

RECONSTRUCTION.

SPEECH

OF

HON. THOMAS A. HENDRICKS,

OF INDIANA,

DELIVERED

IN THE SENATE OF THE UNITED STATES,

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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—

Mr. HENDRICKS said:

Mr. PRESIDENT: The policy and measures of Congress in relation to the South are maintained in this debate upon two propositions: first, that at the end of the war there were no governments of any kind existing in those States; and second, that in such case Congress has the power under the clause of the Constitution which declares that the "United States shall guaranty to every State in this Union a republican form of government," to reconstruct the State governments, or, in plainer words, to make new State governments. These propositions I deny. First, I deny that at the close of the war there were no State governments in the southern States. What was the exact fact in regard to that matter? No one disputes that at the commencement of the war there were legal State governments in the ten States now excluded from representation. Those governments were organized under constitutions which the people had adopted. I submit to Senators, then, as a question of law, what became of the constitutions of the States in force at the commencement of the war?

A State constitution is the bond of its organization; not only the bond of political organization in the State but to some extent the bond that holds it to the Federal Union. I do not very clearly understand how a State can be in the Union without a State government. I do understand that if a State should cease to have a government (if I may so express what seems to be a paradox) that the people would still be under the law and authority of the Federal Government to the extent of the jurisdiction of that Government. But, sir, a State to be a State in the Union must have a political organization. The people of the Territories owe obedience to the laws of the United States; but the Territories are not organized States, and form no part as States of the Federal Union.

Then, sir, when a State constitution is once

formed and the State under that constitution is admitted into the Union, that State organization is not a separate and independent thing, but in its organization becomes a part of the Federal Union. The constitution of the State, when the State has been thus admitted, becomes a part of the national Union and compact, and I deny that the people of that State have a right to destroy their State government and thus cease to be within the Union. I deny that a convention of the people, that the Legislature of the State, or any assemblage of the people whatever can voluntarily terminate the existence of a State government and thus cut off their connection with the Federal Union. That, in my judgment, can only be accomplished with the consent of all the States. Take the case of Louisiana. The people formed her State government; under that government and constitution she was admitted into the Union. Is that constitution of hers (subject, of course, to her amendment and her modification) not a part of the Federal system when she is thus admitted; and is it possible that that bond of society, that means of political organization can cease to exist so that there is no longer any State of Louisiana?

Sir, if the State government ceased to exist in any State of the South, if the constitution of any State ceased to be a constitution, I want to know by what act it occurred. Was it the ordinance of secession? Every Senator will say "No;" that no ordinance of secession could destroy the State constitution, because the ordinance itself, in law and in the eye of the Constitution, is a nullity. Was it the war? War was not made upon the organization of the States; war was not made upon the constitution and laws of any State; but only for the purpose of holding those States, under their organization, in the Federal Union and the people of the States in obedience to the laws of the United States.

Then, sir, I deny that any act of any State or of the people thereof, intended to separate that State from the Federal Union, had any force or validity whatever. 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. I deny that any act of the State could have the effect to disturb, as a question of law, the relation of the State to the Federal Union.

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.

Mr. President, I regret that my colleague [Mr. MORRIS] is not in his seat, as I shall have occasion to refer to some of his arguments so ably presented in the Senate, and to some views that he has heretofore expressed on this and some other of the questions that I intend to discuss. The opinion that I have just now expressed I think was the opinion two years ago of my colleague, and I will refer to his views as then expressed in a carefully prepared speech. Speaking of the different propositions and opinions held in regard to the relations of the States to the Union at the close of the war my colleague said:

"There is another plan, and that is the theory which regards these States as being out of the Union and holding them as conquered provinces, subject to the jurisdiction of Congress like unorganized territory; saying that Congress has the power to provide for calling conventions in these States just as in the Territory of Dakota, and may prescribe the right of suffrage and determine who shall vote in electing delegates to these conventions, just as in the Territory of Dakota; that it may then determine whether it will accept the constitution offered, as might be determined in the case of any other Territory."

That is the statement of opinion which my colleague then attributed to certain politicians, the very opinion which he so ably maintained in this debate the other day. Now see, Mr. President, how well he answers it himself:

"I will not stop to argue this question at length, but I will say this, that from the beginning of the war up to the present time every message of the President, every proclamation, every State paper, and every act of Congress has proceeded upon the hypothesis that no State could secede from the Union; that once in the Union always in the Union. Mr. Lincoln in every proclamation went on the principle that this was an insurrection, a rebellion against the Constitution and laws of the United States; not a rebellion of States, but a rebellion of the individuals, the people of the several southern States, and every man who went into it was personally and individually responsible for his acts and could not shield himself under the action or authority of his State. He went on the principle that every ordinance of secession, every act of the Legislatures of the rebel States in that direction was a nullity, unconstitutional and void, having no legal force or effect whatever, and that as these States were, according to law, in the Union, their standing could not be affected by the action of the people; that the people of these States were personally responsible for their conduct, just as a man is responsible who violates the statute in regard to the commission of murder, and to be treated as criminals just as the authorities thought proper; that the people of a State can forfeit their rights, but that so far as their action is concerned, in a legal point of view, they had no power to affect the condition of the State in the Union. Every proclamation and every act of Congress have proceeded upon this hypothesis."

Mr. JOHNSON. What is the date of the speech from which the Senator reads?

Mr. HENDRICKS. The 29th day of September, 1865. He then goes on to say that Mr. Buchanan had held the opposite doctrine, and that it was not sound to hold that the rebellion was a rebellion of States, and that the States as such could not be subjugated. Then he goes on to say:

"This was our answer to Mr. Buchanan. Upon this hypothesis we have just put down the rebellion. But it is now proposed by some that we shall practically admit that the southern States did secede; that they did go out of the Union; that the work of secession was perfect, was accomplished; that the States are out of the Union, that a government *de facto* was established, and that we now hold these States as conquered provinces, just as we should hold Canada if we were to invade it and take possession of it."

He closes upon this point by using this emphatic language:

"That is what this doctrine leads to. It leads to a thousand other evils and pernicious things never contemplated in the nature of our Government."

Upon this subject I will read from the debates in this body four years ago and before the close of the war the argument of the Senator who now presides over this body, who is now the second officer of the Government. That debate was before this new idea was thought of, that under the guarantee clause of the Constitution Congress could do in regard to the southern States whatever it chose to do—a doctrine all-absorbing and as dangerous as the most despotic sentiment that governs any country in the world. Pending the debate on what was known as the Winter-Davis bill, Mr. WADE used the following language:

"It has been contended in the House of Representatives, it has been contended upon this floor, that the States may lose their organizations, may lose their rights as States, may lose their corporate capacity by rebellion. I utterly deny that doctrine. I hold that once a State of this Union always a State; that you cannot by wrong and violence displace the rights of anybody or disorganize the State. It would be a most hazardous principle to assert that. No, sir; the framers of your Constitution intended no such thing. And how gentlemen, with this principle of the Constitution staring them in the face, can fancy that States can lose their rights because more or less of the people have gone off into rebellion is marvelous to me."—*Thirty-Eighth Congress, p. 3450.*

Four years ago that Senator, then holding high position in this body, holding high position in the Republican party of the United States, declared that a State could not lose its organization; that once a State always a State, and a State under its organization. Now, however, to maintain the policy that has been adopted, you declare these States to be without governments; that in some way it has resulted that the State governments have ceased to exist.

