OLIVER P. MORTON

OLIVER PERRY MORTON, American statesman, was born at Saulsbury, Wayne Co., Ind., Aug. 4, 1823, and died at Indianapolis, Ind., Nov. 1, 1877. After an early schooling, he studied at Miami University, fitted himself for the Bar, and in 1847 began to practice his profession at Centreville, Ind. In 1852, he was elected a county judge, but being drawn into politics he became one of the founders of the Republican party, and in 1860 was elected lieutenant-governor of Indiana. Morton stoutly opposed all compromise with the Secessionists and at the outbreak of the Civil War promptly placed large bodies of State troops at the service of the general government. In 1862, the Democratic legislature of Indiana declined to receive the governor's message, but the subsequent withdrawal of the Republican members left both houses without a quorum. In order to carry on the administration of the State, the governor appointed a bureau of finance, which from April, 1863, to January, 1865, made all disbursements, the legislature not being summoned within that period. His course at this juncture, though condemned by the supreme court, received the approval of the people, the State assuming the obligations thus incurred. The disunionists of Indiana conspired against his life, but their designs being revealed, the leaders of the "Sons of Liberty" or "Knights of the Golden Circle," as the conspirators called themselves, were arrested. In 1864, Morton was again elected governor, but resigned office in 1867 in order to enter the United States Senate, to which he was reëlected in 1873. He wielded a large influence in the Republican party and made many effective speeches in behalf of its principles. He was active in the impeachment of President Johnson, and in 1877 was a member of the Electoral Commission.

ON RECONSTRUCTION

DELIVERED IN THE UNITED STATES SENATE, JANUARY 24, 1868

THE constitution says that "the United States shall guarantee to every State in this Union a republican form of government." By the phrase "United States" here is meant the government of the United States. The act must be the act of the government and it must be a legislative act, a law passed by Congress, submitted to the President for

his approval, and perhaps in a proper case subject to be reviewed by the judiciary.

Mr. President, that this is necessarily the case from the simple reading of the constitution seems to me cannot be for a moment denied. The President in assuming to execute this guaranty himself is assuming to be the government of the United States, which he clearly is not, but only one of its co-ordinate branches; and, therefore, as this guaranty must be a legislative act, it follows that the attempt on the part of the President to execute the guaranty was without authority, and that the guaranty can only be executed in the form of a law, first to be passed by Congress and then to be submitted to the President for his approval; and if he does not approve it, then to be passed over his head by a majority of two thirds in each House. That law then becomes the execution of the guaranty and is the act of the government of the United States.

Mr. President, this is not an open question. I send to the secretary and ask him to read a part of the decision of the supreme court of the United States in the case of Luther vs. Borden, as reported in 7 Howard.

[The secretary read as follows

"Moreover, the constitution of the United States, as far as it has provided for an emergency of this kind, and authorized the general government to interfere in the domestic concerns of the State, has treated the subject as political in its nature and placed the power in the hands of that department.

"The fourth section of the fourth article of the constitution of the United States provides that the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasions; and, upon the application of the legislature or of the executive

(when the legislature cannot be convened), against domestic violence.

"Under this article of the constitution it rests with Congress to decide what government is the established one in a State. For, as the United States guarantees to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed as well as its republican character is recognized by the proper constitutional authority. And its decision is binding upon every other department of the government and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and as no senators or representatives were elected under the authority of the government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy. Yet the right to decide is placed there and not in the courts."]

In this opinion of the supreme court of the United States delivered many years ago the right to execute the guaranty provided for in this clause of the constitution is placed in Congress and nowhere else, and therefore the necessary reading of the constitution is confirmed by the highest judicial authority which we have.

[Mr. Johnson: Do you read from the opinion delivered by the chief justice?]

Yes, sir; the opinion delivered by Chief Justice Taney. He decides that this power is not judicial; that it is one of the high powers conferred upon Congress; that it is not subject to be reviewed by the supreme court because it is political in its nature. It is a distinct enunciation of the doctrine that this guaranty is not to be executed by the President or by the supreme court but by the Congress of the United

States, in the form of a law to be passed by that body and to be submitted to the President for his approval; and should he disapprove it, it may become a law by being passed by a two thirds majority over his head.

Now, I will call the attention of my friend from Wisconsin to some other authority. As he has been pleased to refer to a former speech of mine to show that I am not quite consistent, I will refer to a vote given by him in 1864 on a very important provision. On the 1st of July, 1864, the Senate having under consideration, as in committee of the whole, "a bill to guarantee to certain States whose governments have been usurped or overthrown a republican form of government," Mr. Brown, of Missouri, offered an amendment to strike out all of the bill after the enacting clause and to insert a substitute, which I will ask the secretary to read.

