REMARKS

OF

HON. FRANCIS KERNAN, OF N. Y.,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, APRIL 11, 1864.

The House having under consideration the resolution to expel Mr. Long, of Ohio—

Mr. KERNAN said:

Mr. SPEAKER: The question before the House is whether one of the Representatives of the people from the State of Ohio shall be expelled from this body for views which he entertains, and in support of which he argued at length on the floor of this House. It certainly, sir, is an important question—one of great importance in itself, and of grave importance to this body as a precedent. It is one which calls upon us to examine it with coolness, with firmness, and with deliberation. The proposition to turn out of this Hall one of the Representatives sent here by the people to act and speak for them is one of great importance in reference to the Representative himself, to the rights of his constituents, to this House as a deliberative body, and to the principles upon which our Government is based.

In the remarks which I shall submit, nothing, I trust, can move or induce me to indulge to any degree in the bitter partisan and personal denunciations which have characterized so much of the debate to-day. Is there a person within this Hall who, when he remembers the condition of our country, surrounded as it is with dangers which threaten its destruction, when he thinks of our soldiers in the field, and of our sorrow-stricken and anxious people at home, believes that we, in the council of the nation, have done or tended to effect any good to the country, or done anything toward preserving that Union which we profess to love so much, by the debate which has occurred to-day? I say this not in disparagement of any gentleman here, and in no spirit of criticism; I speak honestly that which has pressed upon my mind as I have heard bitter and vindictive epithets applied by one member to another in this Hall. I only allude to it to say that I shall not on this occasion allow myself to speak one word of like character toward those from whom I may widely differ. I shall confine myself to those questions which seem to me to pertain properly to the matter under consideration, stating my views in regard to the sentiments put forth by the gentleman from Ohio whom it is proposed to expel, and my reasons for the vote which I intend to give on the resolution for his expulsion.

In order to obviate misconception as to the reasons for my action on this question, it is proper that I should state that I differ entirely from the member from Ohio, [Mr. LONG,] both as to his premises and his conclusions, as stated by him in the remarks he submitted to the House, and which are now under consideration. In this speech, as reported in the *Globe*, he says:

"My first and highest ground of opposition to its [the war's] further prosecution is that it is wrong; it is in violation of the Constitution and of the fundamental principles on which the Federal Union was founded."

He proceeds to give his reasons and arguments for this opinion, citing various opinions of others which he claims sustain this position, and finally says:

"I now believe that there are but two alternatives, and they are either an acknowledgment of the independence of the South as an independent nation or their complete subjugation and extermination as a people, and of these alternatives I prefer the former."

If there is no constitutional power in the Government to prosecute the war, to suppress the rebellion and maintain the Union, then there is nothing extraordinary in his being opposed to its further prosecution. But I am of the contrary opinion. In my judgment the Federal Government is sovereign and supreme within its constitutional limits or sphere, and the State Government is sovereign and supreme as to all matters as to which authority is not granted by the Constitution to the Federal Government or prohibit to the States. The Constitution of the United States and the laws made in pursuance thereof are the supreme law of the land and must be obeyed, notwithstanding any State law or constitution to the contrary. This is the letter of the Constitution, and this I understand to be the teaching of the foun-

ders of the Government. The Federal Government has the right, and it is the sworn duty of those intrusted with its adminstration, to enforce the Constitution and laws, to suppress resistance and compel obedience to them within the entire territory of the United States. If ten men combine to resist and endeavor to set their authority at defiance, it is the right and duty of the Federal Government, under and in accordance with the Constitution, to suppress the resistance of these ten men, compel them to obey, and punish them for their disobedience; and it has authority to use all the force necessary to effect this object. So, if a million or any other number of the citizens of one or of several States combine and resist and seek to overthrow the authority of the Constitution and laws of the United States, the Federal Government has the right and it is the duty of those exercising its authority to employ the requisite force to suppress the rebellion and enforce obedience. The State authorities, or the people of a State acting by or through the State Government, cannot by State constitution or law shield one citizen of the State in setting the United States Constitution and laws at defiance, or screen him from punishment for disobeying them; nor can they justify the entire people of the State in disobeying or resisting the authority and jurisdiction of the Federal Government or in rebellion against it, because the Constitution of the United States and the laws made in pursuance thereof are the supreme law of the land, and every person within the United States is bound to submit to and obey them.

