ADVANCE SHEET – October 28, 2022

President's Letter

In her maiden appearance on the Supreme Court bench, the newly appointed Justice Ketanji Jackson created a joyous outcry among some liberal academics by her contention in a question that the Report of the Committee of Fifteen on Reconstruction legitimated race-conscious remedies in legislation: "I looked at the report that was submitted by the Joint Committee on Reconstruction which drafted the 14th Amendment and that Report says that the entire point of the amendment was to secure the rights of the freed former slaves."

There are a couple of questions raised by this statement. The first is whether the Report of the Committee of Fifteen is really a part of the legislative history of the Amendment. The Committee majority (12 out of 15 members) incontestably drafted the amendment. However, as Justice Alito observed in his elaborate discussion of the Fourteenth Amendment in the Mc Donald firearms case: the Report was "distributed by members of the 39th Congress to their constituents shortly after Congress approved the Fourteenth Amendment." In his influential dissenting opinion in *Adamson v. California*, Justice Black observed "This Report was apparently not distributed in time to influence the debates in Congress" (332 U.S. 46, 108-09). The compilation of Reconstruction Amendment Debates assembled by Professor Alfred Avins and published by an anti-Brown organization, the Virginia Commission for Constitutional Government does not include it, even though academics not sharing Avins' conservative views viewed his compilation of the Congressional debates to be an honest one.

Anyone reviewing the debates, as I did some years ago, when I had two or three days to wait in England before an airline departure, must concede that they read like a haystack in a hurricane. They deserve the observation of the Conference of Chief Justices in 1958 who referred to "the framers of the Constitution and the perhaps somewhat less gifted framers of the Fourteenth Amendment." The main theme that arises from them is a distinction between "civil rights", mainly rights before courts; political rights, chiefly the suffrage, for which no Congressional majority existed before adoption of the 15th amendment in 1866, as the younger Justice Harlan demonstrated to devastating effect in his prophetic dissent in the *Reynolds v. Sims* reapportionment case; and "social rights" which were to be left untouched, hence the 19th century Supreme Court's disapproval of public accommodations legislation and the need to resort to the Commerce Clause to legitimate it in the 1960s.

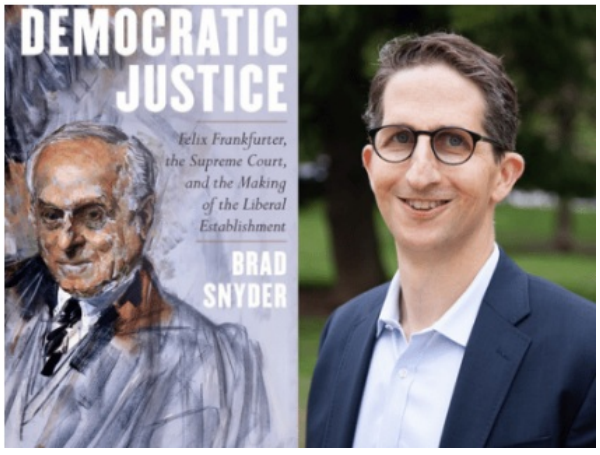
Justice Ketanji Jackson is clearly correct that the members of the Committee of Fifteen (heavily Republican because of the exclusion of many Southerners from Congress) had the purpose she ascribes to them. But they were squeamish and indeed scrupulous about the means. Even the later Fifteenth Amendment, as Professor Eric

Foner laments, left the states free to disqualify blacks from voting through the use of literacy tests and poll taxes. The Committee of Fifteen majority was unwilling to directly legislate against such disqualifications, contenting itself with the language of Section 2 of the Fourteenth Amendment reducing representation to the extent voters were disqualified, which became a dead letter. Section 1 of the Fourteenth Amendment, with its wild and wooly and still bitterly contested language was almost an afterthought, and deserved the comment of Senator John Henderson of Missouri, an opponent of black disenfranchisement because of color, who predicted that Section 1 would produce "years of political strife, in which truth and conscience and patriotism are too often sacrificed to the attainment of success. Judges, even in the highest courts, are but mortals. Should the Supreme Court of the United States affirm the judgment of these inferior tribunals, the present period would be no better for the rights of the negro than when the Supreme Court once before supposed he had no rights which the white man was bound to respect."

The Committee majority avowed, correctly, that its work was a compromise. The Republicans on it, other than Stevens and Bingham, were not noted radicals, Senator Fessenden, the chairman, and Senator Grimes voted against the Andrew Johnson impeachment. The only explicitly racial categorization of which the majority approved was the Freedmen's Bureau, which it rested on the war power, not as a normal incident of civilian government.

However, these are one man's perhaps unorthodox views. The Report, even in our own time, has not been widely published and is hard to find. The Minority Report, of which Senator Reverdy Johnson of Maryland, one of the more noted Supreme Court advocates of his day, was probably the main author, makes arguments about the position of the seceding states that are at least close to being a match for those of the majority. Our readers can form their own judgments on the documents that appear below; when they do, they will be well ahead of most of our newspaper commentators on constitutional law.

George W. Liebmann



Democratic Justice: Felix Frankfurter, the Supreme Court, and the Making of the Liberal Establishment

On Monday, November 14, 2022, at 12:30 p.m., Professor Brad Snyder of Georgetown

Law will appear in the Main Reading Room of the Baltimore Bar Library to speak on his new book *Democratic Justice: Felix Frankfurter, the Supreme Court, and the Making of the Liberal Establishment*. The program will be in-person as well as by way of Zoom.

"The definitive biography of Felix Frankfurter, Supreme Court justice and champion of twentieth-century American liberal democracy. Scholars have portrayed Felix Frankfurter-Harvard law professor and Supreme Court justice-as a judicial failure, a liberal lawyer turned conservative justice, and Warren Court villain. Yet as Brad Snyder reveals, Frankfurter was a pro-government, pro-civil rights liberal. He helped found the ACLU, rejected shifting political labels, and practiced judicial restraint. A disciple of Oliver Wendell Holmes and a protégé of Louis Brandeis, he thrived as a power broker for F.D.R. and as a talent scout for the liberal establishment. (Former students and clerks included Dean Acheson, Elliot Richardson, and Richard Goodwin.) This sweeping narrative illuminates how an Austrian immigrant befriended presidents from Theodore Roosevelt to Lyndon Johnson, led calls for a new trial for Sacco and Vanzetti, and helped achieve a unanimous opinion in On *Brown v. Board of Education*. The result is a full and fascinating portrait of a lawyer and Supreme Court justice who championed democracy"

Professor Brad Snyder teaches constitutional law, constitutional history, and sports law at Georgetown Law. He has published law review articles in the *Vanderbilt Law Review*, *Notre Dame Law Review*, *Law & History Review*, *UC-Davis Law Review*, and *Boston College Law Review* and is the author of *The House of Truth: A Washington Political Salon and the Foundations of American Liberalism* (Oxford University Press, 2017). Prior to law teaching, Professor Snyder worked as an associate at Williams & Connolly LLP and wrote two critically acclaimed books about baseball including *A Well-Paid Slave: Curt Flood's Fight for Free Agency in Professional Sports* (Viking/Penguin, 2006). A graduate of Duke University and Yale Law School, he clerked for the Honorable Dorothy W. Nelson on the United States Court of Appeals for the Ninth Circuit.

Time: 12:30 p.m., Monday, November 14, 2022, with the Library's famous wine & cheese reception immediately following.

R.S.V.P.: If you would like to attend telephone the Library at 410-727-0280 or reply by e-mail to **jwbennett1840@gmail.com**. Please remember to indicate whether you will be attending in-person or by way of Zoom. If you are joining us remotely, a Zoom link will be forwarded the week of the program.

Honorable Joseph F. Murphy, Jr.

After a few months of wasting – blessedly painless – Joe Murphy died in full possession of his faculties and humor, still at work and welcoming company to the hospice when he wasn't.

When I first learned of his illness, a short time after he'd returned to the Bench, I phoned him in the hospital and got the lowdown as to where matters stood. He explained the nature of his malignancy, noting that the Hopkins medicos had advised that his best shot was one of these cutting-edge cancer-killer drugs – no surgery, radiation or chemo for him! And off they went.

Only rub they told him was the remote possibility – odds at only one or two percent – that the potion might fatally attack his heart.

Joe later reported matter of factly that he'd fallen within that select group.

All I could think to respond to this news was to say that I wasn't surprised one bit; he was always in the one percent!

We both laughed at this irony 'cause that's about all one could do other than cry.

Stellar in all he did, a credit to our profession and as decent a man and as loyal a friend one might ever encounter. Top one percentile to the end.

Rob Ross Hendrickson

Honorable Lawrence F. Rodowsky

In response to last issue's invitation to submit additional remembrances of Judge Rodowsky, we received the following from Judge Pamela J. White, Circuit Court for Baltimore City (Ret.). The last two paragraphs below are the first and concluding paragraphs from Judge White's remarks about Judge Rodowsky which appeared in 2001. We invite all of you to the Library to read them in their totality. - J.B.

"Coach Larry Rodowsky" was the title of my segment of the tributes to Judge Rodowsky published in the Maryland Law Review on his retirement (Volume 60, pp.790-797). As described in the law review piece, my remembrance--and gratitude for all that he was--focuses on Judge Rodowsky's work as the 'first team captain and MVP' of the Select Committee on Gender Equality beginning in 1989."

"It is no secret that Larry Rodowsky is an avid fan of Baltimore's professional sports teams. It is no surprise that Judge Lawrence F. Rodowsky is a good sport and team player in all of his professional activities. It is noteworthy that Judge Rodowsky served with distinction as the first team captain and MVP of the Maryland Select Committee on Gender Equality beginning in 1989.

