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LETTER FROM

Gov. W. L. SHARKEY,

U. S. Senator elect from Miss.

AN ABLE REVIEW OF THE RECONSTRUCTION LAWS OF CONGRESS, AND AN EARNEST PROTEST AGAINST THEIR RATIFICATION BY THE PEOPLE OF MISSISSIPPI.

W. H. WORTHINGTON, Esq.,

Ed. (Columbus) Miss. Index:

You have kindly communicated to me the united wish of yourself and other citizens of your vicinity, that I should address the public through the press on the subject of reconstruction under the Congressional plan. The subject is one of great importance, not only as it regards the present, but the future also, and it has received the most deliberate and impartial reflection that I was able to bestow upon it. Whilst I know there are some of our citizens who honestly differ with me, yet I have sufficient confidence in the correctness of my position, and the correctness of the reasons on which it was taken, to be quite willing to submit them to the test of public scrutiny.

That I am in favor of a just and honorable restoration of the Union as it was formed, none will doubt who know anything of my antecedents. And I believe such restoration was fully accomplished by the people of the State, through the aid given them by the President; and had the question been permitted to rest there, our condition would now be very different; we should have had a state of harmony we need never expect to attain. The plan adopted, however, did not suit the radical party. Our members were first excluded from their seats, and then what are known as the military reconstruction bills were passed by a body which ought never to have been recognized as the Congress of the United States.

It is not surprising that a portion of a people impoverished, depressed, bearing all the burthens of government, but deprived of all its blessings and even of equality under it should have at first manifested a willingness to acquiesce in any measures which seemed to hold out even a delusive hope of relief. When they shall have had ample time and opportunity to reflect, I ask them to pause and consider what may be the effect of carrying out their hastily expressed opinions, and then to adopt that course which their deliberate judgment may dictate.

In discussing this question it is necessary in the outset, to correct a fallacy which has been urged by some who still cling to the exploded idea of the right of secession, inasmuch as they profess to find in it a sort of justification of their former course. And this false theory may have had a very extended influence. It has been said in some of the public prints, and elsewhere, that we had a right to secede, we did secede and become a separate and foreign nation, and being conquered, we are bound to submit to whatever terms the conqueror may think proper to impose on us. The truth of the premises, to wit:—that we had a right to secede, we did secede and become a foreign nation, has never been admitted save by a few very extreme radicals at the North who has adopted this theory to justify their oppressive and unconstitutional acts. On the contrary, in more than twenty instances the several departments of Federal government, Executive, Legislative and Judicial, have recognized the southern States as having always been in the Union. We were conquered then as a part of the Union, and not as a foreign nation, that question was settled by the war.

But suppose it were true that we had a right to secede, did secede, and become a separate nation, the conclusion attempted to be drawn that we are bound to submit to such terms as the conqueror may think proper to impose on us, is most fatally erroneous. Such a theory has no existence in the dark and barbarous ages of the world when the conqueror claimed the right to enslave or kill the captives at pleasure, but it has been exploded among civilized nations for many centuries; and he must be hard pressed or miserably deficient in information who urges such a doctrine at the present day, especially as applicable in a limited government. The consequence of permanent conquest, after peace has been restored, is simply this: the government of the conqueror supercedes and takes the place of government of the conquered, except so far as the conquering power may permit the laws of the conquered power to prevail, which is usually allowed as to mere rights of property, but never as regards personal or political rights. This has been a rule of the public law even since the Roman Empire began to extend its dominions by conquest. As a consequence of this rule, the conqueror has no more power over the conquered people than the laws of his government may give. This being the general rule with regard to arbitrary or unlimited governments, how does the matter stand with regard to the government of the United States? It is a limited constitutional government, and in that character, and in that only, it superceded the government of the Confederate States; consequently the constitution of the United States became the supreme law of government over the South, even if it was a separate nationality; and of course when it was established there, it was established not in part but as a whole, with all its guarantees for the protection of life, liberty and property, and every person in the southern states is entitled to full protection under it. Either this is true or the constitution is not in force at all in the south. If it is not in force, Congress cannot legislate for us, since the power to legislate is derived from, is co-extensive with, and only co-extensive with the Constitution. If, on the other hand, it is in force in the South, the legislation of Congress must be in strict subordination to it, and cannot violate any of its principles, or extend beyond the legislative power granted by it. The government can take no more power to the south than it possesses. Away then with this fallacy of northern and southern extremist who strangely enough have united on a common theory; again they are aiding each other as in days past.

