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254. REPORT OF THE JOINT COMMITTEE ON RECONSTRUCTION

June 20, 1866

(*Report of the Joint Committee on Reconstruction*, p. 4 ff.)

A Committee of six Senators and nine Representatives, of which Senator Fessenden was chairman, was appointed in December 1865 "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." The Report recommended that the Confederate states were not entitled to representation; it also maintained the authority of Congress, rather than of the Executive, over the process of reconstruction. The *Report* was published separately, and also with a voluminous body of testimony collected by various sub-committees. Of great importance is B. B. Kendrick, *Journal of the Joint Committee of Fifteen on Reconstruction*.

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 position as States, and consequently the people thereof have a right to immediate representation in Congress without the interposition of any conditions whatever. . . . 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 these propositions are not only wholly untenable, but, if admitted, would tend to the destruction of the government. . . . It cannot, we think, be denied 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 these consequences was that, within the limits prescribed by humanity, the conquered rebels were at the mercy of the conquerors. . . .

It is moreover contended . . . that from the peculiar nature and character of our government . . . from the moment 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 still be fought out in the legislative halls of the country. Treason, defeated in the field, has only to take possession of Congress, and the cabinet.

Your committee 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 position 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. . . .

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. . . .

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 relation 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 position of public trust of, at least, a portion of those whose crimes have proved them to be enemies of the Union, and unworthy of public confidence. . . .

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

... Third. Having voluntarily deprived themselves of representation in Congress for the criminal purpose of destroying the 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 . . . 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. . . .

Fourth. Having . . . 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. . . . 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. . . .

... Eighth. . . . 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 power absorbed in the Executive. . . .

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. . . .

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. . . .