Now, Mr. President, I wish briefly to consider the clause of the Constitution, which has been referred to so frequently, making it the duty of the Government of the United States to guaranty to every State in this Union a republican form of government. I think this is the right construction: it is an obligation and a duty imposed upon the Government, and I agree with my colleague when he says that the legis-

lative department is not the Government; the executive department is not separately the Government; nor is the judiciary the Government; but the whole taken together, in the proper exercise of the powers conferred by the Constitution, makes the Government of the United States. When a duty is imposed upon the Government of the United States that duty must be discharged by the appropriate department of the Government. If the act which must be done in the discharge of a duty imposed by the Constitution is a judicial act, then the duty is upon the judiciary. If it be a legislative act the duty is upon the legislative department; and if it be an executive act the duty then rests upon the Executive, and must be discharged by that department of the Government.

So, sir, I hold that this clause of the Constitution is addressed to each department of the government. This clause contemplates an existing State government republican in form. It speaks of State governments as in existence. If Senators will observe the language of the section itself, they will find that after the words which I have quoted, imposing on this Government the duty of guarantying to every State a republican form of government, the provision goes on "and shall protect each State against invasion, and on application of the Legislature or of the Executive, (when the Legislature cannot be convened,) against domestic violence." The section speaks of an organized State government, a government with an executive and a legislative department, and imposes upon the Government of the United States duties to be discharged when called upon by the executive or the legislative department of the State; so that the very clause itself contemplates an existing State government republican in form, and simply imposes upon the Government of the United States the duty to protect, maintain, and defend that republican form of government. This word "guarantee" does not confer an original power, either in its legal sense or common meaning. It means to maintain or assure that which is already in existence. And this was the view taken by the fathers who had much to do in the formation of the Constitution. Madison, Hamilton, and Story have all said that this clause contemplates a preëxisting State government republican in form, and that it simply confers upon the General Government the power and imposes the duty of protecting that republican form of government to the State.

In the nature of the provision itself, in the scope, force, and meaning of the language used, and according to contemporaneous construction, it confers upon the General Government no power to make a State or to control the people in that work. It is the high prerogative and business of the people to make State governments. No State governments can come into existence at the will and nod of the Congress of the United States. It is not within your power. The Constitution has not said

you might do it; and the whole practice of our Government is to recognize State governments when they have been made by the people.

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. Instead of that opinion, as read by my colleague, giving the decision of the Supreme Court, that court decided in that case a very different proposition. Instead of deciding that Congress had the power to reorganize a State government the court decided that the recognition of a State government by the Executive was controlling upon the judiciary. That was the celebrated case of Rhode Island. The question before the court was this: had an office under the charter government of Rhode Island the power to execute a mandate issued pursuant to martial law in that State? and it raised the question whether the charter government or what was known as the Dorr government was the legitimate and valid government of Rhode Island. The court in deciding that question did not hold that the charter government was the government of Rhode Island because Congress had recognized it, for Congress had not interposed. The court expressly say that the question did not come before Congress, for the reason that the Dorr government never sent Representatives to the House and Senators to this body, and therefore Congress was not called upon to act under any power which it possessed.

But, sir, the charter government of Rhode Island, through its Executive, did call upon the President of the United States to aid in putting down what was regarded as an insurrection in the State by interposing military power against the Dorr government, and the President of the United States recognized the charter government of Rhode Island in responding to that call. Although troops were not called out, yet the President did respond to that call, and recognized by that response the charter government of Rhode Island; and the Supreme Court of the United States say that that action of the Executive, in connection with the decision of the highest court of Rhode Island, was conclusive upon the judicial department of the United States; yes, sir, conclusive upon the question whether the charter government was the legitimate and valid government of Rhode Island. Then the case of *Luther vs. Borden* establishes this proposition: that the Executive of the United States having recognized a State government, the State having once been in the Union, that recognition is binding upon the judiciary.

This is the extent of the decision—that the ruling of the judiciary of Rhode Island, in connection with the recognition of that State gov-

ernment by the Executive of the United States, was conclusive upon the judiciary of the United States on the question as to whether it was a State government.

Now, Mr. President, I claim that Mr. Lincoln, in most express terms, in most emphatic language, in language at the time somewhat offensive to some members of his own party, held the same doctrine; and I call the attention of Senators to the proclamation to which I refer. In the first place, Mr. Lincoln, on the 8th of December, 1863, issued a proclamation, first, of general amnesty to those who would take a prescribed oath, and then assuring them that if the people of these States would reorganize State governments, loyal in their character, the Executive would respect and, under this clause of the Constitution, would guaranty those governments. Here is his language—not calling upon Congress as the source of power for the action of the people, but appealing directly to the people independently of Congress. He says that if they will reorganize their State governments—

"Such shall be recognized as the true government of the State, and the State shall receive thereunder the benefits of the constitutional provision which declares that 'the United States shall guaranty to every State in this Union a republican form of government,' &c."

In this connection it is proper for me to say that Mr. Lincoln declared in that proclamation that the Executive recognition of the State government would not be binding upon Congress on the single question of the admission of Senators and Representatives, for the reason that to judge of their qualifications was, by the Constitution, left expressly to each branch of Congress.

But, sir, I now come to the most emphatic declaration that Mr. Lincoln has made on this subject, and after which you ought not to have elected him President, if your laws now stand upon the true construction of the Constitution. The Winter Davis bill passed on the last day or two of the first session of the Thirty-Eighth Congress. It provided a legislative mode of reorganization, a legislative policy. Instead of acting under that bill, he threw it back in the face of Congress and said that Congress should not tie his hands to any particular mode of reorganization. Here is his proclamation, dated on the 8th day of July, 1864, after you had renominated him but before you had reelected him. Mr. Lincoln recites, in the first place, the passage of the Winter Davis bill, and in his proclamation he says that the proposed mode was agreeable to him; that he liked the plan well enough; but he goes on to say:

"Now, therefore, I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known, that, while I am (as I was in December last, when by proclamation I propounded a plan for restoration) unprepared by a formal approval of this bill, to be inflexibly committed to any single plan of restoration."

Because he was not willing to be bound to

any plan therefore he would not approve the congressional plan by signing the bill; and he further declared that if the people would act according to the plan proposed by Congress she would recognize their action, not because Congress had proposed it, but because he, as the Executive of the United States, judging for himself under the Constitution, had a right to prescribe the plan of restoration; and so he held that Congress should not do it; that his hands should not be tied by any act of Congress.

After Mr. Lincoln had declared this doctrine in this proclamation he was reelected President of the United States. Now, I ask Senators, when your party elected him President was there any more important question before the country than the question of reconstruction, as you call it; of restoration, as Mr. Lincoln called it? You claimed that the war was about to close, and the great question of the nation, the great question of the age, was how shall these States be brought into harmony and into practical relations with the Government of the United States? He declared that Congress should not fix a plan; that he intended to be left free until the close of the war to adopt whatever plan, according to his judgment, might seem to be right; and after he proclaimed that to you and to this nation you reelected him President and said it was right. Now you say State governments do not exist in the South. He did not use the term "reconstruction;" he said "restoration." He recognized these States as existing with valid forms of government, and the simple question was, in his own language, their restoration in their practical relations to the Government of United States.

