The Nation.

[Apr. 26, 1866]

The Power of Congress to Enforce Equal Suffrage.

Warner Mr. Johnson was urged, a little less than a year ago, to rebuild government at the South on the basis of equal suffrage; he declared himself unable to see how it could be constitutionally done. The same objection has been raised again and again not only by enemies of the measure, but also by many of his professional friends. It has been generally conceded that the Federal Government has no power to interfere in New York or Connecticut with the right of suffrage, and it is, therefore, asked, with an air of triumph, how it can have any greater right to interfere with similar regulations in South Carolina and Mississippi.

It must be admitted that some of the answers which have been given have failed to convince the mass of the people. Mr. Stevens maintains, and with a strong array of reasoning, that the South is more conquered territory, as absolutely at the disposal of the Government as was California in 1848. But this doctrine is almost as unpalatable to the conqueror as to the conquered, and even those who believe in it as a matter of law are unwilling to make it a basis of action. Mr. Kelley has cited good authority in favor of the power of Congress to regulate the right of suffrage for its own members in all the States. But this is too broad a doctrine for general acceptance without clearer evidence than has yet been produced. The plea of State necessity has also been raised, and some who do not believe that the Constitution sanctions such an act, have urged that the Constitution should be disregarded in view of the present necessity. This is a dangerous theory, which has been endorsed rather than sanctioned through the war, and cannot any longer be tolerated.

There remains, however, an argument which has, we believe, convinced a majority of Congress, but which has not been sufficiently insisted upon before the people. The great fact of the total disunion of civil government in the revolted States, by their own formal act, obliterating everything which made it possible to recognize any officer acting therein—from 1861 to 1865, has been accepted as true by all parties at the North except the most extreme sympathizers with the rebellion. It has been the keynote of Mr. Johnson’s policy, as well as of that of Congress. His second proposition, that it is the duty of the United States to guarantee to all the States a republican form of government, meets with the like universal acceptance. His theory that Congress has no share in carrying out this guarantee was rejected by the entire Democratic party in 1863 and 1864, and is rejected by nine-tenths, or, to speak more accurately, by one hundred and twenty-two out of every one hundred and twenty-three of the Union party now. We do not propose to discuss that question again at present.

Assuming, then, that civil government had perished in the eleven States, that the action of Congress was necessary to re-establish it, and that the action of Mr. Johnson in that direction was unauthorized and void (all of which we have endeavored to demonstrate on previous occasions), it is plain that the way is clear for Congress to adopt such measures as may seem to it advisable for the purpose of restoring those local governments. It has been settled by the most solemn adjudications that, where such a discretionary power is vested in any branch of the Government, no one can question the terms upon which it exercises that discretion, or dispute the validity of its acts by showing that the power might more judiciously have been used in another way.

Congress must provide for each of those States “a republican form of government.” Not necessarily the same form which existed before 1861. They differed in form, and Congress is at liberty, if it chooses, to give them all one form. If no other form than the one that previously existed is republican, then all the States but one must be anti-republican in form, for they all differ from one another in their framework of government. Equal suffrage is clearly not opposed to the republican idea, even if it is not essential to it. What, then, is there to hinder Congress from prescribing equal suffrage as the means by which civil government shall be reinstated where it has perished? Some kind of suffrage is necessary for the purpose, and Congress being under no obligation, according to the Constitution, to confine itself to any particular method, has a perfect right to choose the best way.

Moreover, the method which Congress would certainly choose, no matter what party should control it, would be the summoning of State conventions. No man can find one line in the old constitutions or laws of the eleven revolted States which regulates the right of suffrage in elections for a convention, and why should Congress restrict it? Why are they bound, to restrict it, when “the people of the several States” have not done so?

Thus it seems clear to us, viewed in every possible way, that Congress has absolute power to regulate the suffrage according to its will in the reconstruction of the revolted States, as an incident of its power and duty to guarantee to them a republican form of government.