As to all matters of government, all local matters, over which jurisdiction and authority are not granted by the Constitution to the Federal Government, the people of the States and the State governments they form are supreme; the Federal Government cannot rightfully interfere with these, because "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." That is my understanding of the Constitution, and of the rightful authority of the Federal Government and those administering it to suppress rebellion against its authority, to use the power of armies and navies to defend and maintain its jurisdiction. I state this my conviction respectfully toward those who may differ from me, but earnestly deepened and strengthened as it is by all the reflections I have been able to bestow upon a question of so much importance under the circumstances in which the country has been, for the last few years, placed.

It is often said in reference to the question of using armed force to suppress the rebellion, "You have no right to coerce States." Why, sir, the United States has nothing to do with coercing States. It deals with individuals who resist the Constitution and laws. It commands them to submit to the law; if they refuse, it enforces obedience and punishes them for disobedience. In doing this, nay, in using armed force to suppress those in rebellion against its authority, it does not intrench upon the rightful jurisdiction or reserved rights of the States. In doing this we are dealing with individuals who owe obedience to the Federal Government and its laws.

I have said thus much to show how widely I differ from those who have doubts as to the authority of the Government of the United States to defend itself and maintain the authority of the Constitution, and thus preserve the Union by employing the necessary armed power to suppress the existing rebellion; and I will add that I regard it to be my duty to sustain those in authority in all needful constitutional measures to bring those in rebellion to obedience.

It is often said, and in my judgment it is true, that the policy of the Administration, as to the mass of the people in rebellion, and in carrying on the war, is not the true one to speedily suppress the rebellion and to defend and restore the Union. Many of the purposes sought to be effected by the party in power in waging the war I entirely disapprove of. I differ from the Administration as to many of its measures, and very much of its policy; nevertheless I do not mean to be placed in an attitude of hostility to the Government of my country. For the present the administration of the Government has been, in accordance with the Constitution, intrusted to the party in power. The President and his chosen advisers can alone now wield its powers, and they and the political party which sustains them decide as to policy and measures. Under these circumstances I deem it to be my duty, as a citizen and as a Representative, to give to them the necessary men and means to defend and maintain the authority of the Constitution and to put down the rebellion, holding them responsible and accountable to the people for the use they make of them. If I believe their policy or measures wrong, I have the right to remonstrate against them, to point out wherein they are erroneous or unauthorized, to advocate a different policy or different measures; and I trust I will never be intimidated from doing so in a proper spirit, and on all fitting occasions, by any denunciation of my acts or imputations upon my motives. If I am, I do not deserve the liberty our institutions were intended to secure to our citizens, and am not worthy of a seat here as a Representative.

The remedy under our form of Government for the misconduct of those administering it, is by an appeal to the electors, who can displace them and indicate the policy they prefer and will have pursued. The remedy, if their policy be wrong, is not in withholding from those intrusted with the administration the necessary means to carry on the Government; is not in a factious opposition or illegal resistance to them; but the remedy is to displace them at the elections. In answer to

the argument that we have no right to carry on this war to put down the rebellion and maintain the Union, my platform may be stated in few words. I with every other citizen have a right to say the Government founded upon the union of the States under the Constitution is my Government; its preservation and perpetuation is essential to my liberty, peace, and prosperity, and to that of my descendants; therefore I have a right and it is my duty to defend it against those who seek to destroy it, whether they come from abroad or arise in our midst. When a portion of our own people array themselves in arms, resist the rightful authority of the constituted authorities of the Federal Government, and declare that the Union under the Constitution is to be severed, deeply as I regret the necessity, nevertheless I will stand with those who are in favor of compelling submission by the use of all the armed force which is required to suppress resistance, and to restore the authority of the Constitution and the laws made in pursuance of it.