But, Mr. President, Congress is concluded upon this question. You say that rebellion, that secession, that war put an end to State governments in the South, and that there is no power to restore State governments except in Congress. That is your doctrine to-day as proclaimed in your legislation. Let us see what you did, and see if you have stood consistently upon that doctrine. In the month of December, 1864, the executive committee of Middle Tennessee issued a call to the people of Tennessee for a State convention "to take steps as wisdom may direct to restore the State of Tennessee to its once honored status in the great national Union." That was the purpose of the call. It is signed by Tillman, Spence, Bryan, Lasselle, and Fowler. These gentlemen did not undertake to call the convention under any authority of law, but as an executive political committee they called the people together, to meet at Nashville, to consider what steps ought to be taken to restore Tennessee to her proper relations to the Government of the United States. Mark you, Mr. President, that was after Tennessee had passed an ordinance of secession; that was after she had sent her regiments into the southern army. After she had done every act that

a State could do, or the people of a State could do, in hostility to the Government of the United States, and before Congress had authorized any restoration, this executive committee called a convention to meet at Nashville. That convention did meet at Nashville in January or February, 1865, and they adopted certain amendments to the constitution of the State of Tennessee. They did not undertake to make a new constitution. They recognized the old constitution as still in force. Tennessee had a constitution which held her to this Union when she went into the war; and when that convention met at Nashville—a political convention, if you please—it resolved itself into a constitutional State convention, and did not undertake to make a new constitution, but recognizing the old constitution as valid and binding, still they added amendments to it. The amendments were abolishing slavery and some other provisions. The amendments, not the Constitution, were submitted to the people of Tennessee, and they voted upon them, not by any congressional authority, but by virtue of the sovereignty that lies in the people of a State to amend their own constitution. They amended the constitution. What has Congress said upon that subject? Did you say to Tennessee, "Your government has gone out like a candle that is burnt out?" Did you say to Tennessee that at the close of the war she had no constitution and nothing to amend? Did you say to the State of Tennessee, "War has destroyed your State government; you are without any organization, and we will not recognize your action; you must get your power and authority from the great source of authority—the Congress of the United States?" No, sir; you did not say that to Tennessee; but then, without reference to party politics, you were casting a vote which your judgments and your consciences approved; and what did you say? Representation in this state of the case was allowed to Tennessee by the joint resolution approved July 24, 1866, not two years ago; and in the preamble you gave the reasons why you admitted Tennessee. Reasons come up to trouble people sometimes, and these reasons come up to meet you in the face of this legislation which undertakes to base the power of Congress upon the proposition that the southern States ceased to have governments at the close of the war. Here is what you say in the preamble. After reciting that this amendment to the constitution of Tennessee abolishing slavery was adopted by a large popular vote, you say:

"And whereas a State government has been organized under said constitution which has ratified the amendment to the Constitution of the United States abolishing slavery, also the amendment proposed by the Thirty-Ninth Congress, and has done other acts proclaiming and denoting loyalty: Therefore."

There, sir, you recognized the old constitution of Tennessee—that constitution which had come through the din and smoke of the war as her political organization. You recognized that as the people in the most informal man-

ner had amended it; and you said that because of that State government they had the right to be represented here. You had not conferred the power. You say now that the people do not possess it, that the Executive does not possess it, and that you must confer the power because there are no governments in the South; and yet you have admitted Senators from Tennessee upon the doctrine that the people, independent of Congress, could amend the constitution, and that, thus amended, the old constitution, the bond of Union which, as a ligament, held the State to the United States, made that State government valid.

Aye, sir, you went further. You say in the preamble that the State government in Tennessee, long before any congressional recognition, did the highest and most important and solemn act that a State government can perform; that it ratified an amendment to the Constitution of the United States. That power which is conferred upon the State Legislatures by the Constitution of the United States you say Tennessee exercised, after she had made flagrant war against the United States, and before Congress had recognized her; that she had exercised this power successfully, and therefore she had a valid, legitimate, legal State government. But you say a State Legislature can ratify a constitutional amendment, but it cannot legally choose Senators to sit here. That will not do, Senators. Everybody knows that will not do.

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. Now, sir, I want to show you what the Senator from Ohio, [Mr. WADE,] then having the charge of that bill, said about the amendment. I was voting against the bill, voting against the Senator. He said:

"I say again, if the gentleman is opposed to this bill in principle, let him not vote for it; but let him

not vote for this miserable dodge, this negation, this amendment that asserts no principle, as a substitute for the bill."

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.

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.

What, then, was the condition of the South? Was order so far restored and did the people yield such obedience to the law and respect to the authority of the Government as justified the President in withdrawing the military power that the civil authority might once more prevail?

In his testimony, given in July last, before the Impeachment Committee of the House, General Grant said:

"I know that immediately after the close of the rebellion there was a very fine feeling manifested in the South, and I thought we ought to take advantage of it as soon as possible."

And he adds:

"But since that time there has been an evident change there."

In his letter to the President of the 18th of December, 1865, many months after the close of the war, many months after Mr. Johnson had adopted his policy, General Grant said:

"Both in traveling and while stopping I saw much and conversed freely with the citizens of those States, as well as with officers of the Army who have been among them. The following are the conclusions come to by me:

"I am satisfied that the mass of thinking men of the South accept the present situation of affairs in good faith. The questions which have heretofore divided the sentiments of the people of the two sections—slavery and State rights, or the right of a State to secede from the Union—they regard as having been settled forever by the highest tribunal—arms—that man can resort to. I was pleased to learn from the leading men whom I met that they not only accepted the decision arrived at as final, but that now the smoke of battle has cleared away and time has been given for reflection, that this decision has been a fortunate one for the whole country, they receiving the like benefits from it with those who opposed them in the field and in the cause."

"My observations lead me to the conclusion that the citizens of the southern States are anxious to return to self-government within the Union as soon as possible; that while reconstructing, they want and require protection from the Government; that they are in earnest in wishing to do what they think is required by the Government, not humiliating to them as citizens, and that if such a course was pointed out they would pursue it in good faith. It is to be regretted that there cannot be a greater commingling at

this time between the citizens of the two sections, and particularly of those entrusted with the law-making power."

That is the description of the condition of the South given by General Grant at the very time the President of the United States was welcoming these States back again in all their practical relations to the United States.

Now, sir, upon this subject I beg leave to read the testimony of my distinguished colleague given at about the same time, at the close of the month of September, in the speech to which I have already referred. My colleague says:

"I desire, in the first place, to remark that to me the general condition of the country is most promising and favorable."

Mark you, this is the testimony of my colleague when Mr. Johnson had almost consummated his policy of restoration.

"I know there are those who take gloomy views of what is called the work of reconstruction, but to me the prospect seems highly encouraging. The war terminated suddenly, and the submission on the part of the people of the southern States has been more complete and sudden than I had expected."