During Judge Rodowsky's tenure as captain and team member of the Slect Committee on Gender Equality, "substantial progress" was made on several critical recommendations of the 1989 Report. Judge Rodowsky called the early plays, successfully, as the Select Committee developed momentum to challenge gender bias in our judicial system."

Bar Library President Publishes New Work

JOURNAL OF TWO PLAGUE YEARS by George W. Liebmann

This is a collection of 70 op-ed pieces appearing in the Baltimore Sun, The American Conservative Online, the Washington Examiner, Chronicles Online, the Washington Times, and the Calvert Institute website in the two years beginning with the presidential election of 2020. It reflects the views of a writer discouraged by the indifference to constitutional values of former President Trump and the devotion to identity politics and moral nihilism of too many of his opponents. It includes articles on President Biden's proposals, voting rights, abortion, the minimum wage, conservation measures, New Urbanism proposals, drug and criminal justice policy, various Maryland political issues, and reflections on past political actors, including William Howard Taft and Felix Frankfurter. 170 pp. The book is available from Amazon in a paperback edition for $20 or in a Kindle edition for $15.

It is a sequel to:

VOX CLAMANTIS IN DESERTO, a collection of 110 short 'op-ed' articles written over a 25-year period encompassing the Clinton, Bush Jr., Obama and Trump administrations; included are a few longer pieces on welfare, reapportionment, Palestine, and civil rights 'consent decrees.' This collection is followed by 20 book reviews, including works by Gary Hart, Hillary Clinton, Gabriel Schoenfeld, Victor Klemperer, Donald Rumsfeld, Frank Costigliola, John Paton Davies, Constance Jordan, Richard Evans, and Jill Lepore and three longer essays on the original design of the United Nations, the Kennedy administration, and the after-effects of Naziism. 350 pp. Available at Amazon.com: $25 for paperback

By the same author:

The Last American Diplomat: John D. Negroponte and the Changing Face of US Diplomacy

"A detailed account of this remarkable career. [Liebmann's] book will be valued by all serious students of American foreign policy." –Times Literary Supplement

Diplomacy between the Wars: Five Diplomats and the Shaping of the Modern World

"Liebmann's thesis will not be welcomed by those who give more than two cheers for democracy, believe that all international problems are capable of solution or think that international law and organisations are the answer to all the world's problems. He makes a powerful case for realistic and informed diplomacy guided by professionals." –Times Higher Education Supplement

America's Political Inventors: The Lost Art of Legislation

"This book consists mostly of engaging vignettes of individuals who pioneered the development of largely successful schemes for the improvement of American life at the state and local levels... This is an original, well- written, rewarding book meriting a wide readership." –CHOICE

The Fall of the House of Speyer: The Story of a Banking Dynasty

"A solid work of financial and social history...Mr. Liebmann has done a service by bringing the history of an important, but almost forgotten, banking family to notice." – Wall Street Journal

TIS THE SEASON – ALMOST

It is hard to believe that by the time the next issue of the *Advance Sheet* "hits the streets," it will be November. I cannot remember a time when hearing from someone meant as much as it does today. We reach out and almost without fail we conclude our remarks with be safe and stay well. If, in addition to calls and e-mails, you would like to send an old fashioned salutation to someone through the mail, I would recommend to you Bar Library note cards. A number of years ago the Bar Library commissioned local artist Martha Dougherty to render works of the Bar Library and Mitchell Courthouse. They were so well received that additional images of the Museum of Baltimore Legal History, Ceremonial Courtroom 400 and the Supreme Bench Courtroom (Courtroom 600), were completed. In turn, these images were used to create Bar Library greeting cards. These marvelous representations evoke a dignity and sophistication that make them ideal for just about any occasion. The cards are blank inside (a brief description of what is portrayed is set forth on the back), allowing you to put whatever you might want, such as a particular holiday message or greeting. They sell for $1.50 each or $14.00 for a box of ten, which, as anyone who has recently purchased a card can tell you, is quite a bargain. In addition to the cards, prints of each of the scenes are available at a cost of $75.00 to $175.00 each, depending upon the size. They make a wonderful gift for anyone associated with the legal profession. This is especially so for that senior Baltimore lawyer who undoubtedly spent a large

part of their early career doing research in the Bar Library or coming to the Mitchell Courthouse for trials and various ceremonies. To purchase, just stop by the Library, phone us at 410-727-0280 or send an e-mail to jwbennett@barlib.org. Curbside pick-up is available.

Joe Bennett

Books – The Perfect Present

As part of a literacy campaign, not sure whether it is still out there or not, we were all told, I suppose especially the young, that "Reading is Fundamental." We found out during the pandemic, that it really is not a bad way to spend time. Many of the speakers who have appeared as part of the Bar Library Lecture series have done so in promotion of a book they had recently published. The Library obtained numerous copies for sale at the lectures and retained those that were not sold so that those who could not attend might have the chance to purchase them at a later time. Thus was born the Bar Library bookstore. The following are available for purchase. For yourself, for someone who is interested in the law or history, stop by and visit our store. If you already know what you would like, just let us know and we will get it to you – including that favorite modern day favorite – curbside pick-up. Just call 410-727-0280 or e-mail us at **jwbennett@barlib.org**.

Abraham Lincoln & Treason In The Civil War (Hardcover) (Signed By Author) $35.00
Abraham Lincoln & Treason In The Civil War (Softcover) (Signed By Author) $20.00
American Constitutional History: A Brief Introduction $30.00
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Art Of Cross-Examination $95.00
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Odessa: Architecture – Monuments $35.00
The Order Of The Coif $95.00
Our Little Monitor: The Greatest Invention Of The Civil War (Signed By Author) $25.00
Prohibition In Maryland: A Collection Of Documents $15.00
The Promise And The Dream $30.00
Reason And Imagination: The Selected Correspondence of Learned Hand $35.00
The Secret Life Of Lady Liberty $20.00
The Spirit Of The Common Law And Other Writings $150.00
Telemachus $20.00

Speaking of meritorious works:

Republican Press At A Democratic Convention: Reports Of the 1867 Maryland Constitutional Convention By The Baltimore American And Commercial Advertiser with Annotations and Commentary by John J. Connolly is a comprehensive volume of over 800 pages. It is currently available at the Bar Library for $50, a fraction of what is currently paid not just for law books, but for supplements to those books. Copies can be purchased through the Library's bookstore, which offers shipping and curbside pick-up. To place your order, telephone 410-727-0280 or e-mail us at **jwbennett@barlib.org**. As a Maryland lawyer there are two documents that you cannot know enough about, one being the Constitution of the United States and the other the Constitution of the State of Maryland. That said, how invaluable is a work that sets forth a substantial amount of information concerning the adoption of one of these documents. Yes, that is right, you should order your copy today!

A Bar Library Membership: The Gift That Keeps On Giving

The ability to borrow from one of the largest collections of legal material in the State; access to expansive Westlaw databases; the purchasing of requested treatises and databases by the Library at your request; telephone and e-mail reference; e-mailing of requests; scanning of material; a speaker series; educational seminars; the Motor Vehicle Administration search service; an on-line catalog accessible from your home or office; interlibrary loan – need I say more. Much more for much less, talk about the perfect gift for yourself, or perhaps, how about a friend. Thanks and take care.

Joe Bennett

Membership Application

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I am a member in good standing of the State Bar Of Maryland:

YES _____ No _____

Dues are $250.00 for the 2022-2023 membership year (Ending September 30, 2023)

Please make dues check payable to the "Baltimore Bar Library"

MEMBER GENEROSITY

During the year the Library benefited from the generosity and financial support of the legal community. I would like to express my thanks to all those who have been so generous. What we have been able to accomplish would not have been possible without that support. Thank you.

Joe Bennett

Contributions to the Bar Library for Fiscal Year 2021-2022 (In Cash Or In Kind)

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REPORT

OF THE

JOINT COMMITTEE ON RECONSTRUCTION.

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 as assiduously as other duties would permit, and now submit to Congress, as the result of their deliberations, a resolution proposing amendments to the Constitution, 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 towards the reorganization of civil government, and the disposition of the people towards the United States; in a word, their fitness to take an active part in the administration of national affairs.