Having then disposed of this question, I hope satisfactorily, I shall proceed to discuss the subject before me, regarding of course the State of Mississippi as a State of the Union under the Constitution. As such should her people ratify, approve, or by any act of theirs, willingly acquiesce in the military reconstruction acts? For myself I answer most emphatically in the negative. By doing so we gain nothing in the present, jeopardize all in the future. To arrive at a correct solution of the question propounded, the general scope and purposes of the acts must be understood, and these are to be gathered from the language employed, and the evils or necessities that gave rise to the enactments. It seems to be clear beyond a reasonable doubt, that by these enactments one of two objects must have been in view: either they were intended to place the radical party permanently in power by the aid of the negro vote, or they were intended to lead to the utter overthrow of all the state governments, as well as the government of the United States, and to build up a consolidated government on the ruins. Which object preponderated it may be difficult to say; in effect they will accomplish both these ends if put into successful operation, and they can accomplish nothing else. And when men so act that certain results must follow their action, they are justly chargeable with designing such results. To these unholy purposes then the people of Mississippi are invited to give their sanction and their aid; indeed they are commanded to do so under penalty of the high displeasure of the Radicals, with the threat of more harsh measures if they do not. Let us see then whether the acts do not prove the object to have been what I have stated, which is made still more apparent when considered with the avowed objects furnished by the action of the dominant party understood, in sending emissaries to drill and coerce the negro in his vote.

The original act starts out with a preamble in these words: "Whereas, no legal State governments or adequate protection for life or property now exists in the states of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican state governments can be legally established, therefore be it enacted, &c." A preamble is usually employed to disclose the reasons and purposes of the act, and ought to be a key to the legislative will, but this is founded in false assumption and abounds in dangerous significance; the provisions of the act prove it to be a mere pretence; a mask to conceal the deformities of the Congressional monster. In the first place it was not true that no legal state government existed in the state of Mississippi.—It is a cardinal principle in our American system that the right to establish government rests with the people; it must emanate from their authority. Indeed this is a universal principle, theoretically acknowledged even in monarchies, and perverted only by the fiction of the divine right of kings, a fiction which Congress has practically employed as applicable to itself.

In 1865 the people of Mississippi assembled in solemn convention and remodeled their constitution so as to restore the relations of the state with the Federal government, the amended constitution being far more republican than that of 1817 which had been recognized by Congress as republican in form when the state was admitted into the Union. Under the constitution of 1865 all the state officers were elected and the state government put in complete operation, the state was recognized as such by all the departments of government, even by Congress itself, by the appointment of the various Federal officers in the state, and indeed by the acts under consideration. The state government had originated from the proper source, the people, who were only aided by the President in restoring their proper relations with the government, that being all that was necessary. The constitution declares that "The United States shall guarantee to each state a republican form of government," in the Union of course; that is, aid the people in establishing such government. It does not say the President shall do this, or that Congress shall do it, just such power then, exercised by either department, as may be necessary, will accomplish the guarantee. Congress could do nothing more legitimately than give such aid. The government so established derives no validity, none of its powers from the aid given to the people either by the President or by Congress, but it derives all its powers from the consent of the people. Suppose the people had assembled in convention and established a government without such aid, will it be pretended that they had not a right to do so? If not, then there must be some power above them, and your theory of government is false. Then I repeat it was not true that Mississippi had no "legal" state government is estopped by various acts from denying that she had.

In the next place was the state government so established adequate for the protection of life and property? If not, then no state government in the Union was so. We might well challenge a comparison of the catalogues of crimes committed by white persons, with Massachusetts or any other northern state.