Here, Mr. President, is the testimony of my colleague, who had intimate relations with the South as the Governor of the State of Indiana; testimony given at the time that the people had acquiesced in the result of the war, that their condition of obedience to the law in respect to the Government was more encouraging than he had expected. What a strange contrast does this testimony of my colleague, given at the time, bear to the remarkable speech to which we have just listened from the Senator from New Hampshire, [Mr. CRAGIN.] If it were courteous and in senatorial language I would say that scarcely any of the statements of fact contained in that speech are entitled to the credit and the confidence of the country. Since this world began no community has been so misrepresented, so uniformly and foully belied as the men of the South who have sought, under Mr. Johnson's policy, to bring the States again into practical and harmonious relations with the Government of the United States.

Then, Mr. President, this is the evidence of what was the condition of southern society at the close of the war. The war had done its work. The South was conquered, to use the language of the majority; subjugated, if you please. They yielded obedience to law; they acquiesced in the authority of the Government; and General Grant said that he felt that it was our duty to take advantage of this favorable condition of the popular mind of the South. To take advantage of it for what purpose? To get these people back again, to place the States once more in harmonious and practical relations with the Government. Finding this favorable condition of the country, Mr. Johnson, as President of the United States, proceeded to his work of restoration. He issued his proclamation of May 29, 1865, to which I now call the attention of the Senate. He does not

assume to possess the power of making State Governments. He, as military governor of Tennessee, had issued his proclamation declaring that the people, by virtue of their inherent right and power, had amended the constitution of that State; and upon that, very doctrine of the right and power of the people to amend their constitutions he issued his proclamation of May 29, 1865. In the first place, I will state that he directed each of the Departments to extend its operations into the southern States. Then he goes on with the work of providing for restoration; and what propositions does he lay down? First, he recognizes the old State government of North Carolina, just as he had done in Tennessee, just as Congress did in admitting Tennessee with the recitals in the preamble; for, after appointing a provisional governor and giving him instructions, he says:

"A convention composed of delegates to be chosen by that portion of the people of said State who are loyal to the United States, and no others, for the purpose of altering or amending the constitution thereof."

Not for the purpose of making a new State government, not for the purpose of making a new constitution, but of altering or amending that constitution which had come down through the war, that constitution which as a ligament, as I said before, held the State of North Carolina as an organized political community to the Union. Next, he recognizes the authority of the people:

"And with authority to exercise within the limits of said State, all the powers necessary and proper to enable such loyal people of the State of North Carolina to restore said State to its constitutional relations to the Federal Government."

Not to place it in a shape where Congress might restore these practical relations, but to enable the people themselves to do this great work. Two years ago—and I then had the assent to my proposition by the nod 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.

My colleague and others have said that Mr. Johnson regarded this government which was to be established in North Carolina as provisional. There is a mistake right here, and a very serious one. The President in his proclamation, and everywhere, recognizes the authority of Governor Holden as provisional, as temporary; that his power was to be but for a time; but until what time? Until the time that the people, exercising their original sovereignty, could act and place their State government in proper shape. That government that the people were to reorganize was not to be provisional. It was to be as enduring as the people could make any government. He did not contemplate that it was to be provisional. He contemplated that it should be perpetual. He authorized the Governor to aid the people in amending their constitution, and when the amendment should be adopted, what was the effect of it? Did he contemplate that an amendment of the organic law of a State was but temporary? Does any Senator attribute such folly to the President? No, sir; the government that was provisional in North Carolina was the authority of the Governor. As soon as the people acted and amended their State constitution, then the work was done; the provisional governor ceased to have any authority; and firmly fixed, the State was once more in practical relations with the Federal Government.

Mr. President, I cannot understand why Senators have made such war against Mr. Johnson because he did this. I do not understand it. I take it Senators are just; that they bring no railing accusation against the President. I have heretofore said, and I now repeat, that I am no partisan defender of the President; but I defend the President when I think he is right, because I claim to be a just man. I want to know of Senators, after Mr. Lincoln had issued his proclamation of the 8th of December, 1863, in which he placed this power in the Executive, and after you elected him upon that doctrine, how can you say that Mr. Johnson is wrong in doing the same thing? After the proclamation of the 8th of December, 1863, and after the proclamation of July, 1864, when he threw back into your faces the congressional plan of restoration, and said he would be bound by no such policy, but that his hands should be free to the close of the war to aid the people in bringing themselves into relations with the Government upon such plan as he thought was best—after all that you elected Mr. Lincoln President, and you—I speak with respect to the majority of this body—you said to your supporters at home that that policy was right. You cannot vote it and then come into the Senate and denounce it. If it was right in Mr. Lincoln to do it, it is not wrong for Mr. Johnson; and, as a just man, although I did not help to elect either,

I shall say that consistency is not to be condemned by the men that participated in it throughout.

Mr. President, Mr. Johnson adopted simply Mr. Lincoln's plan. I am going to settle that point beyond all question, and first I shall do it by the authority of my colleague, which, in my judgment, is quite sufficient authority, inasmuch as his speech has been recognized on all sides as the proper and able exposition of the policy of the party in power. My colleague said—and this, you will recollect, was after the conventions had been called; I believe after they had been in session, or while they were in session in these southern States—when Mr. Johnson's work of reconstruction was going on:

"It is one of my purposes here this evening to show that, so far as his policy of amnesty and reconstruction is concerned, he has absolutely presented nothing new, but that he has simply presented, and is simply continuing, the policy which Mr. Lincoln presented to the nation on the 8th of December, 1863."

These are plain words. This was said by the then Governor of the State of Indiana, by my present honored colleague, that Mr. Johnson in that policy which was then being consummated was simply carrying out that which the President whom you all indorse had inaugurated.

Now, sir, I will read from my colleague's message—a carefully prepared document—to the Legislature of Indiana, of November 14, 1865. I presume North Carolina had then passed her constitutional amendments, and perhaps some of the other States:

"The conditions which have been imposed upon these States by the President are not only reasonable and legitimate but are dictated by justice and a wise foresight for the future of the Republic; and although they may not be accepted this year, or even the next, yet that they ultimately will be I have no doubt."

On this particular point I will read again from the testimony of General Grant. In his examination before the Committee of Impeachment in July last he was asked by Mr. WOODBRIDGE, a member of the committee—

"Question. I want to know whether the plan adopted by Mr. Johnson was substantially the plan which had been inaugurated by Mr. Lincoln as the basis for his future action?"

"Answer. Yes, sir; substantially. I do not know but that it was *verbatim* the same."

"Question. I suppose the very paper of Mr. Lincoln was the one acted on?"

"Answer. I should think so. I think that the very paper which I heard read twice while Mr. Lincoln was President was the one which was carried right through."

And yet you bring your accusations against Mr. Johnson because he received from Mr. Lincoln, as a part of his political inheritance, the North Carolina proclamation, in his own handwriting perhaps, at least the proclamation which President Lincoln had twice presented to the Cabinet, the very same paper.

Now, sir, under this proclamation and the other proclamations of similar import new constitutions were not adopted by the southern States. They stood upon the idea which you stood upon in admitting Tennessee, that the

constitutions which held these States to the Union came through the war and were valid, existing law at the close of the war; and so in all of the States of the South they simply amended their constitutions. These amendments in the case of North Carolina were submitted to the people. My colleague said that none had been submitted. In the State of North Carolina the important amendments, the one abolishing slavery and some others, were submitted to the people.