As to their 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 finances, 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 and without the power to frame 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 his conversation with Mr. Stearns, of Mas-

sachusetts, 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 navy of the United States. The Confederate States 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 connexions, without national or international relations, and subject only to martial law. By withdrawing their representatives 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 constitutions in respect to the vital principle which connected their respective States with the Union and secured 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 states, "from the appropriation for army contingencies, because the duties performed by the parties were regarded as of a temporary character, ancillary 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 power. But he was in exclusive possession of the military authority. It was for him to decide how far he would exercise it, how far he would relax it, when 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, nor 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 of 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 States 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 their 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 this would impute to the President designs of encroachment upon a co-ordinate branch of the government, which should not be lightly 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 the 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 seemed to have based his suggestions was incomplete and unsatisfactory. Authenticated copies of the new 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 had participated in these conventions, and in one State alone was any proposition made to submit the action of the conventions 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 still greater force from the fact, undisputed, that in all these 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 from 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 divided and placed in the hands of four sub-committees, who have been diligently employed in its accomplishment. The results of their labors have 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 justification or excuse, rose in insurrection against the United States. They deliberately abolished their State governments so far as the same connected them politically with the Union as members thereof under the Constitution. They deliberately 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 deter-

mined 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, we think, be denied by any one, having a tolerable acquaintance with 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 law of nations, control a contest of that character, and to all the legitimate consequences following it. One of those consequences was that, within the limits prescribed by humanity, the conquered rebels were at the mercy of the conquerors. That a government thus outraged had 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 of 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; that 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 pastime which any State may play at, not only certain that it can lose nothing in any event, but may even be the gainer by defeat. If rebellion succeeds, it accomplishes its purpose and destroys the government. If it fails, the war has been barren of results, and the battle may be still 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 do 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 profitless 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 a mockery, to contend that a people who have thrown off their allegiance, destroyed the local government which bound their States to the Union as members thereof, 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 a principle 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 very 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 reject 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 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 taxed, 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 is true that the people of the so-called Confederate States had 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 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 by 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 omit the ordinary exercise of its constitutional power to compel equal contribution from all, towards the expenses of 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 have no right to complain if, before resuming those privileges, and while the people of the United States are devising measures 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 pretence 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 had been abolished by constitutional amendment. A large proportion of the population had 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 them, without securing them their rights as free men and citizens. The whole civilized world would have cried out against such base ingratitude, and the bare idea is offensive to all right-thinking men. Hence it became important to inquire what could be done to secure their rights, civil and political. It was evident to your committee that adequate security could only be found in appropriate constitutional provisions. 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 become free, representation for 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 positions as States of the Union. As representation is by the Constitution based upon population, your committee did not think it advisable to recommend a change of that basis. The increase of representation necessarily resulting from the abolition of slavery was considered the most important element in the questions arising out of the changed condition 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 if not the only method of surmounting the difficulty, and as eminently just and proper in itself, your committee came 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 of 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 provision would be in its nature gentle and persuasive, and would lead, it was hoped, at 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 all 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 towards 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 towards the establishment of a State government. They were acting under the War Department and paid out of its funds. They were simply bridging over the chasm between 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 adopted in their constitutions and ordinances as conditions precedent to their recognition by the President. The inducement held out by the President for compliance with the conditions imposed was, directly in one instance, and presumably, therefore, in others, the immediate admission of senators and representatives to Congress. The character 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 his reason that it was a "revolutionary body." There is no evidence of the loyalty or disloyalty of the members of those 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 there 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 civil government," or whether we adopt the alternative doctrine that they were only suspended and were revived by the suppression of the rebellion, the new provisions 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 the consent of the people. Nor could either a convention or a legislature change the fundamental law without power previously conferred. In the view of your committee, it follows, therefore, that the people of a State where the constitution has been thus amended might feel themselves justified in repudiating altogether all such unauthorized assumptions of power, and might be expected to do so at 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, while in some States they have been either passed by in silence or rejected. The language of all the provisions and ordinances of these States on the subject amounts to nothing more than an unwilling admission of an unwelcome truth. As to the ordinance of secession, it is, in some cases, declared "null and void," and in others simply "repealed;" and in no instance is a refutation of this deadly heresy considered worthy of a place in the new constitution.

If, as the President assumes, these insurrectionary States were, at the close of the war, wholly without State governments, it would seem that, before being admitted to participation in the direction of public affairs, such governments should be regularly organized. Long usage has established, and numerous statutes have pointed out, the mode in which this should be done. A convention to frame a form of government should be assembled under competent authority. Ordinarily, this authority emanates from Congress; but, under the peculiar circumstances, your committee is not disposed to criticise the President's action in assuming the power exercised by him in this regard. The convention, when assembled, should frame a constitution of government, which should be submitted to the people for adoption. If adopted, a legislature should be convened to pass the laws necessary to carry it into effect. When a State, thus organized, claims representation in Congress, the election of representatives should be provided for by law, in accordance with the laws of Congress regulating representation, and the proof that the action taken has been in conformity to law should be submitted to Congress.

In no case have these essential preliminary steps been taken. The conventions assembled seem to have assumed that the constitutions which had been repudiated and overthrown were still in existence, and operative to constitute the States members of the Union, and to have contented themselves with such amendments as they were informed were requisite in order to insure their return to an immediate participation in the government of the United States. Not waiting to ascertain whether the people they represented would adopt even the proposed amendments, they at once ordered elections of representatives to Congress, in nearly all instances before an executive had been chosen to issue writs of election under the State laws, and such elections as were held were ordered by the conventions. In one instance at least the writs of election were signed by the provisional governor. Glaring irregularities, and unwarranted assumptions of power, are manifest in several cases, particularly in South Carolina, where the convention, although disbanded by the provisional governor on the ground that it was a revolutionary body, assumed to redistrict the State.

It is quite evident from all these facts, and indeed from the whole mass of testimony submitted by the President to the Senate, that in no instance was regard paid to any other consideration than obtaining immediate admission to Congress, under the barren form of an election in which no precautions were taken to secure regularity of proceedings, or the assent of the people. No constitution has been legally adopted except, perhaps, in the State of Tennessee, and such elections as have been held were without authority of law. Your committee are accordingly forced to the conclusion that the States referred to have not placed themselves in a condition to claim representation in Congress, unless all the rules which have, since the foundation of the government, been deemed essential in such cases, should be disregarded.

It would undoubtedly be competent for Congress to waive all formalities and to admit these Confederate States to representation at once, trusting that time and experience would set all things right. Whether it would be advisable to do so, however, must depend upon other considerations of which it remains to treat. But it may well be observed, that the inducements to such a step should

be of the very highest character. It seems to your committee not unreasonable to require satisfactory evidence that the ordinances and constitutional provisions which the President deemed essential in the first instance will be permanently adhered to by the people of the States seeking restoration, after being admitted to full participation in the government, and will not be repudiated when that object shall have been accomplished. And here the burden of proof rests upon the late insurgents who are seeking restoration to the rights and privileges which they willingly abandoned, and not upon the people of the United States who have never undertaken, directly or indirectly, to deprive them thereof. It should appear affirmatively that they are prepared and disposed in good faith to accept the results of the war, to abandon their hostility to the government and to live in peace and amity with the people of the loyal States, extending to all classes of citizens equal rights and privileges, and conforming to the republican idea of liberty and equality. They should exhibit in their acts something more than an unwilling submission to an unavoidable necessity—a feeling, if not cheerful, certainly not offensive and defiant. And they should evince an entire repudiation of all hostility to the general government, by an acceptance of such just and reasonable conditions as that government should think the public safety demands. Has this been done? Let us look at the facts shown by the evidence taken by the committee.

Hardly is the war closed before the people of these insurrectionary States come forward and haughtily claim, as a right, the privilege of participating at once in that government which they had for four years been fighting to overthrow. Allowed and encouraged by the Executive to organize State governments, they at once place in power leading rebels, unrepentant and unpardoned, excluding with contempt those who had manifested an attachment to the Union, and preferring, in many instances, those who had rendered themselves the most obnoxious. In the face of the law requiring an oath which would necessarily exclude all such men from federal offices, they elect, with very few exceptions, as senators and representatives in Congress, men who had actively participated in the rebellion, insultingly denouncing the law as unconstitutional. It is only necessary to instance the election to the Senate of the late vice-president of the confederacy, a man who, against his own declared convictions, had lent all the weight of his acknowledged ability and of his influence as a most prominent public man to the cause of the rebellion, and who, unpardoned rebel as he is, with that oath staring him in the face, had the assurance to lay his credentials on the table of the Senate. Other rebels of scarcely less note or notoriety were selected from other quarters. Professing no repentance, glorying apparently in the crime they had committed, avowing still, as the uncontradicted testimony of Mr. Stephens and many others proves, an adherence to the pernicious doctrine of secession, and declaring that they yielded only to necessity, they insist, with unanimous voice, upon their rights as States, and proclaim that they will submit to no conditions whatever as preliminary to their resumption of power under that Constitution which they still claim the right to repudiate.

Examining the evidence taken by your committee still further, in connexion with facts too notorious to be disputed, it appears that the southern press, with few exceptions, and those mostly of newspapers recently established by northern men, abounds with weekly and daily abuse of the institutions and people of the loyal States; defends the men who led, and the principles which incited, the rebellion; denounces and reviles southern men who adhered to the Union; and strives, constantly and unscrupulously, by every means in its power, to keep alive the fire of hate and discord between the sections; calling upon the President to violate his oath of office, overturn the government by force of arms, and drive the representatives of the people from their seats in Congress. The national banner is openly insulted, and the national airs scoffed at, not only by an ignorant populace, but at public meetings, and once, among other notable in-

stances, at a dinner given in honor of a notorious rebel who had violated his oath and abandoned his flag. The same individual is elected to an important office in the leading city of his State, although an unpardoned rebel, and so offensive that the President refuses to allow him to enter upon his official duties. In another State the leading general of the rebel armies is openly nominated for governor by the speaker of the house of delegates, and the nomination is hailed by the people with shouts of satisfaction, and openly indorsed by the press.

Looking still further at the evidence taken by your committee, it is found to be clearly shown by witnesses of the highest character and having the best means of observation, that the Freedmen's Bureau, instituted for the relief and protection of freedmen and refugees, is almost universally opposed by the mass of the population, and exists in an efficient condition only under military protection, while the Union men of the south are earnest in its defence, declaring with one voice that without its protection the colored people would not be permitted to labor at fair prices, and could hardly live in safety. They also testify that without the protection of United States troops, Union men, whether of northern or southern origin, would be obliged to abandon their homes. The feeling in many portions of the country towards emancipated slaves, especially among the uneducated and ignorant, is one of vindictive and malicious hatred. This deep-seated prejudice against color is assiduously cultivated by the public journals, and leads to acts of cruelty, oppression, and murder, which the local authorities are at no pains to prevent or punish. There is no general disposition to place the colored race, constituting at least two-fifths of the population, upon terms even of civil equality. While many instances may be found where large planters and men of the better class accept the situation, and honestly strive to bring about a better order of things, by employing the freedmen at fair wages and treating them kindly, the general feeling and disposition among all classes are yet totally averse to the toleration of any class of people friendly to the Union, be they white or black; and this aversion is not unfrequently manifested in an insulting and offensive manner.