Mr. Speaker, entertaining these views, I regard it proper to make a few observations in reference to remarks made this morning by one of my colleagues from New York, [Mr. FERNANDO WOOD,] who expressed views different from those which I have just expressed. I make no complaint that he holds the opinions which he has expressed in reference to this rebellion; but I have a right to point out errors he has fallen into as to others. He said there is no such thing as war Democrats; that this was a contradiction in terms. If, as I under stand him, he means by war Democrats those of the Democratic party who hold that it is the right of the Government of the United States to suppress by force of arms those who are now in armed rebellion against its authority, with the avowed purpose of establishing an independent confederacy in the Southern States, and who hold that the Federal Government has by and under the Constitution authority to employ the necessary armed force to compel those in rebellion to submit to the Constitution and laws of the United States, and that those administering the Government should be sustained in all proper constitutional measures and efforts to effect this object, then I certainly am a war Democrat, and I believe the great mass of the Democratic party are war Democrats.

In the State of New York that party, by each of its State conventions held since the rebellion broke out, has in its declaration of principles denounced secession, declared its unalterable attachment to the Union under the Constitution, and that it would sustain those in authority in all constitutional efforts to suppress the rebellion and restore and preserve the Union. I do not assume on this floor or elsewhere to speak for that party. It is a bold and patriotic party, and always at the proper time and by its representatives selected for that purpose declares its principles and indicates the policy which it advocates, and which if in power it would pursue. I have simply stated my own views and the position occupied by that party in the State of New York. That party has, I believe, contributed its full quota to the army which has been summoned to the field, and its members have not been outdone by others in private or public efforts to encourage the soldier by providing for his family and alleviating the hardships which he endures. The members of that party as a whole are, as I believe, earnestly and determinedly in favor of preserving the Union of these States under the Constitution. To that end and for that purpose they are in favor of employing the necessary force to overthrow the military power of the so called Confederate States, and to compel the people to submit to the Constitution and laws. So far as it is necessary, they are in favor of using force to restore and preserve the Union; but they believe that wisdom, statesmanship, and the best interests of our country require that moderation and conciliation should be superadded to the power of the sword to restore the country to unity and peace.

The gentleman from New York [Mr. FERNANDO WOOD] says he is for peace. I desire peace. When we look around and see mourning in every neighborhood, and sorrow and anxiety produced by this unnatural war at almost every fireside, who does not wish for peace? But, in my judgment, it is idle to talk of peace with the Union preserved until we have defeated the armies marshalled to destory it. It is useless to talk of sending commissioners to treat with the rebel authorities now, because they have declared over and over again that they will not negotiate except upon the basis of separation, of a dissolution of the Union. Peace upon such a basis would be of short duration, while it would be purchased by the destruction of the present Government. Making such a peace, where is to be the division line? How many of the States, after such a peace, will remain united under the Constitution, and how long? No, we must break the military power of those engaged in this rebellion before we can have any peace, except as a condition of separation. Are we prepared for that? For one, terrible as is this war, lamentable as are its consequences, I am not. In my judgment, the evils which will flow from the dissolution of the Union require that we should make every effort to restore and preserve it. Hence, in sorrow rather than in passion, I feel that we can notdesist now from the further prosecution of this war. It should not be prosecuted for the purpose of carrying out any peculiar idea, or to compel the people of the South to regulate their local institutions or conform their State constitutions to the ideas of the people of the Northern States. It should be prosecuted solely for the purpose of vindicating the authority of the Constitution, re-establishing the jurisdiction of the Federal Government, and restoring the Union

of States under the Constitutton; and when this is accomplished there should be peace. This is my opinion. I do not speak for others; but I believe it is substantially the opinion of the mass of the thoughtful, patriotic and conservative citizens of the country.