But, sir, I am not going to discuss that question. It has been too long the established law and custom of this country that a constitutional convention may adopt a constitution without submission to the people. As was stated by the Senator from Pennsylvania yesterday, that great Commonwealth is now an organized State under a constitution that never was submitted to the people, and became the supreme law of that State by the will of the convention. This is the law, though I think the practice better to submit amendments to the people.

Now, Mr. President, what were the amendments to the State constitutions in the South? First, they abolished slavery. Do Senators object to that? Second, secession was, in express terms, repudiated, and the right to secede denounced. Third, the rebel debt was repudiated, and it was declared that it should never be paid. These were the material amendments. Do you, Senators, say that these amendments destroyed the republican character of those constitutions? Were they not republican in character before the war? Were not the constitutions of North Carolina, of South Carolina, and of Georgia at the time they helped to form the Federal Union republican in form? And were not the constitutions under which Mississippi, Louisiana, Alabama, Florida, Arkansas, and Texas were admitted into this Union republican in form? That is settled; I will not discuss it.

Then, sir, these constitutions that were republican in form before the war came down through the war, and by the people were amended, simply adding that slavery should no longer exist; that secession was not the true doctrine of State relation to the Federal Government; and that the rebel debt should never be paid. I want to know if these provisions of amendment destroyed the republican form and character of the constitutions of these southern States?

Such, Mr. President, was the condition of this business when my colleague, in the speech from which I have read, said that the prospect of reconstruction appeared "highly encouraging;" and he added in that speech:

"I am very glad to see that many of the southern States are making commendable progress in the matter of the abolition of slavery."

If these States had not legal State governments in 1865, I want to understand how it is that they could abolish slavery; I want to know how they could assent to an amendment of the

Federal Constitution abolishing slavery all over the United States? If they were then and are invalid, illegal governments, how could they do the most solemn act to which a State can assent? My colleague, then, not having been educated by the progress of events, declared, to use his own language—

"I am very glad to see that many of the southern States are making commendable progress in the matter of the abolition of slavery."

My colleague now denies the authority of those conventions to amend the constitutions of their States, while at the time, when they were in session, he recognized their proceedings!

I should like to know upon this question of constitutional law how it is that my colleague can be so "educated." Upon questions of policy and propriety men may be educated by passing events; we may change our minds and not be "milestones standing by a deserted highway," as he expressed it. We may change our opinions in regard to questions of policy and propriety according to the changing scenes that are passing before us; but so far as the law of the country is concerned, especially the highest law of the land, the Constitution itself, how are we so readily to change our opinions? Events do not change that. We are not allowed to be "educated" by passing events in regard to the proper meaning of the Constitution of the United States. We gather that from the letter and from the contemporaneous history and construction.

Now, sir, I wish to ask Senators a question which I think they will have to answer to the people at home. What objection have you to the constitutions of the southern States as amended by the people? For two years you have made war against this policy; for two years you have kept these States out of the Union so far as representation was concerned; for two years you have kept this country disturbed and distracted; trade, commerce, and business have been uncertain and shivering; industry has been fearful to put forth its hand or capital to trust to any enterprise; the spirit of harmony and of union has been passing away from both sections of the country, because of the strife that you have thus kept up. For what have you done it? What end have you attained? What good has come? Was the constitution as amended in North Carolina not right? Our fathers said it was right when they formed the Union with North Carolina as one of the original thirteen; they said it was a republican form of government, and they lived with North Carolina contented and well until this rebellion came on; and then, when the State had come through the war with her constitution still in force as a legal document, and the people amended it only in three or four particulars, (those three particulars that I mentioned being the material and important ones, namely, abolishing slavery, declaring secession a vicious doctrine, and declaring that the rebel debt should never be paid,) I want to know why, then, you made war upon it? When

these amendments were thus made what was there in the constitution of North Carolina that your judgments and your consciences condemned? If North Carolina came with her old constitution and abolished slavery and adopted these other amendments why did you not let her in?

You cannot say to me that you did not intend traitors to come here and sit with you, because you had passed a law in 1862 saying that no man who had given aid to the rebellion should sit here. You claim that law to be valid and constitutional, and that it keeps out of these Chambers and from every Federal office every man that participated in the rebellion or gave it aid or comfort. Then why have you kept this country distracted, its business disturbed, the hopes of the people depressed, for two years, when these constitutions with these provisions came to you, and there was nothing to do but to admit the States to representation? Answer that question to the judgment of the country, and your policy of reconstruction will stand better in popular judgment.

What has been done since? What have you accomplished by this delay? You can lay your hand of logic upon but one thing. You have not abolished slavery, because that was done before you commenced by a constitution that the people of each State in the South were satisfied with. What have you done to make it any better than the Johnson policy made it? You have excluded from the right of voting a portion of the white people, and you have given the right to vote to the negroes. If you can tell me of any other thing that you have done by this controversy and strife, this disturbance of the country, this rejection of constitutions agreed to by the people—if you can tell me of anything else you have accomplished, I should like to know what it is. You have taken the robes of political power off the shoulders of white men and you have put them upon the shoulders of negroes.

Gentlemen may moralize in solemn tones, as if they came from the tomb, about the gallantry and distinguished services of the negroes in the war. I can tell you that with all the political and party ambition you have, with all the party power you have, you have not power to take the garlands from the brows of the white soldiers and put them on the heads of the negroes. You cannot do it. What is right will stand. And I can tell you that all over this land, in every neighborhood, there are the soldiers that have returned home who will vindicate and defend their own honor against this effort to appropriate the glory of the white "boys" to the negroes. There is not a battle in the war that was won by the negroes. There is not a point that was carried by them. That they did their duty I am not going now to question; but it was the courage and the high qualities of the white troops of the North that carried our flag in triumph from the Potomac to the Gulf.

Then, sir, to return to the question, why have you pursued this course? The commanding General of the Army said that the public sentiment at the close of the war was in a most healthy condition. My colleague bore testimony of like character. That was the judgment of all men in the country. The condition of the country was auspicious, and the popular mind was in a proper condition for free government then, and we ought to have taken advantage of it. And the President and the people did take advantage of it, and amendments to the State constitutions were adopted that you say to-day were right. Now, I want to know why it is that these States have been kept out; that loyal representatives have been denied admission; that controversy has been kept up over the country, and strife instead of peace and quiet? I have my opinion about it. It was necessary for party ends.

But, Mr. President, if I concede all that you claim, that you have the power under the clause of the Constitution which has been so frequently referred to, to reorganize the States, have you exercised it? You claim that your power, your duty is to guaranty to the States republican forms of government. Have you done it? I will barely refer to the principles you have established. What is a republican form of government?

Now, sir, I think a republican form of government is a form of government in which the people make their own laws through legislators selected by themselves; execute their laws through an executive department chosen by themselves, and administer their laws through their own courts. Is not that as near a republican form of government as you can have? That was the state of things when the congressional policy sent five armies into the southern States, when ten Governors were deposed by the paramount authority of the military power. That was the state of society there; the judiciary, the legislative, and the executive departments of their governments were in the exercise of their ordinary and legitimate authority and power in each State. In that state of society where the laws are made by the men whom the people select, where they are administered by the courts that have the confidence of the people, and where the laws are executed by an executive department selected by the people, there is peace, happiness, and prosperity. You have broken that down, and in its stead you have done—what?