This power may be exercised upon another ground. These eleven States, having justly forfeited their right to recognition by the United States, cannot return at any moment and claim a new recognition as an absolute right. The Federal power may properly impose terms and conditions of recognition. This Mr. Johnson has constantly assumed. He would not recognize any of the re-organized States until they had complied with, at least, some of his conditions. If it were true that a State has the absolute right, which some claim for it, to throw up its corporate existence, and to resume it at will, “together with all the property of the Union, then Mr. Johnson’s course during the summer of 1863 would be utterly indefensible. It would have been one long act of monstrous usurpation and tyranny,” Mr. Johnson’s supporters are stopped from taking any such ground. It is simply political suicide for him to deny the right of the Federal Government to impose conditions upon the return of the States to the privileges which they flung away. And the right to impose one condition being admitted, there can be no limit to the number of conditions. The President made it a condition that all should be allowed to vote for delegates to a convention who were qualified to vote for members of a legislature under the laws of 1860, provided they took a certain oath of his invention, and that the right to vote in the latter would be extended and not otherwise. If the right to re-establish the unconditional rule, where did Mr. Johnson get authority to prescribe that any person should or should not vote? He did not follow, necessarily, that one who was enabled under former laws to vote for an assemblyman was, therefore, entitled to vote for a delegate to a convention. But less did Mr. Johnson do than that which could not vote for the latter officer, who could not vote for the former. Was Mr. Johnson’s test oath to be found in any constitution by law, short of a change of national recognition that the Constitutional Amendment should be ratified, and in some cases (for he had no uniform rule), that the war debt should be repudiated. How can his friends, in view of these facts, pretend that the South had any inherent, unconditional right to resume its place in the national councils?

The report of the Committee on Reconstruction in the case of Tennessee, plainly shows that its members are convinced of the right of Congress to impose terms and conditions upon the readmitted States. Eleven members of the committee have reported a bill for the restoration of Tennessee, upon condition that she shall maintain her existing franchise laws. Two other members report that equal suffrage ought to be made one of the conditions. Two oppose all conditions and restrictions.

If Congress has a right to require, as a condition of reconstruction, that a State shall not repeal its existing law, or must have a right to require that the State shall enact a new law? Such conditions have been repeatedly indicated by Congress.

It cannot be said that our decisions on this subject would give Congress any right to interfere with the elective franchise in the loyal States, except, of course, by constitutional amendment. All we claim is, that when a State has voluntarily broken up its government, and abandoned all its rights in the Union, it cannot resume its place and its powers without the consent of the central Government, to be given upon such terms as the latter may see fit. We concede that it is the duty of Congress to provide for such reconstruc-
THE TESTIMONY OF MR. STEPHENS.

Mr. Alexander H. Stephens is a man whose remarkable career, whose special abilities, and whose unequalled influence over the people of his State, entitle his opinions to serious consideration. His early political history has been almost forgotten in the fame of his later years, and it will not be amiss briefly to review it here.

Elected in the fall of 1848 to the House of Representatives, as a Whig, Mr. Stephens continued in the Union as long as he would consent to serve, which was until 1850. For the first five years of his membership he was considered an ultra Whig, and a particularly earnest friend of the Union. He voted against the annexation of Texas and the war with Mexico. His course during the struggle over the Wilmot Proviso, in 1849, was so liberal as to excite suspicion at the South of his soundness upon the slavery question. He did not, of course, vote for the Proviso; but he refused to join in any factious opposition to it. In 1849, however, he suddenly changed his mode of action, and, in conjunction with Mr. Toombs and one or two other Southern Whigs, defeated Mr. Winthrop's re-election to the Speakership, and entered fully into the factious proceedings by which the business of Congress was so much retarded in 1850. It was currently reported that Messrs. Stephens and Toombs made a direct effort to bully Gen. Taylor into submission to their plans, and were severely rebuked by him. However this may be, it is certain that they were in open opposition to that brave old man, who could never be coerced or driven either from the position of an accurate witness or from the whole of his integrity.

Mr. Stephens was never in favor of secession for its own sake, and though he had given much encouragement to its advocates by his action during the lifetime of Gen. Taylor, he was content to accept the subserviency of Mr. Fillmore, and the Compromise of 1850, as a sufficient consideration for the continuance of the Union. On this platform he, Mr. Toombs, and Mr. Cobb, went before the people of Georgia, and the last named was elected governor by 18,000 majority over McDonalcl, the secession candidate. In the following session of Congress, Mr. Stephens finally renounced his connection with the Whig party, and ever afterwards acted with the Democrats.