The witnesses examined as to the willingness of the people of the south to contribute, under existing laws, to the payment of the national debt, prove that the taxes levied by the United States will be paid only on compulsion and with great reluctance, while there prevails, to a considerable extent, an expectation that compensation will be made for slaves emancipated and property destroyed during the war. The testimony on this point comes from officers of the Union army, officers of the late rebel army, Union men of the southern States, and avowed secessionists, almost all of whom state that, in their opinion, the people of the rebellious States would, if they should see a prospect of success, repudiate the national debt.

While there is scarcely any hope or desire among leading men to renew the attempt at secession at any future time there is still, according to a large number of witnesses, including A. H. Stephens, who may be regarded as good authority on that point, a generally prevailing opinion which defends the legal right of secession, and upholds the doctrine that the first allegiance of the people is due to the States, and not to the United States. This belief evidently prevails among leading and prominent men as well as among the masses everywhere, except in some of the northern counties of Alabama and the eastern counties of Tennessee.

The evidence of an intense hostility to the federal Union, and an equally intense love of the late confederacy nurtured by the war, is decisive. While it appears that nearly all are willing to submit, at least for the time being, to the federal authority, it is equally clear that the ruling motive is a desire to obtain the advantages which will be derived from a representation in Congress. Officers of the Union army on duty, and northern men who go south to engage in business, are generally detested and proscribed. Southern men who adhered to

the Union are bitterly hated and relentlessly persecuted. In some localities prosecutions have been instituted in State courts against Union officers for acts done in the line of official duty, and similar prosecutions are threatened elsewhere as soon as the United States troops are removed. All such demonstrations show a state of feeling against which it is unmistakably necessary to guard.

The testimony is conclusive that after the collapse of the confederacy the feeling of the people of the rebellious States was that of abject submission. Having appealed to the tribunal of arms, they had no hope except that by the magnanimity of their conquerors their lives, and possibly their property, might be preserved. Unfortunately, the general issue of pardons to persons who had been prominent in the rebellion, and the feeling of kindliness and conciliation manifested by the Executive, and very generally indicated through the northern press, had the effect to render whole communities forgetful of the crime they had committed, defiant towards the federal government, and regardless of their duties as citizens. The conciliatory measures of the government do not seem to have been met even half way. The bitterness and defiance exhibited toward the United States under such circumstances is without a parallel in the history of the world. In return for our leniency we receive only an insulting denial of our authority. In return for our kind desire for the resumption of fraternal relations we receive only an insolent assumption of rights and privileges long since forfeited. The crime we have punished is paraded as a virtue, and the principles of republican government which we have vindicated at so terrible a cost are denounced as unjust and oppressive.

If we add to this evidence the fact that, although peace has been declared by the President, he has not, to this day, deemed it safe to restore the writ of *habeas corpus*, to relieve the insurrectionary States of martial law, nor to withdraw the troops from many localities, and that the commanding general deems an increase of the army indispensable to the preservation of order and the protection of loyal and well-disposed people in the south, the proof of a condition of feeling hostile to the Union and dangerous to the government throughout the insurrectionary States would seem to be overwhelming.

With such evidence before them, it is the opinion of your committee—

I. That the States lately in rebellion were, at the close of the war, disorganized communities, without civil government, and without constitutions or other forms, by virtue of which political relations could legally exist between them and the federal government.

II. That Congress cannot be expected to recognize as valid the election of representatives from disorganized communities, which, from the very nature of the case, were unable to present their claim to representation under those established and recognized rules, the observance of which has been hitherto required.

III. That Congress would not be justified in admitting such communities to a participation in the government of the country without first providing such constitutional or other guarantees as will tend to secure the civil rights of all citizens of the republic; a just equality of representation; protection against claims founded in rebellion and crime; a temporary restoration of the right of suffrage to those who have not actively participated in the efforts to destroy the Union and overthrow the government, and the exclusion from positions of public trust of, at least, a portion of those whose crimes have proved them to be enemies to the Union, and unworthy of public confidence.

Your committee will, perhaps, hardly be deemed excusable for extending this report further; but inasmuch as immediate and unconditional representation of the States lately in rebellion is demanded as a matter of right, and delay and even hesitation is denounced as grossly oppressive and unjust, as well as unwise and impolitic, it may not be amiss again to call attention to a few undisputed and notorious facts, and the principles of public law applicable thereto,

in order that the propriety of that claim may be fully considered and well understood.

The State of Tennessee occupies a position distinct from all the other insurrectionary States, and has been the subject of a separate report which your committee have not thought it expedient to disturb. Whether Congress shall see fit to make that State the subject of separate action, or to include it in the same category with all others, so far as concerns the imposition of preliminary conditions, it is not within the province of this committee either to determine or advise.

To ascertain whether any of the so-called Confederate States "are entitled to be represented in either house of Congress," the essential inquiry is, whether there is, in any one of them, a constituency qualified to be represented in Congress. The question how far persons claiming seats in either house possess the credentials necessary to enable them to represent a duly qualified constituency is one for the consideration of each house separately, after the preliminary question shall have been finally determined.

We now propose to re-state, as briefly as possible, the general facts and principles applicable to all the States recently in rebellion:

First. The seats of the senators and representatives from the so-called Confederate States became vacant in the year 1861, during the second session of the thirty-sixth Congress, by the voluntary withdrawal of their incumbents, with the sanction and by direction of the legislatures or conventions of their respective States. This was done as a hostile act against the Constitution and government of the United States, with a declared intent to overthrow the same by forming a southern confederation. This act of declared hostility was speedily followed by an organization of the same States into a confederacy, which levied and waged war, by sea and land, against the United States. This war continued more than four years, within which period the rebel armies besieged the national capital, invaded the loyal States, burned their towns and cities, robbed their citizens, destroyed more than 250,000 loyal soldiers, and imposed an increased national burden of not less than $3,500,000,000, of which seven or eight hundred millions have already been met and paid. From the time these confederated States thus withdrew their representation in Congress and levied war against the United States, the great mass of their people became and were insurgents, rebels, traitors, and all of them assumed and occupied the political, legal, and practical relation of enemies of the United States. This position is established by acts of Congress and judicial decisions, and is recognized repeatedly by the President in public proclamations, documents, and speeches.

Second. The States thus confederated prosecuted their war against the United States to final arbitrament, and did not cease until all their armies were captured, their military power destroyed, their civil officers, State and confederate, taken prisoners or put to flight, every vestige of State and confederate government obliterated, their territory overrun and occupied by the federal armies, and their people reduced to the condition of enemies conquered in war, entitled only by public law to such rights, privileges, and conditions as might be vouchsafed by the conqueror. This position is also established by judicial decisions, and is recognized by the President in public proclamations, documents, and speeches.

Third. Having voluntarily deprived themselves of representation in Congress for the criminal purpose of destroying the federal Union, and having reduced themselves, by the act of levying war, to the condition of public enemies, they have no right to complain of temporary exclusion from Congress; but, on the contrary, having voluntarily renounced the right to representation, and disqualified themselves by crime from participating in the government, the burden now rests upon them, before claiming to be reinstated in their former condition, to show that they are qualified to resume federal relations. In order to do this,

they must prove that they have established, with the consent of the people, republican forms of government in harmony with the Constitution and laws of the United States, that all hostile purposes have ceased, and should give adequate guarantees against future treason and rebellion—guarantees which shall prove satisfactory to the government against which they rebelled, and by whose arms they were subdued.

Fourth. Having, by this treasonable withdrawal from Congress, and by flagrant rebellion and war, forfeited all civil and political rights and privileges under the federal Constitution, they can only be restored thereto by the permission and authority of that constitutional power against which they rebelled and by which they were subdued.

Fifth. These rebellious enemies were conquered by the people of the United States, acting through all the co-ordinate branches of the government, and not by the executive department alone. The powers of conqueror are not so vested in the President that he can fix and regulate the terms of settlement and confer congressional representation on conquered rebels and traitors. Nor can he, in any way, qualify enemies of the government to exercise its law-making power. The authority to restore rebels to political power in the federal government can be exercised only with the concurrence of all the departments in which political power is vested; and hence the several proclamations of the President to the people of the Confederate States cannot be considered as extending beyond the purposes declared, and can only be regarded as provisional permission by the commander-in-chief of the army to do certain acts, the effect and validity whereof is to be determined by the constitutional government, and not solely by the executive power.

Sixth. The question before Congress is, then, whether conquered enemies have the right, and shall be permitted at their own pleasure and on their own terms, to participate in making laws for their conquerors; whether conquered rebels may change their theatre of operations from the battle-field, where they were defeated and overthrown, to the halls of Congress, and, through their representatives, seize upon the government which they fought to destroy; whether the national treasury, the army of the nation, its navy, its forts and arsenals, its whole civil administration, its credit, its pensioners, the widows and orphans of those who perished in the war, the public honor, peace and safety, shall all be turned over to the keeping of its recent enemies without delay, and without imposing such conditions as, in the opinion of Congress, the security of the country and its institutions may demand.