1. You have made ten States subject to military authority.

2. You have made the civil tribunals subject to military rule.

3. The lives, liberty, and persons of the people are subject to military authority.

4. Juries are abolished.

5. *Habeas corpus* is abolished. I mean, of course, at the pleasure of the military commanders.

6. You have clothed conventions with au-

thority to fix their own salaries and levy taxes from the people for their payment.

7. You have empowered the commanders to displace Governors, judges, and legislators, and fill their places, thus making them dependent on the will of the commanders. What a spectacle we behold, sir. The judge taken from the bench and the lieutenant placed in his stead! Legislators driven out and others appointed by the military to make the laws which the people must obey!

Sir, what were the causes of complaint which the Colonies made against the British Crown? Speaking of the king of Great Britain, our fathers declared—

"He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries."

"He has kept among us in times of peace standing armies without the consent of our Legislatures."

"He has affected to render the military independent of and superior to the civil power."

"For imposing taxes on us without our consent."

"For depriving us in many cases of the benefits of trial by jury."

You were kind enough in the law to say that if the military commanders thought it good policy they might continue the civil courts and try criminals in the civil courts; but if they thought best, they might organize military commissions; but they should not take any man's life without a reference of the case first to the President, and that limitation was put on only after a great deal of controversy.

So, sir, the property, the life, and the liberty of this people are placed at the control of the military authority; and this is a policy that is called a policy of reconstruction, of restoration, and this you claim to be done under the guarantee clause which directs this Government to guaranty to each State a republican form of government! You find no other point in the Constitution where you can stand. There is not a rock in the Constitution large enough for your feet to stand upon except this one, that it is your duty to guaranty a republican form of government to these States; and in the exercise of that power, in the discharge of that duty, you establish a military rule and despotism which is defined in the language of the Declaration of Independence declaring the offenses of the British Crown toward the Colonies.

This is all under the pretext of the guarantee clause. I had some respect for it when it was claimed as under the military authority of the President, because when you say it is a military necessity, I do not know any argument in answer to that. Military necessity has no reply except obedience; but to say to an intelligent people—to a people who have sense enough to know when they are hungry—that you are guarantying a republican form of government to States when you are subjecting them and all the legitimate and rightful authority of their State governments to military rule, is, in my humble judgment, an insult.

I know the answer to this very well: that your establishment in the southern States is

only provisional; that it is only to last for a little time: and that out of its ruins there will "spring up, phoenix-like, to Joye," republican forms of government. You lay the foundations of free institutions on the solid rock of despotism, and expect it to grow up to a beautiful structure! I do not believe in the doctrine that you can do wrong and expect good to follow. I believe in the doctrine that good is the result of good; that from a pure fountain you may expect pure waters; from a foul and poisonous fountain you may expect impure waters. And when you sow the seeds of despotism in any country I expect the fruit to correspond with the seed. You need not tell me that when you establish military governments and despotisms the result will be free institutions and a happy people.

The Senator from Massachusetts [Mr. Wilson] characterized Toombs the other day, and the instant that he had closed the sentence he turned round to the Senator from Wisconsin and said that his speech was unpatriotic and wicked. Who clothed the Senator from Massachusetts with the garments of Robert Toombs? Who has found in any of the chambers surrounding this Senate Hall the robes of office that Toombs threw off, and brought them that the Senator from Massachusetts might wear them? Sir, denunciation will not serve gentlemen. There are not many of us in the minority here, but, few as we are, we feel that we are standing in the Thermopylae of our country's history, and I believe there will not one flee from the combat.

I have been gratified by one thing in the debate. Each Senator apologizes for the disfranchisement of the whites, and each speech is an effort to make the number disfranchised as low as possible. I have discarded all estimates. When we were induced—no; when you, I will not say "we," because I had no part or lot in the business—when you were induced to vote for these laws, it was under the assurance of the gentleman having charge of the propositions that they disfranchised six to ten thousand. Now, you admit a disfranchisement of about fifty thousand. But I do not think you are authorized to ask me to credit any more estimates; your mistakes are too large. Have you stopped to consider the number of men that are disfranchised under your bill? If it applied only to the men who held office at the breaking out of the war, the number would not be very large. If it applied only to the men who held office during the war, the number would not be so very large. But, sweeping the whole country, you exclude not only all men who took an oath to support the Constitution of the United States, but all men who held office at any time during their lives. You exclude all these from the right of voting. That extends to every neighborhood, a sweeping thing, picking here a man and there a man, until the number is very large. I am glad to hear Senators say that they regret that it is so large. That is an admission that you know it is wrong. I think I hear the Sen-

ator from California say in his seat that we do not all admit that it is wrong.

Mr. CONNESS. I said we do not all share in that regret.

Mr. HENDRICKS. The Senator says all do not share in that regret. My opinion is that in all probability the Senator from California would have liked to see the entire white blood stricken down politically and all the political power put in the hands of the negroes. I am against it, sir.

Mr. President, I say that when Senators try to make the disfranchisement the smallest number possible it is an apology for what is felt to be wrong. My colleague said that President Johnson's proclamation excluded two hundred and fifty thousand or three hundred thousand white men. When Mr. Johnson's proclamation did that he left the political power of the South in the hands of the balance of the white people; he did not strike down a part of the white population and then enfranchise all the negroes.

A great effort and strain is made in this debate to show that you have not established negro supremacy over the white people of the South, and when you make that argument it is an apology for your act. Now, sir, figures show the fact in all the States of the South. Taking all the registered voters there are forty-five thousand nine hundred and seventy-seven more negroes registered than there are white people. That is the aggregate, excluding Texas, from which the returns are not yet full. There are about forty-six thousand more negroes registered than white people.

Another apology is made for your measures that you feel are not right. It is that the white people would not be registered. My opinion about it is, from all the evidence I have on the subject, that in very many localities registration was a most disgusting fraud; and for the purpose of carrying the States negroes were registered over and over again in different names and white men were denied a registration.

This is the fact as we now stand before the country—that under your laws a negro majority controls the southern States, and in five of the States there is a decided negro majority, and they can control the States at any time. And in Georgia there is but a few hundred difference between the two, and with the white men who, for the sake of office and to control the entire negro vote, will go with them they can carry Georgia.

Mr. President, by what authority do you control suffrage? I want to read my colleague's statement on this subject, as he is defending this reconstruction policy. He said in his argument in the Senate the other day that if it becomes necessary for Congress to enfranchise a new class of voters it is proper to do so, the whole matter depending upon the necessity for it in the judgment of Congress. Now, sir, I will read what he said in his message to the Legislature of Indiana in 1865, in the month

of November, upon that subject, while the reconstruction policy of Mr. Johnson was being carried on. He then said:

"The subject of suffrage is, by the national Constitution, expressly referred to the determination of the several States, and it cannot be taken from them without a violation of the letter and spirit of that instrument. It is a fact so manifest that it should not be called in question by any that a people who are just emerging from the barbarism of slavery are not qualified to become a part of our political system, and take part not only in the government of themselves and their neighbors, but of the whole United States. So far from believing that negro suffrage is a remedy for all our national ills, I doubt whether it is a remedy for any, and rather believe that its enforcement by Congress would be more likely to subject the negro to a merciless persecution than to confer upon him any substantial benefit."