[The secretary read as follows:

"That when the inhabitants of any State have been declared in a state of insurrection against the United States by proclamation of the President, by force and virtue of the act entitled 'An act further to provide for the collection of duties on imports, and for other purposes,' approved July 13, 1861, they shall be, and are hereby declared to be, incapable of casting any vote for electors of President or Vice-President of the United States, or of electing senators or representatives in Congress until said insurrection in said State is suppressed or abandoned, and said inhabitants have returned to their obedience to the government of the United States, and until such return to obedience shall be declared by proclamation of the President, issued by virtue of an act of Congress hereafter to be passed, authorizing the same."]

The honorable senator from Wisconsin voted for that in committee of the whole and on its final passage. I call attention to the conclusion of the amendment, which declares that they shall be—

—"incapable of casting any vote for electors of President or Vice-President of the United States or of electing senators or representatives in Congress until said insurrection in said State is suppressed or abandoned, and said inhabitants have returned to their obedience to the government of the United States, and until such return and obedience shall be declared by proclamation of the President, issued by virtue of an act to Congress hereafter to be passed, authorizing the same."

Recognizing that a state of war shall be regarded as continuing until it shall be declared no longer to exist by the President, in virtue of an act to Congress to be hereafter passed, I am glad to find by looking at the vote that the distinguished senator from Maryland [Mr. Johnson] voted for this proposition, and thus recognized the doctrine for which I am now contending; that the power to execute the guaranty is vested in Congress alone, and that it is for Congress alone to determine the status and condition of those States, and that the President has no power to proclaim peace or to declare the political condition of those States until he shall first have been thereunto authorized by an act of Congress.

I therefore, Mr. President, take the proposition as conclusively established, both by reason and authority, that this clause of the constitution can be executed only by Congress; and taking that as established, I now proceed to consider what are the powers of Congress in the execution of the guaranty, how it shall be executed, and what means may be employed for that purpose. The constitution does not define the means. It does not say how the guaranty shall be executed. All that is left to the determination of Congress. As to the particular character of the means that must be employed, that, I take it, will depend upon the peculiar circumstances of each case; and the extent of the power will depend upon the other question as to what may be required for the purpose of maintaining or guaranteeing a loyal republican form of government in each State. I use the word "loyal," although it is not used in the constitution, because loyalty is an inhering qualification, not only in regard to persons who are to fill public offices, but in regard to State governments, and we have no right to recognize a State government that is not loyal to the government of the United States. Now, sir, as to the use of means that are not prescribed in the constitution, I call the attention of the Senate to the eighteenth clause of section eight of the first article of the constitution of the United States, which declares that—

"The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States, or any department or officer thereof."

Here is a declaration of what would otherwise be a general principle anyhow: that Congress shall have the power to pass all laws necessary to carry into execution all powers that are vested in the government under the constitution. As Congress has the power to guarantee or maintain a loyal republican government in each State, it has the right to use whatever means may be necessary for that purpose. As I before remarked, the character of the means will depend upon the character of the case. In one case it may be the use of an army; in another case perhaps it may be simply presenting a question to the courts, and having it tested in that way; in another case it may go to the very foundation of the government itself. And I now propound this proposition: that if Congress, after deliberation, after long and

bloody experience, shall come to the conclusion that loyal republican State governments cannot be erected and maintained in the rebel States upon the basis of the white population, it has a right to raise up and make voters of a class of men who had no right to vote under the State laws. This is simply the use of the necessary means in the execution of the guaranty. If we have found after repeated trials that loyal republican State governments—governments that shall answer the purpose that such governments are intended to answer—cannot be successfully founded upon the basis of the white population, because the great majority of that population are disloyal, then Congress has a right to raise up a new loyal voting population for the purpose of establishing these governments in the execution of the guaranty. I think, sir, this proposition is so clear that it is not necessary to elaborate it. We are not required to find in the constitution a particular grant of power for this purpose; but we find a general grant of power, and we find also another grant of power authorizing us to use whatever means may be necessary to execute the first; and we find that the supreme court of the United States has said that the judgment of Congress upon this question shall be conclusive; that it cannot be reviewed by the courts; that it is a purely political matter, and therefore the determination of Congress, that raising up colored men to the right of suffrage is a means necessary to the execution of that power, is a determination which cannot be reviewed by the courts and is conclusive upon the people of this country.