Seventh. The history of mankind exhibits no example of such madness and folly. The instinct of self-preservation protests against it. The surrender by Grant to Lee, and by Sherman to Johnston, would have been disasters of less magnitude, for new armies could have been raised, new battles fought, and the government saved. The anti-coercive policy, which, under pretext of avoiding bloodshed, allowed the rebellion to take form and gather force, would be surpassed in infamy by the matchless wickedness that would now surrender the halls of Congress to those so recently in rebellion until proper precautions shall have been taken to secure the national faith and the national safety.

Eighth. As has been shown in this report, and in the evidence submitted, no proof has been afforded to Congress of a constituency in any one of the so-called Confederate States, unless we except the State of Tennessee, qualified to elect senators and representatives in Congress. No State constitution, or amendment to a State constitution, has had the sanction of the people. All the so-called legislation of State conventions and legislatures has been had under military dictation. If the President may, at his will, and under his own authority, whether as military commander or chief executive, qualify persons to appoint senators and elect representatives, and empower others to appoint and elect them, he thereby practically controls the organization of the legislative

department. The constitutional form of government is thereby practically destroyed, and its powers absorbed in the Executive. And while your committee do not for a moment impute to the President any such design, but cheerfully concede to him the most patriotic motives, they cannot but look with alarm upon a precedent so fraught with danger to the republic.

Ninth. The necessity of providing adequate safeguards for the future, before restoring the insurrectionary States to a participation in the direction of public affairs, is apparent from the bitter hostility to the government and people of the United States yet existing throughout the conquered territory, as proved incontestably by the testimony of many witnesses and by undisputed facts.

Tenth. The conclusion of your committee therefore is, that the so-called Confederate States are not, at present, entitled to representation in the Congress of the United States; that, before allowing such representation, adequate security for future peace and safety should be required; that this can only be found in such changes of the organic law as shall determine the civil rights and privileges of all citizens in all parts of the republic, shall place representation on an equitable basis, shall fix a stigma upon treason, and protect the loyal people against future claims for the expenses incurred in support of rebellion and for manumitted slaves, together with an express grant of power in Congress to enforce those provisions. To this end they offer a joint resolution for amending the Constitution of the United States, and the two several bills designed to carry the same into effect, before referred to.

Before closing this report, your committee beg leave to state that the specific recommendations submitted by them are the result of mutual concession, after a long and careful comparison of conflicting opinions. Upon a question of such magnitude, infinitely important as it is to the future of the republic, it was not to be expected that all should think alike. Sensible of the imperfections of the scheme, your committee submit it to Congress as the best they could agree upon, in the hope that its imperfections may be cured, and its deficiencies supplied, by legislative wisdom; and that, when finally adopted, it may tend to restore peace and harmony to the whole country, and to place our republican institutions on a more stable foundation.

W. P. FESSENDEN.
JAMES W. GRIMES.
IRA HARRIS.
J. M. HOWARD.
GEORGE H. WILLIAMS.
THADDEUS STEVENS.
ELIHU B. WASHBURNE.
JUSTIN S. MORRILL.
JNO. A. BINGHAM.
ROSCOE CONKLING.
GEORGE S. BOUTWELL.
HENRY T. BLOW.

MINORITY REPORT.

IN THE HOUSE OF REPRESENTATIVES

Mr. ROGERS, from the Select Committee on Reconstruction, submitted the following as the

VIEWS OF THE MINORITY.

The undersigned, a minority of the joint committee of the Senate and House of Representatives, constituted under the concurrent resolution of the 13th of December, 1865, making it their duty to "inquire into the condition of the States which formed the so-called Confederate States of America, and to 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," not being able to concur in the measures recommended by the majority, or in the grounds upon which they base them, beg leave to report:

In order to obtain a correct apprehension of the subject, and as having a direct bearing upon it, the undersigned think it all important clearly to ascertain what was the effect of the late insurrection upon the relations of the States where it prevailed, to the general government, and of the people collectively and individually of such States. To this inquiry they therefore first address themselves.

First, as to the States. Did the insurrection at its commencement, or at any subsequent time, legally dissolve the connexion between those States and the general government? In our judgment, so far from this being a "profitless abstraction," it is a vital inquiry. For if that connexion was not disturbed, such States during the entire rebellion were as completely component States of the United States as they were before the rebellion, and were bound by all the obligations which the Constitution imposes, and entitled to all its privileges. Was not this their condition?

The opposite view alone can justify the denial of such rights and privileges. That a State of the Union can exist without possessing them is inconsistent with the very nature of the government and terms of the Constitution. In its nature the government is formed of and by States possessing equal rights and powers. States unequal are not known to the Constitution. In its original formation perfect equality was secured. They were granted the same representation in the Senate, and the same right to be represented in the House of Representatives; the difference in the latter being regulated only by a difference in population. But every State, however small its population, was secured one representative in that branch. Each State was given the right, and the same right, to participate in the election of President and Vice-President, and all alike were secured the benefit of the judicial department. The Constitution, too, was submitted to the people of each State separately, and adopted by them in that capacity. The convention which framed it considered, as they were bound to do, each as a separate sovereignty that could not be subjected to the Constitution except by its own consent. That consent was consequently asked and given. The equality, therefore, of rights was the condition of the original

thirteen States before the government was formed, and such equality was not only not interfered with, but guaranteed to them as well in regard to the powers conferred upon the general government, as to those reserved to the States or to the people of the States.

The same equality is secured to the States which have been admitted into the Union since the constitution was adopted. In each instance the State admitted has been "declared to be one of the United States, on an *equal footing with the original States in all respects whatever.*"

The Constitution, too, so far as most of the powers it contains are concerned, operates directly upon the people in their individual and aggregate capacity, and on all alike. Each citizen, therefore, of every State owes the same allegiance to the general government, and is entitled to the same protection. The obligation of this allegiance it is not within the legal power of his State or of himself to annul or evade. It is made paramount and perpetual, and for that very reason it is equally the paramount duty of the general government to allow to the citizens of each State, and to the State, the rights secured to both, and the protection necessary to their full enjoyment. A citizen may, no doubt, forfeit such rights by committing a crime against the United States upon conviction of the same, where such forfeiture by law antecedently passed is made a part of the punishment. But a State cannot in its corporate capacity be made liable to such a forfeiture, for a State, as such, under the Constitution, cannot commit or be indicted for a crime. No legal proceeding, criminal or civil, can be instituted to deprive a State of the benefits of the Constitution, by forfeiting as against her any of the rights it secures. Her citizens, be they few or many, may be proceeded against under the law and convicted, but the State remains a State of the Union. To concede that, by the illegal conduct of her own citizens, she can be withdrawn from the Union, is virtually to concede the right of secession. For what difference does it make as regards the result whether a State can rightfully secede, (a doctrine, by-the-by, heretofore maintained by statesmen north as well as south,) or whether by the illegal conduct of her citizens she ceases to be a State of the Union? In either case the end is the same. The only difference is that by the one theory she ceases by law to be such a State, and by the other by crime, without and against law. But the doctrine is wholly erroneous. A State once in the Union must abide in it forever. She can never withdraw from or be expelled from it. A different principle would subject the Union to dissolution at any moment. It is, therefore, alike perilous and unsound.

Nor do we see that it has any support in the measures recommended by the majority of the committee. The insurrectionary States are by these measures conceded to be States of the Union. The proposed constitutional amendment is to be submitted to them as well as to the other States. In this respect each is placed on the same ground. To consult a State not in the Union on the propriety of adopting a constitutional amendment to the government of the Union, and which is necessarily to affect those States only composing the Union, would be an absurdity; and to allow an amendment which States in the Union might desire, to be defeated by the votes of States not in the Union, would be alike nonsensical and unjust. The very measure, therefore, of submitting to all the States forming the Union before the insurrection a constitutional amendment, makes the inquiry, whether all at this time are in or out of the Union, a vital one. If they are not, all should not be consulted; if they are, they should be, and should be only because they are. The very fact, therefore, of such a submission concedes that the southern States are, and never ceased to be, States of the Union.

Tested, therefore, either by the nature of our government or by the terms of the Constitution, the insurrection now happily and utterly suppressed has in no respect changed the relations of the States, where it prevailed, to the general

government. On the contrary, they are to all intents and purposes as completely States of the Union as they ever were. In further support of this proposition, if it needed any, we may confidently appeal to the fact just stated, that the very measure recommended, a constitutional amendment to be submitted to such States, furnishes such support; for, looking to and regarding the rights of the other States, such a submission has no warrant or foundation except upon the hypothesis that they are as absolutely States of the Union as any of the other States. It can never be under any circumstances a "profitless abstraction" whether under the Constitution a State is or is not a State of the Union. It can never be such an abstraction whether the people of a State once in the Union can voluntarily or by compulsion escape or be freed from the obligations it enjoins, or be deprived of the rights it confers or the protection it affords.

A different doctrine necessarily leads to a dissolution of the Union. The Constitution supposes that insurrections may exist in a State, and provides for their suppression by giving Congress the power to "call forth the militia" for the purpose. The power is not to subjugate the State within whose limits the insurrection may prevail, and to extinguish it as a State, but to preserve it as such by subduing the rebellion, by acting on the individual persons engaged in it, and not on the State at all. The power is altogether conservative; it is to protect a State, not to destroy it; to prevent her being taken out of the Union by individual crime, not in any contingency to put her out or keep her out.

The continuance of the Union of all the States is necessary to the intended existence of the government. The government is formed by a constitutional association of States, and its integrity depends on the continuance of the entire association. If one State is withdrawn from it by any cause, to that extent is the Union dissolved. Those that remain may exist as a government, but it is not the very government the Constitution designs. That consists of all, and its character is changed and its power is diminished by the absence of any one.