Sir, I ask pardon of the House for occupying this much of its time in alluding to these questions. But I deemed it not improper to do so, inasmuch as I differ so widely from the views of the gentleman from Ohio [Mr. LONG] whose opinions are under consideration; but, nevertheless, shall vote against the resolution to expel him. I trust that no member will be awed by the manifestations which we have seen and heard in the galleries from maintaining the great principle of free speech and fearless debate in this Hall. Our form of government, the rights of the people, and the character of this body demand that the Representative should be at liberty to proclaim and advocate here his views on questions of a public character freely and fearlessly, whether they chance to be popular or unpopular. I have regretted to observe that while this important question was under consideration, while we were deliberating whether we should expel a Representative of the people for expressing in respectful language his opinions on public questions here, there were American citizens in this Hall so dead to what is due to the place and to the question, as to manifest in clamorous applause their approval of the proposition for suppressing free debate here. Let not the lessons of the French Revolution be lost upon the American people. The Chamber of Deputies intended, doubtless, at the outset to relieve the French people from serious burdens and give them a free government. But by yielding to passion and popular clamor it soon became not a deliberative body to guide and control, but a body to register the decrees of the excited populace. They gave neither freedom nor peace to the French people, but a despotism arose out of the disorder which ensued, beneath which liberty was crushed, and the sons of France were dragged at the will and to subserve the ambition of one man over Europe, drenching it with their blood, and leaving mourning in every household in France. Let us and our people take warning of the danger of giving way to passion, excitement, and undue partisan feeling in times like these. For the sake of our free system of government, and that free discussion among the people, and free debate in our legislative bodies, without which our institutions and liberties cannot long be maintained, let us disregard popular clamor and partisan feelings in deciding whether a Representative of the people shall be expelled for expressing here in an orderly manner opinions upon public questions. Heaven forbid that this Government, under which every citizen has been protected in his rights and been prosperous and happy until this rebellion broke out, should be overthrown, as many a thoughtful man begins to fear it may be although his hope and prayer is that it may not; but if that should be its fate I for one desire to have the consolation of having decided every question according to my judgment, unbiased by the fear of unpopularity on the one hand or the hope of clamorous applause on the other.

The gentleman from Ohio [Mr. LONG] in Committee of the Whole on the state of the Union, the President's message being under consideration, on an occasion when it was entirely proper for him to express his views as to the war, did so. The question is, have we a right to and shall he be expelled for doing so? I beg of members to recollect that we are not to pass upon the correctness of his opinions, or whether we deem them wise or patriotic. As a Representative, and honestly entertaining them, had he not a right to express them here? Had he not a right to try to convince his fellow-members that his views were correct and that they were wrong? If not, then this is not a deliberative body, and debate here is a farce; no opinion can be expressed and maintained here unless they are in accordance with the views of the majority. A Representative believes the policy which the majority is pursuing is destructive of the best interests of the people, that it will lead to no good result, and here in the council of the nation, where it his right and duty to speak, he proposes and advocates a different policy. Conceding that he is wrong, should he be expelled? Has a majority or two-thirds of this House a right to expel him because they think his views erroneous or unpatriotic? If so, what becomes of the freedom of discussion? Where are the rights of minorities here or among the people? His erroneous views should be controverted by arguments, but we have no right by expelling to silence him or to attempt to stifle the voice of his constituents if he speaks their sentiments; and whether he does or not is a question between him and them.

If one citizen or a hundred send to this body a respectful petition praying for precisely what the member [Mr. LONG] has argued, we are bound to receive it. At a former period, when the country was peaceful and happy, when there seemed to be no reason for talking of dissolving this Union and no possible contingency to warrant agitation for that purpose, petitions by citizens of Massachusetts, praying for a dissolution of the Union, were sent to Mr. Adams, a Representative in this body; he presented them and moved a committee for their consideration; and when there was an attempt made to expel or censure him those who made it were abashed and cowed by the excoriation which they received as the eloquent old man vindicated the right of petition in the citizen and the right and duty of the Representative to present his petition here. If a petition to dissolve the Union then could be presented, surely it may be now; and if the people have a right to present a petition they have a right to send a

Representative here to advocate their views in proper terms, and we have no right to expel him for doing so.

But without regard to precedents, upon the principles that underlie the Government and which must be recognized in this as a deliberative legislative body, examine the question. The country is engaged in a war to suppress a rebellion. It has become a fearful war in the destruction of life and property. A Representative of a portion of the people who are waging this war, on a suitable occasion for the consideration of the question, argues to this body that the war should not be further prosecuted; that it will not be successful in restoring the Union of the States, and that the independence of the insurgents should be acknowledged, and peace thus secured. We think his proposition unwise and unpatriotic. But the question is one of the questions to be decided by this House. Every time we vote supplies to maintain the army we decide in favor of continuing the war to put down the rebellion, and try to restore and preserve the Union under the Constitution. Is the member from Ohio [Mr. LONG] to be expelled for differing from the majority, or even for differing with every other member on this question which comes properly before us for decision? If so, it will occur that in exciting times, in regard to vital questions of public policy, the Representative who feels bound to advocate unpopular views will not be overborne by reason and argument, but will be expelled and thus silenced. You will have no debate except that which runs in the one groove, the majority silencing by mere numerical power all who oppose them. I do not wish to see such a state of things in this country within or without this House.