The President of the United States, assuming that he had the power to execute this guaranty, and basing his proclamation upon it, went forward in the work of reconstruction. It was understood at that time—it was so announced, if not by

himself, at least formally by the Secretary of State, Mr. Seward—that the governments which he would erect during the vacation of Congress were to be erected as provisional only; that his plan of reconstruction and the work that was to be done under it would be submitted to Congress for its approval or disapproval at the next session. If the President had adhered to that determination, I believe that all would have been well, and that the present state of things would not exist. But, sir, the executive undertook finally to execute the guaranty himself without the co-operation of Congress. He appointed provisional governors, giving to them unlimited power until such time as the new State governments should be erected. He prescribed in his proclamation who should exercise the right of suffrage in the election of delegates. And allow me for one moment to refer to that. He says in his proclamation:

"No person shall be qualified as an elector, or shall be eligible as a member of such convention, unless he shall have previously taken and subscribed the oath of amnesty, as set forth in the President's proclamation of May 29, A.D. 1865,"

—which was issued on the same day, and was a part of the same transaction:

—"and is a voter qualified as prescribed by the constitution and laws of the State of North Carolina in force immediately before the 20th day of May, A.D. 1861."

The persons having the right to vote must have the right to vote by the laws of the State, and must, in addition to that, have taken the oath of amnesty. The President disfranchised in voting for delegates to the conventions from two hundred and fifty thousand to three hundred thousand men. His disfranchisement was far greater than that which has

been done by Congress. In the proclamation of amnesty he says:

"The following classes of persons are excepted from the benefits of this proclamation:"

He then announced fourteen classes of persons:

"1. All who are or shall have been pretended civil or diplomatic officers, or otherwise domestic or foreign agents, of the pretended Confederate government." . . .

"13. All persons who have voluntarily participated in said rebellion, and the estimated value of whose taxable property is over twenty thousand dollars."

And twelve other classes, estimated to number at the least two hundred and fifty thousand or three hundred thousand men, while the disfranchisement that has been created by Congress does not extend perhaps to more than forty-five thousand or fifty thousand persons at the furthest. These provisional governors, under the authority of the President, were to call conventions; they were to hold the elections, and they were to count the votes; they were to exercise all the powers that are being exercised by the military commanders under the reconstruction acts of Congress. After those constitutions were formed the President went forward and accepted them as being loyal and republican in their character. He authorized the voters under them to proceed to elect legislatures, members of Congress, and the legislatures to elect senators to take their seats in this body. In other words, the President launched those State governments into full life and activity without consultation with or co-operation on the part of Congress.

Now, sir, when it is claimed that these governments are legal, let it be remembered that they took their origin under a proceeding instituted by the President of the United States

in the execution of this guaranty, when it now stands confessed that he could not execute the guaranty. But even if he had the power, let it be further borne in mind that those constitutions were formed by conventions that were elected by less than one third of the white voters in the States at that time; that the conventions were elected by a small minority even of the white voters, and that those constitutions thus formed by a very small minority have never been submitted to the people of those States for ratification. They are no more the constitutions of those States to-day than the constitutions formed by the conventions now in session would be if we were to proclaim them to be the constitutions of those States without first having submitted them to the people for ratification. How can it be pretended for a moment, even admitting that the President had the power to start forward in the work of reconstruction, that those State governments are legally formed by a small minority, never ratified by the people, the people never having had a chance to vote for them. They stand as mere arbitrary constitutions, established not by the people of the several States, but simply by force of executive power.

And, sir, if we shall admit those States to representation on this floor and in the other House under those constitutions, when the thing shall have got beyond our keeping and they are fully restored to their political rights, they will then rise up and declare that those constitutions are not binding upon them, that they never made them; and they will throw them off, and with them will go those provisions which were incorporated therein, declaring that slavery should never be restored, and that their war debt was repudiated. Those provisions were put into those constitutions, but they have never been sanctioned by the people of those States, and they

will cast them out as not being their act and deed as soon as they shall have been restored to political power in this government. Therefore I say that even if it be conceded that the President had the power, which he had not, to start forward in the execution of this guaranty, there can still be no pretence that those governments are legal and authorized, and that we are bound to recognize them.

The President of the United States, in his proclamation, declared that those governments were to be formed only by the loyal people of those States; and I beg leave to call the attention of the Senate to that clause in his proclamation of reconstruction. He says:

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

Again, speaking of the army:

"And they are enjoined to abstain from in any way hindering, impeding, or discouraging the loyal people from the organization of a State government as herein authorized."