A different principle leads to a disintegration that must sooner or later result in the separation of all, and the consequent destruction of the government. To suppose that a power to preserve may, at the option of the body to which it is given, be used to destroy, is a proposition repugnant to common sense; and yet, as the late insurrection was put down by means of that power, that being the only one conferred upon Congress to that end, that proposition is the one on which alone it can be pretended that the southern States are not in the Union now as well as at first.

The idea that the war power, as such, has been used, or could have been used, to extinguish the rebellion is, in the judgment of the undersigned, utterly without foundation. That power was given for a different contingency—for the contingency of a conflict with other governments, an international conflict. If it had been thought that that power was to be resorted to to suppress a domestic strife, the words "appropriate to that object" would have been used. But so far from this having been done, in the same section that confers it an express provision is inserted to meet the exigency of a domestic strife, or insurrection. To subdue that, authority is given to call out the militia. Whether, in the progress of the effort to suppress an insurrection, the rights incident to war as between the United States and foreign nations may not arise, is a question which in no way changes the character of the contest as between the government and the insurrectionists. The exercise of such rights may be found convenient, or become necessary for the suppression of the rebellion, but the character of the conflict is in no way changed by a resort to them. That remains, as at first, and must from its very nature during its continuance remain, a mere contest in which the government seeks, and can only seek, to put an end to the rebellion. That achieved, the original condition of things is at once restored. Two judicial decisions have been made, by judges of eminent and unquestioned ability, which fully sustain our view. In one, that of the Amy Warbick, before the United

States district court of Massachusetts, Judge Sprague, referring to the supposed effect of the belligerent rights which it was conceded belonged to the government during the rebellion, by giving it, when suppressed, the rights of conquest, declared:

"It has been supposed that if the government have the right of a belligerent, then, after the rebellion is suppressed, it will have the rights of conquest; that a State and its inhabitants may be permanently divested of all political advantages, and treated as foreign territory conquered by arms. This is an error, a grave and dangerous error. Belligerent rights cannot be exercised where there are no belligerents. Conquest of a foreign country gives absolute, unlimited sovereign rights, but no nation ever makes such a conquest of its own territory. If a hostile power, either from without or within, takes and holds possession and dominion over any portion of its territory, and the nation, by force of arms, expel or overthrow the enemy, and suppresses hostilities, it acquires no new title, and merely regains the possession of that of which it has been temporarily deprived. The nation acquires no new sovereignty, but merely maintains its previous rights.

"When the United States take possession of a rebel district, they merely vindicate their pre-existing title. Under despotic governments confiscation may be unlimited, but under our government *the right of sovereignty over any portion of a State is given and limited by the Constitution*, and will be the same after the war as it was before."

In the other, an application for habeas corpus to Mr. Justice Nelson, one of the judges of the Supreme Court of the United States, by James Egan, to be discharged from an imprisonment to which he had been sentenced by a military commission in South Carolina, for the offence of murder alleged to have been committed in that State, and the discharge was ordered, and in an opinion evidently carefully prepared, among other things, said:

"For all that appears, the civil local courts of the State of South Carolina were in the full exercise of their judicial functions at the time of this trial, as restored by the suppression of the rebellion, some seven months previously, and by the revival of the laws and the reorganization of the State in obedience to, and in conformity with, its constitutional duties to the Union. Indeed, long previous to this the provisional government had been appointed by the President, who is commander-in-chief of the army and navy of the United States, (and whose will under martial law constituted the only rule of action,) for the special purpose of changing the existing state of things, and restoring the civil government over the people. In operation of this appointment, a new constitution had been formed, a governor and legislature elected under it, *and the State placed in the full enjoyment, or entitled to the full enjoyment, of all her constitutional rights and privileges.* The constitutional laws of the Union were thereby enjoyed and obeyed, and were as authoritative and binding over the people of the State as in any other portion of the country. Indeed, the moment the rebellion was suppressed, and the government growing out of it subverted, *the ancient laws resumed their accustomed sway, subject only to the new reorganization by the appointment of the proper officer to give them operation and effect.* This organization and appointment of the public functionaries, which was under the superintendence and direction of the President, the commander-in-chief of the army and navy of the country, and who, as such, had previously governed the State, from imperative necessity, by the force of martial law, had already taken place, and the necessity no longer existed."

This opinion is the more authoritative than it might possibly be esteemed otherwise, from its being the first elaborate statement of the reasons which governed the majority of the Supreme Court at the last term, in their judgment in the case of Milligan and others, that military commissions for the trial of civilians are not constitutional. Mr. Justice Nelson was one of that majority, and

of course was advised of the grounds of their decision. We submit that nothing could be more conclusive in favor of the doctrine for which they are cited, than these judgments. In the one the proposition of conquest of a State as a right under the war to suppress the insurrection is not only repudiated by Judge Sprague, but, because of the nature of our government, is considered to be legally impossible. "The right of sovereignty over any portion of a State will," he tells us, "only be the same after the war as it was before. In the other we are told "that the suppression of the rebellion restores the courts of the State, and that when her government is reorganized she at once is "in the full enjoyment, or entitled to the full enjoyment, of all her constitutional rights and privileges."

Again, a contrary doctrine is inconsistent with the obligation which the government is under to each citizen of a State. Protection to each is a part of that obligation—protection not only as against a foreign, but a domestic foe. To hold that it is in the power of any part of the people of a State, whether they constitute a majority or minority, by engaging in insurrection and adopting any measure in its prosecution to make citizens who are not engaged in it, but opposed to it, enemies of the United States, having no right to the protection which the Constitution affords to citizens who are true to their allegiance, is as illegal as it would be flagrantly unjust. During the conflict the exigency of the strife may justify a denial of such protection, and subject the unoffending citizen to inconvenience or loss; but the conflict over the exigency ceases, and the obligation to afford him all the immunities and advantages of the Constitution, one of which is the right to be represented in Congress, becomes absolute and imperative. A different rule would enable the government to escape a clear duty, and to commit a gross violation of the Constitution. It has been said that the Supreme Court have entertained a different doctrine in the prize cases. This, in the judgment of the undersigned, is a clear misapprehension. One of the questions in those cases was, whether in such a contest as was being waged for the extinguishment of the insurrection, belligerent rights, as *between the United States and other nations*, belonged to the former. The court properly held that they did; but the parties engaged in the rebellion were designated as traitors, and liable to be tried as traitors when the rebellion should terminate. If the Confederate States, by force of insurrection, became foreign States and lost their character as States of the Union, then the contest was an international one, and treason was no more committed by citizens of the former against the latter than by those of the latter against the former. Treason necessarily assumes allegiance to the government, and allegiance necessarily assumes a continuing obligation to the government. Neither predicament was true, except upon the hypothesis that the old state of things continued. In other words, that the States, notwithstanding the insurrection, were continuously, and are now, States of the United States, and their citizens responsible to the Constitution and the laws. Second, what is there, then, in the present political condition of such States that justifies their exclusion from representation in Congress? Is it because they are without organized governments, or without governments republican in point of form? In fact, we know that they have governments completely organized with legislative, executive and judicial functions. We know that they are now in successful operation; no one within their limits questions their legality, or is denied their protection. How they were formed, under what auspices they were formed, are inquiries with which Congress has no concern. The right of the people of a State to form a government for themselves has never been questioned. In the absence of any restriction that right would be absolute, any form could be adopted that they might determine upon. The Constitution imposes but a single restriction—that the government adopted shall be "of a republican form," and this is done in the obligation to guarantee every State such a form. It gives no power to frame a constitution for a State. It

operates alone upon one already formed by the State. In the words of the Federalist, (No. 44,) "it supposes a pre-existing government of the form which is to be guaranteed." It is not pretended that the existing governments of the States in question are not of the required form. The objection is that they were not legally established. But it is confidently submitted that that is a matter with which Congress has nothing to do. The power to establish or modify a State government belongs exclusively to the people of the State. When they shall exercise it, how they shall exercise it, what provisions it shall contain, it is their exclusive right to decide, and when decided, their decision is obligatory upon everybody, and independent of all congressional control if such government be *republican*. To convert an obligation of guarantee into an authority to interfere in any way in the formation of the government to be guaranteed is to do violence to language. If it be said that the President did illegally interfere in the organization of such governments, the answers are obvious. First. If it was true, if the people of such States not only have not but do not complain of it, but, on the contrary, have pursued his advice, and are satisfied with and are living under the governments they have adopted, and those governments are republican in form, what right has Congress to interfere or deny their legal existence? Second. Conceding, for argument's sake, that the President's alleged interference was unauthorized, does it not, and for the same reason, follow that any like interference by Congress would be equally unauthorized? A different view is not to be maintained because of the difference in the nature of the powers conferred upon Congress and the President, the one being legislative and the other executive; for it is equally, and upon the same ground, beyond the scope of either to form a government for the people of a State once in the Union, or to expel such a State from the Union, or to deny, temporarily or permanently, the rights which belong to a State and her people under the Constitution.