Mr. President, negro governments have been established in the southern States so far as the congressional policy has thus far extended. Inasmuch as my colleague defends this policy I will now read from his speech, from which I before quoted, in 1865, in which, on that subject, he said:

"I submit, then, however clearly and strongly we may admit the natural rights of the negro—I submit it to the intelligence of the people—that colored State governments are not desirable; that they will bring about results that are not to be hoped for; that finally they would threaten to bring about, and I believe would result in, a war of races."

We have been rebuked here because of a suggestion that a war of races might possibly result from a policy such as you have established. My colleague said in that ably prepared speech two years ago that this very policy was likely to bring on a war of races, and we have some evidence on this subject which is threatening. I see in the Chicago Republican of the 12th of last month an account of organized resistance to authority in one of the southern States, which I will read:

"PEROTE, ALABAMA, December 1, 1867.

"DEAR SIR: The citizens of this place held a meeting on yesterday for the purpose of memorializing General Swayne in relation to certain things which have transpired here, and which have given just cause for alarm to the citizens. Owing to our former acquaintance and your acquaintance with General Swayne, they have requested me to address you also, and endeavor to get assistance in having the memorial presented and the request of the people granted."

"For the last several days the people have been kept in a state of alarm, growing out of the resistance of the negroes in this community to the execution of a civil process issued by Judge McCall. The negroes, it seems, belonging to the league at this place, through the instructions of certain leaders among them, and I understand some of them from your city, determined to form a code of laws to govern the negro population, and actually opened a court, officered and organized, and have been arresting by night all negroes that are opposed to and speak anything against their unlawful doings, and carried the matter of punishment so far that one or two appealed to the civil authorities for protection."

"A warrant was issued by Judge McCall last week, and the deputy sheriff came over to arrest the parties on Thursday, and did arrest that evening the sheriff and one of his deputies and put them under guard. He went the next morning to Dr. Dawson's plantation, a mile or two from town, to arrest others. When he had done so a party of some forty negroes made their appearance and defied him to take them off; cursed him and the white people, and told him that they would meet him and them in the open field and test the matter as to who should be masters and rulers. Under these circumstances the sheriff came back and summoned the citizens to his aid."

"As many as could be collected soon joined him and went in pursuit. The negroes made their way toward the Springs, saying they would get the league there and at Chunnennugy Ridge to join them, and their intention was to subdue the whites and take possession of the country."

A few days since, as late as the 9th of this month, I see that in North Carolina there have been similar organizations of negroes under the influence and control of these leagues, dangerous to the peace and quiet of society.

"RALEIGH, January 9, 1868.—Intelligence has just been received here of the capture of a gang of negro desperadoes, who have for some time past infested the eastern portion of the State, committing nightly murders and outrages to such an extent that the people were completely terror-stricken. About the latter part of December the people of Green county were thrown into the utmost excitement and alarm by the presence of a gang of negro robbers, who were armed and in the neighborhood for the purposes of murder, arson, and incendiarism. Their capture was effected on information furnished by two negroes, respectively named John Dixon and Hardy Coward, who, with a number of both whites and blacks, combined to effect the arrest of the banditti. After careful reconnaissance and considerable strategy, Needham Speight, alias Needham Evans, John Dunn, alias Custis, alias John Miller, were surrounded and captured. They were found to be armed with three double-barreled guns, two pistols, and one dirk. They had also three sacks of clothes, a large quantity of fine dresses for ladies, ladies' underclothing, and a quantity of old peach brandy."

"The day after the camping place they had occupied previously was discovered, and here were found the notes, bonds, and bank stock of Willis Brierly, the man whom I have hitherto reported murdered in the presence of his wife; and who was also robbed of a trunk containing a large amount of specie and State money. The desperadoes confessed to the above murder; also that they robbed and beat a Mr. Taylor; that they shot a Mr. C. M. A. Griffin, and that it was then their intention, before arrested, to pillage and destroy the stores and residences at Fountain Hill, a village close by, as well as a Mr. Pittman's residence, about a mile from where they were arrested."

This came over the telegraph from North Carolina within a few days. This is a large organization disturbing the peace and quiet of society and dangerous to the lives and property of the people. On the subject of this strife that may come, as my colleague said in his speech of 1865, between the two races I have just this to say: that that strife when it comes is likely to come from such sources as I have read, and is likely to be accompanied with scenes of barbarism and cruelty such as we cannot contemplate without horror. Very recently I had occasion to express my feelings in regard to that, and I did it in this language:

"Whatever may have been the sympathies of the North on the question of freedom from slavery, you need not think they will be with the negro in this horrible contest now imminent; for when the northern man sees the mother and children escaping from the burning home that has sheltered and protected them; when he hears the scream of beauty and innocence in the flight from pursuing lust, if ever he venerated a mother, or loved a sister or wife, his heart and hand will be for the pale-faced woman and child of his own race. Whatever may have been the sympathies of the North for the negro in the claim made on his behalf for civil rights, just and generous men will turn with horror from the congressional policy that places the white race under the power and government of the negroes, and seeks to establish ten negro States in the Union."

Frequent references in the course of this debate have been made to supposed outrages

and cruelties upon Union men in the southern States. On that point I beg to refer to Report No. 23, of the Thirty-Ninth Congress, in the House of Representatives. In the minority report the following statement of the evidence is made:

"It is true that they [Generals Thomas, Sickles, Wood, and Baird] mention, in general terms, that Union men, Federal soldiers, and freedmen were not safe in their departments, but when asked to specify the number of cases, and the localities where they have occurred, and the names of the parties injured within the last twelve months, they could only mention one case in the State of Tennessee, at Nashville; one in the State of Mississippi, at Granada; one in the State of Louisiana, on the road between Alexandria and Monroe; and not a single case in the State of Virginia, except the Watson case, and no case in North Carolina, Georgia, Florida, or Alabama."

"General Thomas proves that the accused in the case at Nashville was promptly arrested and held for trial."

"General Wood states that in the case of the murder at Granada, the civil authorities did exert themselves to have the murderer arrested, and that it was not their fault that he was not arrested."

"General Baird says, in regard to the murder of the officer of the Freedmen's Bureau, on the road between Alexandria and Monroe, 'that we never succeeded in finding out the parties who did it.'"

"General Scofield testifies: 'I have not seen any disposition manifested to interfere with soldiers of the United States, so far as committing assaults on them, and I know of no instance in which there has been anything like an unprovoked attack upon them'; and as to the freedmen, he says: 'When negroes are arrested under any criminal accusation, I think they are dealt with rather leniently than severely. I do not think that there is a disposition to persecute them, or to be unnecessarily harsh to them. In fact, the general feeling of the respectable people of Virginia is that of pity toward the freedmen.' They all testify in the most explicit manner 'that they have no fault to find with the Governors of the respective States, or the high officials, or the judges of the superior courts, or the intelligent and well-informed citizens; that they have always manifested an earnest desire to assist them whenever called upon so to do.'"