A very large majority of the crimes committed in Mississippi since the close of the war, have been perpetrated by individuals of that favored class of population which has been the special object of congressional solicitude. That many murders, rapes, burglaries, larcenies, &c., have been committed by the blacks is lamentably true, and it is equally true that they were instigated to the commission of these crimes by the marks of favoritism and indulgence bestowed upon them. Nor need we expect an abatement of these outrages so long as the same causes exist. Still, our government and laws, when permitted to take their course, are abundantly adequate for our protection. Our criminal laws have been made more rigorous to suit emergencies; we have the same system of civil law under which we had lived long in the Union, and our laws both civil and criminal, were faithfully administered by such officers as they had. Indeed there is no complaint that the laws were not well administered. The complaint is that the government was not legal and loyal, by which it is to be understood that a government was contemplated which should be loyal to the party, since it certainly did not conflict with the constitution in any respect.

After reading such a preamble it would naturally be supposed that the body of the act contained provisions looking to the more "adequate protection of life or property," but are any such provisions to be found there? Not at all, on the contrary the subject is never alluded to; what protection we had by our laws was taken from us; then the preamble was a mere false pretence; our protection was confided to the tender mercies of a military despotism. The ten southern states were made to comprise five military districts, each placed under the control of a military commander, probably in imitation of the example set by an arbitrary and tyrannical King of England, who divided the kingdom into military districts (four I believe) with a General in command of each district. The act proceeds to declare that it shall be the duty of the commanding general "to protect all persons in their rights of property, to suppress insurrections, disorder and violence, and to punish or cause to be punished all disturbers of the peace and criminals." Now mark the broad extent of this language; the military officers was to do all this without law, without courts, except military courts, without jury: no rule to guide him but his own will. And what little power was wanting to make his will absolutely supreme has been given him by the recent act of the called session. And this is the protection to life and property so pompously foreshadowed by the preamble. If it be protection to the rights of person and property to place them at the discretion of one man—to dispense with the principle that no man shall be deprived of life, liberty or property but by due course of law—to dispense with warrant founded on affidavit as a pre-requisite to arrest—to dispense with the sacred right of trial by jury—to deny the privilege of the habeas corpus, then we have it, and civil government is a mere mockery. Either history is false or a military government is the most tyrannical, the most oppressive and the most insecure for life or property, excepting only the despotism of an assembly of tyrants. The man must be deluded indeed who can believe that protection or good order was any part of the object of these acts. What then were the objects? I repeat, party strength, destruction of the government. It is plainly to be implied from the language of the preamble, that congress claimed supremacy over the state governments, and this claim is undisguisedly set forth in the 6th section, which declares that "any civil government which may exist in any of said states shall be deemed provisional only, and in all respects subject to the paramount authority of the United States, at any time to abolish, modify or supercede the same." There is no mistaking this language; it amounts simply to an assertion that Congress is supreme, and can abolish, control, modify or supersede the state governments at pleasure, for it has been shown that Mississippi was a state in the Union, so recognized by all the departments, so settled beyond the power of denial, by the issue of the war. If this can be done with regard to Mississippi, then the same may be done with regard to any other state, or all of them.

Still further to prove that the alledged insecurity for life and property were not the evils to be redressed, we look in vain in the acts for any provisions requiring the convention to be called to provide for any further security than that already furnished by the laws of the state. We find them, however, very clear and explicit on another subject, and the object so clearly put forth we must take as the true purpose of the enactment; it is that the negroes shall be entitled to vote at the election for members of the convention, and a command to the convention to secure them their votes by the constitution to be formed, and that certain whites, amounting to a great number, should be disfranchised, very clearly to give the negro preponderance of power.—In the convention which formed the constitution of the United States the states most decidedly and persistently refused to surrender the right to regulate the elective franchise but reserved it to each state for itself. Nor did the states grant to congress the right to legislate on the subject of the rights of their citizens. We know that the federal government was created by the states and possesses only such powers as were delegated to it. The internal affairs of the state including protection of life, liberty and property, belong exclusively to the legislatures of the states, and constitute the essential attribute of a state. The proposition is monstrous that Congress has the controlling power over the internal affairs of a state, and yet these acts go to the full extent of usurping that power.—To make the absurdity the more glaring, look at the condition of Virginia, Georgia and North and South Carolina; they were four of the original thirteen that created the government, reserved the power to regulate the elective franchise, and to control all of their internal affairs. They are now told by Congress the thing they create: we are supreme over your state government, we will regulate the elective franchise for you, take entire control of your domestic affairs and place a military governor over you. This is a striking picture, but it is a true one. Suppose such a proposition had been submitted to the patriotic men who formed the constitution; can anybody suppose we should ever have had a Union? It would have been scoffed at, and are their sons so far fallen, so degraded, as to give their assent, their countenance, their approbation, to such a rule of government? If so, let them forever disclaim descent from the founders of the republic.

