefore, that the people of a State when the constitution has been amended might feel themselves justified in repudiating altogether all such unauthorized assumptions of power, and might be expected to do so as pleasure.

So far as the disposition of the people of the insurrectionary States and the probability of their adopting measures conforming to the changed condition of affairs can be inferred from the papers submitted by the President as the basis of his action, the prospects are far from encouraging. It appears quite clear that the anti-slavery amendments, both to the State and Federal Constitutions, were adopted with reluctance by the bodies which did adopt them; and in some States they have been either passed by a