Congress may admit new States, but a State once admitted ceases to be within its control, and can never again be brought within it. What changes her people may at any time think proper to make in her constitution is a matter with which neither Congress nor any department of the general government can interfere, unless such changes make the State government anti-republican, and then it can only be done under the obligation to guarantee that it be republican. Whatever may be the extent of the power conferred upon Congress in the 3d section, article 4, of the Constitution, to admit new States—in what manner and to what extent they can, under that power, interfere in the formation and character of the Constitution of such States preliminary to admission into the Union, no one has ever pretended that when that is had, the State can again be brought within its influence. The power is exhausted when once executed, the subject forthwith passing out of its reach. The State admitted, like the original thirteen States, becomes at once and forever independent of congressional control. A different view would change the entire character of the government as its framers and their contemporaries designed and understood it to be. They never intended to make the State governments subordinate to the general government. Each was to move supreme within its own orbit; but as each would not alone have met the exigencies of a government adequate to all the wants of the people, the two, in the language of Mr. Jefferson, constituted "co-ordinate departments of one single and integral whole;" the one having the power of legislation and administration "in affairs which concerned their own citizens only;" the other, "whatever concerned foreigners, or citizens of other States." Within their respective limits each is paramount. The States, as to all powers not delegated to the general government, are as independent of that government as the latter, in regard to all powers that are delegated to it, is independent of the governments of the States. The proposition, then, that Congress can, by force or otherwise, under the war or insurrectionary or any other power, expel a State from the

Union, or reduce it to a territorial condition and govern it as such, is utterly without foundation. The undersigned deem it unnecessary to examine the question further. They leave it upon the observations submitted, considering it perfectly clear that States, notwithstanding occurring insurrections, continue to be States of the Union.

Thirdly. If this is so, it necessarily follows that the rights of States under the Constitution, as originally possessed and enjoyed by them, are still theirs; and those they are now enjoying, as far as they depend upon the executive and judicial departments of the government. By each of these departments they are recognized as States. By the one, all officers of the government required by law to be appointed in such States have been appointed, and are discharging, without question, their respective functions. By the other they are, as States, enjoying the benefit, and subjected to the powers of that department; a fact conclusive to show that, in the estimation of the judiciary, they are, as they were at first, States of the Union, bound by the laws of the Union, and entitled to all the rights incident to that relation. And yet, so far they are denied that right which the Constitution properly esteems as the security of all the others—that right, without which government is anything but a republic—is indeed but a tyranny—the right of having a voice in the legislative department, whose laws bind them in person and in property—this, it is submitted, is a state of things without example in a representative republican government; and Congress, as long as it denies this right, is a mere despotism. Citizens may be made to submit to it by force, or dread of force, but a fraternal spirit and good feeling toward those who impose it, so important to the peace and prosperity of the country, are not to be hoped for, but rather unhappiness, dissatisfaction, and enmity. There is but one ground on which such conduct can find any excuse—a supposed public necessity; the peril of destruction to which the government would be subjected, if the right was allowed. But for such a supposition there is not, in the opinion of the undersigned, even a shadow of foundation.

The representatives of the States in which there was no insurrection, if the others were represented, would in the House, under the present apportionment, exceed the latter by a majority of seventy-two votes, and have a decided preponderance in the Senate. What danger to the government, then, can possibly arise from southern representation? Are the present senators and representatives fearful of themselves? Are they apprehensive that they might be led to the destruction of our institutions by the persuasion or any other influence of southern members? How disparaging to themselves is such an apprehension. Are they apprehensive that those who may succeed them from their respective States may be so fatally led astray? How disparaging is that supposition to the patriotism and wisdom of their constituents. Whatever effect on mere party success in the future such a representation may have we shall not stop to inquire. The idea that the country is to be kept in turmoil, States to be reduced to bondage, and their rights under the Constitution denied, and their citizens degraded, with a view to the continuance in power of a mere political party, cannot for a moment be entertained without imputing gross dishonesty of purpose and gross dereliction of duty to those who may entertain it. Nor do we deem it necessary to refer particularly to the evidence taken by the committee to show that there is nothing in the present condition of the people of the southern States that even excuses on that ground a denial of representation to them. We content ourselves with saying that in our opinion the evidence most to be relied upon, whether regarding the character of the witnesses or their means of information, shows that representatives from the southern States would prove perfectly loyal. We specially refer for this only to the testimony of Lieutenant General Grant. His loyalty and his intelligence no one can doubt. In his letter to the President of the 18th of December, 1865, after he had recently visited South Carolina, North Carolina, and Georgia, he says:

"*Both in travelling 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 intrusted with the law-making power.*"

Secession, as a practical doctrine ever hereafter to be resorted to, is almost utterly abandoned. It was submitted to and failed before the ordeal of battle. Nor can the undersigned imagine why, if its revival is anticipated as possible, the committee have not recommended an amendment to the Constitution guarding against it in terms. Such an amendment, it cannot be doubted, the southern as well as northern States would cheerfully adopt. The omission of such a recommendation is pregnant evidence that secession, as a constitutional right, is thought by the majority of the committee to be, practically, a mere thing of the past, as all the proof taken by them shows it to be, in the opinion of all the leading southern men who hitherto entertained it. The desolation around them, the hecatombs of their own slain, the stern patriotism of the men of the other States, exhibited by unlimited expenditure of treasure and of blood, and their love of the Union so sincere and deep-seated that it is seen they will hazard all to maintain it, have convinced the south that as a practical doctrine secession is extinguished forever. State secession, then, abandoned, and slavery abolished by the southern States themselves, or with their consent, upon what statesmanlike ground can such States be denied all the rights which the Constitution secures to States of the Union? All admit that to do so at the earliest period is demanded by every consideration of duty and policy, and none deny that the actual interest of the country is to a great extent involved in such admission. The staple productions of the southern States are as important to the other States as to themselves. Those staples largely enter into the wants of all alike, and they are also most important to the financial credit of the government. Those staples will never be produced as in the past until real peace, resting, as it can alone rest, on the equal and uniform operation of the Constitution and laws on all, is attained. To suppose that a brave and sensitive people will give an undivided attention to the increase of mere material wealth while retained in a state of political inferiority and degradation is mere folly. They desire to be again in the Union, to enjoy the benefits of the Constitution, and they invoke you to receive them. They have adopted constitutions free from any intrinsic objection, and have agreed to every stipulation thought by the President to be necessary for the protection and benefit of all, and in the opinion of the undersigned they are amply sufficient. Why exact, as a preliminary condition to representation, more? What more are supposed to be necessary? First, the repudiation of the rebel debt; second, the denial of all obligation to pay for manumit-

ted slaves; third, the inviolability of our own debt. If these provisions are deemed necessary, they cannot be defeated, if the south were disposed to defeat them, by the admission into Congress of their representatives. Nothing is more probable, in the opinion of the undersigned, than that many of the southern States would adopt them all; but those measures the committee connect with others which we think the people of the south will never adopt. They are asked to disfranchise a numerous class of their citizens, and also to agree to diminish their representation in Congress, and of course in the electoral college, or to admit to the right of suffrage their colored males of twenty-one years of age and upwards, (a class now in a condition of almost utter ignorance,) thus placing them on the same political footing with white citizens of that age. For reasons so obvious that the dullest may discover them, the right is not directly asserted of granting suffrage to the negro. That would be obnoxious to most of the northern and western States, so much so that their consent was not to be anticipated; but as the plan adopted, because of the limited number of negroes in such States, will have no effect on their representation, it is thought it may be adopted, while in the southern States it will materially lessen their number. That these latter States will assent to the measure can hardly be expected. The effect, then, if not the purpose, of the measure is forever to deny representatives to such States, or, if they consent to the condition, to weaken their representative power, and thus, probably, secure a continuance of such a party in power as now control the legislation of the government. The measure, in its terms and its effect, whether designed or not, is to degrade the southern States. To consent to it will be to consent to their own dishonor.

The manner, too, of presenting the proposed constitutional amendment, in the opinion of the undersigned, is impolitic and without precedent. The several amendments suggested have no connexion with each other; each, if adopted, would have its appropriate effect if the others were rejected; and each, therefore, should be submitted as a separate article, without subjecting it to the contingency of rejection if the States should refuse to ratify the rest. Each by itself, if an advisable measure should be submitted to the people, and not in such a connexion with those which they may think unnecessary or dangerous as to force them to reject all. The repudiation of the rebel debt, and all obligation to compensate for the loss of slave property, and the inviolability of the debts of the government, no matter how contracted, provided for by some of the sections of the amendment, we repeat, we believe would meet the approval of many of the southern States; but these no State can sanction without sanctioning others, which we think will not be done by them or by some of the northern States. To force negro suffrage upon any State by means of the penalty of a loss of part of its representation will not only be to impose a disparaging condition, but virtually to interfere with the clear right of each State to regulate suffrage for itself without the control of the government of the United States. Whether that control be exerted directly or indirectly, it will be considered, as it is a fatal blow to the right which every State in the past has held vital, the right to regulate her franchise.

To punish a State for not regulating it in a particular way, so as to give to all classes of the people the privilege of suffrage, is but seeking to accomplish incidentally what, if it should be done at all, should be done directly. No reason, in the view of the undersigned, can be suggested for the course adopted, other than a belief that such a direct interference would not be sanctioned by the northern and western States, while, as regards such States, the actual recommendation, because of the small proportion of negroes within their limits, will not in the least lessen their representative power in Congress or their influence in the presidential election, and they may therefore sanction it. This very inequality in its operation upon the States renders the measure, in our opinion, most unjust, and, looking to the peace and quiet of the country, most impolitic. But

the mode advised is also not only without but against all precedent. When the constitution was adopted it was thought to be defective in not sufficiently protecting certain rights of the States and the people. With the view of supplying a remedy for this defect, on the 4th March, 1789, various amendments by a resolution constitutionally passed by Congress were submitted for ratification to the States. They were twelve in number. Several of them were even less independent of each other than are those recommended by the committee. But it did not occur to the men of that day that it was right to force the States to adopt or reject all. Each was, therefore, presented as a separate article. The language of the resolution was, "that the following articles be proposed to the legislatures of the several States as amendments of the Constitution of the United States, ALL OR ANY OF WHICH ARTICLES, when ratified by three-fourths of the said legislatures, to be valid to all intents and purposes as parts of the Constitution. The Congress of that day was willing to obtain either of the submitted amendments—to get a part, if not able to procure the whole. They thought (and in that we submit they but conformed to the letter and spirit of the amendatory clause of the Constitution,) that the people have the right to pass severally on any proposed amendments. This course of our fathers is now departed from, and the result will probably be that no one of the suggested amendments, though some may be approved, will be ratified. This will certainly be the result unless the States are willing practically to relinquish the right they have always enjoyed, never before questioned by any recognized statesman, and all-important to their interest and security—the right to regulate the franchise in all their elections.