Take, for instance, the last war with Great Britain. We went to war, the whole nation went into that war, in the right spirit, saying that we would carry it on until Great Britain gave up the claim she made of taking our sailors from beneath our flag because they were born upon her soil. We carried on that war for the purpose of forcing her to acknowledge that our flag protected those beneath it. We believed, and we had the right to believe, that it was due to us to carry on that war until our flag should be respected. Yet if a man had come into this Hall and advanced the argument that we had better let them take our sailors from beneath our flag rather than further to carry on the war, although such an argument would have been strongly against the popular feeling, although the people believed it to be unpatriotic and wrong, yet could you expel a man for arguing that which he believed to be right?

During that war I recollect Jeremiah Mason, one of the ablest lawyers sent from New England to the Congress then sitting in this Capitol, made a speech, in which he alleged that the then proposed conscription act was unconstitutional and tyrannical; that he believed the people would resist it, and that they ought to resist it. Yet nobody attempted to expel him. It might well have been claimed that this language was seditious, especially in time of war. I do not refer to these illustrations as precisely parallel cases. I merely refer to them for the purpose of saying that whether this Representative [Mr. LONG] is right or wrong, whether we think him patriotic or otherwise, whether we think him one way or the other as to loyalty, the question is, and the only question before us is, can we expel a member here because he believes a certain policy wise and gets up in this Hall and advocates it?

Mr. Speaker, if that shall come to be the rule of action in representative bodies like this, then, believe me, the reign of faction, clamor, and disorder will follow. Not that such is the intention, or that such will be the immediate result, but we shall have stricken down that honest and fearless discussion which is the life of liberty. Why, sir, if the members of this House are to be intimidated for advocating a course of policy which they believe to be right, from fear of expulsion or from fear of censure by this body, then the minority will have surrendered all their rights, or, if they do not, there will be nothing but efforts to expel them. I believe it should be a very remarkable case to justify us in passing censure upon any gentleman occupying a seat upon this floor, sent from any constituency within a loyal State, for words decorously spoken expressing his opinions in debate. Although he may express what I believe to be wrong, what I believe to be most unpatriotic, what I believe to be against the best interests of the Government, and contrary to our duty as Representatives, I would not censure him for the expression of such opinion. I would rather bear the evil which may result from the expression of improper sentiments, than to inaugurate here the principle that because two-thirds of us differ with a Representative we will drive him out of the Hall, instead of arguing and voting him down. That is not the theory or practice which I have supposed wise to inaugurate under our Government. I have supposed that as long as members were debating subjects under consideration, no matter what views they might express as to the policy of the Government, it was not wise or right for us to censure or expel them for the expression of erroneous or improper opinions.

The Constitution declares that "Congress shall make no law abridging the freedom of speech or of the press." If the opinions of the gentleman from Ohio [Mr. LONG] can be expressed or discussed anywhere in the country, they certainly may be here. Can we rightfully prohibit the people at home, far away from the army, where they cannot create any special injury, from expressing the opinions expressed here by him? Certainly not. Upon what principle then can we expel him for uttering them here? This is the body to decide upon questions of peace or

war, upon all questions of public policy; and is a Representative to be expelled, or punished by a resolution of censure for expressing his opinions on these subjects? Mr. Lincoln himself said there must be an end of all wars; that we could not fight always. I trust the time will never come when we must surrender the hope of restoring and preserving this Union. But unless we shall be able to bring this war to a successful close within a reasonable time, no man doubts that the question of having peace upon other terms than the restoration of the Union under the Constitution will have to be discussed and decided. I hope that by success in the field, and wisdom in our councils such a question will be avoided; that we shall succeed in re-establishing the authority of the Constitution and bring those in rebellion under its authority. But I do not believe it will tend to that result to expel a member for holding a different opinion from ourselves. I do not think we shall restore the Union by occupying the time of the House in turning Representatives of the people out of this Hall for opinions expressed on a subject under debate.

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