Another section of the original act contains an extended enumeration of conditions on the performance of which the states shall be entitled to representation, which may be briefly stated thus: 1, when the people of the state shall have formed a constitution in conformity with the constitution of the United States, to be framed by a convention elected by all the male citizens without regard to color; 2, such constitution must secure to the freedmen the right of suffrage; 3, such a constitution must be ratified by a majority of those who vote on the question of ratification; 4, such constitution must be submitted to and approved by congress; 5, the legislature of the state must adopt the constitutional amendment proposed by the thirty-ninth Congress as the 14th article, and 6th, said amendment must have become a part of the constitution of the United States, then the state shall be entitled to representation. Not one of these conditions has congress a right to demand of the states; they are wholly out of the range of congressional power. Now to vote for a convention under this provision is to admit, in the most solemn manner that congress had a right to impose these conditions. And why so much solicitude to invest the negro with the right of suffrage, so distinctly marked throughout these acts as to leave no doubt that this was their paramount object? Was it that he should exercise that right freely and without restraint? Let the efforts of partizan emissaries sent from the North through the South to tell the negroes how they must vote—to threaten them, to bribe them by the heartless, wicked promise that they shall have the lands of their former masters if they will vote right, and to inculcate a hostility between the races that is to end in perpetual enmity, or in a war that will exterminate the one or the other, answer. The radical party is the worst enemy of the negro, as well as of the government.

A few words will suffice as to the supplementary act. It assumes the entire control of elections in the States, and the right to appoint the officers who are to hold them, whether citizens of the State or not. And to complete the work of subjugation, the act of the July sesion of Congress gives the registers of voters absolute authority to exclude any person from exercising the right of suffrage, thus sweeping away the last vestage of liberty the people had.

The several provisions of these acts may be briefly summed up: by them, Congress claims absolute, unlimited power to legislate on all the internal affairs of the States, which are exclusively within the cognizance of the States—it assumes power to exclude the representatives of the States which they are by the Constitution entitled to—it assumes the right to dictate to the people of the States what particular provisions they shall incorporate in their State Constitutions—the right to cause citizens to be arrested without warrants founded on affidavit—the right to cause them to be tried without jury—the right to suspend the *habeas corpus*—the right to deprive them of life, liberty and property without due process of law—the right to make the civil power subordinate to the military power—to control, modify or abolish State governments at pleasure; in short to abolish all Constitutional governments, State and Federal, and to declare them annulled and that Congress is the supreme power, and it might as well have been said, in, so many words, all Constitutional government is hereby abolished, and Congress assumes supreme power over the national State governments. Such an act would have been equally as valid as those under consideration.

That these acts are Constitutional no one will pretend; even their most ardent advocates admitted in Congress that they were not; the leader of the party, Mr. Stevens, still admit they are not. That such members could reconcile their votes with their oath to support the Constitution, is characteristic of a flexible conscience, and as an evidence also that they regarded the success of their party as paramount to their duty to support the Constitution. Will the Southern people act with a like disregard of the Constitution? This they will do by voting for a Convention, which is to be but the means of giving strength to the radical party, by investing the freedmen with the right of suffrage which was the leading object of their acts.