In 1854, Mr. Stephens took a leading and active part in driving through the infamous Kansas-Nebraska bill. It had been so thoroughly entangled by the adroit parliamentary tactics of its opponents that its passage seemed almost impossible. Mr. Stephens took the reins from Richardson (of Illionia), the regular leader, and, in one day put it farther forward than the combined wisdom of its other supporters had been able to do in two months. He had paid dearly for his sagacity since.

The part which Mr. Stephens took in the great drama of secession is familiar to all. Opposing the project with all his power, and in words of singular wisdom and foresight, he nevertheless yielded to the decision of his State, and gave a support to the new compact Confederacy which was invaluable. But he soon lost confidence in his superior officer, and, although his peculiar position made it unsuitable that he should publicly oppose Mr. Davis, his views were well understood. He was anxious to bring about peace, and, it has always been believed, was willing to restore the Union upon certain conditions, whereas the great desire of Mr. Davis was to prevent its restoration upon any terms whatever.

It will be seen that Mr. Stephens's course has not been always consistent, and that his opinions have vacillated from one extreme to another, varying as widely as was possible for those of a Southern man in political life. This is not necessarily discreditable to him, but it does detract very materially from our confidence in his assurances as to what his constituents will or will not do. They may be neither so loyal nor so obstinate as he thinks, and he may again go with his States in another direction.

Mr. Stephens's statements before the committee are more worthy the name of argument than of evidence. Nearly all that he says, except in regard to the negroes, consists of his own reasoning upon mooted questions of law and policy. We do not find fault with this. The questions put by the committee naturally led him to do so. But we think the people of the North have not little inclination to accept Stephen's comments in place of Blackstone and Story.

The legal propositions of Mr. Stephens may be summed up as follows:

1. Each State is sovereign, and has a right to secede at pleasure.
2. Having seceded, every State has an absolute right to return to the Union at will.
3. The Federal Government has no power to impose any conditions upon the return of a seceded State.
4. "The validity of laws depends upon their constitutionality."
5. The constitutionality of laws passed by Congress in the absence of representatives from seceded States is very doubtful.

The fourth proposition, like a good deal more of Mr. Stephens's "testimony," seems to have been taken from the immortal Dundy. As to the others, it surely needs no argument to prove that a Federal Union upon such a basis would be such a mockery of government as the world has rarely seen. We know of nothing to which it may be compared save to Milton's description of Sin, into whom womb her hideous offspring might return, and from which they might go at pleasure, regardless of her resistance or her suffering. The doctrine of simple secession we can understand, but this doctrine of secession and return at will is something too sublimated for our philosophy. Add to this the conception of a government of thirty-six States which is so paralyzied by the secession of any one that the validity of all legislation had in the absence of that one is doubtful, and our faith in the existence of a government at all is seriously shaken.

It is possible that Mr. Stephens does not mean exactly this. It is, indeed, probable (for he is a sly and sober man) that, he does not.

Yet we have in no way misrepresented his language. The cause of his falling into such extraordinary nonsense appears to have been his confusion of Mr. Johnson's ideas of constitutional law with some of his own, whereas the two are wholly incompatible. The fact, however, that distinguished Southerners should thus in one breath assert their continued belief in the right of secession, and yet claim as indisputable their right to unconditional re-admission, is significant.

North Carolina, which has (though by a minority of her people only) declared the ordinance of secession to have been always void, may, with a good grace claim restoration as a right, however mistaken she may be in supposing that ordinance to be the only obstacle in the way. But from Georgia, which has simply repeated that ordinance, with the avowed purpose of recognizing its validity, such a claim is a little brazen.

We do not entertain any united feelings toward Mr. Stephens on account of his expressions of opinion, although some of them appear to us very ill timed as well as unwise. But it is necessary to call attention to the incongruous mixture of Mr. Johnson's and Mr. Calhoun's views which is prevalent at the South, and to point out the endless absurdities which are involved in permitting States, which will not renounce the right of secession, to claim a right to unconditional and instant re-admission. We suggest to Congress that whatever else may be dispensed with, no State should be restored to its privileges until it has explicitly declared the ordinance of secession to have been always null and void, nor until it has ratified this declaration by a majority of all the voters in the State. Let us have no more such evasion as was
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