Now, sir, when I have noticed a very few points made by my colleague upon matters not exactly connected with the issue before the Senate, I shall have closed what I felt it to be my duty to say to the Senate. He says that gentleman spoke but for himself when he said your reconstruction measures were outside of the Constitution. I suppose my colleague refers to Mr. STEVENS, of the House. Here is what Mr. STEVENS said upon that subject. I read from his letter of the 26th of August, 1867:

"Some of the members of the Senate"—

some of the majority, of course, he refers to—

"seemed to doubt their power under the Constitution which they had just repudiated, and wholly outside of which all agreed that we were acting, else our whole work of reconstruction was usurpation."

He does not speak for himself alone; he says all agreed. I wonder where you did agree to it. I know there were frequent caucuses, and I was not admitted to the secrets of those caucuses, and of course I cannot state what was agreed upon. But he says all agreed that this policy of yours and these laws of yours are outside of the Constitution, and if they are inside the Constitution they are acts of usurpation. My colleague very summarily disposes

of him. Why, sir, who is Mr. STEVENS? He is no obscure man. He was the chairman, as I understand, of the Committee on Reconstruction, and is the very author of your bills. From his brain they sprung; from his brain they received their support in the House of Representatives. I believe he is still the chairman in the House of Representatives of the Committee on Reconstruction. He is authorized to speak much more than my colleague, who was not, when the first bill was passed, a member of this body. Then, Mr. STEVENS being chairman of the committee, and being conversant with your councils and secrets, says all agreed that this policy was outside of the Constitution; and if it was outside it was a clear case of usurpation.

But, sir, my colleague remarked that the arch traitor of the southern rebellion was at large, and not hung. Why so? If you have power to send military commissions down into the southern States and hang men, why have you not hung Jeff. Davis long ago? What is in the way of hanging him if he must be hung? Simply this: that there is a court over which Chief Justice Chase presides; and there is another court over which a Mr. Underwood presides; and there is a certain Horace Greeley that stands in the way as bailman. What have I to do with all this? What has the President to do with it? If you can send a military commission, which the Supreme Court says has no authority to try a man except in time of war and for a military offense; if you can send a military commission down South, and try men without authority of law and against the Constitution, there is no use in going through any forms and ceremonies; but you can just as well pass a law at once that Jeff. Davis shall be hung. There is no difficulty about it. It can be done. If his presence as the arch traitor is in the way of establishing a republican form of government under the guarantee clause hang him! There is no trouble about it in the world! It is one of the class of powers clearly defined.

Now, Mr. President, I have but very little to say about this particular bill which is before the Senate. It is a bill which upon its face admits that the constitutional question is against the majority, for it says that the executive department and the judicial department of the Government shall not recognize the southern State governments as State governments. You say to the judiciary, "These States shall not be recognized." The Constitution of the United States says that the judicial proceedings of the several States shall be respected in all the other States. That is a constitutional provision; and yet here you say that the judicial department of the Government shall not recognize these States at all; and therefore the Supreme Court, you think, cannot try any questions that are likely to arise on your reconstruction policy.

And this brings me to consider for a minute the remarkable bill requiring two thirds of the

Supreme Court to concur before an act of Congress can be decided unconstitutional. What is the effect of that? In the first place, it gives an unconstitutional law two-thirds of a majority over the Constitution itself. The question is whether an act of Congress is the law or whether the Constitution is the law, and on that question you propose to give the Constitution one chance and the unconstitutional act of Congress two chances. Then, if my rights in a case in the Supreme Court depend upon the Constitution and your rights depend upon an act of Congress, three judges can give you a decision, while I must have six to carry my case. As has been expressed, a two-pound weight is put in one end of the scale of justice and a one-pound weight in the other; and you expect this country to approve that, do you? You expect honest men who are fit to sit on juries to say that such legislation as that is right? For a thousand years the courts have come down with our race on the doctrine that a majority shall decide; and now, for political and partisan purposes, because you dare not trust your legislation to go before that tribunal which the fathers and the Constitution established to settle it, you attempt to strip that court of the authority and the power with which the fathers clothed it. It is an admission bold and patent before the world that your legislation is vicious.

My colleague in the course of his speech referred to a statement made by him in a speech recently delivered in this city, that the Democrats stood upon the policy of paying for the slaves of the South. In party warfare, Mr. President, I concede always to the opposite party the right to define their own positions, and I take them as truthfully defining their positions, and I do not ever attribute to the opposite party political opinions which they disclaim for themselves. I have no right to do it, and I say my colleague has no right to attribute to the great Democracy of this country—a grand party, a party whose power and intelligence have had a mighty influence in the past, and is to wield a great influence in the future of this country—doctrines and purposes which that party disclaims for itself. We have a right to stand where we define our own platform. I think it is a most remarkable thing that any Republican gentleman should say that the Democracy are in favor of paying for manumitted slaves. There are only two cases where such a measure has been seriously urged before Congress, and upon that point I ask the attention of the Senate.

In 1862 Mr. Lincoln sent a special message to Congress proposing that they should adopt a joint resolution, which he drew and sent down to Congress, to buy up the slaves of the

loyal people. My distinguished friend from New York [Mr. CONKLING] was then a member of the House of Representatives, and he was the honored mouthpiece of the Administration in favor of this policy on that occasion. He introduced into the House the resolution sent down by Mr. Lincoln; and here it is; I will read it:

"Resolved by the Senate and House of Representatives of the United States in Congress assembled, That the United States ought to cooperate with any State which may adopt gradual abolishment of slavery, giving to such State pecuniary aid, to be used by such State in its discretion, to compensate for the inconveniences, public and private, produced by such change of system."

Are Democrats to be charged now with being in favor of buying up negroes? What was the answer made by Indiana on the day that resolution was introduced in the House of Representatives? Mr. Voorhees, then a Representative from Indiana, said:

"If there is any border slave State man here who is in doubt whether he wants his State to sell its slaves to this Government or not, I represent a people that is in no doubt as to whether they want to become the purchasers. It takes two to make a bargain; and I repudiate, once and forever, for the people whom I represent on this floor, any part or parcel in such a contract."

And he went on to argue against the proposition.

But, Mr. President, who is it that brings the charge against us of wanting to pay for negroes? There is only one case in the history of this Government where money has been taken out of the national Treasury to pay for negroes, and that was to buy up the negroes of the District of Columbia at \$300 a head; and the party in the majority passed that law and it was approved by Mr. Lincoln. Then who has the right to charge against the Democracy of this country a purpose to pay for slave property? The Democracy have never recognized such property in negroes as required or authorized the Government to pay money out of the national Treasury for them?

Mr. President, my colleague has spoken of a column—the column of congressional reconstruction—and has said that "it is not hewn of a single stone, but is composed of many blocks." Sir, I think he is right. Its foundation is the hard flint-stone of military rule, brought from the quarries of Austria, and upon that foundation rests the block from Africa, and it is thence carried to its topmost point with fragments of our broken institutions. That column will not stand. It will fall, and its architects will be crushed beneath its ruins. In its stead the people will uphold thirty-seven stately and beautiful columns, pure and white as Parian marble, upon which shall rest forever the grand structure of the American Union.