It would be well for the Southern people to reflect that as a minority their only security depends upon protecting the Constitution from the dangers which are always to be apprehended from the legislative department of the government. Mr. Jefferson warned his countrymen that "all the powers of the government, legislative, executive and judiciary, are constantly tending to the legislative departments, and when there concentrated, it is precisely the definition of a despotism." Mr. Madison was still more emphatic, if possible, in warning his countrymen against the dangers to be apprehended from this department. He said, "against the enterprising spirit of this department of the government the people should exert all their jealousy and exhaust all their watchfulness." In these acts of Congress we have abundant evidence of the wisdom and forecast of these great fathers of the Republic. Shall we yield our acquiescence, our approval of these great and glaring inovations on the Constitution by voting for a convention? If any truth is settled beyond doubt, it is that the people, the source of power, should resist by all peaceable means in their power, every encroachment on their supreme will expressed by the Constitution, however slight the instance or plausible the pretext; this is their only security. The innovation of to-day if tolerated, becomes a precedent for to-morrow. "What to-day is fact, to-morrow is doctrine, and if the precedent does not exactly suit, analogy will supply the defect;" and so we go on from one innovation to another until the whole charter of our liberties is swept into the terrible vortex of political ambition. These remarks are just as applicable to the Northern as to the Southern people. All may rest assured that if their Constitution has not already been destroyed, it needs but their approval of these extreme measures to complete the desecration.

The Judicial department, it is true, was intended to be a check on the dangerous spirit of aggression, but that department is weak, and composed of men, frail men, who but too often bend before the turbulence of faction, and will sometimes be found not altogether free from party bias. Besides, the judicial arm may be paralized by the overwhelming power of legislative usurpation, so that at last the people must depend upon vigilance for the preservation of their Constitutional liberties.

It remains to notice some of the reasons urged for the acceptance of these measures, some of which present to my mind the strongest possible reasons why we should reject them.

Some will say, if we do not accept these measures, we never shall get our members into Congress. And will you compromise your Constitutional right to have your representatives in Congress by establishing a precedent which may be used to exclude your representatives at any time as it may suit the whims and caprice of a dominant party? Such a policy would amount to an absolute surrender of our Constitutional right, and to substituting in its place the discretion of a majority in Congress. This consideration alone should be sufficient to induce us to reject the plan. Nor should the people desire to have representation in Congress since it is certain, with the elective franchise extended and controlled as it is to be, you never can send any one there who does not approve the entire Congressional plan, or if you should chance to send such as do not, it is very certain they will be pronounced disloyal and rejected. Your representatives, then, are to become the instruments which shall but rivet the chains of slavery more firmly upon you. Look at the condition of Tennessee, and you may see the prototype of what is to be your own condition; she has not a single conservative member of Congress; not one who does not go with the radical party to the full extent of its work of persecution. Look, too, at Kentucky, whose members were excluded simply because they were opposed to the dominant party. Nor will you be allowed to change the form of your State government so as to limit the right of suffrage, since by adopting these measures you admit that Congress has the power to control, modify or abolish it at pleasure, and you will be held estopped by your own act. Your only security, therefore, is to be found in persistently holding on to, and in demanding an observance of your Constitutional rights. If a despotism must be placed over you, let it be done without your consent. Mississippi now occupies the attitude of having resisted these measures through the proper channels of an appeal to the judiciary for relief; her people will destroy the moral force of her position by a voluntary acquiescence in them.

Others again say, if we do not accept these measures, something worse will be inflicted on us. This is a compromise by surrendering right to discretion. It is virtually saying to the radical party, we will surrender our Constitutional rights, even the functions and very existence of our States, and submit ourselves entirely to your discretion, if you will not inflict further injuries upon us. We fear your power, but will strengthen your party in the hope of your leniency. When this vile method of inviting further encroachments on our rights by removing the barriers against oppression, is adopted, what guarantee can we have that will afford protection? A partial pledge has been given by some, repudiated by others. But how could you rely on the most sacred pledge of a party which has so shamelessly disregarded their obligation to preserve the principles of the Constitution inviolate. A people who will display firmness in resisting oppression, have a much better chance to escape it in the end than those who bow the neck at its first approach and take the yoke willingly. In truth the sure and only way to escape it is to resist it, by all Constitutional means. What was it that secured our English ancestors the benefits of *Magna Charta*? A proper and unyielding spirit of resistance. They did not say to King John at hunnymede, we will submit to what you have done if you will go no further; they knew that would be to invite additional oppression. They demanded that he should retrace his steps and restore their ancient rights. And what was that compelled Charles I, who had violated *Magna Charta*, to approve and sign the *Petition of right* or secured Charter of Liberty? A determined spirit of resistance to oppression. What induced our fathers of the Revolution to raise the standard of liberty and struggle until they achieved their freedom? It was the spirit of resistance to oppression which should always characterize their descendants. If the maxim be true "that for a people to be free is but to will it," it is certainly true that for a people to be slaves it is only for them to consent to it. If we accept these measures as "peace offerings," we may rest assured the oppressors hand will not be raised until his grasp is firmly fixed upon us. I do not mean forcible resistance of course, which is always hazardous, often foolish. I mean that we should, in a proper manner, assert and maintain our rights, at least never consent to our wrongs. The South could now exert more moral power than she had physical power, if the people were united. Our weakness consists in our divisions. Our united remonstrance expressed, through a Convention of the people of the Southern States, would no doubt, meet a favorable response. But divided as we are, nothing can be accomplished.