Now, sir, so far from those State governments having been organized by the loyal people, they were organized by the disloyal; every office passed into the hands of a rebel; the Union men had no part or lot in those governments; and so far from answering the purpose for which governments are intended, they failed to extend protection to the loyal men, either white or black. The loyal men were murdered with impunity; and I will thank any senator upon this floor to point to a single case in any of the rebel States where a rebel has been tried and brought to punishment by the civil authority for the murder of a Union man. Not one case, I am told, can be found.

Those governments utterly failed in answering the purpose of civil governments; and not only that, but they returned the colored people to a condition of quasi-slavery; they made them the slaves of society instead of being, as they were before, the slaves of individuals. Under various forms of vagrant laws they deprived them of the rights of freemen and placed them under the power and control of their rebel masters, who were filled with hatred and revenge.

But, Mr. President, time passed on. Congress assembled in December, 1865. For a time it paused. It did not at once annul those governments. It hesitated. At last, in 1866, the constitutional amendment, the fourteenth article, was brought forward as a basis of settlement and reconstruction; and there was a tacit understanding, though it was not embraced in any law or resolution, that if the Southern people should ratify and agree to that amendment, then their State governments would be accepted. But that amendment was rejected, contemptuously rejected. The Southern people, counselled and inspired by the Democracy of the North, rejected that amendment. They were told that they were not bound to submit to any conditions whatever; that they had forfeited no rights by rebellion. Why, sir, what did we propose by this amendment? By the first section we declared that all men born upon our soil were citizens of the United States—a thing that had long been recognized by every department of this government until the Dred Scott decision was made in 1857. The second section provided that where a class or race of men were excluded from the right of suffrage they should not be counted in the basis of representation—an obvious justice that no reasonable man for a moment could deny; that if four million people down South were to have no suffrage, the men living in their midst and surrounding

them and depriving them of all political rights, should not have members of Congress on their account. I say the justice of the second clause has never been successfully impugned by any argument, I care not how ingenious it may be. What was the third clause? It was that the leaders of the South, those men who had once taken an official oath to support the constitution of the United States and had afterward committed perjury by going into the rebellion, should be made ineligible to any office under the government of the United States or of a State. It was a very small disfranchisement. It was intended to withhold power from those leaders by whose instrumentality we had lost nearly half a million lives and untold treasure. The justice of that disfranchisement could not be disproved. And what was the fourth clause of the amendment? That this government should never assume and pay any part of the rebel debt; that it should never pay the rebels for their slaves. This was bitterly opposed in the North as well as in the South. How could any man oppose that amendment unless he was in favor of this government assuming a portion or all of the rebel debt, and in favor of paying the rebels for their slaves? When the Democratic party, North and South, opposed that most important and perhaps hereafter to be regarded as vital amendment, they were committing themselves in principle, as they had been before by declaration, to the doctrine that this government was bound to pay for the slaves and that it was just and right that we should assume and pay the rebel debt.

This amendment, as I have before said, was rejected, and when Congress assembled in December, 1866, they were confronted by the fact that every proposition of compromise had been rejected; every half-way measure had been spurned by the rebels and they had nothing left to do but to begin the

work of reconstruction themselves; and in February, 1867, Congress for the first time entered upon the execution of the guaranty provided for in the constitution by the passage of the first reconstruction law. A supplementary bill was found necessary in March, another one in July, and I believe another is found necessary at this time; but the power is with Congress. Whatever it shall deem necessary, whether it be in the way of colored suffrage, whether it be in the way of military power—whatever Congress shall deem necessary in the execution of this guaranty, is conclusive upon the courts and upon the States.

Sir, when Congress entered upon this work it had become apparent to all men that loyal republican State governments could not be erected and maintained upon the basis of the white population. We had tried them. Congress had attempted the work of reconstruction through the constitutional amendment by leaving the suffrage with the white men, and by leaving with the white people of the South the question as to when the colored people should exercise the right of suffrage, if ever; but when it was found that those white men were as rebellious as ever, that they hated this government more bitterly than ever; when it was found that they persecuted the loyal men, both white and black, in their midst; when it was found that Northern men who had gone down there were driven out by social tyranny, by a thousand annoyances, by the insecurity of life and property—then it became apparent to all men of intelligence that reconstruction could not take place upon the basis of the white population and something else must be done.

Now, sir, what was there left to do? Either we must hold these people continually by military power or we must use such machinery upon such a new basis as would enable loyal