There are, too, some general considerations that bear on the subject, to which we will now refer.

First. One of the resolutions of the Chicago convention, by which Mr. Lincoln was first nominated for the presidency, says, "that the maintenance inviolate of *the rights of the States* is essential to the balance of power on which the prosperity and endurance of our political fabric depend." In his inaugural address of 4th March, 1861, which received the almost universal approval of the people, among other things he said, "*no State of its own mere motion can lawfully get out of the Union;*" and that, "in view of the Constitution and the laws, the Union is unbroken, and to the extent of my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States."

Second. Actual conflict soon afterwards ensued. The south, it was believed, misapprehended the purpose of the government in carrying it on, and Congress deemed it important to dispel that misapprehension by declaring what the purpose was. This was done in July, 1861, by their passing the following resolution, offered by Mr. Crittenden: "That in this national emergency, Congress, banishing all feeling of mere passion or resentment, will recollect only its duty to the whole country; that this war is not waged, upon our part, in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; that as soon as these objects are accomplished, the war ought to cease." The vote in the House was 119 for and 2 against it, and in the Senate 30 for and 5 against it. The design to conquer or subjugate, or to curtail or interfere in any way with the rights of the States, is in the strongest terms thus disclaimed, and the only avowed object asserted to be "to defend and maintain the spirit of the Constitution, and to preserve the Union AND THE DIGNITY, EQUALITY, AND RIGHTS OF THE SEVERAL STATES UNIMPAIRED." Congress, too, by the act of 13th July, 1861, empowered the President to declare, by proclamation, "that the inhabitants of such State or States where the insurrection existed are in a state of insurrection against the United States,"

and thereupon to declare that "all commercial intercourse by and between the same, by the citizens thereof and the citizens of the United States, shall cease and be unlawful *so long as such condition of hostility shall continue.*" Here, also, Congress evidently deals with the States as being in the Union and to remain in the Union. It seeks to keep them in by forbidding commercial intercourse between their citizens and the citizens of the other States so long, and so long *only*, as *insurrectionary hostility shall continue.* That ended, they are to be, as at first, entitled to the same intercourse with citizens of other States that they enjoyed before the insurrection. In other words, in this act, as in the resolution of the same month, the dignity, equality, and rights of such States (the insurrection ended) were not to be held in any respect impaired. The several proclamations of amnesty issued by Mr. Lincoln and his successor under the authority of Congress are also inconsistent with the idea that the parties included within them are not to be held, in the future, restored to all rights belonging to them as citizens of their respective States. A power to pardon is a power to restore the offender to the condition in which he was before the date of the offence pardoned.

It is now settled that a pardon removes not only the punishment, but *all* the legal disabilities consequent on the crime. (7 Bac. A. B. Tit. Par.) Bishop on Criminal Law (vol. 1, p. 713) states the same doctrine. The amnesties so declared would be but false pretences if they were, as now held, to leave the parties who have availed themselves of them in almost every particular in the condition they would have been in if they had rejected them. Such a result, it is submitted, would be a foul blot on the good name of the nation. Upon the whole, therefore, in the present state of the country, the excitement which exists, and which may mislead legislatures already elected, we think that the matured sense of the people is not likely to be ascertained on the subject of the proposed amendment by its submission to existing State legislatures. If it should be done at all, the submission should either be to legislatures hereafter to be elected, or to conventions of the people chosen for the purpose. Congress may select either mode, but they have selected neither. It may be submitted to legislatures already in existence, whose members were heretofore elected with no view to the consideration of such a measure; and it may consequently be adopted, though a majority of the people of the States disapprove of it. In this respect, if there were no other objections to it, we think it most objectionable.

Whether regard be had to the nature or the terms of the Constitution, or to the legislation of Congress during the insurrection, or to the course of the judicial department, or to the conduct of the executive, the undersigned confidently submit that the southern States are States in the Union, and entitled to every right and privilege belonging to the other States. If any portion of their citizens be disloyal, or are not able to take any oath of office that has been or may be constitutionally prescribed, is a question irrespective of the right of the States to be represented. Against the danger, whatever that may be, of the admission of disloyal or disqualified members into the Senate or House, it is in the power of each branch to provide against by refusing such admission. Each by the Constitution is made the judge of the election returns and qualifications of its own members. No other department can interfere with it. Its decision concludes all others. The only corrective, when error is committed, consists in the responsibility of the members to the people. But it is believed by the undersigned to be the clear duty of each house to admit any senator or representative who has been elected according to the constitutional laws of the State, and who is able and willing to subscribe the oath required by constitutional law.

It is conceded by the majority that "it would undoubtedly be competent for Congress to waive all formalities, and to admit those Confederates States at once, trusting that time and experience would set all things right." It is not, therefore, owing to a want of constitutional power that it is not done. It is not because

such States are not States with republican forms of government. The exclusion must therefore rest on considerations of safety or of expediency alone. The first, that of safety, we have already considered, and, as we think, proved it to be without foundation. Is there any ground for the latter expediency? We think not. On the contrary, in our judgment their admission is called for by the clearest expediency. Those States include a territorial area of 850,000 square miles, an area larger than that of five of the leading nations of Europe. They have a coast line of 3,000 miles, with an internal water line, including the Mississipi, of about 36,000 miles. Their agricultural products in 1850 were about $560,000,000 in value, and their population 9,664,656. Their staple productions are of immense and growing importance and are almost peculiar to that region. That the north is deeply interested in having such a country and people restored to all the rights and privileges that the Constitution affords, no sane man, not blinded by mere party considerations, or not a victim of disordering prejudice, can for a moment doubt. Such a restoration is also necessary to the peace of the country. It is not only important but vital to the potential wealth of which that section of our country is capable, that cannot otherwise be fully developed. Every hour of illegal political restraint, every hour the possession of the rights the Constitution gives is denied, is not only in a political, but a material sense, of great injury to the north as well as to the south. The southern planter works for his northern brethren as well as for himself. His labors heretofore inured as much if not more to their advantage than to his. Whilst harmony in the past between the sections gave to the whole a prosperity, a power, and a renown of which every citizen had reason to be proud, the restoration of such harmony will immeasurably increase them all. Can it, will it be restored as long as the south is kept in political and dishonoring bondage? and can it not, will it not be restored by an opposite policy? By admitting her to all the rights of the Constitution, and by dealing with her citizens as equals and as brothers, not as inferiors and enemies, such a course as this will, we are certain, soon be seen to bind them heart and soul to the Union, and inspire them with confidence in its government by making them feel that all enmity is forgotten, and that justice is being done to them. The result of such a policy, we believe, will at once make us in very truth one people, as happy, as prosperous, and as powerful as ever existed in the tide of time; while its opposite cannot fail to keep us divided, injuriously affect the particular and general welfare of citizen and government, and, if long persisted in, result in danger to the nation. In the words of an eminent British whig statesman, now no more, "A free constitution and large exclusions from its benefit cannot subsist together; the constitution will destroy them, or they will destroy the constitution." It is hoped that, heeding the warning, we will guard against the peril by removing its cause.

The undersigned have not thought it necessary to examine into the legality of the measures adopted, either by the late or the present President, for the restoration of the southern States. It is sufficient for their purpose to say that, if those of President Johnson were not justified by the Constitution, the same may at least be said of those of his predecessor. We deem such an examination to be unnecessary, because, however it might result, the people of the several States who possessed, as we have before said, the exclusive right to decide for themselves what constitutions they should adopt, have adopted those under which they respectively live. The motives of neither President, however, whether the measures were legal or not, are liable to censure. The sole object of each was to effect a complete and early union of all the States; to make the general government, as it did at first, embrace all, and to extend its authority and secure its privileges and blessings to all alike. The purity of motive of President Johnson in this particular, as was to have been expected, is admitted by the majority of the committee to be beyond doubt; for, whatever was their

opinion of the unconstitutionality of his course and its tendency to enlarge the executive power, they tell us that they "do not, for a moment, impute to him any such design, but cheerfully concede to him the most patriotic motives." And we cannot forbear to say, in conclusion, upon that point, that he sins against light, and closes his eyes to the course of the President during the rebellion, from its inception to its close, who ventures to impeach his patriotism. Surrounded by insurrectionists he stood firm. His life was almost constantly in peril, and he clung to the Union, and discharged all the obligations it imposed upon him, even the closer because of the peril. And now that he has escaped unharmed, and by the confidence of the people has had devolved upon him the executive functions of the government, to charge him with disloyalty is either a folly or a slander: folly in the fool who believes it; slander in the man of sense, if any such there be, who utters it.

REVERDY JOHNSON.
A. J. ROGERS.
HENRY GRIDER.

JOINT RESOLUTION proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring,) That the following article be proposed to the legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

ARTICLE 14.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.