By some it is said, oh, a Convention will be called, and we had as well vote for it. The man who is willing to inflict a wound on the Constitution of his country because others will do so, but trifles with the right of suffrage, and proves that it may be unwisely bestowed. Even the freedmen, if they consult their true interest, should oppose a Convention. They hold their freedom by Constitutional guarantees, first by the Constitution of the State, and secondly by the Constitution of the United States. These reconstruction acts are founded on the idea that the State Constitution is void, and of course the act of the Legislature which ratified the amendment to the Constitution of the United States is also void, and they are not legally free. But if this were not so, by voting for a Convention they lat invest Congress with power to abolish all Constitutions at pleasure and then what guarantee have they for their freedom? If they give their sanction that Congres may do whatever it pleases, regardless of the Constitution, it may deem it proper to declare them slaves again, or it may drive them from the country. Their policy, therefore, is to hold on to what they have got. The right of suffrage will soon be conferred on those of them who may acquire property, by the voluntary act of the people with whom they live.

Chief in the catalogue of evils most dreaded, it would seem, it confiscation of property. And has it come to this that a portion of the American people, living under the Constitution of the United States, are afraid of having their property confiscated by act of Congress for acts done before the act passed? Well, let it come; let usurpations be accumulated until their united enormities shall shock the sense of the American people and awaken them to the dangers that surround them. Extremes always bring counteraction, and great reforms in government spring from great abuses of power. Such a reform we now much need to restore the Constitution to its purity. Mr. Stevens, no doubt, introduced his confiscation scheme to alarm the South into acquiescence in measures which he knew to be unconstitutional. He well knew that the salvation of his party depended on converting the strength of the South to his party purposes through the fears of the people, and he did not mis-judge human nature in appealing to avarice rather than to patriotism. But will the South save property by yielding all its political rights? Surely he who thinks so must have taken a superficial view of passing events; place the ignorant misguided negro in power, with vicious degraded radicals to control him, and confiscation by State section is inevitable. The freedmen are daily taught that the land belongs to them; secret associations have been formed througout the South to inculcate this doctrine. An act of confiscation lacked but one vote in the last Tennessee Legislature to become a law, and it is now confidently expected that it will be passed at the next session. It is much safer, therefore, to risk Congressional confiscation, since the process will be found far more difficult; the judicial barrier, though an uncertain one, may still afford us some protection. If, however, this Congressional system of government is to prevail, we need not dread confiscation much in such a State government as we shall have; those who are imposing it upon us would not live under it, and thousands of our citizens will leave the State; consequently our lands will be worth very little, as none will emigrate to the State except such as may come for spoils, to be taken, from either the white or black man, or both.

It should be remembered by those who think it right to take part in the Convention, that they cannot expect to control a body elected by such a constituency. And their motive, although it may be a good one, loses all its force from the fact that this is not to be a Convention in the true sense of the term; it is to be simply an assemblage of men to record the edicts of Congress. It will have no discretion, as its action is prescribed in advance, and its meeting will be vain if it do not shape its action as directed; Congress might just as well have formed a Constitution for us.

[CONTINUED ON THIRD PAGE.]